

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Judge
Case No. 2012-CP-26-3859

Thomas Rickerson

Appellant,

vs.

John Karl, M.D. and Virginia Bell, CS, FSP

Respondents

RECEIVED
DEC 13 2013
SC Court of Appeals

RECORD ON APPEAL

William Isaac Diggs
LAW OFFICES OF WILLIAM ISAAC DIGGS
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
(843)-626-4243
(843)-626-5123

ATTORNEY FOR APPELLANT

Lydia Lewis Magee
Sheila Marlouvon Bias
Marian Williams Scalise
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Columbia, SC 29201-2604
803-771-4400

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Thomas Rickerson,

Plaintiff,

-vs-

John Karl, M.D. and
Virginia Bell, CS, FSP,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-26-3859

ORDER OF DISMISSAL

FILED
HORRY COUNTY
13 MAY -2 PM 4:20
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter came before the Court on April 22, 2013 on Defendants' Motion to Dismiss pursuant to South Carolina Code Ann. § 15-79-125(C), seeking dismissal of the Plaintiff's Notice of Intent and preventing a Summons and Complaint from being filed in this matter. Present at the hearing were William Isaac Diggs, attorney for the Plaintiff, and Marian Williams Scalise, attorney for the Defendants. Based on the Court's review of the Defendants' Motion to Dismiss, Plaintiff's Return to Motion to Dismiss, exhibits presented at the hearing, S.C. Code Ann. §15-79-125(C), and the South Carolina ADR Rules as well as considering counsels' arguments during the hearing, this Court finds that dismissal with prejudice is an appropriate sanction for failing to mediate the case within 120 days as required by S.C. Code Ann. §15-79-125(C) and ADR Rules 4(c) and 5(f) and for failing to request an extension to mediate.

In 2005, as part of comprehensive tort reform, the South Carolina General Assembly enacted §15-79-125 which requires that a medical malpractice plaintiff must initially file a Notice of Intent to File Suit together with an affidavit of an expert witness. In the present case, Plaintiff filed his Notice of Intent on May 15, 2012, alleging that an antibiotic prescribed by the Defendants interacted with the Plaintiff's other medications allegedly resulting in hospitalization. Defendant Dr. John Karl was served on June 16, 2012, and Defendant Nurse Practitioner Virginia Bell was served on June 19, 2012. Defendants' counsel filed a Notice of Appearance on July 2, 2012.

1
mtc

South Carolina Code Ann. §15-79-125(c) states, "Within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no more than sixty days is granted by the court based upon a finding of good cause." South Carolina ADR Rules 4(c) and 5(f) require that pre-suit mediations be held no later than 120 days after defendants are served; they do not mention the potential for an extension.

One hundred twenty (120) days from June 19, 2012 was October 17, 2012. Based on the information presented, no attempt was made by any party to schedule mediation prior to December 19, 2012, more than two months after the 120-day pre-suit mediation deadline. Further, no motion was filed seeking an extension of time to mediate. While the ADR Rules discuss both parties' obligation to participate in a mediation, it does not specify who is responsible for initiating the scheduling of a mediation. This Court finds that the Plaintiff, as the party bringing the lawsuit and as the one who has the burden of proof, is responsible for this. If a Defendant will not cooperate in the scheduling of a mediation, the Plaintiff can then file a Motion seeking an extension of time to mediate. Nevertheless, in this case, there was absolutely no discussion about mediation and no contact with a mediator until December 19, 2012. Parties are not permitted to mediate by consent beyond the statutory deadline; instead, it requires permission from the Court. Here, permission from the Court was neither sought nor granted prior to the expiration of the 120-day deadline.

Defendants filed their Motion to Dismiss on Dec. 20, 2012. Rule 10(a) of the South Carolina ADR authorizes sanctions for failure to timely file proof of ADR; the rule does not mandate specifically what sanction must be imposed. Rule 10(b) provides that "any lawful sanctions" may be imposed for a violation of ADR, and it specifically lists that an example of a lawful sanction is "any other sanction authorized by Rule 37(b), SCRPC." Rule 37(b) authorizes dismissal of an action with prejudice as a lawful sanction. Based on the lack of any effort to schedule mediation within 120 days or to request an extension of 60 days, this Court finds that dismissal with prejudice is an appropriate sanction.

NOW, THEREFORE, based upon the above findings and conclusions, it is hereby
ORDERED, ADJUDGED, AND DECREED that this matter is dismissed with prejudice.

AND IT IS SO ORDERED.



Honorable Benjamin H. Culbertson
Presiding Judge, Fifteenth Judicial Circuit

April 24, 2013.

Conway, South Carolina.

11-75

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-26-3859

Thomas Rickerson
PLAINTIFF(S)

John Karl, M.D., et al.
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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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:

Plaintiff's Motion to Reconsider Order of Dismissal is DENIED.
(This motion was decided without oral arguments.)

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

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)
N/A	N/A	\$ N/A
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

June 27, 2013
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:

William Isaac Diggs

Marian W. Scalise

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: None

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
File 2012-CP-26-

Thomas Rickerson,)
Plaintiff,)
v.)

NOTICE OF INTENT TO FILE SUIT

John Karl, M.D. and Virginia Bell,)
CS, FNP,)
Defendants)

12 MAR 15 AM 9:13
CLERK OF COURT
JUDICIAL CIRCUIT
FIFTEENTH

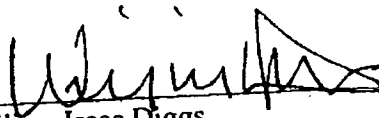
COMES NOW THE PLAINTIFF, by and through his undersigned counsel,
pursuant to S. C. Code Ann. § 15-79-125 who would show the following:

STATEMENT OF FACTS

1. In 2007, Plaintiff underwent coronary bypass surgery performed by Bryan McIntyre, M.D. Thereafter, Plaintiff was maintained on Coumadin and aspirin, both of which are known to cause serious bleeding. Plaintiff's cardiology team also prescribed Lasix for presumed congestive organ failure
2. In July 2011, plaintiff saw Dr. John Karl and nurse practitioner and clinical specialist, Virginia Bell, who prescribed Bactrim for the plaintiff to treat his poorly diagnosed skin lesions. However, both Dr. Karl and Nurse Practitioner Bell were negligent in prescribing Bactrim without proper indication and diagnosis when plaintiff was on Coumadin and Lasix and failed to adjust plaintiff's other medications, Lasix and Coumadin, in accordance with medical guidelines.
3. This negligent act in the presence of the drug, Metformin, which had been previously prescribed for plaintiff, set the plaintiff on a path of disastrous complications, including, bleeding and renal failure, that almost claimed the plaintiff's life.

4. As a direct and proximate result of defendants' negligence, jointly and severally, Plaintiff suffered additional medical expenses from requisite hospitalization and pain and suffering, and was forced to take a leave of absence from his employment until his release and recovery. Plaintiff's wife incurred damages directly due to the severity of plaintiff's illness. Such was in the form of a loss of society and companionship, stress, and the required provision of nursing and home care for the plaintiff who could not properly care for himself on a daily basis.

LAW OFFICES OF WILLIAM ISAAC DIGGS



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

**ATTORNEY FOR THE PLAINTIFF THOMAS
RICKERSON**

This 10th day of May, 2012
Myrtle Beach, South Carolina

7

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
File 2012-CP-26-

Thomas Rickerson,)
Plaintiff,)
v.)
John Karl, M.D. and Virginia Bell,)
Cs FNP,)
Defendants)

AFFIDAVIT OF OMAR JARAKI, M.D.

12 MAY 15 PM 9:43
CLERK OF COURT

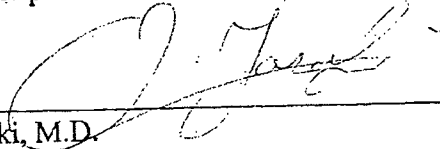
COMES NOW THE UNDERSIGNED, who upon being duly sworn, deposes
and says as follows:

STATEMENT OF FACTS

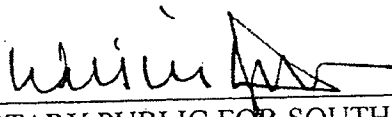
1. In 2007, Plaintiff underwent coronary bypass surgery performed by Bryan McIntyre, M.D. Dr. McIntyre and Dr. Bowen Truluck, a cardiologist, failed to convert the patient from atrial fibrillation to normal sinus rhythm and maintained the plaintiff on the dangerous medicine Coumadin and aspirin, both of which are known to cause serious bleeding. Dr. Truluck and his cardiology team also prescribed lasix for presumed congestive failure, but they failed to properly follow up, especially in adjusting the medicine when other medications were added to plaintiff's regimen.

2. In July 2011, plaintiff saw Dr. John Karl and nurse practitioner, Virginia Bell, who prescribed for the plaintiff bactrim to treat his poorly diagnosed skin lesions. However, both Dr. Karl and Nurse Practitioner Bell were negligent in prescribing Bactrim without proper indication and diagnosis when plaintiff was on Coumadin and Lasix and failed to adjust other medications, to wit: Lasix and Coumadin in accordance with medical guidelines.

3. This negligent act in the presence of the drug, Metformin, which had been prescribed for plaintiff, set the plaintiff on a path of disastrous complications, including, bleeding and renal failure, that almost claimed the plaintiff's life.


Omar Jaraki, M.D.

Sworn to before me this 6th day of
April, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA

William Jean Diago
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 09-22-2013

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
File 2012-CP-26-3859

Thomas Rickerson,)
Plaintiff,)

v.)

John Karl, M.D.; and Virginia)
Bell, CS, FNP)
Defendants)

**AMENDED NOTICE OF INTENT TO
FILE SUIT**

HORRY COUNTY
13 JAN -4 PM 2:53
HEATHER HUGHES-WARD
CLERK OF COURT

COMES NOW THE CLAIMANT, Thomas Rickerson, by and through his undersigned counsel, and pursuant to S.C. Code Ann. § 15-79-125, who would give his **AMENDED** Notice of Intent to File Suit. Attached as **Exhibit A** and incorporated by reference herein is a document setting forth facts which show that the claimant is entitled to relief. The contemporaneous filing requirement of the expert's affidavit is attached hereto as **Exhibit B**, with his Curriculum Vita. Attached as **Exhibit C** are claimant's Answers to the standard Interrogatories and standard interrogatories which are served on the respondents. 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 and ADR Rule 5(f).

Pursuant to ADR 4(c), in the event the parties are unable to agree upon a mediator, the Court hereby appoints _

(Mediator)

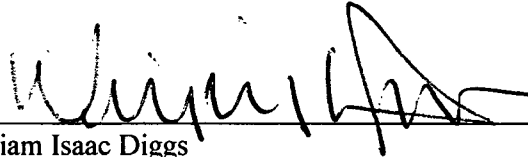
Christopher Pence

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

(Alternative Mediator)

Respectfully Submitted

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
Tele: 843-626-4243
Fax: 843-626-5123

**ATTORNEY FOR THE CLAIMANT THOMAS
RICKERSON**

This 4th day of January, 2013
Myrtle Beach, South Carolina

PLEASE TAKE NOTICE THAT S.C. Code Ann. § 15-79-125(C) STATES

**Within ninety days and no later than one hundred
twenty days from the service of the Notice of Intent to
File Suit, the parties shall participate in a mediation
conference unless an extension for no more than sixty
days is granted by the court based upon a finding of
good cause.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) File 2012-CP-26-3859

Thomas Rickerson,)
)
)
Plaintiff,)
)
v.)
)
John Karl, M.D. and Virginia Bell,)
)
CS, FNP,)
)
)
Defendants)

STATEMENT OF FACTS

HORRY COUNTY
13 JAN -4 PM 2:53
MELANIE HUGGINS-WARD
CLERK OF COURT

COMES NOW THE PLAINTIFF, by and through his undersigned counsel,
pursuant to S. C. Code Ann. § 15-79-125 who would show the following:

STATEMENT OF FACTS

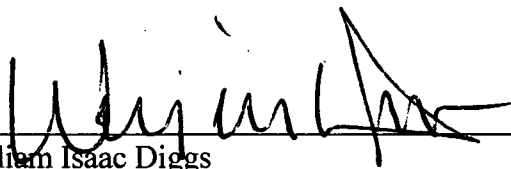
1. In 2007, Plaintiff underwent coronary bypass surgery performed by Bryan McIntyre, M.D. Thereafter, Plaintiff was maintained on Coumadin and aspirin, both of which are known to cause serious bleeding. Plaintiff's cardiology team also prescribed Lasix for presumed congestive organ failure

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3. This negligent act in the presence of the drug, Metformin, which had been previously prescribed for plaintiff, set the plaintiff on a path of disastrous complications, including, bleeding and renal failure, that almost claimed the plaintiff's life.

4. As a direct and proximate result of defendants' negligence, jointly and severally, Plaintiff suffered additional medical expenses from requisite hospitalization and pain and suffering, and was forced to take a leave of absence from his employment until his release and recovery. Plaintiff's wife incurred damages directly due to the severity of plaintiff's illness. Such was in the form of a loss of society and companionship, stress, and the required provision of nursing and home care for the plaintiff who could not properly care for himself on a daily basis.

LAW OFFICES OF WILLIAM ISAAC DIGGS



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

**ATTORNEY FOR THE PLAINTIFF THOMAS
RICKERSON**

This 4th day of January, 2013
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 File 2012-CP-26-

Thomas Rickerson,)
)
 Plaintiff,)
 v.)

AFFIDAVIT OF OMAR JARAKI, M.D.

John Karl, M.D. and Virginia Bell,)
 Cs FNP,)
 Defendants)

12 MAR 15 PM 9:13
 CLERK OF COURT

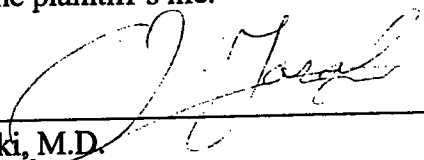
COMES NOW THE UNDERSIGNED, who upon being duly sworn, deposes
 and says as follows:

STATEMENT OF FACTS

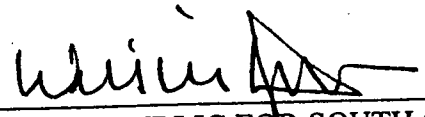
1. In 2007, Plaintiff underwent coronary bypass surgery performed by Bryan McIntyre, M.D. Dr. McIntyre and Dr. Bowen Truluck, a cardiologist, failed to convert the patient from atrial fibrillation to normal sinus rhythm and maintained the plaintiff on the dangerous medicine Coumadin and aspirin, both of which are known to cause serious bleeding. Dr. Truluck and his cardiology team also prescribed lasix for presumed congestive failure, but they failed to properly follow up, especially in adjusting the medicine when other medications were added to plaintiff's regimen.

2. In July 2011, plaintiff saw Dr. John Karl and nurse practitioner, Virginia Bell, who prescribed for the plaintiff bactrim to treat his poorly diagnosed skin lesions. However, both Dr. Karl and Nurse Practitioner Bell were negligent in prescribing Bactrim without proper indication and diagnosis when plaintiff was on Coumadin and Lasix and failed to adjust other medications, to wit: Lasix and Coumadin in accordance with medical guidelines.

3. This negligent act in the presence of the drug, Metformin, which had been prescribed for plaintiff, set the plaintiff on a path of disastrous complications, including, bleeding and renal failure, that almost claimed the plaintiff's life.


Omar Jaraki, M.D.

Sworn to before me this 6th day of
April, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA

William Isaac Diggs
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 09/25/2013

Curriculum Vita

Omar Jaraki, MD

Name: Omar Jaraki

DOB: 03/12/1956

Citizenship: USA

Address: 1418 10th Ave, Conway SC, 29526

Specialties:

Cardiologist

Cardiovascular interventionist

Electrophysiologist

Nuclear cardiologist

Emergency medicine

Clinical Pharmacologist

Clinical research

Board certifications:

Internal Medicine

Emergency Medicine

Clinical Cardiology

Interventional Cardiology

Nuclear cardiology

Board Eligible:

Cardiac Electrophysiology

Clinical Pharmacology

Education:

Electrophysiology Fellowship, Illinois Masonic Medical Center, 2000

Interventional Cardiology, Emory University, 1997

Clinical Cardiology, University of Missouri, 1994-1997

Internal Medicine, residency Faulkner Hospital, Boston, 1988-90

Internship, St Luke's Hospital, Cleveland, 1987

Medical School:

Damascus Faculty of medicine, 1976-1980, MD

Damascus University, Science, 1974-1976, BS

Research Interest:

Stem Cell therapy

Nitric Oxide role in Hemodynamic

Function of endothelial cells

Teachings:

Several conferences in Medicine and Clinical pathology

Cardiology rounds in hemodynamic

Cell culture and differentiations

Cell signaling and manipulations

Stem cell isolation and development

Developments:

Institute of Electrophysiology

Electrophysiology Lab in Arkansas

Cardiovascular Lab in Damascus

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
File 2012-CP-26-3859

**PLAINTIFF'S ANSWERS
TO STANDARD INTERROGATORIES**

V.)

Defendants)

INTERROGATORIES

Answer:

No written or recorded statements have been taken from this witness regarding this litigation other than statements made to medical providers. Those providers would have

possession of any such statements made to them respectively.

Karen Rickerson
201 Threshing Way
Unit 1042
Myrtle Beach, SC 29579

No written or recorded statements have been taken from this witness regarding this litigation.

(2) Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

Answer

At the present time there are no photographs, plats, sketches or other prepared documents in plaintiff's possession that relate to the claim or defense in this case.

(3) In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

Answer

- Mark P. Caravan, MD
Timothy J. Cornell
Anne M. Everman, MD
Joseph L. Trask, MD II
D. Bowen Truluck, MD
Cardiology/Gastroenterology Associates of Myrtle Beach, PA
945 82nd Parkway, Suite 3
Myrtle Beach, SC 29572
843.449.3381 phone
- Mark J. McCoy, DMD
201 Ronnie Court
Myrtle Beach, SC 29579
- Matthew M. Kreps, M.D.
Administration Office
Carolina Health Specialists
4615 Oleander Drive SUITE 201A
Myrtle Beach, SC 29577
(843) 449-9559

Kenneth Belcher, MD
Carolina Health Specialists
Grand Strand Regional Medical Center
809 82nd Pkwy
Myrtle Beach, SC 29572
(843)692-1784

- John Y. Karl, MD
Virginia (Ginger) Ellen Bell, Cs FNP
Inlet Medical Associates
912 Inlet Square Drive
Murrells Inlet, SC 29576
Phone: 843-651-4111
- Ben D. Davis, M.D.
Grand Strand Spine & Neuro Center
Trauma & General Surgery
849 82nd Pkwy
Myrtle Beach, SC 29572
- Yenney Meza, M.D.
809 82nd Parkway
Myrtle Beach, SC 25977
843-692-1000
- Natalie Thomas, M.D.
809 82nd Parkway
Myrtle Beach, SC 25977
843-692-1000

(4) Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Answer:

N/A

(5) Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

Answer:

Plaintiff is not in possession of this information at present.

However, monetary damages total the medical expenses

medical services needed incurred by him for medical services needed due to

defendants' negligent treatment of claimant. Claimant also incurred a loss of income as he was not able to work for several weeks due to his hospitalization and recovery period.

(6) List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Answer:

Omar Jaraki, M.D.
P.O. Box 810
N. Myrtle Beach, SC 29597

(7) For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Answer:

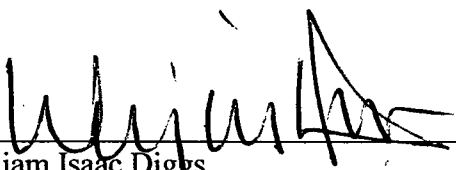
Plaintiff is presently not aware of any witnesses other than the parties in this case who have knowledge of facts known or observed. Claimant's wife has also been named as a witness in this matter since she observed claimant's decline in health following defendants' treatment of claimant.

(8) *[Defendants only.]* If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

(9) *Limitations.* In addition to the standard interrogatories authorized by this paragraph, the court may order additional interrogatories for good cause shown in any case. In all actions in which the amount in controversy is not less than \$25,000, and in all actions for declaratory or injunctive relief, a party may serve additional interrogatories including more than one set of interrogatories upon any other party; but the total number of general interrogatories to any one party shall not exceed fifty questions including subparts, except by leave of court upon good cause shown.

Respectfully submitted

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
Tele: 843-626-4243
Fax: 843-626-5123

**ATTORNEY FOR THE PLAINTIFF, THOMAS
ALLEN RICKERSON**

This 4th day of January, 2013
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Thomas Rickerson,

Plaintiff,

-vs-

John Karl, M.D. and Virginia
Bell, CS, FNP,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-26-3859

MOTION TO DISMISS

HORRY COUNTY
CLERK OF COURT
12 DEC 20 PM 12:09
JUDGINS-WARD

TO: WILLIAM ISAAC DIGGS, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendants, will move before the Judge of the Court of Common Pleas, on the tenth (10th) day after the service hereof, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, pursuant to South Carolina Code Ann. § 15-79-125(C), for an Order dismissing the Notice of Intent and preventing a Summon and Complaint from being filed in this matter on the basis that a mediation conference was not held within the statutory time frame of within 120 days from service of the Notice of Intent to File Suit. Section 15-79-125(C) requires a mediation conference as a condition of this type of action. Defendants were served on or about June 14, 2012; thus, mediation should have taken place on or before October 12, 2012. Plaintiff did not request a mediation extension from the Court for an additional sixty days (until December 11, 2012). Instead, Plaintiff's first request to mediate this case was by telephone request on December 19, 2012. Pursuant to Section 15-79-125(E), Plaintiff may initiate a civil action by filing a summons and complaint only if the matter cannot be resolved through mediation. Since Plaintiff failed to

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mediate the case, he cannot initiate a civil action. As such, Plaintiff fails to satisfy the statutory requirements to proceed with this litigation, and it must be dismissed with prejudice.

Said Motion will be based upon the statutes, case law, pleadings, affidavits, memoranda, depositions, and any other evidence that may be received by the Court hereinafter to be served.

Respectfully submitted,



Marian Williams Scalise

Lydia L. Magee

Richardson, Plowden & Robinson, P.A.

2103 Farlow Street, P.O. Box 3646

Myrtle Beach, SC 29578

(843) 448-1008

mscalise@richardsonplowden.com

Attorneys for Defendants John Karl, M.D. and Virginia Bell, CS, FNP

December 19, 2012.

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Thomas Rickerson,)

Plaintiff,)

v.)

John Karl, M.D. and Virginia Bell,)
CS, FNP,)

Defendants)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
File 2012-CP-26-3859

RETURN TO MOTION TO DISMISS

HORRY COUNTY
12 DEC 27 AM 8:41
JULIE HUGHES-WARD
CLERK OF COURT

COMES NOW THE PLAINTIFF, by and through his undersigned counsel, who would, responding to the defendants' motion to dismiss show unto this Court that for the various reasons set forth below, defendants' motion to dismiss is without merit and should be denied. The statutory procedure set forth at S.C. Code Ann. § 15-79-125 does not contemplate dismissal with prejudice of actions of this type until, "... within sixty days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end; *or (2) prior to expiration of the statute of limitations, whichever is later.*" Emphasis added. The statute of limitations has not run in this case.

Historical Background

In 2007, Plaintiff underwent coronary bypass surgery and his physicians— maintained the plaintiff on Coumadin, aspirin and Lasix. In 2011, plaintiff saw defendants who prescribed Bactrim for the plaintiff to treat poorly diagnosed skin lesions. Plaintiff alleges that both defendants were negligent in prescribing Bactrim without proper indication and diagnosis when plaintiff was on Coumadin and Lasix, and failed to adjust the Lasix and Coumadin in accordance with medical guidelines. Plaintiff asserts that this negligent act in the presence of the drug, Metformin, which also had been

prescribed for plaintiff, set the plaintiff on a path of complications, including, bleeding and renal failure, that almost claimed the plaintiff's life in the summer of 2011. Plaintiff required hospitalization from July 2, 2011, through July 14, 2012, and endured prolonged recovery.

Intent to File Suit

Plaintiff filed a Notice of Intent to File Suit on May 15, 2012. The notice was served on Defendant John Karl, on June 16, 2012, and on defendant Virginia Bell on June 19, 2012. Defendants' counsel mailed a notice of appearance on July 2, 2012. Defendants subpoenaed medical records on August 1, 2012, and September 6, 2012, and plaintiff was provided notice of those named in the subpoenas. On September 18, 2012, plaintiff also requested that defendants provide copies of medical records actually received from the providers subpoenaed and defendants began to do so.

On September 19, 2012, defendants provided medical records received to that date. But, medical records remained outstanding. On December 6, 2012, defendants last provided copies of records received from their subpoenas. Even though they continued to gather records, Defendants never requested a formal extension of time to mediate this case. In reliance on defendants' subpoenas and their provision of responses thereto, neither did plaintiff request a formal extension of the mediation process. Neither did plaintiff file a civil lawsuit against the defendants. The statute contemplates a mediation to be completed by 180 days from June 19, 2012, the date the last service on defendant, Bell. Such would be December 16, 2012. That was a Sunday.

The Office of the Clerk of Court filed a Notice of ADR on December 13, 2012, within that 180 day period of time. Plaintiff received that notice on December 19, 2012.

On that date, the office of plaintiff's counsel called the court appointed mediator and defendants' counsel to schedule the mediation. Dates of availability were received from the mediator but defendants' counsel ignored plaintiff's request. Plaintiff then scheduled a mediation date of January 22, 2013, with the mediator, and sent notice thereof to the defendants' counsel on even date therewith. On December 20, 2012, rather than communicate with plaintiff's counsel, defendants mailed a motion to dismiss.

The Pre-Suit Mediation Process and the Statute of Limitations

The statute of limitations would not run in this case until July, 2013 at the earliest and July, 2014, at the latest. Therefore, the Clerk of Court's ADR notice is not inconsistent with the provisions of S.C. Code Ann. § 15-79-125. Subsection "C" of this statute states,

Unless inconsistent with this section, the Circuit Court Alternative Dispute Resolution Rules in effect at the time of the mediation conference for all or any part of the State *shall govern the mediation process*, including compensation of the mediator and payment of the fees and expenses of the mediation conference.

Emphasis added. The Clerk of Court has appointed a mediator and the matter has been scheduled for mediation on January 22, 2013. The statute of limitations has not passed in this case and will not until July, 2013, at the earliest.¹ S.C. Code Ann § 15-79-125 (E) states,

If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed: (1) within sixty days after the mediator determines that the mediation is not

¹ Perhaps if the statute of limitations had passed, defendants' motion to dismiss would have more merit as the ADR Rules would then be inconsistent with the statute. However, at this time, with mediation scheduled, the motion is premature, we submit.

viable, that an impasse exists, or that the mediation should end; *or (2) prior to expiration of the statute of limitations, whichever is later.*

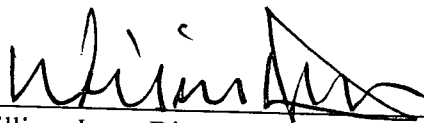
Emphasis added. Defendants have not made themselves available for mediation and the time for mediation arguably could be ended. Notwithstanding the failure of the parties to mediate this case as of the date of this writing, the statute of limitations has not passed. Thus, plaintiff may still file a civil suit in this matter. He has the option of either amending his notice of intent to file suit, dismissing it without prejudice and refiling the notice of intent to file suit, or filing the civil suit.

Conclusion

For the foregoing reasons, defendants' motion to dismiss with prejudice is without merit and should be denied. The case has been set for mediation for January 22, 2013, and the matter should properly proceed in that fashion. If the defendants fail to participate in that process, plaintiff has every right to file suit we submit.

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



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

**ATTORNEY FOR PLAINTIFF THOMAS
RICKERSON**

This 24th day of December, 2012
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
File 2012-CP-26-3859

Thomas Rickerson,)
Plaintiff,)
v.)
John Karl, M.D. and Virginia Bell,)
CS, FNP,)
Defendants)

**MOTION TO RECONSIDER
ORDER OF DISMISSAL**

FILED
NORTH CAROLINA
2013 MAY 13 PM 4:40
MELANIE HUGGINS-WARD
CLERK OF COURT

COMES NOW THE PLAINTIFF, by and through his undersigned counsel, who would respectfully request of the Court that it reconsider the Order of Dismissal signed on April 24, 2013, and filed on May 2, 2013, a copy of which was received by counsel on Thursday, May 9, 2013, without a certificate of service, on the grounds that

I.

The imposition of dismissal with prejudice is **excessive and too extreme** in its consequence under the circumstances present in this case and constitutes an abuse of discretion. Plaintiff would show that a "sanction," if any be required in this case, should be less severe such as the entry of an order to mediate or to pay costs to defense counsel for having to file a motion to compel mediation;

II.

ADR 4 imposes an obligation on the parties to contact the mediator regarding the mediation conference; this Court's order relieves the defendant from that responsibility and not only shifts that responsibility wholly to the plaintiff, the order punishes the plaintiff for not contacting the mediator by dismissing the case "with prejudice" and imposes no sanction on the defendant; while it would make just as much sense to enter

judgment in favor of the plaintiff as to liability for defendants' failure to mediate within the statutory framework;

III.

Plaintiff was lulled into a false sense of security and cooperation by defendants.

Defendants sought authorization from plaintiff regarding release of plaintiff's medical records to the defendants by subpoena (via *Satisfactory Assurance*, under HIPPA procedure, provided by plaintiff's counsel to counsel for the defendants, and which subpoenas bore notice of such Satisfactory Assurance) to the following medical providers, and witnesses, on the dates indicated:

- On July 18, 2012 to Waccamaw Community Hospital by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Grand Strand Regional Medical Center, Radiology Department, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to to Grand Strand Regional Medical Center, Patient Accounts, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to to Grand Strand Regional Medical Center, Medical Records; by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Conway Medical Center, Medical Records, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Conway Medical Center, Patient Accounts, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Conway Medical Center, Radiology Department, by Defendants' attorney, Lydia Magee, Esquire;

- On July 18, 2012 to South Strand Ambulatory Care Center, Radiology Department; by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to South Strand Ambulatory Care Center, Medical Records, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to South Strand Ambulatory Care Center, Patient Accounts, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to A. Brian McIntyre, M.D., Coastal Cardiovascular Surgery, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Richard H. Hussey, III, M.D. Myrtle Beach Dermatology, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Carolina Health Specialists at 4591 Socastee Blvd., by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Carolina Health Specialists at 945 82nd Parakway, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Arthur Mason Ahearn, M.D. by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Cardiology Gastroenterology Associates, by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Express Scripts by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to NextStep Wound Healing Center by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to James N. Powers, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Wal-Mart Pharmacy, HIPPA Legal Team, by defendants' attorney, Lydia Magee, Esquire;

- On July 18, 2012 to Denny's Human Resources, by defendants' attorney, Lydia Magee, Esquire;

The following subpoenas and notices were sent to medical providers for the specific purpose of providing the medical providers of plaintiff's consent to Satisfactory Assurance under the controlling HIPPA statutory complex:

- On August 1, 2012 to Grand Strand Regional Medical Center, Patient Accounts, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Conway Medical Center, Medical Records, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Grand Strand Regional Medical Center, Medical Records, by defendants' attorney, Lydia Magee;
- On August 1, 2012 South Strand Ambulatory Care Center, Radiology Department, by defendants' attorney, Lydia Magee;
- On August 1, 2012 to Conway Medical Center, Radiology Department, by defendants' attorney, Lydia Magee;
- On August 1, 2012 to Grand Strand Regional Medical Center, Radiology Department, by defendants' attorney, Lydia Magee;
- On August 1, 2012 to Waccamaw Community Hospital, Radiology Department, by defendants' attorney, Lydia Magee;
- On August 1, 2012 to Waccamaw Community Hospital, Patient Accounts, by defendants' attorney Lydia Magee, Esquire;
- On August 1, 2012 to Waccamaw Community Hospital, Medical Records, by defendants' attorney, Lydia Magee, Esquire;

- On August 1, 2012 to Conway Medical Center, Patient Accounts, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to A. Brian McIntyre, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to South Strand Ambulatory Care Center, Patient Accounts, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to South Strand Ambulatory Care Center, Medical Records, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Richard H. Hussey, III, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Carolina Health Specialists, at 4591 Socastee Blvd., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Carolina Health Specialists at 945 82nd Parkway, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to James N. Powers, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Arthur Mason Ahearn, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Express Scripts, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to NextStep Wound Healing Center by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Cardiology Gastroenterology Associates, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 Doctor's Care, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Wal-Mart Pharmacy, by defendants' attorney, Lydia Magee, Esquire;

- On August 22, 2012 to Amedisys, by defendants' attorney Lydia Magee, Esquire;
- On August 22, 2012 to Doctor's Care, by defendants' attorney, Lydia Magee, Esquire;
- On September 6, 2012 to Doctor's Care, by defendants' attorney, Lydia Magee, Esquire;
- On September 6, 2012 to Amedisys, by defendants' attorney, Lydia Magee, Esquire;

On **September 18, 2012**, plaintiff's counsel wrote defendants' attorney, Lydia Magee, Esquire, and asked that plaintiff be provided with copies of materials received from medical providers in response to the subpoenas listed above; and on **September 19, 2012**, Attorney Magee provided 4 CD's containing the medical records received by defendants pursuant to subpoena. As of that date, neither party had scheduled a mediation nor had either party sought the appointment of a mediator. Neither party had mentioned that it was ready to mediate the case as neither party had indicated they had concluded collecting and reviewing materials received via the subpoena process.¹

On or about September 6, 2012, plaintiff received a copy of a letter from Attorney, Magee, to Judge Steven H. John, asking for an order of protection from December 10, 2012 through February 22, 2013, due to maternity leave. And on or about December 11, 2012, plaintiff's counsel received a letter and order of protection from co-counsel for the defendants, Miriam Scalise for the dates of February 15 through February

¹ S.C. Code Ann. § 15-79-125(B) states, All named parties may subpoena medical records and other documents potentially related to the medical malpractice claim pursuant to the rules governing the service and enforcement of subpoenas outlined in the South Carolina Rules of Civil Procedure. Upon leave of court, the named parties also may take depositions pursuant to the rules governing discovery outlined in the South Carolina Rules of Civil Procedure.

25, 2013. On **December 6, 2012**, attorney Magee provided a CD with medical records received from an additional provider, Amedisys. On **December 13, 2012**, the Clerk of Court appointed Christopher H. Pearce, Esquire, as mediator in the case. In response thereto, plaintiff's counsel wrote to Mr. Pearce on **December 20, 2012**, and scheduled mediation for January 22, 2013. On **December 20, 2012**, defendants' attorney, Miriam Scalise, Esquire, filed a motion to dismiss based on the fact that the parties had not mediated the case. Defendants' counsel had never spoken with the plaintiff's attorney regarding mediation and had never indicated that even though the parties were co-operating regarding the subpoena process called for by S.C. Code Ann. § 15-79-125(B), defendants had no intention of doing anything other than waiting for the plaintiff to provide notice of mediation.

Mr. Pearce wrote to the parties on **January 2, 2013** acknowledging that he had been appointed as the mediator. On January 4, 2012, plaintiff's counsel forwarded a copy of the amended notice of intent to file suit. However, defendants refused to participate in the mediation process. Mr. Pearce wrote the parties on January 8, 2013 advising that he had to cancel the mediation of January 22, 2013, due to an unforeseen scheduling conflict. On **January 31, 2013**, Mr. Pearce wrote the parties indicating that in effect mediation was not feasible due to the positions of the parties in the matter.

Because the parties had not addressed the issue of mediation, on **January 4, 2013**, plaintiff filed an *Amended Notice of Intent to File Suit* and Christopher Pearce was appointed as the mediator in the case. Defendants have not responded to that amended notice.

Thereafter, on **February 7, 2013**, plaintiff filed civil action 2013-CP-26-788, alleging the medical malpractice negligence cause of action set forth previously in the notice of intent to file suit, and that action remains pending at this time.

IV.

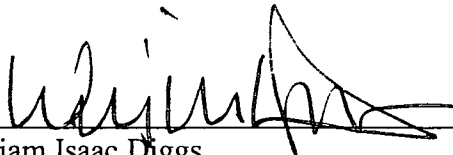
On **January 31, 2013**, Mr. Pearce wrote the parties indicating that mediation was not feasible due to the positions of the parties in the matter. Plaintiff would ask this Court to reconsider its Order of Dismissal with Prejudice and find that mediation is not feasible pursuant to § 15-79-125 (E), and conclude that plaintiff may continue with the suit as against the defendants.

V.

There is no prohibition against filing an Amended Notice of Intent to File Suit pursuant to S.C. Code Ann § 15-79-125, and plaintiff would ask this Court to reconsider the Order of Dismissal with Prejudice and allow plaintiff to pursue his Amended notice, as the statute of limitations had not run.

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



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

**ATTORNEY FOR THE PLAINTIFF THOMAS
RICKERSON**

This 13th day of May, 2013
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	File 2012-CP-26-3859
Thomas Rickerson,	)	
	)	MEMORANDUM IN SUPPORT OF
Plaintiff,	)	MOTION TO RECONSIDER
v.	)	ORDER OF DISMISSAL
	)	
John Karl, M.D. and Virginia Bell,	)	
CS, FNP,	)	
	)	
Defendants	)	

COMES NOW THE PLAINTIFF, by and through his undersigned counsel, who would respectfully submit the following Memorandum in Support of his Motion to Reconsider Order of Dismissal:

I. THE SANCTION OF DISMISSAL IS TOO SEVERE

The imposition of dismissal with prejudice is excessive and too extreme in its consequence under the circumstances present in this case and constitutes an abuse of discretion. Plaintiff would show that a "sanction," if any be required in this case, should be less severe such as the entry of an order to mediate or to pay costs to defense counsel for having to file a motion to compel mediation.

Plaintiff's Notice of Intent to File Suit was filed on May 15, 2012. The two defendants were served on June 16 and June 19, 2012. Thus 120 days from the last service date would have been October 17, 2012, after the second defendant had been served. In early July, 2012, attorneys Lydia Magee and Marian Scalise entered a joint notice of appearance on behalf of the defendants. On September 19, 2012, upon request, defendants provided medical records to the plaintiff received to that date. But, some

medical records remained outstanding and on December 6, 2012, defendants provided their remaining copies of medical records to the plaintiff which had been received as a result of the issuance of subpoenas by defendants. The subpoenas were issued by defendants' counsel, Lydia Magee, Esquire. On September 6, 2012, plaintiff received a letter from Attorney, Magee, that she had received an order for court protection for the dates of December 10, 2012 through February 22, 2013. Defendants never notified the plaintiff that they had concluded their gathering of medical records. We submit the information gathering and notification of protection signaled a good faith intention by defendants to prepare to mediate the case. Indeed, as of December 6, 2012, defendants had never otherwise directly communicated with the plaintiff about mediation. Therefore, Plaintiff was not concerned specifically about time because counsel thought defendants were investigating and preparing to mediate the case on its merits and that defendants themselves were not making time limitations an issue for mediation.¹

Then, without any contact with plaintiff what so ever, Defendants filed their motion to dismiss on December 20, 2012, two weeks after copying plaintiff with medical records they had received by subpoena with plaintiff's co-operation. The Motion to Dismiss was signed by defense counsel, Marian Scalise, Esquire. Plaintiff filed a Response to the Motion to Dismiss then plaintiff filed an Amended Notice of Intent to

¹ Respectfully, plaintiff's construction of the mediation procedure at S.C. Code Ann. § 15-79-125, is that the defendant is given notice of intention to file suit. Mediation must be completed within certain time limits during which a plaintiff must be available to mediate and during which the plaintiff may not file suit. The defendant may extend time limits for mediation for up to sixty days upon a showing of "good cause." But this requires court approval if objected to by the plaintiff. However, if the defendant chooses not avail itself of the chance to mediate the claim, a plaintiff may file suit. Otherwise, if by agreement, we submit the time limits do not preclude the parties from agreeing to mediate the case pursuant to the ADR.

File Suit on January 4, 2013, as the statute of limitations had not run on plaintiff's claim, and would not run until as late as July, 2014.

This Court dismissed plaintiff's Notice of Intent to File Suit *with prejudice* as a sanction because *plaintiff* did not mediate the case within 120 days of filing his Notice of Intent to File Suit, or by October 17, 2013. This was so even though defendants themselves never communicated with the plaintiff about the mediation or otherwise attempted to schedule the mediation conference, or even communicated about a mediation conference with a mediator. Indeed, a mediator had not been appointed. We respectfully submit the Court's ruling was error and an abuse of discretion.

Discussion

As shown in the *Motion for Reconsideration*, defendants gathered voluminous medical records with the consent of plaintiff. Defendants' requests covered a number of years over which plaintiff had received medical treatment from a number of providers. Defendants sought authorization from plaintiff regarding the release of plaintiff's medical records by subpoena to providers via Satisfactory Assurance, pursuant to HIPPA's subpoena procedure set out at 45 CFR 164.512(e).² This satisfactory assurance was

² 45 CFR 164.512(e)(1)(ii) states: (e) **Standard: Disclosures for judicial and administrative proceedings.**(1) **Permitted disclosures.** A covered entity may disclose protected health information in the course of any judicial or administrative proceeding: . . . (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or (B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section."

Section 164.512(e)(1)(iii) states, "(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting health

provided by plaintiff to counsel for the defendants, which subpoenas bore notice of *satisfactory assurance* to the medical providers who received these subpoenas from defendants. See **Exhibit A**.

"[When] the effect will be ... granting judgment by default or dismissal, a preclusion order may be made *only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party*." *Orlando v. Boyd*, 320 S.C. 509, 512, 466 S.E.2d 353, 355 (1996), emphasis added; citing, *Dunn v. Dunn*, 298 S.C. 499, 381 S.E.2d 734 (1989); and *Kershaw Co. Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990). Thus, "a sanction of dismissal is too severe if there is no evidence of any intentional misconduct." *Barnette v. Adams Brothers Logging, Inc.*, 355 S.C. 588, 592, 586 S.E.2d 572 (2003); *Bryson v. Bryson*, 378 S.C. 502, 662 S.E.2d 611 (Ct.App. 2008).

In those cases where our Supreme Court has affirmed dismissal of actions based on a failure to prosecute, the dismissals were imposed to maintain the orderly disposition of cases *in the face of repeated warnings* to the offending party or multiple opportunities to proceed with trial, and only then upon a finding of unreasonable neglect. See *Small v. Mungo*, 254 S.C. 438, 443, 175 S.E.2d 802, 804 (1970) (finding no abuse of discretion where counsel was in his office and plaintiff and witnesses were at work when the case was called for trial, and counsel informed the court that he could not appear for hours);

information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that: (A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and (1) No objections were filed; or(2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

citing *Bond v. Corbin*, 68 S.C. 294, 294-95, 47 S.E. 374, 374 (1904)(upholding a dismissal after plaintiff failed to appear for trial even though he was first up for trial on the docket at a regular term of court and the case was twice continued first until the afternoon, and then again until the next morning at which time plaintiff still failed to appear). There must be some showing of indifference to the rights of the defendant. *E.g.*, *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 901 (Ct.App. 2006)(the dismissals were, “imposed to maintain the orderly disposition of cases in the face of repeated warnings to the offending party or multiple opportunities to proceed with trial, and only then upon a finding of unreasonable neglect.” 368 S.C. at 62).

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). This is especially so when no inquiry into the merits of plaintiff's case was made. *cf* (“[T]he court never made an inquiry into the content of the evidence [the expert witness] would offer. By not getting *any* information about the proposed witness' testimony, the court did not meet its duty of discovering and evaluating the content of the potential evidence.”) (emphasis in original). *Bryson v. Bryson*, 378 S.C. 502, 508, 662 S.E.2d 611 (Ct.App. 2008). In the instant case, Plaintiff nearly died from toxicity caused by a negligent mixing of prescriptive medications as prescribed by the defendants. We respectfully request this Court to reconsider the dismissal with prejudice and allow the matter to proceed on the merits.

II. ADR 4 APPLIES TO BOTH PARTIES

ADR 4 imposes an obligation on the parties to contact the mediator regarding the mediation conference; this Court's order relieves the defendant from that responsibility and not only shifts that responsibility wholly to the plaintiff, the order punishes the plaintiff for not contacting the mediator by dismissing the case "with prejudice" and imposes no sanction on the defendant; it would make just as much sense to enter judgment in favor of the plaintiff as to liability for defendants' failure to mediate within the statutory framework.

ADR 4(f) states, "*The parties* shall notify the selected or appointed neutral to initiate scheduling of the ADR Conference." Emphasis added. Thus, the responsibility to contact the mediator for the mediation scheduling is shared by both parties. We submit it is error to (1) relieve the defendant from any responsibility under this rule, and (2) wholly shift the burden to the plaintiff to schedule the mediation conference, and (3) impose the sanction of dismissal with prejudice against the plaintiff *after the fact* of shifting the burden. This is especially so given the fact that defendants never contacted the plaintiff about the mediation conference, if for no other reason just to let plaintiff know that the defendants were ready to mediate. No mediation conference was ever scheduled, defendants made no contact with a mediator, and indeed, no mediator was even appointed in this case until the clerk of court appointed Christopher Pearce, Esquire, on December 13, 2012, pursuant to the ADR rules.

Moreover, because defendants failed to mediate within the statutory timeframe, we submit it is equally plausible that defendants have waived the right to mediate and thus, plaintiff is entitled to proceed with litigation having done all it could do in the pre-

suit mediation process. This is so because (1) defendants were provided notice of intent to file suit; (2) defendants made no effort to schedule a mediation conference; and (3) defendants offered no theory of defense on the merits to plaintiff's allegations of malpractice or medical negligence. Therefore, we submit it is reasonable to argue that defendants themselves should suffer judgment with prejudice against them as to liability and the matter referred for a damages hearing.

It is important to note that when the plaintiff filed its initial Notice of Intent to File Suit, no mediator was appointed. Thus, when the Clerk of Court appointed Christopher Pearce, on December 13, 2012, just one week after defendants had finished gathering medical information, that was the first involvement of a mediator in this case. Plaintiff attempted to schedule the mediation at that time but defendants refused to mediate arguing that the statutory time frame had run. We submit that defendants may not run out the clock in the face of their obligations under ADR 4, and then affirmatively use their conduct as a sword to block plaintiff's claim altogether.

III. FALSE SENSE OF SECURITY

Plaintiff was lulled into a false sense of security and cooperation by defendants because Defendants sought and received authorization from plaintiff regarding release of plaintiff's medical records to the defendants pursuant to subpoena.

Plaintiff was lulled into a false sense of security by the defendants. One defense attorney appeared to engage in a good faith effort to collect evidence in preparation of mediation conference and a second attorney sought dismissal of the matter as a result of the time accorded to defendants to gather that information.

Defendants sought and received authorization from plaintiff for release of plaintiff's medical records by subpoena. Defendants were permitted to offer Satisfactory Assurance to medical providers in their subpoenas which was based upon plaintiff's cooperation. As noted in the Motion for Reconsideration, subpoenas were sent by the defendants to the following medical providers, and witnesses, on the dates indicated below. **See Exhibit B.**

- On July 18, 2012 to Waccamaw Community Hospital by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Grand Strand Regional Medical Center, Radiology Department, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to to Grand Strand Regional Medical Center, Patient Accounts, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to to Grand Strand Regional Medical Center, Medical Records; by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Conway Medical Center, Medical Records, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Conway Medical Center, Patient Accounts, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Conway Medical Center, Radiology Department, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to South Strand Ambulatory Care Center, Radiology Department; by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to South Strand Ambulatory Care Center, Medical Records, by Defendants' attorney, Lydia Magee, Esquire;

- On July 18, 2012 to South Strand Ambulatory Care Center, Patient Accounts, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to A. Brian McIntyre, M.D., Coastal Cardiovascular Surgery, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Richard H. Hussey, III, M.D. Myrtle Beach Dermatology, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Carolina Health Specialists at 4591 Socastee Blvd., by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Carolina Health Specialists at 945 82nd Parkway, by Defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Arthur Mason Ahearn, M.D. by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Cardiology Gastroenterology Associates, by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Express Scripts by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to NextStep Wound Healing Center by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to James N. Powers, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Wal-Mart Pharmacy, HIPPA Legal Team, by defendants' attorney, Lydia Magee, Esquire;
- On July 18, 2012 to Denny's Human Resources, by defendants' attorney, Lydia Magee, Esquire;

The following subpoenas and notices were sent to medical providers for the specific purpose of providing the medical providers of plaintiff's consent to Satisfactory Assurance under the controlling HIPPA statutory complex:

- On August 1, 2012 to Grand Strand Regional Medical Center, Patient Accounts, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Conway Medical Center, Medical Records, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Grand Strand Regional Medical Center, Medical Records, by defendants' attorney, Lydia Magee;
- On August 1, 2012 South Strand Ambulatory Care Center, Radiology Department, by defendants' attorney, Lydia Magee;
- On August 1, 2012 to Conway Medical Center, Radiology Department, by defendants' attorney, Lydia Magee;
- On August 1, 2012 to Grand Strand Regional Medical Center, Radiology Department, by defendants' attorney, Lydia Magee;
- On August 1, 2012 to Waccamaw Community Hospital, Radiology Department, by defendants' attorney, Lydia Magee;
- On August 1, 2012 to Waccamaw Community Hospital, Patient Accounts, by defendants' attorney Lydia Magee, Esquire;
- On August 1, 2012 to Waccamaw Community Hospital, Medical Records, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Conway Medical Center, Patient Accounts, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to A. Brian McIntyre, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to South Strand Ambulatory Care Center, Patient Accounts, by defendants' attorney, Lydia Magee, Esquire;

- On August 1, 2012 to South Strand Ambulatory Care Center, Medical Records, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Richard H. Hussey, III, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Carolina Health Specialists, at 4591 Socastee Blvd., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Carolina Health Specialists at 945 82nd Parkway, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to James N. Powers, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Arthur Mason Ahearn, M.D., by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Express Scripts, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to NextStep Wound Healing Center by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Cardiology Gastroenterology Associates, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 Doctor's Care, by defendants' attorney, Lydia Magee, Esquire;
- On August 1, 2012 to Wal-Mart Pharmacy, by defendants' attorney, Lydia Magee, Esquire;
- On August 22, 2012 to Amedisys, by defendants' attorney Lydia Magee, Esquire;
- On August 22, 2012 to Doctor's Care, by defendants' attorney, Lydia Magee, Esquire;
- On September 6, 2012 to Doctor's Care, by defendants' attorney, Lydia Magee, Esquire;

- On September 6, 2012 to Amedisys, by defendants' attorney, Lydia Magee, Esquire;

On September 18, 2012, plaintiff's counsel wrote defendants' attorney, Lydia Magee, Esquire, and asked that plaintiff be provided with copies of materials received from medical providers in response to the subpoenas listed above; and on September 19, 2012, Attorney Magee provided 4 CD's containing the medical records received as of that date by defendants pursuant to subpoena. As of that date, neither party had scheduled a mediation conference nor had either party sought the appointment of a mediator. Defendants had not informed plaintiff that they were ready to mediate the case and neither party had indicated they had concluded collecting and reviewing materials received via the subpoena process. S.C. Code Ann. § 15-79-125(B) states,

All named parties may subpoena medical records and other documents potentially related to the medical malpractice claim pursuant to the rules governing the service and enforcement of subpoenas outlined in the South Carolina Rules of Civil Procedure. Upon leave of court, the named parties also may take depositions pursuant to the rules governing discovery outlined in the South Carolina Rules of Civil Procedure.

Plaintiff anticipated that defendants were preparing for mediation by use of this statutory provision.

On or about September 6, 2012, plaintiff received a copy of a letter from Attorney, Magee, to Judge Steven H. John, asking for an order of protection from December 10, 2012 through February 22, 2013, due to maternity leave. And on or about December 11, 2012, plaintiff's counsel received a letter and order of protection from co-counsel for the defendants, Miriam Scalise for the dates of February 15 through February 25, 2013. On December 6, 2012, attorney Magee provided a CD with medical records

received from an additional provider, Amedisys. On December 13, 2012, the Clerk of Court appointed Christopher H. Pearce, Esquire, as mediator in the case. In response thereto, plaintiff's counsel wrote to Mr. Pearce on December 20, 2012, and scheduled mediation for January 22, 2013. **Exhibit C.** Also, on December 20, 2012, defendants' attorney, Miriam Scalise, Esquire, filed her Motion to Dismiss based on the fact that the plaintiff had not mediated the case by October 17, 2012. Defendants' counsel had never spoken with the plaintiff's attorney regarding mediation and had never indicated that even though the parties were co-operating regarding the subpoena process called for by S.C. Code Ann. § 15-79-125(B), defendants had no intention of doing anything other than filing a motion to dismiss.

Plaintiff respectfully submits he was lulled into a false sense of security that defendants would let him know when they were ready to mediate the case after their collection of evidence pursuant to S.C. Code Ann. § 15-79-125(B). *Cf Moore v. Pilot Life Insurance Co.*, 205 S.C. 474, 488, 32 S.E.2d 757 (1945) (Statement to the insured that [company agent] would procure the blanks for the filing of proofs and would let the insured know when he received them . . . was sufficient to warrant the inference that the insured was lulled into a sense of security and led to believe that no further action on his part was necessary until the agent communicated further with him)."

IV. MEDIATION IS/WAS NOT FEASIBLE

On January 31, 2013, Mr. Pearce wrote the parties indicating that mediation was not feasible due to the positions of the parties in the matter. Plaintiff would ask this Court to reconsider its Order of Dismissal with Prejudice and find that

mediation is not feasible pursuant to § 15-79-125 (E), and conclude that plaintiff may continue with the suit as against the defendants.

Christopher Mr. Pearce, Esquire, wrote to the parties on January 2, 2013, acknowledging that he had been appointed as the mediator. **Exhibit D.** On January 4, 2012, plaintiff's counsel forwarded a copy of the amended notice of intent to file suit. However, defendants refused to participate in the mediation process. Mr. Pearce wrote the parties on January 8, 2013, advising that he had to cancel the mediation of January 22, 2013, due to an unforeseen scheduling conflict. Then on January 31, 2013, Mr. Pearce wrote the parties indicating that in effect mediation was not feasible due to the positions of the parties in the matter. **Exhibit E.**

The statute of limitations would not run in this case until July, 2013, at the earliest (two years) and July, 2014, at the latest (three years). Therefore, the Clerk of Court's ADR notice is not inconsistent with the provisions of S.C. Code Ann. § 15-79-125. Subsection "C" of this statute states,

Unless inconsistent with this section, the Circuit Court Alternative Dispute Resolution Rules in effect at the time of the mediation conference for all or any part of the State ***shall govern the mediation process***, including compensation of the mediator and payment of the fees and expenses of the mediation conference.

Emphasis added. The Clerk of Court appointed a mediator and the matter had actually been scheduled for mediation on January 22, 2013. The statute of limitations has not passed in this case and will not until July, 2013, at the earliest. S.C. Code Ann § 15-79-125 (E) states,

If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons

and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed: (1) within sixty days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end; *or (2) prior to expiration of the statute of limitations, whichever is later.*

Emphasis added. Defendants did not make themselves available for mediation and the time for mediation passed with no effort by defendants to use the statutory mediation process to avoid formal civil litigation. Thus, we submit that the mediator declared this matter could not be resolved through mediation and the plaintiff should be permitted to file suit.

V.

There is no prohibition against filing an Amended Notice of Intent to File Suit pursuant to S.C. Code Ann § 15-79-125, and plaintiff would ask this Court to reconsider the Order of Dismissal with Prejudice and allow plaintiff to pursue his Amended notice, as the statute of limitations had not run.

Because the matter had not been mediated as of January 4, 2013, plaintiff filed an *Amended Notice of Intent to File Suit* and Christopher Pearce, Esquire, was appointed as the mediator in the case. Defendants never responded to that amended notice. We respectfully submit that the statutory complex does not prohibit the filing of an Amended Notice of Intent to File Suit especially if the statute of limitations had not run. Therefore, we submit that the defendants again waived any right to mediate the case.

The bottom line is that the defendants will not mediate the malpractice allegations on the merits. However, that attitude should not be used to prejudice the right of the plaintiff to bring an action against them for negligence. On February 7, 2013, plaintiff

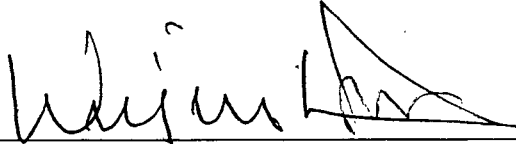
filed civil action 2013-CP-26-788, alleging the medical malpractice cause of action in negligence set forth previously in the notice of intent to file suit. Of course, the defendants have again filed motions to dismiss due to their failure to mediate this matter. That action remains pending at this time.

CONCLUSION

Plaintiff would respectfully ask this Court to Reconsider its Order of Dismissal and allow this case to proceed on the merits by declaring that mediation resolution was not possible in this case.

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



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**ATTORNEY FOR THE PLAINTIFF THOMAS
RICKERSON**

This 5th day of June, 2013
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Thomas Rickerson,

Plaintiff,

vs.

John Karl, M.D. and
Virginia Bell, CS, FSP,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-26-3859

**MEMORANDUM IN RESPONSE TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION OF ORDER OF
DISMISSAL**

Defendants hereby submit their Memorandum in Response to Plaintiff's Motion for Reconsideration of the Order of Dismissal entered in the above referenced case on April 24, 2013. The Order of Dismissal correctly applies the law to the facts at hand and is a sound, reasoned Order requiring no changes.

Plaintiff's Motion to Reconsider the Order of Dismissal raises a number of grounds which Defendants respond to as follows:

I. ADR Rule 4 imposes a requirement upon Plaintiff to commence the mediation.

S.C. Code Ann. § 15-79-125 governs the initiation of medical malpractice actions. Specifically, section 15-79-125(A) imposes a requirement on the Plaintiff to file the Notice of Intent to File Suit (hereinafter "Notice"). Additionally, section 15-79-125(C) provides the Circuit Court Alternative Dispute Resolution Rules ("ADR") shall govern the pre-suit mediation process. ADR Rule 4 states in pertinent part,

In medical malpractice cases subject to pre-suit mediation as required by S.C. Code § 15-79-125(C), the Notice of Intent to File Suit . . . **shall contain language directed to the defendant(s) that the dispute is subject to pre-suit mediation within 120 days and must contain a place for the names of the primary and secondary mediators The plaintiff shall serve the**

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defendants with the Notice of Intent to File Suit containing the mediator appointment.

ADR Rule 4 (emphasis added). Following the filing of the Notice, Section 15-79-125(C) states,

Within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties **shall** participate in a mediation conference unless an extension for no more than sixty days is granted by the court based upon an finding of good cause.

See also ADR Rule 5(f) (emphasis added). In both the ADR rules and the South Carolina Code, the onus is on the plaintiff to file the Notice, thus providing defendants with notice of the required pre-suit mediation and the selected mediator.

Plaintiff directs this Court's attention to ADR Rule 4(f), which states, "The parties shall notify the selected or appointed neutral to initiate the **scheduling** of the ADR conference." Plaintiff's attempt to "hang his hat" on this provision is imprudent. Plaintiff overlooks the fact that he failed to include in his Notice, as required by ADR Rule 4, that the suit was subject to mediation or name a mediator. Therefore, even if Defendants were responsible for commencing mediation, they cannot be expected to schedule a non-noticed mediation with an unnamed mediator. Therefore, reading ADR Rule 4, in conjunction with section 15-79-125(c), it is clear that it is the Plaintiff who shall include language in the Notice directing the defendants to participate in pre-suit mediation, thereby initiating such mediation.

Plaintiff also contends we have "waived the right to mediate" and therefore he is entitled to proceed with litigation "having done all [he] could do in the pre-suit mediation process," because he (1) provided a notice of intent; (2) Defendants made no effort to schedule a mediation conference; and (3) Defendants offered no theory or defense on the merits to Plaintiff's allegations of malpractice or medical negligence. These assertions are without merit. First, as discussed above, Plaintiff filed a defective Notice which failed to alert Defendants they were

subject to pre-suit mediation or provide the name of a mediator who had been selected for mediation. Second, it is not Defendants' obligation to commence pre-suit mediation, especially when nothing in either the statute or ADR rules requires them to do so and in the absence of Plaintiff's notification that mediation was required or name a mediator. Finally, no law suit has been filed; accordingly, Defendants have not been called upon to "answer" or otherwise defend the allegations against them.

Finally, even if it were not clear the plaintiff should commence pre-suit mediation, Plaintiff's position—that Defendants share in the obligation of scheduling pre-suit mediation—is inapposite to the very foundation of civil proceedings. It is the plaintiff who has the claim. It is the plaintiff who initiates actions. It is the plaintiff who has the initial burden of proof. It is the plaintiff who must follow the procedure rules with regards to initial pleadings to ensure that the defendant has proper notice of the claims against which he must defend himself. See e.g. McComas v. Ross, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006) (stating "The Plaintiff has the burden of prosecuting [his] action."); Martasin v. Hilton Head Health Sys., 364 S.C. 430, 438, 613 S.E.2d 795, 799 (Ct. App. 2005) (stating that in a medical malpractice action plaintiff has the burden of proving defendant's negligence and that such negligence was the proximate cause of plaintiff's injury); Black's Law Dictionary 538 (3rd Pocket ed. 2006) (defining "plaintiff" as the party who brings a civil suit in a court of law). To somehow create an exception to a plaintiff's responsibilities with regard to initiating lawsuits is untenable. Accordingly, it is Defendants' position that this Court did not err in finding Plaintiff was responsible for initiating pre-suit mediation.

II. Dismissal with Prejudice is an appropriate sanction.

Plaintiff complains that dismissal with prejudice is excessive, too extreme, and an abuse

of discretion. This Court should reject this claim. Pursuant to ADR Rule 10, sanctions are appropriate for any party violating provisions of the ADR Rules. ADR Rule 10 lists appropriate, non-excessive sanctions and directs parties to additional appropriate sanctions listed in SCRCP Rule 37(b)(2). Rule 37(b)(2)(C) authorizes sanctions in the form of “[a]n order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed or **dismissing the action or proceeding or any part thereof**, or rendering a judgment of default against the disobedient party.” (emphasis added). As noted above, Plaintiff violated ADR Rule 4, which subjects him to the sanctions in ADR Rule 10 and SCRCP Rule 37. Had Plaintiff wished to avoid such sanctions, he need only have correctly followed the rules as prescribed by statute and the ADR rules.

Additionally, the imposition of this sanction is not an abuse of discretion. An abuse of discretion with regard to the imposition of sanctions occurs when the decision is controlled by an error of law or based on unsupported factual conclusions. See Southeastern Site Prep, L.L.C. v. Atl. Coast Builders and Contractors, L.L.C., 394 S.C. 97, 105, 713 S.E.2d 650,654 (Ct. App. 2011) (stating under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or based on unsupported factual conclusions); Bayle v. South Carolina Dept. of Transp., 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Ct. App. 2001) (stating an abuse of discretion occurs when the trial judge’s ruling is based upon an error of law or, when based on factual conclusions, is without evidentiary support). As noted above, the sanction of dismissal with prejudice is supported by the ADR Rules and the South Carolina Rules of Civil Procedure; accordingly, there is no error of law.

Sanctions are also supported by the facts of this case. Plaintiff filed the Notice on June 19, 2012, without “language directed to the defendants that the dispute is subject to pre-suit

mediation within 120 days [, nor did it] contain a place for the names of the primary and secondary mediators.” See ADR Rule 4. There is no evidence Plaintiff attempted to institute pre-suit mediation before October 17, 2012—120 days after his filing of his defective Notice.¹ This Court found the sanction of dismissal with prejudice was appropriate due to “plaintiff’s lack of any effort to schedule mediation.” Such “lack of effort” demonstrates plaintiff’s unreasonable neglect in not diligently pursuing his claim, and therefore, dismissal of the claim with prejudice is an appropriate sanction. See McComas, at 62, 626 S.E.2d at 904 (“The Plaintiff has the burden of prosecuting her action, and the trial court may properly dismiss an action for plaintiff’s unreasonable neglect in proceeding with [his] cause.”).

In Plaintiff’s Memorandum in Support of the Motion to Reconsider Order of Dismissal, he cites several cases, Orlando v. Boyd, 320 S.C. 509, 512, 466 S.E.2d 353, 355 (1996) and its progeny, in support of his contention that the sanction of dismissal is too severe. Plaintiff conveniently neglects to specify that these cases considered whether the failure to list an expert witness on discovery responses warranted the sanction of dismissal—not whether a dismissal with prejudice in and of itself is too severe. The case at bar is easily distinguishable from that line of cases, and we submit the failure to include witnesses on a discovery response is not as severe as Plaintiff (1) failing to abide by statute and ADR rules to provide notice to Defendants and (2) failing to ensure he properly initiated his own claim.

Plaintiff’s Memorandum also avers that the Supreme Court has only affirmed dismissal of actions for failure to prosecute “in the face of repeated warnings to the offending party or multiple opportunities to proceed with trial, and only upon a finding of unreasonable neglect.”

¹ Indeed, plaintiff made no movements to conduct pre-suit mediation until the Clerk of Court attempted to assign mediators in a letter filed December 13, 2013. ADR Rule 4 directs the Clerk of Court to assign a mediator to cases in which one is required, but has not been assigned on the **210th** day after the filing of the action. Notwithstanding the Clerk’s letter regarding mediators, the time for Plaintiff to schedule pre-suit mediation had clearly passed at the point the Clerk’s letter was sent.

These cases, too, are distinguishable from the case at bar. First, Small v. Mungo, 254 S.C. 438, 443, 175 S.E.2d 802, 804 (1970), involved a situation wherein the plaintiff's case was number eleven on the docket, yet it was called for trial on Tuesday morning at 10 a.m. after the other preceding cases were disposed of. Id. Upon inquiry from the court, the plaintiff stated he could not arrive to court until after 2:00 p.m. that same day. Id. The circuit court, upon motion from the defendant, dismissed the matter with prejudice. Id. On appeal, the Supreme Court found that dismissal of the action was appropriate because an inference of "unreasonable neglect" could be gleaned from Plaintiff's action. Id. However, the Court reversed the "with prejudice" portion of the order, finding, "the particular facts of the case" did not warrant dismissal with prejudice. The court did **not** state that dismissal with prejudice was not an appropriate sanction in other circumstances. Id. Similarly, Bond v. Corbin, 68 S.C. 294, 294-95, 47 S.E. 374, 374 (1904), involved a Plaintiff whose case was called for court, yet he failed to appear even after the court attempted to contact him and granted two continuances. The trial court dismissed this action. Id. On appeal, the trial court's actions were affirmed, finding the trial court did not abuse its discretion in dismissing the action and that plaintiff's actions warranted such a dismissal. Id. These cases involved the trial courts calling the plaintiffs when they failed to show up for court. This is not the case here. Further, even if it were somehow analogous to the case bar, Defendants submit that Plaintiff's "repeated warnings" are in the form of the provisions in § 15-79-125, ADR Rule 4, ADR Rule 5(f), ADR Rule 10, and SCRPC Rule 37; and, as noted above, Plaintiff's "lack of effort" is equivalent to a finding of "unreasonable neglect."

Finally, Plaintiff's Memorandum mentions Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990) (citing Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197 (1958)), for the

proposition that sanctions 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 the case.”

We agree with Plaintiffs. “The sanction should be aimed at the specific misconduct of the party sanctioned.” Balloon, at 154, 399 S.E.2d at 440.² Accordingly, as here, Plaintiff’s conduct in failing to notify Defendants the suit was subject to pre-suit mediation, elect a mediator, or otherwise attempt to initiate the mediation proceedings effectively prohibits the action from commencing; therefore, an order prohibiting same is aimed at the specific conduct of Plaintiff—his inactivity and unreasonable neglect.

Dismissal with prejudice is not an excessive sanction, especially since it is authorized by SCRCF Rule 37. The foregoing facts establish Plaintiff failed to meet his obligation of commencing pre-suit mediation. Therefore, this Court’s ruling was not an abuse of discretion because it is supported by the facts and correctly applies the law.

III. Plaintiff’s counsel’s claim that he was “lulled into a false sense of security” is without merit.

Plaintiff’s counsel’s claim that he was “lulled into a false sense of security” is without merit. The fact that defense counsel subpoenaed medical records and provided copies of the received records to Plaintiff’s counsel in accordance with § 15-79-125(B) or that defense counsel copied Plaintiff’s counsel on requests for protection in all of their cases has nothing to do with Plaintiff’s failure to mediate the case within the statutory deadline. There are no provisions in the statute which allow Defendants’ actions to relieve Plaintiff of his obligations under the

² We would be remiss if we did not bring to the Court’s attention that in Balloon, the Court of Appeals also reversed the circuit court’s order because the circuit court judge who imposed the sanction based his decision on his reading of a previous judge’s order and not of his own discretion. The Court of Appeals noted the judge did not exercise his discretion, but acted in such a manner “because he [believed he] had no choice under the prior order.” The Court of Appeals held, “It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.” Here, this Court did not improperly exercise its discretion. The Order of Dismissal clearly references the sanctions available in ADR Rule 10 and SCRCF Rule 37, which evidences this Court was aware of the wide range of sanctions from which it could choose and, in its discretion, chose dismissal with prejudice.

statute and ADR rules. The fact remains that Plaintiff's counsel never communicated with defense counsel with regard to scheduling the mediation within the statutory time frame or asking if the Defendants needed more information prior to mediating the case. Moreover, Plaintiff never filed a Motion requesting an Extension to Mediate beyond the 120 days as required by statute. The 120-day deadline to mediate the case is a distinct deadline which can only be extended by Court order. There is nothing in the statute that would allow attorneys to extend the deadline on their own. See S.C. Code Ann. § 15-79-125.

Plaintiff's arguments with regard to his "false sense of security" can only be construed as Plaintiff relying on Defendants to determine the fate of his own lawsuit. Plaintiff concedes as much when he states, "Plaintiff respectfully submits he was lulled into a false sense of security **that defendants would let him know when they were ready to mediate the case** after their collection of evidence pursuant to S.C. Code Ann. § 15-79-125(B)." As discussed above, it is the Plaintiff who must initiate lawsuits. It is the Plaintiff who must establish a claim exists. For Defendants to determine the pace of this litigation is absurd. Defendants' actions do not relieve Plaintiff of his obligations under the statute and the ADR rules.

IV. It would be improper for the Court to find that mediation was not feasible as Plaintiff has produced no evidence to prove that mediation could not have been timely held within the statutory deadline.

Section 15-79-125(E) provides if the matter cannot be resolved through mediation, a plaintiff may initiate a civil action by filing a summons and complaint within sixty days of the mediator determining the mediation is not viable, that an impasse exists, that the mediation should end, or prior to the expiration of the statute of limitations. Although Plaintiff asks this Court to reconsider its decision in light of this particular statutory language, such an argument should be rejected. Subsection (E) of 15-79-125 is not applicable here because no mediation has

occurred. This Court cannot find mediation was not feasible when no such mediation was initiated. Plaintiff offers no evidence that he 1) provided notice to Defendants regarding pre-suit mediation or 2) scheduled mediation within the statutorily required time frame.

Moreover, Plaintiff offers no evidence the mediation could not have occurred within the statutory time frame. In his Motion for Reconsideration, plaintiff provides the Court with all the requests Defendants made with regards to medical records and defense counsels' requests for orders of protection. These requests are not proof mediation was not feasible. First, the request for medical records is permissible under section 15-79-125. Nothing in the statute precludes the pre-suit mediation from occurring during the time period in which medical records are being collected.

Second, while Plaintiff attempts to use defense counsels' requests for protection as evidence mediation was not feasible, such protection requests are unhelpful to plaintiff. As discussed above, the deadline for initiating pre-suit mediation was October 17, 2012. Defense counsel requested protection for December 10, 2012 through February 2013 and February 15 through February 25, 2013; both time frames are well outside the deadline for pre-suit mediation.

Finally, to the extent Plaintiff relies on mediator Christopher Pearce's characterization that one party has "specifically expressed an unwilling to actually submit the case to mediation" (See Ex. A), as evidence mediation was not feasible, such reliance is flawed. Defendants respectfully submit Mr. Pearce mischaracterized our position. Defendants contacted Mr. Pearce to inform him that it was our position that the case could no longer be mediated because the statutory deadline for mediation had passed. (See Ex. B) At no point did Defendants state they were unwilling to mediate. (See Id.) Rather, we expressed our concern that there was no statutory authority to mediate the issue in January of 2013 when the original Notice was filed on

June 19, 2012.

Plaintiff has offered no evidence that mediation was not feasible. Instead, he has highlighted for this Court the many opportunities in which he could have initiated pre-suit mediation but failed to do so. Accordingly, this Court's original Order of Dismissal should stand.

V. There is nothing in the statute which allows for Plaintiff to amend his Notice of Intent to File Suit.

On January 4, 2013, Plaintiff attempted to cure his defective Notice by filing an Amended Notice of Intent to File Suit which more closely comports with the provisions of ADR Rule 4(c). Defendants submit such a filing is not permitted by the rules and should be disregarded by this Court. Section 15-79-125 is the statutory authority for initiating a medical malpractice suit, and it contains no provisions for amending the Notice.

Additionally, Plaintiff's argument that he should be allowed to amend his Notice of Intent to File Suit because the Statute of Limitations has not run is specious. First, the amendment to the Notice comes outside the 120-day window for instituting the pre-suit mediation as required by statute. Plaintiff should not be allowed to "re-start the clock" by amending his Notice. If the legislature intended the flexibility in the statute Plaintiff urges, the language of the statute would clearly reflect that intent. See Ranucci v. Crain, 397 S.C. 168, 171, 723 S.E.2d 242, 244 (Ct. App. 2012) (citing Gordon v. Phillips Utils. Inc., 362 S.C. 403, 608 S.E.2d 427 (2005)) (stating the primary purpose in construing a statute is to ascertain legislative intent); City of Camden v. Brassell, 326 S.C. 556, 561 486 S.E.2d 492, 495 (Ct. App. 1997) (stating, "Where the language of the statute is clear and explicit, the Court cannot rewrite the statute and inject matters into it which are not in the legislature's language.").

Second, the statute only provides for the filing of a Notice and then subsequent summons

and complaint if the matter cannot be resolved through mediation. There is no provision for amending the Notice to cure defects. Nor is there a provision for further action unless mediation has occurred. Because Plaintiff failed to ensure that pre-suit mediation took place, he has no other recourse in regards to this particular action.

CONCLUSION

Section 15-79-125 and the ADR Rules are clear. Section 15-79-125 requires the **Plaintiff** to file the Notice of Intent to File Suit. ADR Rule 4 requires the **Plaintiff** to include in said filed Notice of Intent to File Suit “language directed to the defendant that the dispute is subject to pre-suit mediation within 120 days and must contain a place for the names of the primary and secondary mediators.” Plaintiff did not comply with the requirements of ADR Rule 4; accordingly, ADR Rule 10 provides for sanctions as listed in the rule and in SCRCP Rule 37. SCRCP Rule 37 provides dismissal of the action is an appropriate sanction. Therefore, based on the facts and evidence presented, this Court correctly determined Plaintiff failed to properly initiate this medical malpractice action, and an appropriate sanction for such failure was dismissal with prejudice. This Court’s order thoroughly addresses the issues and correctly applies the law; reconsideration is not necessary.

[SIGNATURE TO FOLLOW]

Respectfully submitted,

Marian W. Scalise

Marian Williams Scalise

Lydia L. Magee

Richardson, Plowden, & Robinson, P.A.

2103 Farlow Street, P.O. Box 3646

Myrtle Beach, SC 29578

(843)-448-1008

mscalise@richardsonplowden.com

Attorneys for Defendants John Karl, M.D. and
Virginia Bell, CS, FNP

June 19, 2013
Myrtle Beach, South Carolina

January 31, 2013

Via Electronic Mail

William Isaac Diggs, Esquire
William Isaac Diggs, Attorney at Law
1700 D Oak Street
Myrtle Beach, SC 29577

Marian Williams Scalise, Esquire
Richardson Plowden, Attorneys at Law
P.O. Box 3646
Myrtle Beach, SC 29578

Re: Thomas Rickerson v. John Karl, MD
Case No. 2012-CP-26-03859

Greetings:

As previously discussed, I was unavailable to mediate this matter for you on January 22, 2013, as requested. Since my letter to you dated January 8, 2013 on that issue, I have received correspondence from each of you demonstrating conflicting positions regarding the intent of the parties to mediate this case. Based on these conflicting positions, I have consulted the South Carolina ADR Rules and discussed this situation with several well respected mediators within the 15th Judicial Circuit. Pursuant to those efforts, I have determined that it would be inappropriate for me to issue a mediation results report to the Court (i.e. – ADR Coordinator) wherein one of the parties has specifically expressed an unwilling to actually submit the case to mediation.

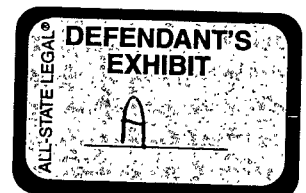
To the extent you are willing to mediate this case, I will be glad to assist you with those processes. However, to the extent you continue to have a disagreement as to whether the above matter should be mediated, I would recommend that one or both of you immediately direct that issue to the Court for adjudication.

Sincerely,

THE PEARCE LAW GROUP, P.C.

Christopher H. Pearce
Christopher Pearce, Esquire

cc: Lana H. Sims, Jr.



FILE COPY

January 10, 2013

Reply to:
Myrtle Beach
mscalise@richardsonplowden.com

Christopher H. Pearce, Esquire
1294 Professional Drive, Suite B
Myrtle Beach, SC 29577

Lana H. Sims, Jr., Esquire
Ellis Lawhorne & Sims, P.A.
P.O. Box 2285
Columbia, SC 29202

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859

Dear Mr. Pearce and Mr. Sims:

I am in receipt of a letter from Attorney William Isaac Diggs dated December 20, 2012 discussing pre-suit mediation in the above-referenced matter. I have filed a Motion to Dismiss the Notice of Intent to File Suit on the Defendants' behalf. I am enclosing a copy of that Motion to Dismiss for your review. South Carolina Code Section 15-79-125 mandates pre-suit mediation take place within 90 to 120 days from the service of the Notice of Intent. It is my position pre-suit mediation had to be held on or before October 12, 2012. The referenced statute provides the time for pre-suit mediation can be extended by up to 60 days only if the Court makes a finding that good cause exists to extend the deadline. Mr. Diggs never proposed dates for pre-suit mediation within the applicable statutory timeframe nor did he seek relief from the Court to extend the deadline by 60 days. Therefore, it is my position the Notice of Intent should be dismissed and that no authority exists statutorily for the holding of the pre-suit mediation in January 2013.

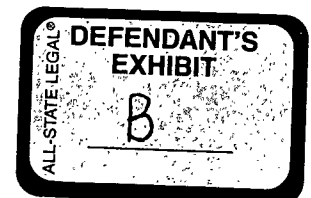
If you have any questions, please do not hesitate to contact me.

Yours very truly,

Marian W. Scalise

Marian Williams Scalise

MWS/bh
Enclosure
cc: William Isaac Diggs, Esquire



STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2012-CP-26--03859

COUNTY OF Horry

THOMAS RICKERSON,

-vs-

JOHN KARL and VIRGINAI BELL,

Defendants.

APRIL 22, 2013

B E F O R E:

HONORABLE BENJAMIN H. CULBERTSON

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

WILLIAM J. DIGGS, Esquire
Attorney for the Plaintiff

MARIAN W. SCALISE, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Next is 2012-CP-26-3859. This is
3 the case of Thomas Rickerson versus John Karl,
4 M.D., and Virginia Bell CSFNP. According to my
5 roster the matter is before the Court on a motion
6 to dismiss.

7 Please give the court reporter your names and
8 who you represent.

9 MS. SCALISE: My name is Marian Scalise, I
10 represent Dr. Karl as well as Nurse Practitioner
11 Virginia Bell.

12 THE COURT: All right.

13 MR. DIGGS: Your Honor, Bill Diggs here for
14 Thomas Rickerson.

15 THE COURT: Miss Scalise, this is your
16 motion?

17 MS. SCALISE: Yes, sir.

18 THE COURT: Let me hear from you.

19 MS. SCALISE: Your Honor, as part of the
20 comprehensive tort reform the General Assembly
21 enacted Section 15-79-125 that requires a medical
22 malpractice plaintiff to first file a notice of
23 intent to file a suit, together with an expert
24 witness affidavit. The notice of intent in this
25 matter was filed on May 15th, 2012. In that notice

1 of intent the plaintiff claimed that an antibiotic
2 that was prescribed interacted with some other
3 medications that resulted in Mr. Rickerson
4 allegedly having to be hospitalized. Dr. Karl was
5 served on June 16th of 2012, Nurse Practitioner
6 Bell was served on June 19th, 2012.

7 Under Code Section 15-79-125(C) the parties,
8 it says shall participate in mediation conference
9 within 90 and no later than a 120 days from service
10 of that notice of intent. So, 120 days from that
11 last service date of June 19th is October 17th,
12 2012. There was no request for mediation until
13 December 19th, 2012, so two months later there was
14 no request for an extension to conduct mediation,
15 no motion was filed to extend the deadline for
16 mediation and the parties are not permitted to
17 mediate beyond the statutory deadline just by
18 consent.

19 Your Honor, we contend that dismissal of this
20 case is proper under Rule 10 of the South Carolina
21 ADR rules which authorize sanctions for failure to
22 timely mediate. Under Rule 10(B) it provides any
23 lawful actions may be imposed for violation of ADR
24 and it specifically describes any other sanctions
25 authorized by Rule 37(B) of the South Carolina

1 Rules of Civil Procedure, and that rule would
2 authorize dismissal of the action with prejudice as
3 a lawful sanction. We would ask this matter be
4 dismissed with prejudice.

5 THE COURT: All right.

6 Mr. Diggs?

7 MR. DIGGS: Your Honor, here is what happened
8 from my perspective. We filed the notice of intent
9 to file suit and immediately defendants began to
10 send subpoenas for medical records and of course
11 under the HIPA law they sent those subpoenas to me
12 on behalf of my client so that we could sign off,
13 you know, agree and allow them to go ahead and
14 collect the necessary medical records. There were
15 a number of doctors that were contacted by the
16 defendants and each time we would get a copy of the
17 subpoena and we would agree to allow the defendants
18 to collect the medical records and continue to
19 collect information that they needed in order to
20 prepare for the mediation. Nobody ever said
21 anything to me about the time limits in this
22 particular situation.

23 The view that I took from the time limits
24 that are set in the statute is that unless the
25 parties were enforcing those and made an issue of

1 those time limits, that as long as the discovery
2 process was continuing to unfold and neither party
3 was concerned about running out of time in order to
4 mediate the case, that it would be acceptable to
5 the parties to mediate the case when the parties
6 became ready to do that.

7 Now, there is nothing, contrary to what
8 counsel is arguing, I don't see anything in the
9 statute that says jurisdiction is lost in this
10 situation, that an amendment can't be filed.

11 THE COURT: Excuse me for interrupting.
12 Doesn't it say, though, it shall be, what it is,
13 shall be mediated within 90 days but in no event
14 more than 120 days?

15 MR. DIGGS: It does, with the Court's
16 approval with respect to additional time. Now, the
17 way I read that, Your Honor, is if one of the
18 parties wants to enforce the time limit for the
19 mediation they can do that and the Court has the
20 obligation, I would submit under the statute the
21 Court is given authority to enforce the provisions
22 of the statute certainly with respect to the time
23 limitations but only if someone makes an issue of
24 the time limitation. At that time, Your Honor, I
25 didn't see a need to cut off the discovery process

1 and say, "Look, no more, we're going to set this
2 case for mediation." Miss Scalise or no one from
3 her office ever said they had intended to do that.

4 Your Honor, what the ADR Rule 4 says also is
5 that the parties, Rule 4(F) says the parties,
6 plural, have a responsibility to notify the
7 mediator, not just the plaintiff, but the parties
8 do and the defendant as much as the plaintiff in
9 the case failed to do that. I would argue that you
10 can't just place on the plaintiff the
11 responsibility to mediate the case because if you
12 have got a defendant that is not willing to do that
13 and that is playing coy in some fashion you're
14 going to run out the clock just as they did in this
15 case and they are trying to impose the death
16 penalty on your case because you were misled or
17 fooled into not pressing them on the time limit and
18 then after that happened getting thrown out of
19 court with prejudice.

20 Now, what happened, Your Honor, we initially,
21 when we filed this notice back on May 15th of 2012,
22 the notice itself, the filing was defective because
23 I neglected to put in our interrogatory under the
24 requirements that the statute has with respect to
25 your standard interrogatories and I didn't put the

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1 little form on there that allows for the clerk at
2 the time of filing to write in and appoint a
3 mediator, and so when I learned that Miss Scalise
4 was going to make an issue of this, the time limit,
5 she filed her motion to dismiss on December 20th
6 and still in December I know of at least one
7 occasion we received medical records from the
8 defendants on this case, indicating they were still
9 undertaking discovery in the case. But when she
10 filed her motion to dismiss on the 20th, if I can
11 back up, that was right after the clerk in this
12 Court had sent out a notice of mediation
13 requirement and appointed a mediator in the case.
14 That was done on December the 13th.

15 And so when I got the notice from the clerk's
16 office, I received it on December the 19th and I
17 immediately notified or contacted the mediator Mr.
18 Pierce and contacted Miss Scalise's office and
19 tried to get some times set to have the mediation.
20 At that point we did set mediation for January 22nd
21 but two things happened. The mediator had a
22 scheduling conflict and had to back out of that
23 particular mediation and Miss Scalise ignored my
24 response, or my effort to get dates from her office
25 about mediating the case.

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1 And so we filed a return on December 24th to
2 her motion to dismiss, indicating that dismissing
3 this case would be premature because our Statute of
4 Limitations wasn't even going to run until July of
5 2013, and so what I did was we filed an amended
6 notice on January 4th, amended notice of intent to
7 file suit and in that we of course put our
8 interrogatory responses in there and we made, put a
9 place, stated the name of the mediator that had
10 been court appointed by the clerk and the Court.

11 To the best of my knowledge that was
12 ignored. I transmitted a copy of that amended
13 filing to the mediator, I didn't get any response,
14 I don't believe, from Miss Scalise's office, there
15 was no motion to dismiss or anything of that
16 nature. If I'm wrong on that point I apologize.

17 But we sent several letters out, Your Honor.
18 I would like to make them part of the record. I
19 copied Miss Scalise on those, simply contacting,
20 showing the contacts we made with the mediator.
21 And actually to no avail because by that time it
22 was clear that the defendants were not going to
23 mediate the case and the mediator didn't really, he
24 was kind of in a quandry, didn't know what to do in
25 that situation and so we kind of stood down, made

1 the decision he wasn't going to do any mediation in
2 the case.

3 So, what I'm arguing is that it was
4 certainly not the intent of this statute to cut
5 off, and when I say the statute, I mean --

6 THE COURT: Tell me what the intent of the
7 statute is.

8 MR. DIGGS: I think the intent is to give the
9 defendants an opportunity to look at a case,
10 mediate the case before having to respond to a
11 formal lawsuit. And I would submit that is what
12 the time limitations are put in here for. It is
13 not to cut off the plaintiff's access to the courts
14 but to give the defendants an opportunity.

15 THE COURT: But how much time and opportunity
16 do we give them?

17 MR. DIGGS: Well, I would think it certainly
18 was cleared up when the clerk of this court issued
19 an ADR notice appointing mediator and referring the
20 case to mediation.

21 THE COURT: Well, the problem I have, I will
22 agree with you, all I can tell you is what the
23 statute says, and the statute says that within 90
24 days and no later than 120 days from the service of
25 notice of intent to file suit the parties shall

1 participate in a mediation conference unless an
2 extension of no more than 60 days is granted by the
3 Court upon a finding of good cause.

4 MR. DIGGS: Right.

5 THE COURT: That has got to mean something.

6 MR. DIGGS: What that means, I would submit,
7 Your Honor, is if the time limits, if a defendant
8 wants to make use of those time limits, or a
9 plaintiff, they can certainly invoke those and cut
10 off the plaintiff's right to proceed and go through
11 this particular process, but even if, even if we
12 have a mediation and it fails, which it is likely
13 to do because I think reasonably everyone expects
14 that a complicated case such as a medical
15 malpractice case is not going to settle early on
16 unless there is some really good reason for that to
17 happen and I would argue that that is certainly the
18 exception as opposed to the general rule. Cases
19 generally don't settle until later in the discovery
20 process and later in the litigation process.

21 But the statute goes on to say, Your Honor,
22 under Subsection E, after the portion that you
23 read, within 60 days after the mediator determines
24 mediation is not viable, that an impasse exists or
25 the mediation should end or prior to the expiration

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1 of the statute of limitations, whichever is later,
2 the lawsuit can be filed.

3 And so what we have here is a situation, I
4 would argue, is where the defendants chose, and it
5 is reasonable, I don't slight the defendants for
6 doing this, they chose not to mediate but they were
7 offered that opportunity, the plaintiff offered
8 them an opportunity to mediate, they chose not to
9 and so I would certainly submit that with the
10 passage of time the mediator would be reasonable to
11 conclude or determine that mediation is not viable
12 in the case or that an impasse exists or that the
13 mediation should end, so I would argue that statute
14 clears up a problem such as the one that evolved in
15 this case because mediation wasn't held within that
16 time frame. That would permit, if mediation
17 opportunities was afford all the parties, they
18 chose not to do it, mediation is not viable, so I
19 would assert that gives the plaintiff the right at
20 that point within the time frames included in the
21 statute to file the lawsuit.

22 THE COURT: All right. I'm going to go ahead
23 and make these Plaintiff's Exhibit 1.

24

25 (Letters marked as Plaintiff's Exhibit

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1 Number 1).

2 THE COURT: Anything in reply?

3 MS. SCALISE: Yes, sir, Your Honor. What I
4 have heard from Mr. Diggs is acknowledgement that
5 the very first time he ever approached anyone about
6 requesting a mediation was on December 19th. That
7 was well past the deadline that the General
8 Assembly has set forth in order to have a
9 mediation. We cannot just simply consent to that
10 mediation, which is why I filed my motion to
11 dismiss.

12 It sounds as if the only explanation he has
13 given is that he did not have medical records.
14 Your Honor, I would submit that for the party
15 bringing the lawsuit he should have already had
16 those medical records to begin with, not that he is
17 waiting on me to send him medical records, so I
18 don't quite understand that.

19 But regardless of what his reason for not
20 mediating withing the 120 day time frame, it is
21 still his responsibility as the party bringing the
22 lawsuit to schedule that mediation, to request that
23 mediation. I'm certainly not going to just agree
24 voluntarily to do that unless the plaintiff has
25 specifically requested that and, Your Honor, we

1 believe that under Section 15-79-130(C) the statute
2 is very clear that after 120 days if the plaintiff
3 has not specifically requested or if the defendant,
4 anybody has requested from the Court and shown good
5 cause why there can be an additional 60 days, then
6 mediation cannot take place, so a dismissal of the
7 case is proper and appropriate.

8 His comment that I was offered the
9 opportunity and chose not to mediate, again that
10 has to do with what happened after December 19th
11 and we as the defendant believe that we cannot just
12 voluntarily consent to a mediation outside of the
13 statutory time frame.

14 He also referenced the notice that was sent
15 by the Court and I believe, Your Honor, the notice
16 that was sent by the Court is a notice for ADR that
17 they send in all their cases regardless of whether
18 it is a notice of intent or a civil action but in
19 the notice of ADR that was sent from the Circuit
20 clerk of court it talks about participating in a
21 mediation on or before 300 days from the date of
22 filing this action and under the statute for notice
23 of intent it is not technically an action that
24 would apply to this particular notice of ADR, in
25 particular it would not have a 300 day time frame

1 for the mediation.

2 THE COURT: Excuse me for interrupting. I
3 can clear that up. Basically Horry County is a
4 mandatory ADR county. The ADR rules mandate you
5 have to mediate or enter into an alternative
6 dispute resolution conference within 300 days of
7 filing summons and complaint or, you know, that it
8 is exempt from ADR.

9 So, we have it set up with the clerk of court
10 every case, when it reaches 300 days old they look
11 to see if it is exempt or if there is a mediation
12 report in there or if there is a scheduling order
13 that puts it back beyond the 300 days. If there is
14 no scheduling order, it is not exempt and there is
15 no mediation report they go ahead and send out that
16 ADR action letter. That is how that came about.

17 All right, anything further?

18 MS. SCALISE: Nothing, Your Honor.

19 MR. DIGGS: Just briefly, if I could. ADR
20 Rule 4, she says it is the plaintiff's
21 responsibility. That is not what the ADR Rule 4
22 says.

23 THE COURT: I understand that and I know that
24 but still it is pretty clear in this that when the
25 plaintiff has an action, or to me it is, when the

1 plaintiff has an action in a medical malpractice
2 case you file your notice of intent, then there has
3 to be a mediation within 90 days or in no event
4 longer than 120 days.

5 MR. DIGGS: What do you do if the defendant
6 says, "I'm not going to mediate"?

7 THE COURT: If you have where you scheduled
8 the mediation and they just didn't show up or they
9 said, "We're not going to mediate," then I think
10 that is an exception. I mean, I think that is when
11 you have complied with the statute but here I don't
12 see where there was even an attempt to set up a
13 mediation.

14 MR. DIGGS: Your Honor, there was an attempt
15 to work with the defendant, to cooperate in their
16 collection of medical records. I never said we
17 didn't have the records, the defendant never asked
18 me for the records. They asked me to sign off on a
19 subpoena to get the records from the providers. I
20 mean, which we did. I assumed everybody was acting
21 in good faith. Your Honor, they never made a
22 statement, not one statement that we were running
23 out of time, "We're going to hold your feet to the
24 fire on this time line and even though the statute
25 doesn't say it, we're going to seek the death

1 penalty on your case because you didn't mediate the
2 case."

3 THE COURT: Well, no, I think that is when
4 you can file a motion for an extension of time
5 based upon good cause, where the Court can grant an
6 extension but it is up to 60 days for good cause,
7 where you can come into court and say, "Judge,
8 look, we have tried to mediate it, they won't do
9 it, here is where we set it up, they wouldn't do
10 it, here is where they said they are not going to,
11 here is when we filed our motion within that time
12 frame seeking extension for good cause because they
13 won't do it," and then the Court can enforce it
14 pursuant to the ADR rules.

15 MR. DIGGS: Your Honor, you don't believe
16 that even with the statute of limitations not
17 having run, that a plaintiff can't amend a notice?

18 THE COURT: I don't know.

19 MR. DIGGS: You're about to hold that this
20 filing, this notice that was deficient in terms of
21 what it contained is going to sound the death knell
22 for my client's medical malpractice action.

23 THE COURT: Well, I mean, why was it
24 deficient? It was based upon the plaintiff's
25 deficiency, it wasn't the defendant was deficient,

1 it was the plaintiff was deficient in filing it.

2 MR. DIGGS: I don't see anything in the
3 statute, with all due respect, that says we're
4 going to mediate, in fact I see a reference to the
5 statute of limitations that comes into play.

6 THE COURT: After a mediator has said you're
7 at an impasse. You're reading certain portions of
8 the statute and ignoring other portions of the
9 statute.

10 MR. DIGGS: Well --

11 THE COURT: That portion says after.

12 MR. DIGGS: How about mediation is not
13 viable, that is what the statute says?

14 THE COURT: Subsection E, if the matter
15 cannot be resolved through mediation plaintiff may
16 initiate civil action by filing summons and
17 complaint pursuant to South Carolina Rules of Civil
18 Procedure. The action must be filed within 60 days
19 after the mediator's determination that mediation
20 is not viable.

21 MR. DIGGS: That is what we did in this case,
22 after the mediator determined --

23 THE COURT: When did the mediator, when did a
24 mediator determine this was not viable?

25 MR. DIGGS: The mediator notified us that he

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1 didn't feel comfortable in having the mediation,
2 given the posture the defendant had taken in the
3 case.

4 THE COURT: That was after the time period
5 had passed.

6 MR. DIGGS: It was after the time limit had
7 passed.

8 THE COURT: Yes. Okay. This doesn't extend
9 it until after that or else then the 60 day time
10 period would never mean anything.

11 MR. DIGGS: It would mean something if one of
12 the parties wanted to enforce it. I mean, it goes
13 back to --

14 THE COURT: And I understand your argument,
15 Mr. Diggs, but I'm going to grant the motion.

16 MS. SCALISE: Thank you, Your Honor.

17 THE COURT: You are going to prepare an
18 order?

19 MS. SCALISE: I will, yes, Your Honor.

20 THE COURT: All right.

21 (Hearing concluded).
22
23
24
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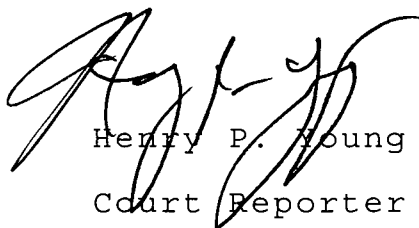
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 22nd day of April, 2013.

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

July 10, 2013



Henry P. Young
Court Reporter

Henry P. Young
Court Reporter, Fifteenth Judicial Circuit
704 Creekfront Road
North Myrtle Beach, SC 29582

843 231-0697

July 10, 2013

William I. Diggs, Attorney
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

Rickerson vs. John Karl, et al

Transcript of motion hearing April 22, 2013, Common
Pleas Court for Horry County.

19 pages @ 3.25 per page:

\$61.75

Henry P. Young
SSN 431-76-2059

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COUNTY OF Horry

Thomas Rickerson
Plaintiff,

vs.

John Karl Md
Defendant.

2012CP2603859

NOTICE OF ADR

Case File Date: May 15, 2012

Pursuant to the South Carolina Alternative Dispute Resolution Rules (SCADR), you are required to participate in the following methods of Alternative Dispute Resolution (ADR): mediation or arbitration (binding or non-binding); on or before 300 days from the date of filing of this action. The parties have a right to mutually agree upon the form of ADR and a neutral person(s) to conduct that ADR process. In the event the parties are unable to agree upon the form of ADR, the court hereby designates mediation as the default process of ADR. In the event the parties are unable to agree upon a mediator, the court hereby appoints Christopher H. Pearce

to serve as mediator. In the event the aforementioned mediator has a conflict of interest or is unable to serve, the alternate mediator is Lana H. Sims Jr.

The parties and/or their lawyers shall contact the court-appointed mediator directly regarding scheduling and payment of the court-mandated fee.

A Rule to Show Cause why sanctions should not be imposed may be issued in all cases that fail to file a Proof of ADR or Exemption form indicating evidence of participation in or exemption from an ADR process within 300 days from the date of filing of the action or 120 days from the date of this notice.

Date: April 6, 2013

Melanie Huggins-Ward
Clerk of Court

Notice of this Order was given by facsimile transmission, or if no fax number is shown, by first class mail or email to the attorneys of record on Thursday, December 06, 2012

Plaintiff's Lawyer: William Isacc Diggs
Defendant's Lawyer: Marian Williams Scalise

Clerk's Initials: (91)

56	04/22/2013	9:30 AM	ADR/Notice of ADR	Vito Carbonara-PLT	10/08/2012	2012CP2600884 Vito Carbonara , plaintiff, et al VS TD Bank NA , defendant, et al	Breach of Cont 140	Scott B. Umstead (843) 913-4610	Rita Bolt Barker (864) 242-8235 Wade S. Kolb Jr. (803) 418-0800
57	04/22/2013	9:30 AM	ADR/Notice of ADR	American Express Bank FSB-PLT	10/08/2012	2012CP2601026 American Express Bank FSB VS Karen Dalessio	Debt Collections 110	Summer Hughes Smoot (678) 298-8817	Karen Dalessio
58	04/22/2013	9:30 AM	ADR/Notice of ADR	Maryanne Robinson -PLT	10/08/2012	2012CP2601135 Maryanne Robinson , plaintiff, et al VS Michael R Ott , defendant, et al	Torts/Other 399	Neil D. Wright (843) 449-0781 x23	Eileen T Ott Michael R Ott
59	04/22/2013	9:30 AM	ADR/Notice of ADR	Samuel Rabon-PLT	10/22/2012	2012CP2601196 Samuel Rabon , plaintiff, et al VS Fogner Insurance Agency Inc , defendant, et al	Torts/Other 399	Gene McCain Connell Jr. (843) 238-5648	John Robert Murphy (803) 454-1231 Thomas Bacot Pritchard (843) 722-3300 Val H. Stieglitz III (803) 253-8262
60	04/22/2013	9:30 AM	ADR/Notice of ADR	Amanda M Sanderson-PLT	10/22/2012	2012CP2601197 Amanda M Sanderson VS Sears Roebuck And Co	Personal Injury 350	Jeffrey Edwin Johnson (843) 488-5333	James Christopher Clark (843) 448-3500
61	04/22/2013	9:30 AM	ADR/Notice of ADR	Britney Stanley-PLT	10/22/2012	2012CP2601237 Britney Stanley VS Jacob K Foor	Motor Veh Accid 320	Byron Preston David (843) 488-1415	Jimmy Carlton Powell Jr. (843) 213-5502
62	04/22/2013	9:30 AM	ADR/Notice of ADR	Crescom Bank-PLT	10/22/2012	2012CP2601242 Crescom Bank , plaintiff, et al VS James K Phillips , defendant, et al	Debt Collections 110	Michael Sartip (843) 449-9417	Valerie Jo Falbo
63	04/22/2013	9:30 AM	ADR/Notice of ADR	Janine Mathews-PLT	10/22/2012	2012CP2601248 Janine Mathews VS Felcor Lodging Limited Partnership , defendant, et al	Premises Liab 330	Daniel Nathan Hughey (843) 881-8644	Danielle F. Payne (803) 731-0030 Jimmy Carlton Powell Jr. (843) 213-5502
64	04/22/2013	9:30 AM	ADR/Notice of ADR	Daniel J Hafner-PLT	10/22/2012	2012CP2601344 Daniel J Hafner VS Thelma L Meredith , defendant, et al	Motor Veh Accid 320	Lawrence J. Purvis Jr. (843) 650-7800	Ronald Barton Diegel (803) 782-4100 Willard D. Hanna Jr. (843) 651-9000
65	04/22/2013	9:30 AM	ADR/Notice of ADR	Betsy Johnson Ahnert-PLT	12/19/2012	2012CP2601358 Betsy Johnson Ahnert VS Horry County , defendant, et al	Real Prop/Other 499	David Popowski (843) 722-8301	Sanford Cox Graves (843) 915-7416 L. Morgan Martin (843) 248-0177
66	04/22/2013	9:30 AM	ADR/Notice of ADR	Troy Capital LLC-PLT	02/18/2013	2012CP2601373 Troy Capital LLC VS Selina B Mabry	Debt Collections 110	Wylie Westmoreland Clarkson (803) 252-5817	Selina B Mabry
67	04/22/2013	9:30 AM	ADR/Notice of ADR	Daphene Davene Larry-PLT	12/19/2012	2012CP2601426 Daphene Davene Larry VS First Coastal Financial Inc , defendant, et al	Unfair Trade Pra 640	Daphene Davene Larry	Michael F. Bowler III (843) 571-5955
68	04/22/2013	9:30 AM	ADR/Notice of ADR	Dean Carroll-PLT	12/19/2012	2012CP2601489 Dean Carroll VS Young Interiors Inc	Constructions 100	Charles Bernhart Jordan Jr. (843) 388-8883	Ellis Reed-Hill Lesemann (843) 388-8883 x1603
69	04/22/2013	9:30 AM	ADR/Notice of ADR	Branch Banking and Trust Company-PLT	12/19/2012	2012CP2601520 Branch Banking and Trust Company VS Nicholson U Tucker	Debt Collections 110	Jerry T. Myers (919) 250-2133	Nicholson U Tucker
70	04/22/2013	9:30 AM	ADR/Notice of ADR	Easton Sports Inc-PLT	12/19/2012	2012CP2601545 Easton Sports Inc VS George Karukas , defendant, et al	Debt Collections 110	B. Ray Woodard (843) 538-4566	George Karukas
71	04/22/2013	9:30 AM	ADR/Notice of ADR	Raphael Yekuel-PLT	12/19/2012	2012CP2601554 Raphael Yekuel , plaintiff, et al VS Shoreline Building Inc , defendant, et al	Personal Injury 350	Frank H. DuRant (843) 448-1541	William Alfred Bryan Jr. (843) 353-2350 Cheryl D. Shoun (843) 720-1762 Lee Anne Walters (843) 720-2044
72	04/22/2013	9:30 AM	ADR/Notice of ADR	Palisades Collection LLC-PLT	12/19/2012	2012CP2601561 Palisades Collection LLC VS John A Lowenbruck	Debt Collections 110	Adam S. Tesh (803) 771-4400	William Levern Pyatt (803) 750-5929
73	04/22/2013	9:30 AM	ADR/Notice of ADR	JP Morgan Chase Bank NA-PLT	12/19/2012	2012CP2601746 JP Morgan Chase Bank NA , plaintiff, et al VS James Blevins , defendant, et al	Real Prop/Other 499	Christopher A. Chleborowicz (910) 254-1060	Bonnie L Blevins James Blevins Bonnie L Shutt
74	04/22/2013	9:30 AM	ADR/Notice of ADR	Altman Properties LLC-PLT	12/19/2012	2012CP2601753 Altman Properties LLC VS Evelyn Dew	Breach of Cont 140	Charles Edward Parrish (843) 248-8877	Ralph James Wilson Jr. (843) 381-0765
75	04/22/2013	9:30 AM	ADR/Notice of ADR	LVNV Funding LLC-PLT	11/02/2012	2012CP2601778 LVNV Funding LLC VS Frank Depalma	Debt Collections 110	Adam S. Tesh (803) 771-4400	Frank Depalma
76	04/22/2013	9:30 AM	ADR/Notice of ADR	LVNV Funding LLC-PLT	11/02/2012	2012CP2601780 LVNV Funding LLC VS Susan Leaf	Debt Collections 110	Adam S. Tesh (803) 771-4400	Susan Leaf
77	04/22/2013	9:30 AM	ADR/Notice of ADR	Pete G Gustafson-PLT	11/02/2012	2012CP2601810 Pete G Gustafson VS Columbia Properties Myrtle Beach LLC , defendant, et al	Premises Liab 330	Peter Lee Hearn Sr. (843) 248-3172	John Martin Grantland (803) 454-1237 Michael D Hoffer (404) 881-2638
78	04/22/2013	9:30 AM	ADR/Notice of ADR	Carolinas Hospital System Florence-PLT	11/02/2012	2012CP2601912 Carolinas Hospital System Florence VS James Coleman	Debt Collections 110	S. Nelson Weston Jr. (803) 771-4400	Bradley Alexander Floyd (843) 238-5141
79	04/22/2013	9:30 AM	ADR/Notice of ADR	Saxon Inc-PLT	11/02/2012	2012CP2601921 Saxon Inc , plaintiff, et al VS John Thomas , defendant, et al	Breach of Cont 140	Randall K. Mullins (843) 272-8902	Anita Ruth Floyd (843) 248-3206
80	04/22/2013	9:30 AM	ADR/Notice of ADR	Valerie Schramm-PLT	01/09/2013	2012CP2602119 Valerie Schramm , plaintiff, et al VS Grand Strand Child Development Center LLC , defendant, et al	Personal Injury 350	Ian D. Maguire (843) 361-7549	J. Boone Aiken III (843) 669-8787
81	04/22/2013	9:30 AM	ADR/Notice of ADR	Robert Hochman-PLT	01/09/2013	2012CP2602122 Robert Hochman VS Pennsylvania Life Insurance Company , defendant, et al	Personal Injury 350	Bradley Davis Hewett (803) 726-0123	D. Lawrence Kristinik III (803) 255-9531
82	04/22/2013	9:30 AM	ADR/Notice of ADR	Georgios N Kolombos-PLT	01/09/2013	2012CP2602200 Georgios N Kolombos VS Katrina Sue Ulmer	Torts/Other 399	Ryan A. Stampfle (843) 445-9933	Natasha M. Hanna (843) 839-8002
83	04/22/2013	9:30 AM	ADR/Notice of ADR	Thomas Rickerson-PLT	12/13/2012	2012CP2603859 Thomas Rickerson VS John Karl Md , defendant, et al	Notice/Med Mal/230	William Isaac Diggs (843) 626-4243	Marian Williams Scalise (843) 448-1008
84	04/22/2013	9:30 AM	ADR/Notice of ADR	Anne Lytle-PLT	12/14/2012	2012CP2609164 Anne Lytle , plaintiff, et al VS BI Lo LLC	Personal Injury 350	Frank Anthony Barton (803) 739-1824	Ronald Barton Diegel (803) 782-4100

90

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Thomas Rickerson,

Plaintiff,

-vs-

John Karl, M.D. and Virginia
Bell, CS, FNP,

Defendants.

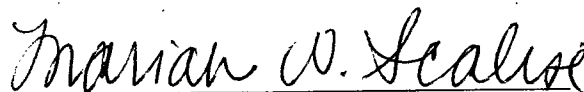
IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-26-3859

NOTICE OF APPEARANCE

The undersigned attorneys are in receipt of the Plaintiff's Notice of Intent to File Suit. The undersigned have been retained to represent John Karl, M.D. and Virginia Bell, CS, FNP, in the above-referenced matter and hereby notify the Court, the parties, and their attorneys that they are appearing on John Karl, M.D.'s and Virginia Bell, CS, FNP's behalf in this action. Please note that through this limited appearance, these Defendants do not waive any defenses, objections, jurisdictional arguments or available statutory or common law defenses.

Respectfully submitted,



Marian Williams Scalise
Richardson, Plowden & Robinson, P.A.
2103 Farlow Street, P.O. Box 3646
Myrtle Beach, SC 29578
(843) 448-1008
mscalise@richardsonplowden.com

Lydia L. Magee by M. Scalise

Lydia L. Magee

Richardson, Plowden & Robinson, P.A.

2103 Farlow Street, P.O. Box 3646

Myrtle Beach, SC 29578

(843) 448-1008

lmagee@richardsonplowden.com

Attorneys for Defendants John Karl, M.D. and Virginia
Bell, CS, FNP

7-2

, 2012.

Myrtle Beach, South Carolina

Reply to:
Myrtle Beach
Imagee@richardsonplowden.com
Ext. 301

September 6, 2012

The Honorable Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit
1301 Second Avenue, Ste. 3A30
Conway, SC 29526-5234

Re: Order of Protection

Horry County Cases

Marion Adam vs. Dr. Cornelius Beck d/b/a Inlet Dental Center, Inc.
C/A No.: 2012-CP-26-300
Our File No.: 155-394

Karen E. Carpenter, as Personal Representative of the Estate of Donald A. Carpenter, Jr.; Deceased v. Kevin E. Cullen, DO; Daniel J. Gordon, MD; Carolina Hospitalists, LLC; John A. Rogowski, Jr., MD; J.A. Rogowski, P.C.; Conway Emergency Group, LLP; Edward Botse-Baidoo, MD; Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists; and Grand Strand Regional Medical Center, LLC
C/A No.: 2011-CP-26-3968
Our File No.: 155-383

Edward Daniel Carroll v. Horry County, Horry County Sheriff's Department, Conway Hospital, Inc. d/b/a Conway Medical Center, Team Health, Inc. d/b/a Team health Hospitalist Group, Martin A. Duclos, M.D., Elham Novin-Baheran, M.D., Paul Gordon, M.D., and Kevin Cullen, D.O.
C/A No.: 2012-CP-26-1245
Our File No.: 4961-111

Tammy DelaCruz, as Next Friend of Marco DelaCruz, a minor v. Dr. Tracey Golden, M.D. and Magnolia OB-GYN, LLC of Myrtle Beach
C/A No.: 2012-CP-26-3611
Our File No.: 5412-091

Gene A. Dunlap and Bonnie L. Dunlap v. Daniel L. Rosner, M.D., Coastal Carolina Otolaryngology Associates, P.A. and Grand Strand Regional Medical Center, LLC
C/A No.: 2012-CP-26-1002
File No.: 5412-087

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Letter to The Honorable Steven H. Johnson
September 6, 2012
Page 2

Kelley Gault, Individually and as Personal Representative of the Estate of John W. Gault, Jr. v. Loris Community Hospital and Pamela Sue Grim, M.D.
C/A No.: 2011-CP-26-5005
Our File No.: 5412-066

Christina Mills Lahn and Ricci Lahn, Individually and as Guardian ad Litem for Nash Lahn, a minor v. Nancy D. Benson, Brenton Juberg, M.D., North Strand OB/GYN, P.C., Loris Community Hospital, and Loris Healthcare System n/k/a McLeod Loris/Seacoast Hospital
C/A No.: 2012-CP-26-4983
Our File No.: 155-403

Phyllis Lupo vs. Gregory S. Mencken, M.D., Carolina Radiology Associates, LLC, Conway Hospital, Inc. and John and Jane Does 1-10
C/A No.: 2012-CP-26-2118
Our File No.: 155-398

Mariann Muscolino, as Personal Representative of the Estate of Alma Speranza, Deceased v. Timothy Cornnell, M.D., Cardiology/Gastroenterology Associates of Myrtle Beach, P.A., Paul Hyler, M.D., Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists and Grand Strand Regional Medical Center, LLC d/b/a Grand Strand Regional Medical Center
C/A No.: 2011-CP-26-8156
Our File No.: 7693-002

John Richards, as Personal Representative of the Estate of June Richards, Deceased v. Jose Convalecer, M.D., Saria Almo, P.A., Scott Mayhew, M.D., Lyle Shelver, M.D., Crystal Lilly, P.A., Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists, Charles T. Walls, Jr., M.D., Charles T. Walls, Jr., M.D., P.C. d/b/a Diagnostic Pathology Partnership, Edward L. Proctor, Jr., M.D., Edward L. Proctor, Jr., M.D., P.A. d/b/a Diagnostic Pathology Partnership, Melanie A. Hopkins, M.D., Hopkins Pathology, P.A. d/b/a Diagnostic Pathology Partnership and Grand Strand Regional Medical Center, L.L.C. d/b/a Grand Strand Regional Medical Center
C/A No.: 2011-CP-26-5717
Our File No.: 155-387

Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859 (Notice of Intent)
Our File No.: 5412-089

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Gregory and Floretta Rush, as natural Guardians of Harmoniee Shantell Rush, a minor under the age of 14 years v. Conway Hospital, Inc. d/b/a Conway Medical Center
C/A No.: 2012-CP-26-3852
Our File No.: 4961-073

Robert H. Stephenson as the Personal Representative of the Estate of Dorothy J. Stephenson, Deceased v. Grand Strand Regional Medical Center, LLC; Jessica Thasitis, RN; Hospitalist Group for Grand Strand Regional Medical Center, LLC; Kyaw Hein, MD; Cardiology/Gastroenterology Associates of Myrtle Beach, PA; Joseph Trask, MD; and Mark P. Karavan, MD
C/A No.: 2012-CP-26-3852
Our File No.: 7693-010

Dominick M. Vallario v. Allen Smolenski, MD; Richard Schmitt, MD; James Merritt, MD; Matthew J. Metz, MD; and Jacob Robinson, MD
C/A No.: 2012-CP-26-5265
Our File No.: 155-405

Charles Vanderhorst, both individually and as Personal Representative of the Estate of Tyreatha Vanderhorst v. Magnolia OB-GYN, LLC of Myrtle Beach and Tracey Golden, M.D.
C/A No.: 2012-CP-26-549
Our File No.: 5412-076

Ruby Walwyn v. Conway Hospital, Inc. d/b/a Conway Hospital Wellness Center
C/A No.: 2010-CP-26-1194
Our File No.: 4961-109

Carol Worrell, as Administratrix of the Estate of Jon C. Worrell v. Grand Strand Regional Medical Center, LLC, Veronica Ortiz, M.D., Michael C. Overbeck, M.D., and Jose W. Convalecer, M.D., and Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists
C/A No.: 2011-CP-26-1728
Our File No.: 155-382

Georgetown County Case

Allison H. Bazen and Bradley Bazen v. Christine Gerber, M.D. and Carolina Obstetrics-Gynecology, LLP
C/A No.: 2012-CP-22-232
Our File No.: 5412-075

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Letter to The Honorable Steven H. John
September 6, 2012
Page 4

Dear Judge John:

Enclosed please find a proposed Order of Protection from the court for all matters related to the above-captioned case for the following dates in 2012 and 2013:

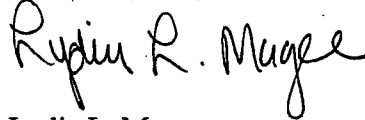
December 10, 2012, through February 22, 2012-Maternity Leave

By copy of this letter to all counsel of record in this case, I am hereby notifying them of my request and ask that they advise the Court and me if they object to the Order no later than September 21, 2012. My law partners Marian Scalise and Doug Baxter will be covering these cases while I am on maternity leave.

If this Order meets with your approval, I would appreciate your signing the enclosed Order of Protection and returning it to me in the enclosed envelope.

If you have any questions or concerns, please let me know. I appreciate your consideration.

Yours very truly,



Lydia L. Magee

LLM/baz

Enclosure

cc: (via email only)

Charles J. Hodge, Esquire
Gene Connell, Esquire
O. Fayrell Furr, Jr., Esquire
John B. McCutcheon, Jr., Esquire
Darren Kent Sanders, Esquire
Weldon Johnson, Esquire
David Yarborough, Esquire
D. Nathan Hughey, Esquire
Andrew D. Gowdown, Esquire
William W. Doar, Esquire

James A. Merritt, Jr., Esquire
John Felder, Esquire
Sam Arthur, Esquire
William Diggs, Esquire
Chad McGowan, Esquire
Stuart Snow, Esquire
Karolan Ohanesian, Esquire
G. Murrell Smith, Jr., Esquire
Saunders M. Bridges, Jr., Esquire

ab

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
)

IN RE: Lydia L. Magee

) **ORDER OF PROTECTION**

It has come to the Court's attention that Lydia L. Magee, Esquire (SC Bar No. 16584) requested protection for the following dates in 2012 and 2013:

December 10, 2012, through February 22, 2013-Maternity Leave

THEREFORE, it is ordered that Lydia L. Magee be protected from trial and/or any court appearances for the above dates.

IT IS SO ORDERED.

The Honorable Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit

_____, 2012.

_____, South Carolina.

HORRY COUNTY CASES

Marion Adam vs. Dr. Cornelius Beck d/b/a Inlet Dental Center, Inc.
C/A No. 2012-CP-26-300

Karen E. Carpenter, as Personal Representative of the Estate of Donald A. Carpenter, Jr., Deceased v. Kevin E. Cullen, DO; Daniel J. Gordon, MD; Carolina Hospitalists, LLC; John A. Rogowski, Jr., MD; J.A. Rogowski, P.C.; Conway Emergency Group, LLP; Edward Botse-Baidoo, MD; Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists; and Grand Strand Regional Medical Center, LLC
C/A No. 2011-CP-26-3968

Edward Daniel Carroll v. Horry County, Horry County Sheriff's Department, Conway Hospital, Inc. d/b/a Conway Medical Center, Team Health, Inc. d/b/a Team Health Hospitalist Group, Martin A. Duclos, M.D., Elham Novin-Baheran, M.D., Paul Gordon, M.D., and Kevin Cullen, D.O.
C/A No. 2012-CP-26-1245

Tammy DelaCruz, as Next Friend of Marco DelaCruz, a minor v. Dr. Tracey Golden, M.D. and Magnolia OB-GYN, LLC of Myrtle Beach
C/A No. 2012-CP-26-3611 (Notice of Intent)

Gene A. Dunlap and Bonnie L. Dunlap v. Daniel L. Rosner, M.D., Coastal Carolina Otolaryngology Associates, P.A. and Grand Strand Regional Medical Center, LLC
C/A No. 2012-CP-26-5049

Kelley Gault, Individually and as Personal Representative of the Estate of John W. Gault, Jr. v. Loris Community Hospital and Pamela Sue Grim, M.D.
C/A No. 2011-CP-26-5005

Christina Mills Lahn and Ricci Lahn, Individually and as Guardian ad Litem for Nash Lahn, a minor v. Nancy D. Benson, Brenton Juberg, M.D., North Strand OB/GYN, P.C., Loris Community Hospital, and Loris Healthcare System n/k/a McLeod Loris/Seacoast Hospital
C/A No. 2012-CP-26-4983 (Notice of Intent)

Phyllis Lupo vs. Gregory S. Mencken, M.D., Carolina Radiology Associates, LLC, Conway Hospital, Inc. and John and Jane Does 1-10
C/A No. 2011-CP-26-9145 (Notice of Intent) and 2012-CP-26-2118

Mariann Muscolino, as Personal Representative of the Estate of Alma Speranza, Deceased v. Timothy Cornnell, M.D., Cardiology/Gastroenterology Associates of Myrtle Beach, P.A., Paul Hyler, M.D., Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists and Grand Strand Regional Medical Center, LLC d/b/a Grand Strand Regional Medical Center
C/A No. 2011-CP-26-8156

HORRY COUNTY CASES

Marion Adam vs. Dr. Cornelius Beck d/b/a Inlet Dental Center, Inc.
C/A No. 2012-CP-26-300

Karen E. Carpenter, as Personal Representative of the Estate of Donald A. Carpenter, Jr., Deceased v. Kevin E. Cullen, DO; Daniel J. Gordon, MD; Carolina Hospitalists, LLC; John A. Rogowski, Jr., MD; J.A. Rogowski, P.C.; Conway Emergency Group, LLP; Edward Botse-Baidoo, MD; Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists; and Grand Strand Regional Medical Center, LLC
C/A No. 2011-CP-26-3968

Edward Daniel Carroll v. Horry County, Horry County Sheriff's Department, Conway Hospital, Inc. d/b/a Conway Medical Center, Team Health, Inc. d/b/a Team health Hospitalist Group, Martin A. Duclos, M.D., Elham Novin-Baheran, M.D., Paul Gordon, M.D., and Kevin Cullen, D.O.
C/A No. 2012-CP-26-1245

Tammy DelaCruz, as Next Friend of Marco DelaCruz, a minor v. Dr. Tracey Golden, M.D. and Magnolia OB-GYN, LLC of Myrtle Beach
C/A No. 2012-CP-26-3611 (Notice of Intent)

Gene A. Dunlap and Bonnie L. Dunlap v. Daniel L. Rosner, M.D., Coastal Carolina Otolaryngology Associates, P.A. and Grand Strand Regional Medical Center, LLC
C/A No. 2012-CP-26-5049

Kelley Gault, Individually and as Personal Representative of the Estate of John W. Gault, Jr. v. Loris Community Hospital and Pamela Sue Grim, M.D.
C/A No. 2011-CP-26-5005

Christina Mills Lahn and Ricci Lahn, Individually and as Guardian ad Litem for Nash Lahn, a minor v. Nancy D. Benson, Brenton Juberg, M.D., North Strand OB/GYN, P.C., Loris Community Hospital, and Loris Healthcare System n/k/a McLeod Loris/Seacoast Hospital
C/A No. 2012-CP-26-4983 (Notice of Intent)

Phyllis Lupo vs. Gregory S. Mencken, M.D., Carolina Radiology Associates, LLC, Conway Hospital, Inc. and John and Jane Does 1-10
C/A No. 2011-CP-26-9145 (Notice of Intent) and 2012-CP-26-2118

Mariann Muscolino, as Personal Representative of the Estate of Alma Speranza, Deceased v. Timothy Cornnell, M.D., Cardiology/Gastroenterology Associates of Myrtle Beach, P.A., Paul Hyler, M.D., Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists and Grand Strand Regional Medical Center, LLC d/b/a Grand Strand Regional Medical Center
C/A No. 2011-CP-26-8156

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STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
)

IN RE: Lydia L. Magee

) **ORDER OF PROTECTION**

It has come to the Court's attention that Lydia L. Magee, Esquire (SC Bar No. 16584) requested protection for the following dates in 2012 and 2013:

December 10, 2012, through February 22, 2013-Maternity Leave

THEREFORE, it is ordered that Lydia L. Magee be protected from trial and/or any court appearances for the above dates.

IT IS SO ORDERED.

The Honorable Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit

_____, 2012.

_____, South Carolina.

100



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

EXHIBIT A

1700 Oak Street, Suite D
Myrtle Beach, SC 29577

843.626.4243
843.626.5123 Fax

www.MyrtleBeachLaw.com

September 18, 2012

Lydia L. Magee, Esquire
Richardson Plowden
P.O. Box 3646
Myrtle Beach, SC 29578

RE: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
Civil Action No.: 2012-CP-26-3859
Your File No.: 5412-089

Dear Lydia:

This letter will confirm the telephone conversation between you and Barbara Daniels of my office wherein your office was requested to forward to my office copies of all medical bills and records you receive by way of subpoena on behalf of Thomas Rickerson. In addition, please find a copy of the signed Consent Form as the attorney for Thomas Rickerson. If you have any questions, please feel free to speak with me or Barbara.

With kind regards, I remain

Sincerely,

William Isaac Diggs

WID/bad

Enclosed: As stated

13 JUN -5 PM 3:10
CLERK OF COURT
MURRAY COUNTY
MELANIE HUGGINS-WARD

101



Licensed in NC & SC

1700 Oak Street, Suite D
Myrtle Beach, SC 29577
843.626.4243
843.626.5123 Fax
www.MyrtleBeachLaw.com

December 20, 2012

Christopher H. Pearce
1294 Professional Drive
Suite B
Myrtle Beach, SC 29577

Re: Thomas Rickerson vs. John Karl and Virginia Bell
Case: 2012-CP-26-3859

Dear Mr. Pearce:

The Court has appointed you as a mediator in the above matter. After speaking with your assistant I contacted the defendants' counsel to try to schedule the mediation by calling her office to set the date and time. I have not received any response back as to what date and time is good for her. For that reason I am contacting you and scheduling the mediation with you for January 22, 2012 starting at 10 a.m. at your office. I will copy the opposing counsel with this correspondence and hopefully we both will hear from her as to whether she will attend the mediation. Please let me know if you have any questions. With kind regards, I am,

Sincerely yours,

William Isaac Diggs

WID/

CC:
Marian Williams Scalise
Richardson, Plowden & Robinson, P.A.
2103 Farlow Street, P.O. Box 3646
Myrtle Beach, SC 29578



January 2, 2013

William Isacc Diggs, Esquire
William Isaac Diggs Attorney at Law
1700 D Oak Street
Myrtle Beach, SC 29577

Marian Williams Scalise, Esquire
Richardson Plowden Attorneys at Law
P.O. Box 3646
Myrtle Beach, SC 29578

Re: Thomas Rickerson v. John Karl Md
Case No. 2012-CP-26-03859

Greetings:

I am the Court appointed mediator in the above matter. If you have selected another mediator or if this matter has been settled or otherwise disposed of, please let me know. If you wish for me to serve as mediator in this matter, we need to conduct the mediation in the near future, and / or no later than April 6, 2013 per the attached Notice of ADR. I am in receipt of Attorney Diggs' letter dated December 20, 2012 scheduling the mediation for January 22, 2012 at 10 a.m. at my office, The Pearce Law Group, P.C., 1294 Professional Drive, Suite B, Myrtle Beach, SC, and have reserved it on my calendar.

If the case is not ripe for mediation at this time because of discovery not being completed or the like, I cannot defer the mediation deadline(s). You must obtain an order from the Chief Administrative Judge, Steven H. John, to defer the mediation timetable(s). If such an order is obtained, please send me a copy for my records.

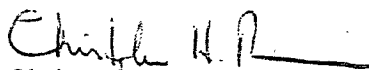
To the extent you move forward with mediation, I would like to receive from each of you before the mediation a brief (4-5 paragraph) letter containing a non-argumentative statement of the facts and issues in the case, whether or not discovery has been completed and the status of settlement negotiations, if any.

It is my understanding that the rules provide for a mediator's fee in an appointed matter of \$175.00 per hour and that is typically shared by the parties on an equal basis. If you have a different arrangement or understanding in mind, please let me know.

I look forward to working with you in mediating this matter.

Sincerely,

THE PEARCE LAW GROUP, P.C.


Christopher Pearce, Esquire

103



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

JAN = 7 2013

1700 Oak Street, Suite D
Myrtle Beach, SC 29577

843.626.4243
843.626.5123 Fax

www.MyrtleBeachLaw.com

January 4, 2013

Christopher Pearce, Esquire
Pearce Law Group, P.C.
1294 Professional Drive, Suite B
Myrtle Beach, SC 29577

Re: Thomas Rickerson v. John Karl and Virginia Bell
Re: 2012-CP-26-3859

Dear Mr. Pearce:

Enclosed is a copy of the Amended Notice of Intent to File Suit in the above matter. The Amended Notice has been filed due to imperfections contained within the initial filing which are cured by the Amended filing. Plaintiff is ready and willing to mediate this case on the January 22, 2013, scheduled date. Opposing counsel, Mirian Scalise, has a motion to dismiss this action pending in Circuit Court based on the failure of the parties to mediate within the 90 time limit set out in § 15-79-125. Thus, she has indicated to me that she will not mediate the case as ordered in the ADR order sent to you. It is my opinion that Attorney Scalise has taken this position for purposes of causing confusion and delay and that she never intends to mediate this case.

The negligent conduct complained of in this matter occurred in July, 2011. Thus, the statute of limitations has not run in this case and it is my opinion that nothing has transpired that warrants dismissal of this case with prejudice especially given the fact that defense counsel herself took no action to schedule a mediation conference. Given the position taken by Attorney Scalise, I would ask that you issue a notice of impasse in this case so that I may proceed with the civil action before the statute of limitations does run in July, 2014. If you have any questions, please let me know. With kind regards, I am

Sincerely yours,

William Isaac Diggs

WID

Enclosure: As stated

Cc: Mirian Williams Scalise, Esquire (with enclosures)

104

January 8, 2013

Via Electronic Mail

William Isaac Diggs, Esquire
William Isaac Diggs Attorney at Law
1700 D Oak Street
Myrtle Beach, SC 29577

Marian Williams Scalise, Esquire
Richardson Plowden Attorneys at Law
P.O. Box 3646
Myrtle Beach, SC 29578

Re: Thomas Rickerson v. John Karl, MD
Case No. 2012-CP-26-03859

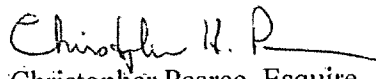
Greetings:

I am in receipt of certain correspondence from Mr. Diggs regarding the pending mediation of this matter. Notwithstanding the issues and concerns presented therein, this past Friday I was unexpectedly served with notices and subpoenas on behalf of my clients in a pending Federal Court case that will require my presence in Glen Allen, Virginia on January 21-22, 2013. As such, I regret to inform you that I will not be available to mediate this matter for you on January 22, 2013, as previously scheduled with our office. By copy of this letter to alternate court appointed mediator, Lana H. Sims, Jr., and ADR Coordinator Fawn Norris of the same.

I regret having to cancel the pending mediation. However, time is of the essence in the above matter for my clients as it is under a recently modified Case Management Order providing limited time for these depositions to be taken. Unfortunately, I did not reasonably foresee that January 21-22, 2013 would be the only dates available for opposing counsel to take these particular depositions.

Sincerely,

THE PEARCE LAW GROUP, P.C.


Christopher Pearce, Esquire

cc: Lana H. Sims, Jr.



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

JAN 11 2013

1700 Oak Street, Suite D
Myrtle Beach, SC 29577

843.626.4243

843.626.5123 Fax

www.MyrtleBeachLaw.com

January 10, 2013

Christopher Pearce, Esquire
Pearce Law Group, P.C.
1294 Professional Drive, Suite B
Myrtle Beach, SC 29577

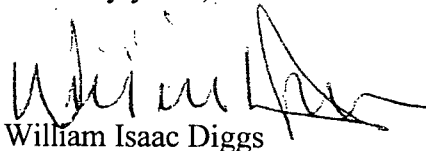
Re: Thomas Rickerson v. John Karl and Virginia Bell
Re: 2012-CP-26-3859

Dear Mr. Pearce:

I am in receipt of your letter dated January 8, 2013. Knowing that you cannot be available for the mediation on January 22, 2013, I would request that you reschedule the mediation regarding the Amended Notice of Intent to File Suit in the above matter as soon as your schedule allows. Please notify me and opposing counsel of your date and time for the mediation. I will make myself available at any date and time.

If you have any questions, please let me know. With kind regards, I am

Sincerely yours,



William Isaac Diggs

WID

Cc: Mirian Williams Scalise, Esquire

100

FILE COPY

January 10, 2013

Reply to:
Myrtle Beach
mscalise@richardsonplowden.com

Christopher H. Pearce, Esquire
1294 Professional Drive, Suite B
Myrtle Beach, SC 29577

Lana H. Sims, Jr., Esquire
Ellis Lawhorne & Sims, P.A.
P.O. Box 2285
Columbia, SC 29202

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859

Dear Mr. Pearce and Mr. Sims:

I am in receipt of a letter from Attorney William Isaac Diggs dated December 20, 2012 discussing pre-suit mediation in the above-referenced matter. I have filed a Motion to Dismiss the Notice of Intent to File Suit on the Defendants' behalf. I am enclosing a copy of that Motion to Dismiss for your review. South Carolina Code Section 15-79-125 mandates pre-suit mediation take place within 90 to 120 days from the service of the Notice of Intent. It is my position pre-suit mediation had to be held on or before October 12, 2012. The referenced statute provides the time for pre-suit mediation can be extended by up to 60 days only if the Court makes a finding that good cause exists to extend the deadline. Mr. Diggs never proposed dates for pre-suit mediation within the applicable statutory timeframe nor did he seek relief from the Court to extend the deadline by 60 days. Therefore, it is my position the Notice of Intent should be dismissed and that no authority exists statutorily for the holding of the pre-suit mediation in January 2013.

If you have any questions, please do not hesitate to contact me.

Yours very truly,

Marian W. Scalise

Marian Williams Scalise

MWS/bh
Enclosure
cc: William Isaac Diggs, Esquire

107

January 31, 2013

Via Electronic Mail

William Isaac Diggs, Esquire
William Isaac Diggs, Attorney at Law
1700 D Oak Street
Myrtle Beach, SC 29577

Marian Williams Scalise, Esquire
Richardson Plowden, Attorneys at Law
P.O. Box 3646
Myrtle Beach, SC 29578

Re: Thomas Rickerson v. John Karl, MD
Case No. 2012-CP-26-03859

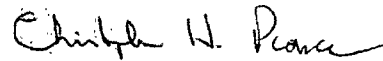
Greetings:

As previously discussed, I was unavailable to mediate this matter for you on January 22, 2013, as requested. Since my letter to you dated January 8, 2013 on that issue, I have received correspondence from each of you demonstrating conflicting positions regarding the intent of the parties to mediate this case. Based on these conflicting positions, I have consulted the South Carolina ADR Rules and discussed this situation with several well respected mediators within the 15th Judicial Circuit. Pursuant to those efforts, I have determined that it would be inappropriate for me to issue a mediation results report to the Court (i.e. – ADR Coordinator) wherein one of the parties has specifically expressed an unwilling to actually submit the case to mediation.

To the extent you are willing to mediate this case, I will be glad to assist you with those processes. However, to the extent you continue to have a disagreement as to whether the above matter should be mediated, I would recommend that one or both of you immediately direct that issue to the Court for adjudication.

Sincerely,

THE PEARCE LAW GROUP, P.C.



Christopher Pearce, Esquire

cc: Lana H. Sims, Jr.

EXHIBIT B

**SUBPOENAS MAILED BY DEFENSE COUNSEL LYDIA MAGEE TO
PLAINTIFF'S MEDICAL PROVIDERS**

Reply to:
Myrtle Beach
lmagee@RichardsonPlowden.com
Ext. 301

July 18, 2012

William Isaac Diggs, Esquire
Law Offices of William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

Dear Bill:

Pursuant to the Privacy Rule, 45 C.F.R. § 164.512(e) of the regulations promulgated under the Health Insurance Portability and Accountability Act ("HIPAA"), I am providing you and your clients with notice that Lydia L. Magee, Esquire, and Marian W. Scalise, Esquire, attorneys for Defendants **John Karl, M.D. and Virginia Bell, CS, FNP**, intend to subpoena Protected Health Information ("PHI") about **Thomas A. Rickerson, Jr.** from the medical records custodian, patient account services, and/or radiology department of the following, solely for purposes of this proceeding:

Waccamaw Community Hospital
Attn: Medical Records
Patient Accounts
Radiology Department
4070 Highway 17 Bypass
Murrells Inlet, SC 29576

Grand Strand Regional Medical Center
Attn: Medical Records
Patient Accounts
Radiology Department
809 82nd Parkway
Myrtle Beach, SC 29572

Conway Medical Center
Attn: Medical Records
Patient Accounts
Radiology Department
300 Singleton Ridge Road
Conway, SC 29526

South Strand Ambulatory Care Center
Attn: Medical Records
Patient Accounts
Radiology Department
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

A. Brian McIntyre, M.D.
Coastal Cardiovascular Surgery
933 Medical Circle
Myrtle Beach, SC 29572

Richard H. Hussey, III, M.D.
Myrtle Beach Dermatology
4573 Oleander Dr.
Myrtle Beach, SC 29577

Carolina Health Specialists
4591 Socastee Blvd.
Myrtle Beach, SC 29588

Carolina Health Specialists
945 82nd Parkway
Myrtle Beach, SC 29572

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Letter to William Isaac Diggs, Esquire
July 18, 2012
Page 2

Wal-Mart Pharmacy
Attn: HIPPA Legal Team
702 SW 8th St.
Batonville, AR 72716
Fax: 479-204-9696

James N. Powers, M.D.
Lowcountry Infectious Disease
Group
8208-A Devon Ct.
Myrtle Beach, SC 29572

NextStep Would Healing Center
4070 Highway 17, Suite 107
Murrells Inlet, SC 29526

Arthur Mason Ahearn, M.D.
752 Collins Meadow Drive
Georgetown, SC 29440-2848

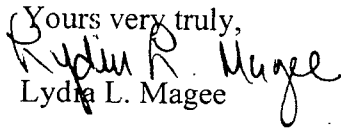
Express Scripts
BL0345
6625 West 78th St.
Bloomington, MN 55439-0842

Cardiology Gastroenterology Associates
945 82nd Parkway, Suite 3
Myrtle Beach, SC 29572

I am enclosing copies of the subpoenas for your review. If you or your clients object to the subpoenas, then you must file a Motion to Quash or similar objection with the court, within fourteen (14) days hereof. If you do not file such objection on or before **August 1, 2012**, then we will serve the subpoenas on the health care providers referenced above, with a copy to you.

If you do not intend to file such a motion, please sign the consent on the bottom of this letter and return it to me via facsimile. I would very much appreciate your assistance in expediting this process.

Should you have any questions, please feel free to contact Marian or me.

Yours very truly,

Lydia L. Magee

LLM/baz
Enclosure

Consent:

On behalf of my clients, I hereby waive any objection to the production of medical records, itemized patient accounts, and/or radiology studies pursuant to the subpoenas referenced above.

Date: _____

William Isaac Diggs, Esquire
Attorney for Plaintiff

///

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Waccamaw Community Hospital
Attn: Medical Records
4070 Highway 17 Bypass
Murrells Inlet, SC 29576

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

July 18, 2012
Date

Lydia L. Magee

Print Name

843-448-1008

113

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Waccamaw Community Hospital
Attn: Patient Accounts
4070 Highway 17 Bypass
Murrells Inlet, SC 29576

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
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PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

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I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

Print Name

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 302

August 1, 2012

 **COPY**

Express Scripts
BL0345
6625 West 78th St.
Bloomington, MN 55439-0842

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

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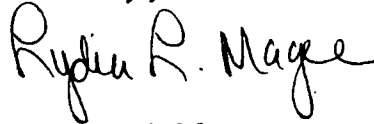
Letter to Express Scripts
August 1, 2012
Page 2

The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia R. Magee".

Lydia Lewis Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

116

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Express Scripts
BL0345, 6625 West 78th St.
Bloomington, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE
Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

Print Name

117

PROOF OF SERVICE

SERVED	DATE	8/1/2012	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	BL0345, 6625 West 78 th St., Bloomington, MN 55439-0842	☐ YES ☐ NO AMOUNT \$
SERVED ON Express Scripts			MANNER OF SERVICE U.S. Mail
SERVED BY Brandi A. Zilbermann			TITLE Legal Assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2012

SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

Reply to:
Myrtle Beach

limagee@RichardsonPlowden.com

Ext. 302

August 1, 2012

 **COPY**

NextStep Wound Healing Center
4070 Highway 17, Suite 107
Murrells Inlet, SC 29526

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

120

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

Thomas Rickerson, Plaintiff

v.

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: NextStep Wound Healing Center
470 Highway 17, Suite 107
Murrells Inlet, SC 29526

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE
Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

July 18, 2012
Date

Lydia L. Magee

Print Name

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

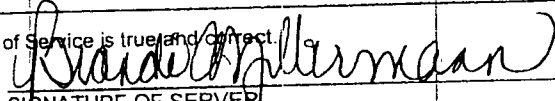
843-448-1008

121

PROOF OF SERVICE

SERVED	DATE	8/1/2012	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	4070 Highway 17, Suite 107, Murrells Inlet, SC 29526	
SERVED ON NextStep Wound Healing Center			MANNER OF SERVICE U.S. Mail
SERVED BY Brandi A. Zilbermann			TITLE Legal Assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct. Executed on 8/1/2012	 SIGNATURE OF SERVER Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29579 ADDRESS OF SERVER
---	---

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises, need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

122

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

123

Reply to:
Myrtle Beach

Imagee@RichardsonPlowden.com

Ext. 302

August 1, 2012

Carolina Health Specialists
4591 Socastee Blvd.
Myrtle Beach, SC 29588

 **COPY**

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

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You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

124

Letter to Carolina Health Specialists

August 1, 2012

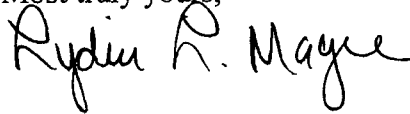
Page 2

The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia R. Magee".

Lydia Lewis Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

125

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Carolina Health Specialists
4591 Socastee Blvd.
Myrtle Beach, SC 29588

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PLACE OF TESTIMONY	COURTROOM	
	DATE AND TIME	, AM

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**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME	, AM
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I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

Print Name

126

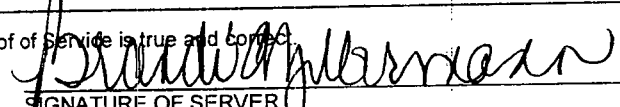
PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>4591 Socastee Blvd., Myrtle Beach, SC 29588</u>	
SERVED ON <u>Carolina Health Specialists</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2012


SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

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127

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 302

August 1, 2012

Richard H. Hussey, III, M.D.
Myrtle Beach Dermatology
4573 Oleander Dr.
Myrtle Beach, SC 29577

 **COPY**

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

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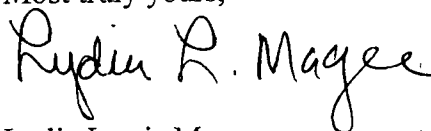
Letter to Richard H. Hussey, III, M.D./Myrtle Beach Dermatology
August 1, 2012
Page 2

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Most truly yours,

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Lydia Lewis Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

129

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

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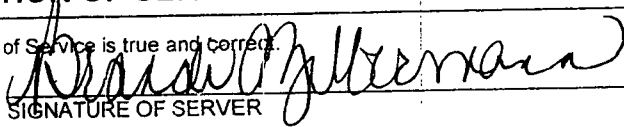
Attorney's Signature <i>Lydia L. Magee</i> Attorney Defendant Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578 843-448-1008	Date July 18, 2012	Print Name Lydia L. Magee
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PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>94573 Cleander Dr., Myrtle Beach, SC 29577</u>	
SERVED ON <u>Richard H. Hussey, III, M.D./Myrtle Beach Dermatology</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

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- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

131

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

South Strand Ambulatory Care Center
Attn: Medical Records
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

 **COPY**

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records of Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN:
438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections **allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage.** Additionally, **please fill out, sign and return the enclosed letter** certifying that the materials produced are a full and complete copy of your file on the above named patient.

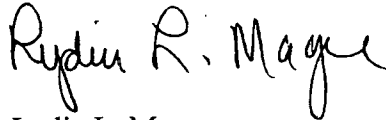
132

Letter to South Strand Ambulatory Care Center
August 1, 2012
Page 2

Should you have any questions or need additional information concerning this matter,
please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script, appearing to read "Lydia L. Magee".

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

133

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: South Strand Ambulatory Care Center
Attn: Medical Records
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature <i>Lydia L. Magee</i> Attorney Defendant Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578 843-448-1008	Date July 18, 2012	Print Name Lydia L. Magee	Print Name <i>134</i>
--	-----------------------	------------------------------	--------------------------

PROOF OF SERVICE

SERVED	DATE	8/1/2012	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	5050 Highway 17 Bypass South, Myrtle Beach, SC 29588	☐ YES ☐ NO AMOUNT \$
SERVED ON South Strand Ambulatory Care Center			MANNER OF SERVICE U.S. Mail
SERVED BY Brandi A. Zilbermann			TITLE Legal Assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2012

SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

135

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

136

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

 **COPY**

South Strand Ambulatory Care Center
Attn: Patient Accounts
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Bills of Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN:
438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

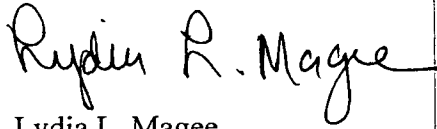
You will note that this Subpoena is for your bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these bills. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. Additionally, please enclose a letter certifying that the materials produced are a full and complete copy of your file on the above-named patient. **The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.**

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

137

Letter to South Strand Ambulatory Care Center
August 1, 2012
Page 2

Very truly yours,



Lydia L. Magee

LLM/baz
Enclosures
cc: William Isaac Diggs, Esquire

138

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: South Strand Ambulatory Care Center
Attn: Patient Accounts
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM	
	DATE AND TIME	AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME	AM
---------------------	---------------	----

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME	AM
----------	---------------	----

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature: Lydia R. Magee Date: July 18, 2012 Print Name: Lydia L. Magee
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

139

PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>5050 Highway 17 Bypass South, Myrtle Beach, SC 29588</u>	
SERVED ON	<u>South Strand Ambulatory Care Center</u>	MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY	<u>Brandi A. Zilbermann</u>	TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on 8/1/2012

Brandi A. Zilbermann
SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

141

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 302

August 1, 2012

A. Brian McIntyre, M.D.
Coastal Cardiovascular Surgery
933 Medical Circle
Myrtle Beach, SC 29572

 **COPY**

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

142

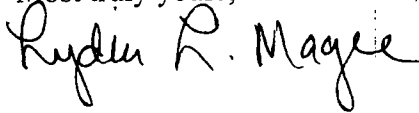
Letter to A. Brian McIntyre, M.D./Coastal Cardiovascular Surgery
August 1, 2012
Page 2

The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia R. Magee".

Lydia Lewis Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

143

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

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: A. Brian McIntyre, M.D.
Coastal Cardiovascular Surgery
933 Medical Circle
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

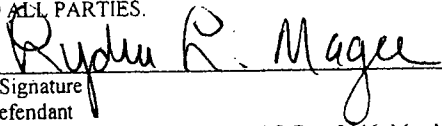
PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

 Attorney's Signature Attorney Defendant Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578 843-448-1008	July 18, 2012 Date	Lydia L. Magee Print Name	144
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PROOF OF SERVICE

SERVED	DATE <u>8/1/2019</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>933 Medical Circle, Myrtle Beach, SC 29572</u>	
SERVED ON <u>A. Brian McIntyre, M.D./Coastal Cardiovascular Surgery</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on 8/1/2019

Brandi Zilbermann
SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

145

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

146

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

Conway Medical Center
Attn: Patient Accounts
300 Singleton Ridge Road
Conway, SC 29526



Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Bills of Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN:
438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

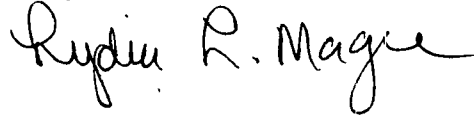
You will note that this Subpoena is for your bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these bills. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. Additionally, please enclose a letter certifying that the materials produced are a full and complete copy of your file on the above-named patient. **The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.**

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

147

Letter to Conway Medical Center
August 1, 2012
Page 2

Very truly yours,

A handwritten signature in cursive script, reading "Lydia L. Magee". The signature is written in dark ink and is positioned above the printed name.

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

148

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Conway Medical Center
Attn: Patient Accounts
300 Singleton Ridge Road
Conway, SC 29526

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

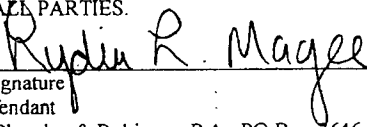
PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

 Attorney's Signature Attorney Defendant Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578 843-448-1008	July 18, 2012 Date	Lydia L. Magee Print Name	149
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PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>8300 Singleton Ridge Road, Conway, SC 29526</u>	
SERVED ON <u>Conway Medical Center</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on 8/1/2012

Brandi Zilbermann
SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

150

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr.** [DOB: 7/10/1952; SSN: 438-86-5903], including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

151

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

Waccamaw Community Hospital
Attn: Medical Records
4070 Highway 17 Bypass
Murrells Inlet, SC 29579

 COPY

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records of Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN:
438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. **These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage.** Additionally, **please fill out, sign and return the enclosed letter** certifying that the materials produced are a full and complete copy of your file on the above named patient.

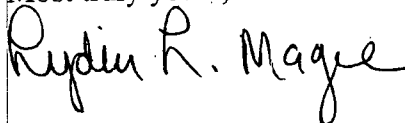
152

Letter to Waccamaw Community Hospital
August 1, 2012
Page 2

Should you have any questions or need additional information concerning this matter,
please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia L. Magee". The signature is written in dark ink and is positioned directly below the typed name.

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

153

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Waccamaw Community Hospital
Attn: Medical Records
4070 Highway 17 Bypass
Murrells Inlet, SC 29576

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE
Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

July 18, 2012
Date

Lydia L. Magee

Print Name

843-448-1008

154

PROOF OF SERVICE

SERVED	DATE <u>8/1/2013</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>4070 Highway 17 Bypass</u> <u>Murrells Inlet, SC 29576</u>	
SERVED ON <u>Waccamaw Community Hospital</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on 8/1/2013

Brandi Zilbermann
SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

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(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

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- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
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155

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All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

156

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

Waccamaw Community Hospital
Attn: Patient Accounts
4070 Highway 17 Bypass
Murrells Inlet, SC 29579

 COPY

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
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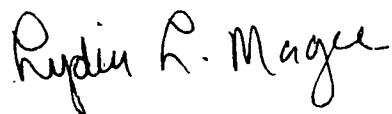
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Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

157

Letter to Waccamaw Community Hospital
August 1, 2012
Page 2

Very truly yours,

A handwritten signature in cursive script that reads "Lydia L. Magee".

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

158

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

Thomas Rickerson, Plaintiff

v.

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Waccamaw Community Hospital
Attn: Patient Accounts
4070 Highway 17 Bypass
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PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

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**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE
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PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

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PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

Print Name

159

Letter to Waccamaw Community Hospital

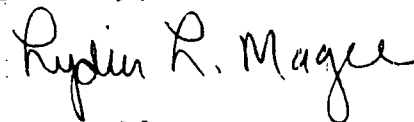
August 1, 2012

Page 2

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script, reading "Lydia L. Magee".

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

160

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

161

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

Waccamaw Community Hospital
Attn: Radiology Department
4070 Highway 17 Bypass
Murrells Inlet, SC 29576



Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Radiology studies/films/imaging of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for radiology studies/films/imaging in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your radiology studies only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

162

Letter to Waccamaw Community Hospital

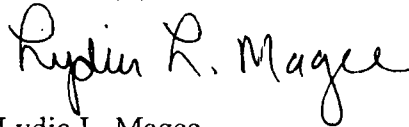
August 1, 2012

Page 2

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia L. Magee".

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

163

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Case Number: 2012-CP-26-3859

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Pending in Horry County

TO: Waccamaw Community Hospital
Attn: Radiology Department
4070 Highway 17 Bypass
Murrells Inlet, SC 29576

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE

PLACE
Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

July 18, 2012
Date

Lydia L. Magee

Print Name

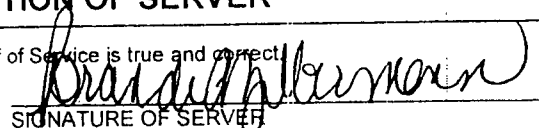
843-448-1008

164

PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>4070 Highway 17 Bypass</u> <u>Murrells Inlet, SC 29576</u>	
SERVED ON <u>Waccamaw Community Hospital</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

certify that the foregoing information contained in the Proof of Service is true and correct.	
Executed on <u>8/1/2012</u>	
SIGNATURE OF SERVER	
<u>Richardson, Plowden & Robinson, P.A.</u> <u>PO Box 3646</u> <u>Myrtle Beach, SC 29579</u>	
ADDRESS OF SERVER	

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

165

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr.** [DOB: 7/10/1952; SSN: 438-86-5903], including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

166

Reply to:
Myrtle Beach
lmagee@RichardsonPlowden.com
Ext. 302

August 1, 2012
Via Fax Only (479-204-9696)



Wal-Mart Pharmacy
Attn: HIPPA Legal Team
702 SW 8th St.
Batonville, AR 72716

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

167

Letter to Wal-Mart Pharmacy
August 1, 2012
Page 2

The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in black ink that reads "Lydia R. Magee". The signature is written in a cursive style with a large, looped "L" and "M".

Lydia Lewis Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

168

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Wal-Mart Pharmacy
Attn: HIPPA Legal Team
702 SW 8th St.
Batonville, AR 72716
Fax: 479-204-9696

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

July 18, 2012
Date

Lydia L. Magee

Print Name

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>702 SW 8th St., Batonville, AR 72716</u>	
SERVED ON <u>Wal-Mart Pharmacy</u>		MANNER OF SERVICE <u>Fax</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct. Executed on <u>8/1/2012</u>		 SIGNATURE OF SERVER <u>Richardson, Plowden & Robinson, P.A.</u> <u>PO Box 3646</u> <u>Myrtle Beach, SC 29579</u> ADDRESS OF SERVER
--	--	--

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:
- i. fails to allow reasonable time for compliance; or
 - ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
 - iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
 - iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

170

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

171

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 302

August 1, 2012

 **COPY**

Arthur Mason Ahearn, M.D.
752 Collins Meadow Drive
Georgetown, SC 29440-2848

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Dr. Ahearn:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

172

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

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Arthur Mason Ahearn, M.D.
752 Collins Meadow Drive
Georgetown, SC 29440-2848

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature

Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

July 18, 2012
Date

Lydia L. Magee

Print Name

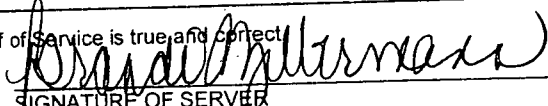
843-448-1008

173

PROOF OF SERVICE

SERVED	DATE	8/1/2012	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE	752 Collins Meadow Drive, Georgetown, SC 29440-2848	
SERVED ON Arthur Mason Ahearn, M.D.			MANNER OF SERVICE U.S. Mail
SERVED BY Brandi A. Zilbermann			TITLE Legal Assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct. Executed on 8/1/2012	 SIGNATURE OF SERVER <u>Richardson, Plowden & Robinson, P.A.</u> <u>PO Box 3646</u> <u>Myrtle Beach, SC 29579</u> ADDRESS OF SERVER
---	--

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:
- i. fails to allow reasonable time for compliance; or
 - ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
 - iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
 - iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

174

Reply to:
Myrtle Beach
lmagee@RichardsonPlowden.com
Ext. 302

August 1, 2012

 **COPY**

James N. Powers, M.D.
Lowcountry Infectious Disease Group
8208-A Devon Ct.
Myrtle Beach, SC 29572

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Dr. Powers:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

175

Letter to James N. Powers, M.D./Lowcountry Infectious Disease Group

August 1, 2012

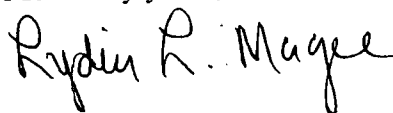
Page 2

The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,



Lydia Lewis Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

176

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: James N. Powers, M.D.
Lowcountry Infectious Disease
8208-A Devon Ct.
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

July 18, 2012
Date

Lydia L. Magee

Print Name

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

177

PROOF OF SERVICE

SERVED	DATE	8/1/2012	FEES AND MILEAGE TENDERED TO WITNESS	YES	NO	AMOUNT \$
	PLACE	8208-A Devon Ct., Myrtle Beach, SC 29572				
SERVED ON James N. Powers, M.D./Lowcountry Infectious Disease Group				MANNER OF SERVICE U.S. Mail		
SERVED BY Brandi A. Zilbermann				TITLE Legal Assistant		

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2012

SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

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- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

178

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr.** [DOB: 7/10/1952; SSN: 438-86-5903], including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

179

Reply to:
Myrtle Beach
limagee@RichardsonPlowden.com
Ext. 302

August 1, 2012

 **COPY**

Carolina Health Specialists
945 82nd Parkway
Myrtle Beach, SC 29572

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

180

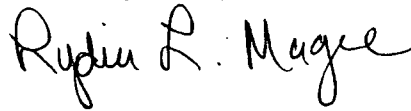
Letter to Carolina Health Specialists
August 1, 2012
Page 2

The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia L. Magee".

Lydia Lewis Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

181

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

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Case Number: 2012-CP-26-3859

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Pending in Horry County

TO: Carolina Health Specialists
945 82nd Parkway.
Myrtle Beach, SC 29572

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PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

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PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

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**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

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Attorney's Signature

Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

Print Name

182

PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u> PLACE <u>4945 82nd Parkway, Myrtle Beach, SC 29572</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
SERVED ON <u>Carolina Health Specialists</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2012


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Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

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183

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All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

184

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 302

August 1, 2012

Cardiology Gastroenterology Associates
945 82nd Parkway, Suite 3
Myrtle Beach, SC 29572

 **COPY**

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C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

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185

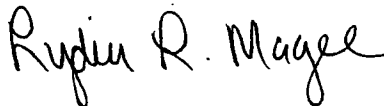
Letter to Cardiology Gastroenterology Associates
August 1, 2012
Page 2

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LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

186

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ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

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John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

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PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

July 18, 2012
Date

Lydia L. Magee

Print Name

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

187

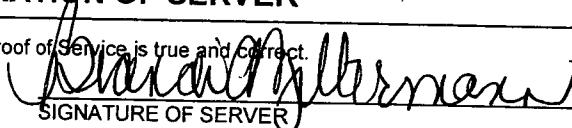
PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>945 82nd Parkway, Suite 3, Myrtle Beach, SC 29572</u>	
SERVED ON <u>Cardiology Gastroenterology Associates</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2012


SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:
- fails to allow reasonable time for compliance; or
 - requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
 - requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
 - subjects a person to undue burden.

(B) If a subpoena:

- requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or materials.

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

189

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

Grand Strand Regional Medical Center
Attn: Radiology Department
809 82nd Parkway
Myrtle Beach, SC 29572

 **COPY**

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Radiology studies/films/imaging of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for radiology studies/films/imaging in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your radiology studies only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

190

Letter to Grand Strand Regional Medical Center

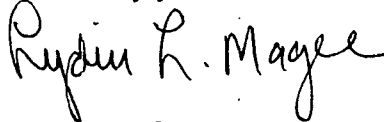
August 1, 2012

Page 2

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia L. Magee". The signature is written in dark ink and is positioned above the printed name.

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

191

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Grand Strand Regional Medical Center.
Attn: Radiology Department
809 82nd Parkway
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature Lydia L. Magee Date July 18, 2012 Print Name Lydia L. Magee
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

192

PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>809 82nd Parkway, Myrtle Beach, SC 29572</u>	
SERVED ON <u>Grand Strand Regional Medical Center</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2012

Brandi A. Zilbermann
SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

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(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
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(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

193

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All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

Conway Medical Center
Attn: Radiology Department
300 Singleton Ridge Road
Conway, SC 29526

 **COPY**

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Radiology studies/films/imaging of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for radiology studies/films/imaging in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

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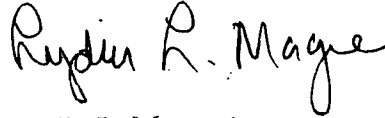
195

Letter to Conway Medical Center
August 1, 2012
Page 2

Should you have any questions or need additional information concerning this matter,
please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia L. Magee". The signature is written in dark ink and is positioned above the printed name.

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

196

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

Thomas Rickerson, Plaintiff

v.

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Conway Medical Center
Attn: Radiology Department
300 Singleton Ridge Road
Conway, SC 29526

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

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**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE
Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

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PREMISES

DATE AND TIME , AM

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Attorney's Signature

Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

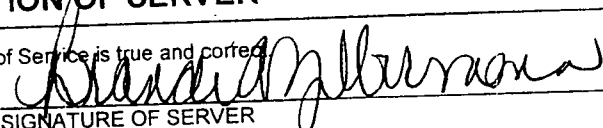
Lydia L. Magee

Print Name

PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>8300 Singleton Ridge Road, Conway, SC 29526</u>	
SERVED ON	<u>Conway Medical Center</u>	MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY	<u>Brandi A. Zilbermann</u>	TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct. Executed on <u>8/1/2012</u>	 SIGNATURE OF SERVER <u>Richardson, Plowden & Robinson, P.A.</u> <u>PO Box 3646</u> <u>Myrtle Beach, SC 29579</u> ADDRESS OF SERVER
--	---

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All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

199

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

 **COPY**

South Strand Ambulatory Care Center
Attn: Radiology Department
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

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Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for radiology studies/films/imaging in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your radiology studies only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections **allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage.** Additionally, **please fill out, sign and return the enclosed letter** certifying that the materials produced are a full and complete copy of your file on the above named patient.

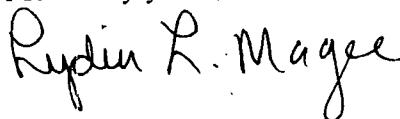
200

Letter to South Strand Ambulatory Care Center
August 1, 2012
Page 2

Should you have any questions or need additional information concerning this matter,
please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia L. Magee". The signature is written in dark ink and is positioned above the printed name.

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

201

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

Thomas Rickerson, Plaintiff

v.

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: South Strand Ambulatory Care Center
Attn: Radiology Department
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

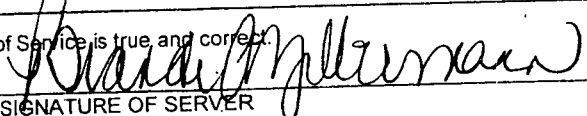
Print Name

202

PROOF OF SERVICE

SERVED	DATE	8/1/2012	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE	5050 Highway 17 Bypass South, Myrtle Beach, SC 29588	
SERVED ON	South Strand Ambulatory Care Center		MANNER OF SERVICE U.S. Mail
SERVED BY	Brandi A. Zilbermann		TITLE Legal Assistant

DECLARATION OF SERVER

certify that the foregoing information contained in the Proof of Service is true and correct. Executed on 8/1/2012	 SIGNATURE OF SERVER Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29579 ADDRESS OF SERVER
---	---

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:
- i. fails to allow reasonable time for compliance; or
 - ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
 - iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
 - iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

203

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr.** [DOB: 7/10/1952; SSN: 438-86-5903], including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

204

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

Grand Strand Regional Medical Center
Attn: Medical Records
809 82nd Parkway
Myrtle Beach, SC 29572

 **COPY**

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records of Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN:
438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections **allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage.** Additionally, **please fill out, sign and return the enclosed letter** certifying that the materials produced are a full and complete copy of your file on the above named patient.

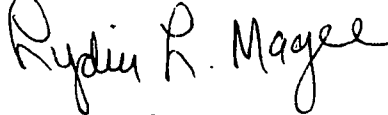
205

Letter to Grand Strand Regional Medical Center
August 1, 2012
Page 2

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script that reads "Lydia L. Magee". The signature is written in dark ink and is positioned above the printed name.

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

206

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Case Number: 2012-CP-26-3859

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Pending in Horry County

TO: Grand Strand Regional Medical Center
Attn: Medical Records
809 82nd Parkway
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature Lydia L. Magee July 18, 2012 Lydia L. Magee Print Name
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

201

PROOF OF SERVICE

SERVED	DATE <u>8/1/2013</u> PLACE <u>809 82nd Parkway, Myrtle Beach, SC 29572</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
SERVED ON <u>Grand Strand Regional Medical Center</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2013

SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
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the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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308

2

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

209

RICHARDSON
RICHARDSON PLOWDEN ROBINSON, P.A.
PLOWDEN
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7738 • Columbia, SC 29202
1900 Barnwell St., Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 • Myrtle Beach, SC 29578
2103 Farlow St., Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1533

www.RichardsonPlowden.com

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

Conway Medical Center
Attn: Medical Records
300 Singleton Ridge Road
Conway, SC 29526

 **COPY**

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records of Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN:
438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

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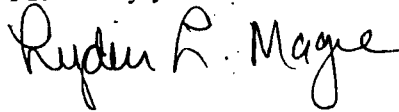
210

Letter to Conway Medical Center
August 1, 2012
Page 2

Should you have any questions or need additional information concerning this matter,
please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script, reading "Lydia L. Magee". The signature is written in dark ink and is positioned above the printed name.

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

211

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Conway Medical Center
Attn: Medical Records
300 Singleton Ridge Road
Conway, SC 29526

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PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

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PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

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PREMISES

DATE AND TIME , AM

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Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

Print Name

2/2

PROOF OF SERVICE

SERVED	DATE <u>8/1/2012</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>8300 Singleton Ridge Road, Conway, SC 29526</u>	
SERVED ON	Conway Medical Center	MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY	Brandi A. Zilbermann	TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2012

Brandi Zilbermann
SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579
ADDRESS OF SERVER

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(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

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(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- fails to allow reasonable time for compliance; or
- requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- subjects a person to undue burden.

(B) If a subpoena:

- requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

- A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr.** [DOB: 7/10/1952; SSN: 438-86-5903], including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

214

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

August 1, 2012

Grand Strand Regional Medical Center
Attn: Patient Accounts
809 82nd Parkway
Myrtle Beach, SC 29572

 COPY

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Bills of Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN:
438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on July 18, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

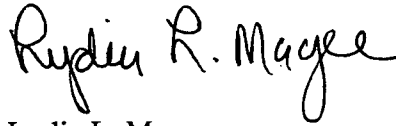
You will note that this Subpoena is for your bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these bills. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. Additionally, please enclose a letter certifying that the materials produced are a full and complete copy of your file on the above-named patient. **The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.**

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

215

Letter to Grand Strand Regional Medical Center
August 1, 2012
Page 2

Very truly yours,

A handwritten signature in cursive script that reads "Lydia L. Magee". The signature is fluid and elegant, with the first letters of the first and last names being capitalized and prominent.

Lydia L. Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

216

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Grand Strand Regional Medical Center

Attn: Patient Accounts

809 82nd Parkway

Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE

Richardson, Plowden & Robinson, P.A.

PO Box 3646

Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

Print Name

PROOF OF SERVICE

SERVED	DATE <u>8/1/2013</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>809/827 Parkway, Myrtle Beach, SC 29572</u>	
SERVED ON <u>Grand Strand Regional Medical Center</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/2013

Brandi Zilbermann
SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

218

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Doctor's Care
1220 21st Avenue North
Myrtle Beach, SC 29577

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME September 19, 2012, 5:00 PM
--	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
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ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Lydia L. Magee 8-22-12 Lydia L. Magee
Attorney's Signature Date Print Name
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

220

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Doctor's Care
1200 Middleburg Dr.
Myrtle Beach, SC 29579

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME September 19, 2012, 5:00 PM
--	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
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I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Ryden R. Magee 8-22-12 Lydia L. Magee
Attorney's Signature Date Print Name
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

221

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Amedisys
1705 Oak St., Suite 2
Myrtle Beach, SC 29577

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME September 19, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

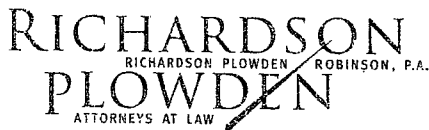
843-448-1008

Date

8-22-12 Lydia L. Magee

Print Name

222



COLUMBIA P.O. Drawer 7788 • Columbia, SC 29202
1900 Barnwell St., Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 • Myrtle Beach, SC 29578
2103 Farlow St., Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1533

www.RichardsonPlowden.com

Reply to:
Myrtle Beach
limagee@RichardsonPlowden.com
Ext. 301

August 22, 2012

William Isaac Diggs, Esquire
Law Offices of William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

1175

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

Dear Bill:

Pursuant to the Privacy Rule, 45 C.F.R. § 164.512(e) of the regulations promulgated under the Health Insurance Portability and Accountability Act ("HIPAA"), I am providing you and your clients with notice that Lydia L. Magee, Esquire, and Marian W. Scalise, Esquire, attorneys for Defendants **John Karl, M.D. and Virginia Bell, CS, FNP**, intend to subpoena Protected Health Information ("PHI") about **Thomas A. Rickerson, Jr.** from the medical records custodian, patient account services, and/or radiology department of the following, solely for purposes of this proceeding:

Amedisys
1705 Oak St., Suite 2
Myrtle Beach, SC 29577

Doctor's Care
1220 21st Avenue North
Myrtle Beach, SC 29577

Doctor's Care
200 Middleburg Dr.
Myrtle Beach, SC 29579

I am enclosing copies of the subpoenas for your review. If you or your clients object to the subpoenas, then you must file a Motion to Quash or similar objection with the court, within fourteen (14) days hereof. If you do not file such objection on or before **September 5, 2012**, then we will serve the subpoenas on the health care providers referenced above, with a copy to you.

If you do not intend to file such a motion, please sign the consent on the bottom of this letter and return it to me via facsimile. I would very much appreciate your assistance in expediting this process.

Should you have any questions, please feel free to contact Marian or me.

223

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

224

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

September 6, 2012

Doctor's Care
200 Middleburg Dr.
Myrtle Beach, SC 29579

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on August 22, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

225

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Doctor's Care
1200 Middleburg Dr.
Myrtle Beach, SC 29579

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME September 19, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

Date

Lydia L. Magee

Print Name

PROOF OF SERVICE

SERVED	DATE <u>9/6/2013</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>200 Middleburg Dr., Myrtle Beach, SC 29579</u>	
SERVED ON <u>Doctor's Care</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 9/6/2013

Brandi A. Zilbermann
SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

228

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

September 6, 2012

Doctor's Care
1220 21st Avenue North
Myrtle Beach, SC 29577

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on August 22, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

229

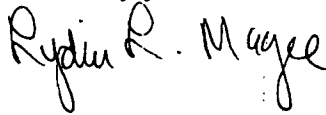
Letter to Doctor's Care
September 6, 2012
Page 2

The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,

A handwritten signature in cursive script, reading "Lydia R. Magee".

Lydia Lewis Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

230

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Doctor's Care
1220 21st Avenue North
Myrtle Beach, SC 29577

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME September 19, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

Date

Lydia L. Magee

Print Name

843-448-1008

231

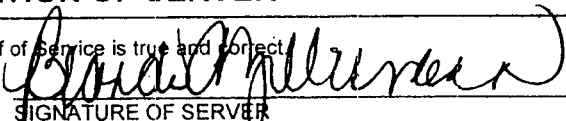
PROOF OF SERVICE

SERVED	DATE <u>9/6/2012</u> PLACE <u>1220 21st Avenue North, Myrtle Beach, SC 29577</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
SERVED ON <u>Doctor's Care</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 9/6/2012


 SIGNATURE OF SERVER

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29579

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

232

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

Reply to:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

September 6, 2012

Amedisys
1705 Oak St., Suite 2
Myrtle Beach, SC 29577

Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

**Topic: Notice to Provide Satisfactory Assurance in Support of Subpoena for
Medical Records and Bills of Thomas A. Rickerson, Jr. [DOB:
7/10/1952; SSN: 438-86-5903]**

Dear Sir/Madam:

Please find enclosed a Rule 45(b) Subpoena for records and bills in the above-referenced matter. The Health Insurance Portability and Accountability Act (HIPAA) requires the party requesting the information to provide "satisfactory assurance" that written notice has been provided to the patient/representative that their protected health information has been requested by subpoena. As such, we have enclosed a copy of a letter which was sent to Plaintiff's counsel on August 22, 2012, which documents a good faith effort to provide written notice to the Plaintiff in this lawsuit. **Neither Plaintiff nor his attorney has objected to the production of the requested information.**

You will note that this Subpoena is for your records and bills only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify Brandi A. Zilbermann at 843-448-1008, extension 302 if the cost will exceed \$50.00. I have enclosed for your review S.C. Code Section 38-77-341 and Section 44-7-325 which deals with the fees that our laws allow you to charge for this service. It also outlines that it is an unfair trade practice to charge more than the law allows. These Sections allow \$.65 per page for the first 30 pages and \$.50 per page for all other pages, a search fee of \$15.00, and postage. Additionally, please fill out, sign and return the enclosed letter certifying that the materials produced are a full and complete copy of your file on the above named patient.

234

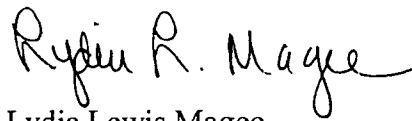
Letter to Amedisys
September 6, 2012
Page 2

The bill(s) should include the amounts paid by private insurance, Medicare or Medicaid, the patient, the amount written off and/or amounts paid by any other source.

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact me.

With kindest regards, I remain

Most truly yours,



Lydia Lewis Magee

LLM/baz

Enclosures

cc: William Isaac Diggs, Esquire

235

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Amedisys
1705 Oak St., Suite 2
Myrtle Beach, SC 29577

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME September 19, 2012, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

Date

Lydia L. Magee

Print Name

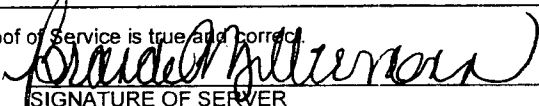
843-448-1008

236

PROOF OF SERVICE

SERVED	DATE <u>9/6/2017</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE <u>1705 Oak St., Suite 2, Myrtle Beach, SC 29577</u>	
SERVED ON <u>Amedisys</u>		MANNER OF SERVICE <u>U.S. Mail</u>
SERVED BY <u>Brandi A. Zilbermann</u>		TITLE <u>Legal Assistant</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.	
Executed on <u>9/6/2017</u>	 SIGNATURE OF SERVER
<u>Richardson, Plowden & Robinson, P.A.</u> <u>PO Box 3646</u> <u>Myrtle Beach, SC 29579</u> ADDRESS OF SERVER	

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- fails to allow reasonable time for compliance; or
- requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- subjects a person to undue burden.

(B) If a subpoena:

- requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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237

REQUEST AND NOTICE OF SATISFACTORY ASSURANCE

A complete copy of your entire file (cover to cover) pertaining to the treatment of **Thomas A. Rickerson, Jr. [DOB: 7/10/1952; SSN: 438-86-5903]**, including, but not limited to: admission summaries, discharge summaries, operative reports, all prescriptions, bills, invoices, telephone call or log records for medications, in-patient, out-patient and emergency medical records, medical reports, test results, lab test data, reports and results, diagnostic tests, x-rays, radiology reports, physician's reports, progress reports, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence from any source, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, telephone call reports, medical logs, disability determination information, questionnaires, and other written or printed information contained in your medical file concerning the above-named patient.

All records must be complete and include any and all above-referenced documents from any physician or department within your facility treating **Thomas A. Rickerson, Jr.**

238

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Waccamaw Community Hospital
Attn: Radiology Department
4070 Highway 17 Bypass
Murrells Inlet, SC 29576

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
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☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
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ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Lydia L. Magee July 18, 2012 Lydia L. Magee
Attorney's Signature Date Print Name
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

239

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Grand Strand Regional Medical Center
Attn: Radiology Department
809 82nd Parkway
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
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ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Lydia L. Magee July 18, 2012 Lydia L. Magee Print Name
Attorney's Signature Date
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

240

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Grand Strand Regional Medical Center
Attn: Patient Accounts
809 82nd Parkway
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
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☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
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<i>Lydia L. Magee</i> Attorney's Signature Attorney Defendant Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578 843-448-1008	July 18, 2012 Date	Lydia L. Magee Print Name	241
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STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Grand Strand Regional Medical Center
Attn: Medical Records
809 82nd Parkway
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

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Lydia L. Magee July 18, 2012 Lydia L. Magee
Attorney's Signature Date Print Name
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

242

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Conway Medical Center
Attn: Medical Records
300 Singleton Ridge Road
Conway, SC 29526

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

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Attorney's Signature Lydia L. Magee Date July 18, 2012 Print Name Lydia L. Magee
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

243

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Conway Medical Center
Attn: Patient Accounts
300 Singleton Ridge Road
Conway, SC 29526

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

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PLACE OF DEPOSITION	DATE AND TIME , AM
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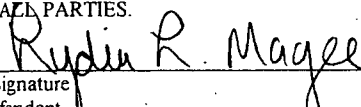
PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
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 Attorney's Signature Attorney Defendant Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578	July 18, 2012 Date	Lydia L. Magee Print Name
843-448-1008		

244

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Conway Medical Center
Attn: Radiology Department
300 Singleton Ridge Road
Conway, SC 29526

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

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SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE
Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

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Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

Print Name

245

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: South Strand Ambulatory Care Center
Attn: Radiology Department
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

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**SEE ATTACHED
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PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

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Attorney's Signature
Attorney Defendant

July 18, 2012
Date

Lydia L. Magee
Print Name

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: South Strand Ambulatory Care Center
Attn: Medical Records
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

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PLACE OF DEPOSITION	DATE AND TIME , AM
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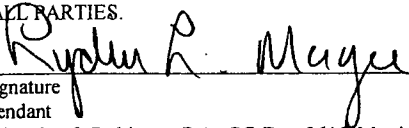
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 Attorney's Signature Attorney Defendant Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578 843-448-1008	July 18, 2012 Date	Lydia L. Magee Print Name
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247

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: South Strand Ambulatory Care Center
Attn: Patient Accounts
5050 Highway 17 Bypass South
Myrtle Beach, SC 29588

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
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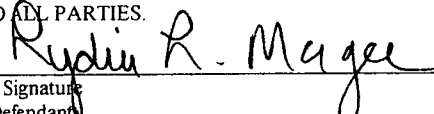
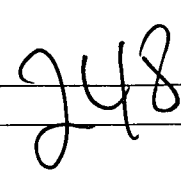
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 Attorney's Signature Attorney Defendant Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578 843-448-1008	July 18, 2012 Date	Lydia L. Magee Print Name	
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STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: A. Brian McIntyre, M.D.
Coastal Cardiovascular Surgery
933 Medical Circle
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

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PO Box 3646
Myrtle Beach, SC 29578

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Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

Lydia L. Magee

Print Name

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Richard H. Hussey, III, M.D.
Myrtle Beach Dermatology
4573 Oleander Dr.
Myrtle Beach, SC 29577

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

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PLACE OF DEPOSITION	DATE AND TIME , AM
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Lydia R. Magee July 18, 2012 Lydia L. Magee
Attorney's Signature Date Print Name
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

250

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Carolina Health Specialists
4591 Socastee Blvd.
Myrtle Beach, SC 29588

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

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PLACE OF DEPOSITION	DATE AND TIME , AM
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Attorney's Signature
Attorney Defendant

July 18, 2012
Date

Lydia L. Magee
Print Name

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Carolina Health Specialists
945 82nd Parkway.
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

SEE ATTACHED NOTICE OF SATISFACTORY ASSURANCE

PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
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ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLE AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Lydia L. Magee July 18, 2012 Lydia L. Magee
Attorney's Signature Date Print Name
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

252

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Arthur Mason Ahearn, M.D.
752 Collins Meadow Drive
Georgetown, SC 29440-2848

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

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PLACE OF DEPOSITION	DATE AND TIME , AM
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Lydia L. Magee July 18, 2012 Lydia L. Magee
Attorney's Signature Date Print Name
Attorney Defendant
Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578
843-448-1008

253

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Cardiology Gastroenterology Associates
945 82nd Parkway, Suite 3
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

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PLACE OF DEPOSITION	DATE AND TIME , AM
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**SEE ATTACHED
NOTICE OF SATISFACTORY ASSURANCE**

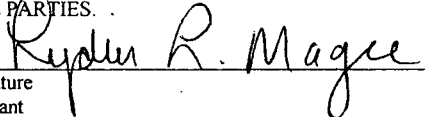
PLACE Richardson, Plowden & Robinson, P.A. PO Box 3646 Myrtle Beach, SC 29578	DATE AND TIME August 15, 2012, 5:00 PM
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 Attorney's Signature Attorney Defendant Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578 843-448-1008	July 18, 2012 Date	Lydia L. Magee Print Name
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254

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Express Scripts
BL0345, 6625 West 78th St.
Bloomington, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

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PLACE OF DEPOSITION

DATE AND TIME , AM

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**SEE ATTACHED
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Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

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Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

July 18, 2012
Date

Lydia L. Magee

Print Name

843-448-1008

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: NextStep Wound Healing Center
470 Highway 17, Suite 107
Murrells Inlet, SC 29526

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

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PLACE OF DEPOSITION

DATE AND TIME , AM

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PLACE

Richardson, Plowden & Robinson, P.A.
PO Box 3646
Myrtle Beach, SC 29578

DATE AND TIME August 15, 2012, 5:00 PM

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Attorney's Signature
Attorney Defendant

Lydia L. Magee

July 18, 2012
Date

Lydia L. Magee

Print Name

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

256

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: James N. Powers, M.D.
Lowcountry Infectious Disease
8208-A Devon Ct.
Myrtle Beach, SC 29572

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

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Myrtle Beach, SC 29578

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Attorney's Signature
Attorney Defendant

July 18, 2012
Date

Lydia L. Magee

Print Name

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Wal-Mart Pharmacy
Attn: HIPPA Legal Team
702 SW 8th St.
Batonville, AR 72716
Fax: 479-204-9696

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Attorney's Signature
Attorney Defendant

July 18, 2012
Date

Lydia L. Magee
Print Name

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

Reply To:
Myrtle Beach
Imagee@RichardsonPlowden.com
Ext. 301

July 18, 2012

Denny's
Attn: Human Resources
800 S. Kings Highway
Myrtle Beach, SC 29577

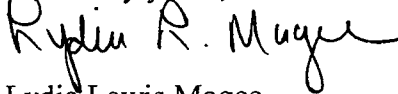
Re: Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859
Our File No.: 5412-089

To Whom It May Concern:

This office represents **John Karl, M.D. and Virginia Bell, CS, FNP** in the above-referenced action. Please find enclosed a Rule 45(b) Subpoena for a complete copy of your entire employment/personnel file that you have regarding **Thomas A. Rickerson, Jr.**

You will note that this Subpoena is for your records only and does not require a personal appearance by anyone. These documents may be mailed to us prior to the date shown on the Subpoena in lieu of your appearing at that time. We will, of course, provide reimbursement for any reasonable expenses incurred in providing us with a copy of these records. However, prior to preparing these copies, please notify us if the cost will exceed \$50.00. Additionally, please enclose a letter certifying that the materials produced are a full and complete copy of your file on the above-named patient. Should you have any questions or need any additional information concerning this matter, please call me. With kindest regards, I remain

Most truly yours,



Lydia Lewis Magee

LLM/baz
Enclosures
cc: William Isaac Diggs Esquire

259

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF HORRY

Thomas Rickerson, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

John Karl, M.D. and Virginia Bell, CS, FNP,
Defendant

Case Number: 2012-CP-26-3859

Pending in Horry County

TO: Denny's

Attn: Human Resources
800 S. Kings Highway
Myrtle Beach, SC 29577

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The entire employment/personnel file on Thomas A. Rickerson, Jr., Date of Birth: 7/10/1952; SSN: 438-86-5903, including, but not limited to, employment application, date of hire/fire/termination; any disciplinary notices or reprimands; any job-related injuries; worker's compensation claims; absences from work; medical insurance information; medical excuses indicating her inability to work; days missed from work; reasons for absences; lost wages. All records must be complete.

PLACE

Richardson, Plowden & Robinson, P.A.
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Myrtle Beach, SC 29578

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Attorney's Signature
Attorney Defendant

Richardson, Plowden & Robinson, P.A., PO Box 3646, Myrtle Beach, SC 29578

843-448-1008

July 18, 2012
Date

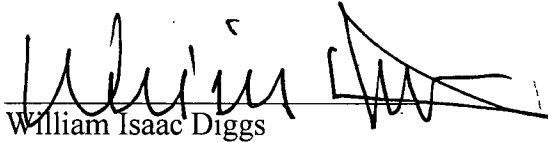
Lydia L. Magee

Print Name

260

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 APPELLANT

This 9th day of December, 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, Judge
Case No. 2012-CP-26-3859

Thomas Rickerson

Appellant,

vs.

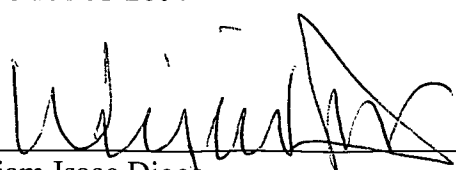
John Karl, M.D. and Virginia Bell, CS, FSP

Respondents

CERTIFICATE OF SERVICE

This is to certify that I have this 1 / 14 day of December, 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:

Sheila Marlouvon Bias
Marian Williams Scalise
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201-2604



William Isaac Diggs

RECEIVED

DEC 13 2013

SC Court of Appeals