

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Casey Manning

OCT 23 2017

Appellate Case No. 2016-001494

SC Court of Appeals

Theodore P. Polansky, Employee,

.....Respondent.

v.

SC Office of Attorney General, Employer,
and State Accident Fund, Carrier,

.....Appellants.

RECORD ON APPEAL

Volume 3 of 3

Temus C. Miles, Esq.
McKay, Cauthen, Settana & Stublely, P.A.
Post Office Box 7217
Columbia, South Carolina 29202
(803) 256-4645
Attorney for Appellants

Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
Attorney for Respondent

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(encephalopathy) and medications to treat organic dysfunction such as severe headaches and memory loss. In the 1999 injury, Mr. Polansky while a Chief Investigator for the Attorney General's office fell while carrying boxes down steps and sustained severe injury to his left leg. While under continuing treatment for that problem, he sustained the injury in May of 2000 wherein he sustained injury to his back as a result of lifting boxes.

By the fall of 2000, on November 13, 2000, he was referred to Dr. Gary G. Poehling, M.D., by his treating orthopaedist, Dr. Robert Peele, wherein Dr. Poehling confirmed the diagnosis of Regional Pain Syndrome/RSD (Regional Sympathetic Dystrophy). By that time Mr. Polansky had already undergone multiple steroid injections due to the pain in his back, he was suffering from loss of bladder control, urinary urgency with difficulty with control and was on multiple medications to control severe pain in his back and legs and had been diagnosed and was being treated for psychological problems stemming from the injuries. However, Mr. Polansky continued to work and both Dr. Poehling and Dr. Feldman noted that despite all his problems that Mr. Polansky was working and was to be commended for continuing to work with all of those severe problems.

After completing a chronic pain management program at Baptist Medical Center at the recommendation of Dr. Poehling in May of 2001 Mr. Polansky was placed under the care of Dr. Ezra B.

Riber for chronic pain management; under whose care he has been since that time and continuing. In 2001 due to his psychological problems stemming from the accident he was referred to the Baptist Counseling Program where he came under the care of Dr. Frank Forsthoefer. He was on medications throughout 2001 for treatment of his chronic pain problems stemming from The Reflex Sympathetic Dystrophy, his back and his legs and due to his psychological problems stemming from these injuries. All of his medical care was paid for and was accepted by the State Accident Fund. As part of his care, Mr. Polansky was referred in 2001 by Dr. Riber for a psychological evaluation for a spinal cord stimulator trial which included a battery of neuropsychological testing which was performed by Dr. Avie Rainwater with the tests being performed on October 10th and 15th of 2001. He was diagnosed with agitated depression secondary to pain, bi-polar disorder, psychological factors affecting a physical condition and a fear of pain among others. He was psychologically cleared at that time for the spinal cord stimulator trial which subsequently resulted in the implantation of a spinal cord stimulator.

While under treatment for these psychological and physical problems on February 21, 2002, Mr. Polansky was hospitalized at Baptist Medical Center due to a severe deterioration in his, "cognitive functions":

"in the form of forgetfulness; inability to read, comprehend and retain information. His cognitive

decline has become more progressive and includes both visual and auditory hallucinations and paranoia upon admission." (APA, p. 659.)

This was determined during that hospitalization to be due to:

"confusion as to his medications and the timing of his medications"

and to a drug reaction to Seroquel prescribed to treat his medical condition stemming from the accident and which reaction resulted in a chemical encephalopathy of the brain with

"edema in all four extremities with swallowing difficulties and an edematous tongue. . . . In the hospital setting as part of the Seroquel reaction he had episodes of weakness as well as difficulty swallowing and enuresis. . . ."

* * *

"The patient was withdrawn from the Seroquel due to the medication encephalopathy. During the most severe aspects of the encephalopathy, due to the medication, he did not know the President before President George Bush, Jr. He could not do several subtractions and he could not quickly identify the particular day of the week." (APA, p. 669.)

Subsequent to hospitalization, he continued under the treatment of his treating psychiatrist for psychological and cognitive disorder and his other treating doctors for his physical problems.

Throughout his treatment notes in 2002 after the hospitalization for the chemical encephalopathy caused by the drug-drug interaction, Dr. Forsthoefel recorded repeatedly problems with cognitive function, particularly as to memory loss and problems with comprehension. He also began to record and

question whether or not these cognitive dysfunctions were coming from his psychological problems versus a physical brain problem. Then on July 29, 2004 Dr. Forsthoefel made a referral, which was authorized by the State Accident Fund, to a neurologist due to the cognitive problems. On July 29th Dr. Forsthoefel referred the Claimant to Dr. Ngo for problems with concentration and memory and noted that, "for no apparent reason, he has suffered a cognitive decline in which he cannot perform even simple calculation and in which confusion is such that he cannot drive." He then stated to the neurologist that, "I would appreciate your consideration of any organic mental condition." This evaluation was authorized as noted but instead of being referred to Dr. Ngo, State Accident Fund referred him to Dr. Julian Adams. While the change in the evaluation to Dr. Adams was objected to, Dr. Adams had been the neurologist that had seen the Claimant when he was admitted for the drug interaction at which time from a neurological standpoint he had diagnosed Mr. Polansky with a chemical encephalopathy with severe cognitive dysfunction. In his evaluation in 2004 among other things, Dr. Adams stated that if memory issues were the problem that was being investigated that he would recommend, "psychological testing."

Throughout 2005, the Claimant continued to request both a referral to another neurologist and to a psychologist for neuropsychological testing concerning the cognitive dysfunctions, in other words physical brain problems, that the Claimant was

having at that time. Also in 2005 due to the anticipated retirement by Dr. Forsthoefel, Mr. Polansky's psychological treatment from a psychiatrist standpoint was transferred to Dr. Krebs briefly and then Dr. Jo A. Marturano, M.D. whose records just like Dr. Forsthoefel's are replete with cognitive dysfunction problems from 2005 through 2009. On September 19, 2005, Dr. Marturano issued a specific report stating that,

"based on my evaluation and treatment of Mr. Polansky, it is my opinion that he is in need to a complete neurological work-up, by a neurologist, for many of the problems he is having. The neurological evaluation should include EEG testing. I would also recommend neuropsychological testing of Mr. Polansky."

Repeated requests were then made for the neurological evaluation and neuropsychological testing by the Claimant through his attorney.

Between 2005 and 2009, the Claimant continued under the care of Dr. Marturano and Dr. Ezra Riber. Beginning on September 2, 2004 he came under the care for psychological counseling and treatment by Dr. C. Jean Jonet, Ph.D., who since then has seen Mr. Polansky multiple times per week and/or on a weekly basis from 2004 through the present time and continuing under the authorization by the State Accident Fund. In addition to the recommendations of Dr. Forsthoefel, Dr. Marturano, Dr. Adams, and Dr. Ezra Riber, the Claimant's treating chronic pain medicine specialist, on September 20, 2005 stated the opinion and issued a specific report that due to the chronic and current problems he

was experiencing from a neurological standpoint, that it was his recommendation and opinion that Mr. Polansky should have, "a comprehensive neurological evaluation." During this period of time he was receiving numerous authorized medications including Topamax that were being prescribed for the severe headaches that he was having. Finally after the referrals and recommendations of Dr. Forsthoefel, Dr. Marturano, Dr. Riber and even Dr. Adams, Mr. Polansky was finally referred for neuropsychological testing to Dr. Nicholas Lind in the Fall of 2007. He performed neuropsychological testing at that time but did not complete and submit the report of his results until February of 2008. In a later report of May 21, 2012 he specifically noted that the delay in issuing his findings in 2008 was due to the fact that when Mr. Polansky was referred to him by the State Accident Fund for neuropsychological testing and evaluation that he was not provided with any medical records and referred to his efforts in obtaining as much information as he could from Dr. Jonet and from Dr. Marturano. Based on his testing in 2007 and 2008, Dr. Lind found Mr. Polansky to be severely impaired with overall memory being severely impaired and delayed and retention memory being severely impaired in reference to his comprehensive testing. In reference to his memory scales: his auditory, visual immediate, immediate memory, auditory delayed memory, visual delayed memory, auditory recorded delayed memory, general memory and working memory were either extremely low or borderline. His adult

intelligence scale in reference to verbal intelligence was extremely low; his performance intelligence was extremely low and his full scale adult intelligence was extremely low. After testing on November 20, 2007 in his progress note of February 7, 2008, he confirmed that he had, "left messages for Dr. Jonet and Dr. Marturano (Mr. Polansky's psychologist and psychiatrist) in order to consult and share records. In his later report in 2012 when he was provided all of the records in reference to the 2002 hospitalization, encephalopathy, the pre-encephalopathy testing by Dr. Rainwater and the records from Dr. Forsthoefel, in his conclusions Dr. Lind stated that his initial impression back in 2007 without the records was that of a progressive dementia (physical condition of the physical brain) and that that was the reason for his suggestion of a brain scan to determine whether or not there was in fact any physical atrophy of the brain. However, after review of all those records, again which he did not have the benefit of in 2008, it was his opinion that Mr. Polansky had demonstrated physical brain dysfunction that was more than likely not at least aggravated by the drug-drug interaction triggered encephalopathy.

Throughout 2008, 2009 and 2010, Mr. Polansky continued under the care of Dr. Ezra Riber and Dr. Jonet and resumed treatment with Dr. Forsthoefel when he resumed his private practice in 2009. In 2009 and 2010, Mr. Polansky continued to receive treatment for his psychological and cognitive dysfunction

problems and severe headaches and for his severe physical problems which included his RSD condition and problems with his shoulders, his left and right legs, low back pain, sexual, bowel and bladder dysfunction.

He also developed and had recurrent problems with his spinal cord stimulator which had provided tremendous pain relief in reference to his back and his legs for a significant amount of time.

However, in 2010 because of problems with the stimulator, Dr. Riber made a referral to Dr. Giancarlo Barolat in Colorado for re-implantation of a spinal cord stimulator. This referral was necessitated due to the fact that local orthopaedists due to the severe condition of the Claimant's back, the multiple implantations of the spinal cord stimulator and the previous failure of the spinal cord stimulator in reference to the pulse generator would not reimplant the stimulator. Dr. Barolat based on the Commission records, the medical records, and the requests for approval from Dr. Riber, is one of the foremost authorities on spinal cord stimulators. The referral was not authorized for approximately a year and ultimately resulted in an Order of the Commission ordering the referral of Mr. Polansky to Dr. Barolat for re-implantation of the spinal cord stimulator which was accomplished not in 2010, but in the fall of 2011. The Record of the Commission is clear that the focus of the Claimant and treatment throughout 2010 and through the time that the spinal cord stimulator re-implantation was ordered by the Commission was

on the physical problems that the Claimant was having.

However, it is also very apparent from the Record that during this time Counsel for the Claimant was working with the attorney who had been hired by the State Accident Fund to obtain Second Injury Fund benefits and was taking the position on behalf of the Claimant that due to the chemical encephalopathy that Mr. Polansky had sustained physical injury and damage to the brain and was trying to resolve this issue with the Fund without litigation expense and on May 11, 2009 stated and wrote specifically that,

"after the brain injury, he has had severe problems, not only of a psychological nature but of a physical nature stemming from this. . . . I hope that the State Accident Fund will also be cooperative in trying to see that Ted is fairly compensated for the remainder of his life." (APA, p. 699.)

Subsequent to that on May 14, 2009, Ms. Mary League, the contract attorney, responded that she was unable to give an answer as to position of the State Accident Fund on the brain injury but that she had, "forwarded a copy of your letter to the State Accident Fund adjuster requesting that she be contacted in regards thereto." According to the records of the Commission, the State Accident Fund did receive approval for Second Injury Fund protection for this claim.

As noted in 2010 and 2011, the Claimant was trying to obtain authorization for the re-implantation by Dr. Barolat of the spinal cord stimulator which resulted in a Motion being filed

ordering that that be provided. It is also very clear from the Record wherein there is specific continual recordation by Dr. Riber of all the medications that the Claimant was taking which included multiple medications specifically for problems associated with cognitive dysfunction and physical injury to the brain including Topamax for migraine headaches; Galantamine ER, a medication prescribed for dementia and Alzheimer's (physical injury conditions of the brain); Donepezil which is prescribed for dementia and for Alzheimer's, again physical injury and conditions of the brain; and Imitrex (generic - Sumatriptan) which is prescribed for migraine headaches. In addition, the Claimant has been prescribed on a continual basis throughout this period of time Geodon, which is an anti-psychotic medication; and Provigil along with Ambien which are specific sleep disorder medications.

In a series of reports starting on March 3, 2011, Dr. Forsthoefel, the authorized treating psychiatrist, stated the opinion that the Claimant's cognitive decline since the drug-drug interaction in 2002 was related, "in a residual way to the encephalopathy triggered by the drug-drug interaction. Based on this report, the Claimant was sent to Dr. Avie Rainwater, Ph.D. for additional neuropsychological testing due to the fact that Dr. Rainwater had performed testing prior to the drug-drug interaction triggered encephalopathy. Based on his retesting performed on March 22, 2011, and comparison to his previous 2001

testing, Dr. Rainwater stated that, "it is my opinion, stated to a reasonable degree of psychological certainty that the absence of significant psychometric changes in the patient's tests-retest data logically supports the conclusion that the patient's current neurocognitive changes do represent a decline in brain functioning secondary to the drug-drug interaction encephalopathy." The Claimant's treating psychiatrist since 2001 in a report dated May 6, 2011 then stated the opinion to a reasonable degree of medical certainty that it was his opinion that "Mr. Polansky, did sustain a physical brain injury as a result of the encephalopathy" as explained in another report of June 28, 2011 this was a chemical encephalopathy that he had sustained due to the drug-drug interaction with residual features up to and including the date of his 6/28/11 report including continued neurocognitive deficits in the form of expressive and secondary aphasia, deficits in comprehension, attention span and recent memory.

Based on the opinions of Dr. Forsthoefel and Dr. Avie Rainwater, Ph.D., the Claimant on May 12, 2011 filed for a hearing for lifetime benefits due to physical brain damage suffered as a result of the 2002 drug-drug interaction which resulted in a chemical encephalopathy (physical damage to the brain) and that lifetime compensation benefits be resumed under that Award as of the date of the last payment of weekly compensation on March 8, 2011. Thus within two (2) months of the

report of Dr. Rainwater and one week after the opinion of the treating psychiatrist that the Claimant had sustained physical brain damage as a result of the drug-drug interaction resulting in the encephalopathy in 2002 which resulted in the Claimant's cognitive dysfunction, the Claimant filed for a hearing for an Award.

Since that time, and which I have taken into consideration in my Decision, the Claimant's authorized chronic pain medicine specialist (since 2001) expressed the opinion to a reasonable degree of medical certainty that Mr. Polansky based on his knowledge of Mr. Polansky as a result of the chemical encephalopathy had sustained organic brain damage and that that brain damage was severe enough to constitute a hindrance and obstacle to employment. (Dr. Riber previously issued a report on 09/20/05 requesting neurological examination and testing). He further stated the opinion in reference to his area of specialty that physicians in the area of physical rehabilitation, pain management, neurology and psychiatry use the terms "physical brain damage" and "injury" interchangeable in referring to organic damage to the brain and that in his opinion the residual neurocognitive deficits that persisted at the time of the opinion on June 30, 2014 were likely permanent and would not change. The Claimant's treating clinical psychologist, Dr. C. Jean Jonet, Ph.D., expressed the opinion that in her clinical opinion as a clinical psychologist and the treating clinical psychologist for

Mr. Polansky since 2004 that he had sustained physical brain damage as a result of the drug-drug interaction and encephalopathy in 2002 and that he is totally and permanently disabled as a result of his condition. She also stated in her report that he was suffering from severe neurocognitive deficits including expressive aphasia as well as documented decreased attention, concentration and short term memory skills. She stated that through her treatment of Mr. Polansky that she knows him to be a college educated individual but yet he cannot even write a check, cannot count change, cannot use tools or perform household chores or repairs, and cannot now change a lock even though he had previously done that type of work prior to attending college. He frequently becomes derailed while talking, requires redirection and prompts and sometimes he stares off into space. He is tremendously or enormously forgetful, takes notes but loses them. In addition, Dr. Frank Forsthoefel and Dr. Avie Rainwater issued written reports stating not only that Mr. Polansky had suffered physical brain damage but that it is severe and is severe enough to constitute a hindrance or obstacle to employment in and of itself and that he is totally and permanently disabled due to his condition stemming from the accident.

While I have taken into consideration all this testimony and all the evidence presented in this matter, I have given great weight to and have given substantial consideration to the

testimony of the treating psychiatrist who appeared on behalf of the Claimant at the hearing and is the only testimony that was taken in this matter.

After the parties stipulated to Dr. Forsthoefel's credentials as a Board Certified psychiatrist, Dr. Forsthoefel in his testimony in summary testified that after the 2002 hospitalization for the encephalopathy, which is a physical injury to the brain involving swelling of the brain, he began to notice greater and greater problems in reference to cognitive deficits unrelated to his moods. He explained how severe the encephalopathy was in 2002 of which he has, "a vivid memory of it even to this day" which is also reflected in the Discharge Summary that Mr. Polansky was agitated, writhing, had an altered mental status, was confused, his face and ankles were swollen, he was delirious and incoherent and during the hospitalization that remitted. He explained that encephalopathy is a global syndrome of the brain involving a physical alteration of the brain structure and that it is an organic injury to the brain. He explained that after the 2002 drug-drug interaction and encephalopathy that Mr. Polansky who was already having significant psychological problems stemming from the work-related injury, for which he was treating Mr. Polansky in 2001 prior to the 2002 hospitalization, that it became clear to him that Mr. Polansky's problems with memory, confusion and other cognitive dysfunctions were not related to his psychological condition but

that there was something else going on in Mr. Polansky's mind that was not of a psychiatric nature. He explained the difference between cognitive dysfunctions stemming from a psychological condition and cognitive dysfunctions that are stemming from an organic brain injury, or in other words, physical damage to the brain. In reference to cognitive dysfunctions that stem from a psychological condition, they are what he referred to as "mood congruent". Mood congruent means that as the person's mood improves there is a decrease in the cognitive dysfunction as well. For example, if a person is suffering from depression as their depressed mood changes or improves, you will see an improvement in their cognitive dysfunction. The same is true for all other mood or psychological/functional conditions.

Throughout 2002 and 2003 and the early part of 2004 as the medications stabilized his depression and schizoaffective disorder as Dr. Forsthoefel put it, "very nicely" during this time there continued to be not only continuing cognitive deficits but those cognitive deficits continued to get worse. In Mr. Polansky's case, even as his mood would improve in reference to his psychological problems, his cognitive dysfunctions continued to decrease or in other words were not mood congruent or related to his mood. This led Dr. Forsthoefel in 2004 to recommend neurological examination and neuropsychological testing.

He testified that Mr. Polansky's moods are now stabilized on medication and have been so for quite some time but yet at the

same time he is having increased disability and inability to remember what he has read and even to express what he has read. This is not just related to the reading of the newspaper, but is related to his ability to keep his finances, use the telephone, etc.

Mr. Polansky is suffering from sensory aphasia and expressive aphasia. These refer to the ability of an individual to read something and then relate what they have read. They have problems both on the one side in actually reading something to you and then on the other side they can read something but have absolutely no idea what they just read and/or are able to relate immediately what they just read to an individual. Dr. Forsthoefel related that while Mr. Polansky may read the newspaper, which it will probably take him an entire day to do, he does not read the newspaper in the sense that we understand it. Dr. Forsthoefel testified that Mr. Polansky may be able to read words and/or sentences, but then he cannot comprehend those. Dr. Forsthoefel has confirmed through his treatment that Mr. Polansky both does not understand what he is reading and then cannot relate back what he is reading to you. He also has severe problems in reference to his memory. In reference to his memory, Dr. Forsthoefel testified that where there is a regular pattern, to what he is going, for example driving to a location or patterns of behavior such as feeding the dog, or there are circumstances or circumscribed areas that he has patterned

himself to do, he does fairly well, but if you change those patterns or ask him to do something out of that area such as give him directions to go somewhere he is not used to going or if you have asked him about something such as going on a trip and what his memory of that is, he does terrible. For example, where he regularly goes to Dr. Riber's office, Dr. Jonet's office and Dr. Forsthoefel's office, he can handle that but if you were to give him an address in Columbia or Camden, South Carolina and tell him to go there, he would not be able to do it. Most importantly he testified that aphasia is a specific condition that results directly from organic physical brain damage, not from a psychological consequence.

This Commissioner specifically asked Dr. Forsthoefel to tell this Commissioner exactly how bad Mr. Polansky's physical brain damage is to which he responded by explaining his answer in reference to the American Psychiatric Association's diagnostic criteria under DSM IV which sets out a criteria and scale for global assessment of functioning, known as the GAF. Under the GAF scale, the range for all individuals in reference to global functioning is from 0 to 100. He said almost no one gets 100 but no one receives a score of 0. He read into the Record the scale of 0 to 10 and the scale at 40 wherein there is some impairment of testing, speech is at times illogical, obscure or irrelevant, major impairment in several areas such as work, school, family, relationship, judgment thinking or mood and other criteria. He

placed Mr. Polansky between 30 and 40 on the GAF, and based on his assessment under the GAF, Dr. Forsthoefel stated the opinion that Mr. Polansky was, "very, very seriously impaired".

As this point based on the testimony of Dr. Forsthoefel up to that point and based on my observations of Mr. Polansky throughout the hearing, which in my opinion was confirmed by the testimony of Dr. Forsthoefel as to how seriously impaired Mr. Polansky was in reference to his ability to know and appreciate what was being said and/or written and specifically in reference to his testimony about how severe Mr. Polansky was impaired especially in the area of aphasia, this Commissioner went off the Record and discussed with the attorneys my opinion that Mr. Polansky appeared so impaired that he needed to have a Guardian ad Litem appointed. The Attorneys agreed and off the Record, Ms. Gale DuBose confirmed that she would agree to serve as Mr. Polansky's Guardian ad Litem at which time I went back on the Record, explained that this was simply the appointment of a Guardian not of a general nature, but simply for purposes of a workers' compensation hearing and inquired of Ms. DuBose as to whether or not she would agree to serve as Mr. Polansky's Guardian ad Litem for purposes of the workers' compensation action to which she responded she would. I appointed her at that point Mr. Polansky's Guardian ad Litem for the remainder of the pendency of the litigation.

Dr. Forsthoefel resumed and he was asked whether or not in

his medical opinion Mr. Polansky was competent or incompetent to handle his financial affairs to which he responded that in his opinion to a reasonable degree of medical certainty Mr. Polansky was incompetent to handle his financial affairs. Dr. Forsthoefel then in reference to a list of cognitive functions explained as to Mr. Polansky's impairments in those areas. In reference to the cognitive function of decision making, Dr. Forsthoefel testified that because of his inability to comprehend the written word and at times the spoken word, he is severely impaired in reference to that cognitive function. In reference to the ability to learn, he is very limited in any ability to learn any type of new things. In reference to such cognitive functions as sensory input, his ability to understand the written word, understand the spoken word, his learning problems with comprehension and expressing himself, all of those are tied together and in Dr. Forsthoefel's opinion Mr. Polansky is, "very, very impaired" in all of those areas and cognitive functions.

Dr. Forsthoefel also agreed in reference to the neuropsychological testing results that Mr. Polansky is very limited and severely impaired in reference to memory and particularly certain types of memory such as delayed memory, retention memory in his intelligence scale, and that he agreed with the assessment by Dr. Jonet, Ph.D., the clinical psychologist that has been treating Mr. Polansky since 2004. Most importantly to this Commissioner, Dr. Forsthoefel was then

asked the question that if you assume or if Mr. Polansky did not in fact have any of the physical problems including the RSD, the spinal cord stimulator, the severe problems that he has with his back, or any of the other problems that he has, in his opinion based purely on the organic brain injury and cognitive deficits that he has, is he employable or unemployable. Dr. Forsthoefel expressed the opinion that he is unemployable. He was then asked the further question that, "simply based on his organic brain damage" to a reasonable degree of medical certainty is Mr. Polansky incapable of employment, to which Dr. Forsthoefel expressed and gave the opinion unequivocally that Mr. Polansky is, "totally incapable" of employment due purely, simply and strictly based on his organic brain damage.

Subsequent to the direct testimony of Dr. Forsthoefel, Counsel for the Defendants conducted a thorough cross-examination of the Claimant's authorized treating psychiatrist and asked for an explanation of every area of the doctor's opinions in reference to Mr. Polansky and in reference to his opinion that Mr. Polansky had sustained severe disabling physical brain damage as a result of the encephalopathy stemming from the drug/drug interaction, and in the opinion of this Commissioner, left no stone unturned in reference to an explanation and clarification as to all of the opinions and evidence given by the Dr. Forsthoefel during his direct testimony. However based upon the review of that cross-examination, Dr. Forsthoefel explained to

the satisfaction of this Commissioner and gave a thorough and complete explanation in reference to the cross-examination questions of defense counsel and his opinions but maintained his position as to his opinions concerning Mr. Polansky. He was thoroughly cross-examined about Mr. Polansky's mental condition both before and after the encephalopathy and as to how those psychological conditions had been stabilized. He explained objective test results such as MRI's in the area of physical brain damage and the lack of value of those tests sometimes even in cases of documented physical damage to the brain from such global conditions as dementia.

At the conclusion of Dr. Forsthoefel's testimony, this Commissioner held a side-bar with the lawyers as far as any other testimony and subsequent to that off the Record side-bar discussion and with my appointment of a Guardian ad Litem, the Claimant advised that that constituted the Claimant's case. The Defendants presented no additional evidence or witnesses and the hearing was concluded.

Therefore based upon my review of all of the testimony and evidence presented, the medical opinion evidence from all of the Claimant's longtime and current authorized treating doctors and providers, and based particularly upon my review of the testimony of Dr. Forsthoefel to which I give great weight, it is my finding that the Claimant has proven by a preponderance of the evidence that he is entitled to the benefits sought and is entitled to an

Award for lifetime weekly compensation benefits to be resumed pursuant to the Form 50 request and that he is entitled to this Award due to having sustained serious, severe and permanent brain damage as established by the evidence and uncontested medical and professional opinions of all the Claimant's longtime authorized treating physicians and psychological professionals in this case stemming from his original injuries from the accidents and the treatment necessary to treat those injuries. I further find that the Claimant's severe injuries to his back and leg which resulted in his other severe conditions such as his psychological condition, chronic pain and RSD, combined with his pre-existing conditions to result in a much greater disability than would have been caused by the injuries alone. I further find that Mr. Polansky's physical brain damage readily meets the requirements of SC Code §42-9-400(d). I further find that the Claimant's compensation rate for the payment of benefits shall continue at the rate as previously paid by the Defendants, that being the maximum compensation rate for 2000 in the amount of \$507.34 per week. In reference to the compensation rate, it is my opinion that the maximum compensation rate for the year of the accident under S.C. Code §42-9-10 applies. Wherefore I have made the following findings of salient fact:

FINDINGS OF FACT

1. A Guardian Ad Litem was appointed by the undersigned at the hearing, based upon (a) my observations of Claimant, and (b) the testimony of Dr. Forsthoefer. The person appointed has been in a 20+ year relationship with Claimant, and in at least one record is referred to as Claimant's common law wife (e.g., Defendants APA #20, page 715; Defendants' APA #21, page 718).

2. Claimant sustained admitted accidents on October 19, 1999, and May 30, 2000, and Defendants paid Claimant 500 weeks of temporary compensation for these claims. The 500-week period ended in March 2011 (Commission's file; Defendants' APA #26, page 738; Defendants' APA #28, page 743).

3. The admitted body parts/conditions are (a) the back (for which Claimant underwent spinal cord stimulator implantation, and re-implantation in Colorado), and psychological overlay (2000); and (b) the left knee (1999). See e.g., Claimant's APA #7, page 250.

4. The parties mediated the claims in November 2014, and agreed that Claimant was permanently and totally disabled, and is entitled to receive lifetime causally-related treatment per the agreement. The parties did not reach the issue of whether Claimant had sustained an alleged brain injury or physical brain damage after a drug-drug interaction (Claimant's APA #15).

5. Prior to the mediation, there was no (a) Order from the Commission setting forth the compensable body parts/conditions; or (b) agreement by the parties setting forth the compensable

body parts/conditions.

6. Claimant contends that he sustained physical brain damage pursuant to Section 42-9-10(C), after a drug-drug interaction in 2002 caused encephalopathy, and therefore is entitled to receive lifetime compensation. Procedurally, Claimant contends that Defendants are estopped from denying physical brain damage as Defendants (a) have paid for all of Claimant's treatment, (b) had knowledge of Claimant's cognitive condition and decline, and (C) impliedly accepted physical brain damage (or at least a brain injury) through the provision of treatment. Claimant filed a Form 50 (including the brain) in May 2011, and re-filed a Form 50 in March 2012 (Commission's file; Defendants' APA #27, page 740).

7. Defendants contend that Laches, waiver, and estoppel, whether separately or collectively, apply and bar any claim of physical brain damage. Regardless, Defendants contend that, at most, Claimant sustained a brain injury pursuant to Regulation 67-1101. Defendants maintain that Claimant's cognitive problems are more the result of Claimant's psychological/psychiatric issues than organic damage.

8. Claimant was hospitalized in February 2002 after a drug reaction to Seroquel which had been prescribed to treat his admitted injuries (Claimant's APA #11).

9. Claimant has a preponderance standard to meet, and I find that he meets it: Claimant has been diagnosed with physical

brain damage resulting from Claimant's drug-drug chemical encephalopathy by more than one authorized physician and all of his current treating physicians, Dr. Frank Forsthoefel, M.D. (authorized treating psychiatrist since 2001) and Dr. Ezra Riber (chronic pain specialist since 2000). (Claimant's APA #1, pages 2, 6-8, and 10; Claimant's #2, page 12).

10. Claimant's condition since the 2002 hospitalization has deteriorated. Medical evidence from 2007 notes that Claimant reported concerns with increasing cognitive difficulties. After administering a battery of tests, Dr. Lind found that "the feigning of memory difficulties is not likely," and is "suggestive of dementia." I give great weight to this evidence, and find that it dovetails with Dr. Forsthoefel's testimony that Claimant has experienced a severe cognitive decline independent of Claimant's psychiatric condition/mood. (Defendants' APA #23, pages 723 and 725-727; testimony of Dr. Forsthoefel; Claimant's APA #1, pages 5 and 9; Claimant's APA #8, pages 341-343).

11. Dr. Jonet, Ph.D., the authorized treating clinical psychologist since 2004, also opines that Claimant has brain damage. Dr. Jonet's treatment records from 2004 - 2015 speak to Claimant's cognitive impairment and decline, memory problems, and forgetfulness. In 2005, because of Claimant's cognitive decline, Dr. Jonet stated that Claimant "needs neuro referral." (Claimant's APA #3, pages 15-19; Claimant's APA #8, e.g., pages 341-362, 368-369, 371, 374-376, 378-379, 382, 384-389, 393, 406,

415, 417, 420, 432-433, 437-439, 453, 463-464, 471-472, 482, 484, 501, 505, 507, 516-517, 520, 553, 561, 564-565, 563, 577, 582, 600, and 603-606).

12. Dr. Jonet met with Carrier's case manager regarding Claimant's cognitive impairment (Claimant's APA #8, page 589, dated 2005).

13. Dr. Marturano (treating psychiatrist) also documented Claimant's poor memory, at one point believed to be attributable to chronic narcotic use. In 2009, Dr. Marturano noted that he needed to discuss Claimant's memory issues with Dr. Jonet. Dr. Marturano also documented Claimant's (a) inability to comprehend the newspaper or to figure out "brain teasers" anymore; (b) inability to remember his zip code and his PIN for ATM machines, (c) forgetfulness while driving (missing turns, etc.), and (d) going to the "wrong appointment location" to see Dr. Marturano, among other difficulties. Because of Claimant's presentation, Dr. Marturano also recommended and requested neuro-psych testing (for Claimant's memory issues) throughout his records from 2005 to 2009. (Claimant's APA #9, pages 608-616, 619-624, 626, 628-629, 632, 634, 642, 653-654, 656, and 661).

14. Dr. Krebs also documented Claimant's forgetfulness (Claimant's APA #10, page 667).

15. Rehabilitation Consultant Fi-Fi Jubran found Claimant "to be sincere and to want to help himself get better." (Claimant's APA #17, page 704).

Claimant's brain injuries is one of those "most serious" and "severe" cases contemplated by Crisp and Sparks; therefore, Claimant meets his burden of establishing by the preponderance of the evidence that he has sustained physical brain damage. Claimant is not required to prove physical brain damage by objective diagnostic tests or by clear and convincing evidence.

19. At the hearing, Defendants' counsel highlighted and emphasized records which by all appearances would be favorable to the Defendants. However, Dr. Forsthoefel explained to my satisfaction that Claimant has physical brain damage. Given Dr. Forsthoefel's continuum of treatment from 2001 to the present--except for the break in the treating relationship from 2004-2008--I find that Dr. Forsthoefel is in the best position to render this opinion as Dr. Forsthoefel has observed the cognitive changes himself.

20. I considered Dr. Adams' opinion from his report of August 23, 2004 (in which he recommended that if "memory" was the issue that Claimant undergo psychological testing (Defendants' APA #20, pages 715-716), but Dr. Forsthoefel's opinion is the more persuasive of the two.

21. I considered the fact that Claimant can drive some, but Dr. Forsthoefel testified that it is limited to familiar places. Further, various treatment notes chronicle Claimant's difficulty driving. Finally, Claimant's license was last renewed in 2006 and does not expire until 2016. (testimony of Dr. Forsthoefel;

Defendants' APA #43, page 849; See also Defendants' APA #31, page 808).

22. Defendants' defense of Laches is not persuasive. If Defendants had never paid for any of Claimant's treatment, had no knowledge of the encephalopathy or Claimant's cognitive decline, and were just now or recently being asked to assume the treatment for the organic brain injury/damage, the result in this case might be vastly different. However, Defendants had access to Claimant's medical records and provided benefits for his treatment. Further, the extent of Claimant's condition was not wholly apparent or fully appreciated after the diagnosis of encephalopathy, but rather has continued to decline since 2002.

23. As to Defendants' objections concerning Dr. Rainwater's records, the conclusion (regarding mail order prescriptions) in Claimant's APA #4, page 20, is the same conclusion as reached by Dr. Jonet in Claimant's APA #3, page 15. I can therefore discount or even disregard that e-mail objected to by Defendants in Claimant's APA #4. Notwithstanding any dispute between Dr. Rainwater and the carrier, I find the opinions of Dr. Forsthoefel to be the most compelling of all the evidence. (See Defendants' APA #44; Claimant's APA #1, page 7).

24. Dr. Rainwater's opinion is not pivotal or necessary in this case, and I can completely disregard it and reach the same conclusion as far as physical brain damage is concerned.

25. Although Claimant's APA #9, page 664 is part of the

treatment records, I find them wholly unnecessary to my conclusions herein. I can also similarly disregard pages 633, 637, and 662, although these submissions were not objected to.

26. I can (and do) completely disregard Claimant's APA #9, page 663, and reach the same conclusions I reach herein. This document is wholly unnecessary to my decision.

27. Claimant's average weekly wage is \$877.01, yielding a compensation rate of \$507.34, the maximum for 2000. I do not find persuasive Claimant's argument that exceptional circumstances exist to change the compensation rate (paid over the 500-week period), and that Claimant's compensation rate should be based upon that of 2015 or any date other than that of the later accident date. Although I considered it, the Circuit Court Order submitted by Claimant is not binding or of precedential value.

28. Claimant is entitled to lifetime benefits.

29. The Commission Record reflects that the State Accident Fund filed for benefits and was awarded coverage under the Second Injury Fund based on pre-existing psychological problems and pre-existing conditions in the Claimant's back which combined with the effects of the injury to the Claimant's psychological condition and back injury stemming from the accident to result in a greater disability and greater degree of medical care than would have resulted from the injuries from the accident alone. The combination of the Claimant's pre-existing conditions and the

injuries from the accidents and the treatment necessary to treat those problems caused and resulted in the Claimant's serious, severe and permanent physical brain damage. In 2009 the State Accident Fund as is reflected in the Record sought assistance of the Claimant in obtaining Second Injury Fund coverage for these problems. It is also clear that in 2009 the Claimant placed the State Accident Fund on notice of this claim for lifetime benefits due to physical brain damage and the desire to resolve that issue by agreement without the need for further litigation expense.

30. Based on the Record, the Claimant's pre-existing psychological and back problems combined with the effects on the injuries including chronic pain, RSD, and depression to cause greater psychological problems, diagnosed as schizoaffective disorder and bi-polar disorder which necessitated the administration of such drugs as Seroquel. The administration of Seroquel resulted in a drug-drug reaction that caused the encephalopathy. Therefore the reaction to the medications needed to treat the conditions stemming from the combination of the pre-existing conditions and the injuries stemming from the accidents resulted in the Claimant's physical brain damage and the tremendous increase in benefits, lifetime compensation, stemming from the accidents.

CONCLUSIONS OF LAW

Under S.C. Code §42-17-40 the following Conclusions of Law apply in this case to the issues presented for decision:

1. Under S.C. Code §42-1-40 and S.C. Code §42-9-10, the Decision is made as to the applicable compensation rate in this matter. All cases, decisions and legal memorandum as to exceptional circumstances and the wording and meaning of S.C. Code §42-9-10 have been taken into consideration as the issue of the applicable average weekly wage and compensation rate that applies. The provisions and requirements of S.C. Code §42-17-10 were taken into consideration in making this decision since no prior decision has been made by the Commission on that issue and it is appropriate that a decision be made at this time.

2. Under S.C. Code §42-9-10(C), the determination is made as to the Claimant's entitlement to lifetime weekly compensation benefits due to having sustained physical brain damage resulting from the encephalopathy which resulted from a drug-drug interaction from drugs necessary to treat the Claimant's disabling symptoms and conditions stemming from the work-related injuries. The South Carolina Supreme Court Decision in the cases of Sparks v. Palmetto Hardwood, Inc., 406 SC 124, 750 Southeastern 2d 61 (2013) and Crisp v. Southco, Inc., 401 SC 627, 738 Southeastern 2d 835 (2013) were taken into consideration in determining whether or not the Claimant has met his burden of proof in establishing that he has sustained physical brain damage severe enough to establish his entitlement to an Award for

lifetime compensation benefits under S.C. Code § 42-9-10(C). The evidence establishes in accordance with those decisions that the Claimant has sustained severe permanent impairment of the normal functioning of the brain and has sustained physical brain damage that is both serious and severe. In fact, based on the undisputed testimony of the Claimant's treating psychiatrist, Mr. Polansky's physical brain damage is so severe that he is unemployable due to his physical brain damage alone regardless of any other physical or psychological impairments.

3. Under the Mediated Settlement Agreement, the Claimant is entitled to lifetime medical care under SC Code §42-15-60(C) as set out in that Agreement which Agreement is incorporated herein as part of this Order and that his physical brain damage is causally related to the injuries sustained in the accident for which he is entitled to lifetime medical care.

4. Under the stipulations of the parties, the parties stipulated to jurisdiction and venue and to the other issues as reflected in the stipulations.

5. Under the Defendants' defense listed in their Pre-Hearing Brief of Laches, waiver, and estoppel, based on a review of the evidence, their argument and cases cited, I do not find their argument persuasive or in fact supported by fact or law. The Claimant in reply to this defense cited the case of Jervey v. Martint Environmental, Inc., 396 S.C. 442, 721 S.E.2d 469 (SC App. 2011) and asserted the concept of Laches waiver and estoppel

should be applied to the Defendants.

The State Accident Fund paid for the hospitalization for the encephalopathy (brain injury) in 2002. From 2002 to 2004 they paid for medical care which included constant reference to increasing problems with cognitive dysfunction. In 2004 at the request of the authorized treating psychiatrist for neurologic examination by Dr. Ngo for cognitive dysfunction believed to be in part due to the encephalopathy, the assigned rehab nurse scheduled and a neurological evaluation was performed by Dr. Julian Adams who noted that, "if memory loss" is the important factor in your investigation that Mr. Polansky should have "psychological testing". At the recommendation of treating doctors, Dr. Forsthoefel, Dr. Marturano, Dr. Jonet, Ph.D. and Dr. Riber and at the continual request of the Claimant between 2004 - 2007, in late 2007 and 2008, the State Accident Fund had neuropsychological testing performed by Dr. Nicholas Lind, Ph.D. (but did not provide him with treatment records) who found severe cognitive impairment and recommended further testing concerning, "possible dementia", a physical brain damage condition. In 2009, the Claimant placed the State Accident Fund on notice that he believed he had suffered physical brain damage and requested discussion to resolve that by agreement without litigation. Between 2009 and 2011 the State Accident Fund paid for treatment which noted continual decline in cognitive function and paid for medications specifically for the treatment of physical brain

conditions. Then in 2011 within three months of the opinions of Dr. Rainwater, Ph.D. and Dr. Forsthoefel and within one week of Dr. Forsthoefel's opinion that Mr. Polansky was suffering from physical brain damage, the Claimant filed for a hearing.

Based on this evidence I do not find the Defendants' position to be persuasive but I do find the argument persuasive that laches should apply as to the Defendants. In this case the Defendants paid for all treatment and evaluations requested for brain injury between 2002 and 2011. In Jervey the Court of Appeals applied laches to hold that the Defendants acceptance of the claim including the payment of medicals and compensation for a period of 455 days barred the Defendants from raising a denial to the claim. In this case the Defendants paid medical care for brain injury for nine years at the time of the first definitive medical opinion that the Claimant had sustained permanent brain damage.

Even applying Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (SC App. 1999), upon which the defense relies on the elements required to establish laches and estoppel is that only where there is the relinquishment of a, "known right" for an unreasonable length of time so these concepts apply. There is no evidence that before the opinion of Dr. Forsthoefel in 2011 that there was medical opinion evidence stating to a reasonable degree of medical certainty that Mr. Polansky had sustained permanent physical brain damage that was causing his severe cognitive

dysfunction. Within one week of that opinion being given by of the authorized treating psychiatrist, the Claimant filed for an Award. Further, the party asserting these affirmative defenses has the burden of proof to prove prejudice, and opportunity to have acted sooner and material prejudice. I do not find any evidence that the Defendants have met that burden of proof.

ORDER AND AWARD

THEREFORE IT IS ORDERED that the Claimant is found to be entitled to an Award for lifetime weekly compensation benefits in the amount of \$507.34/week due to having sustained serious, severe permanent physical brain damage as a result of the injuries stemming from his work-related accidents. Those payments are to resume the last payment of compensation to the Claimant, which was made on or about the week of March 8, 2011. All compensation that has accrued shall be paid in a lump sum through the date that weekly compensation benefits are resumed.

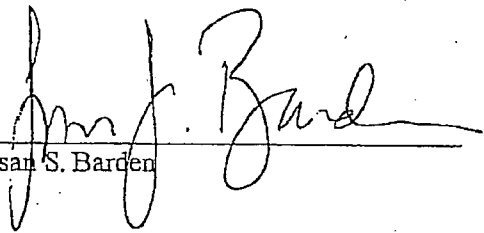
IT IS FURTHER ORDERED that the Claimant is entitled to lifetime medical care pursuant to the mediated Settlement Agreement through the authorized treating physicians Dr. Forsthoefel, Dr. Jonet, Dr. Riber and Dr. Beasley and such other medical providers as those physicians deem necessary and to include lifetime medical care for the physical brain damage and all causally related medical conditions, pursuant to SC Code §42-

15-60(C) .

IT IS FURTHER ORDERED that the previous decision by this Commission on Second Injury Fund coverage is incorporated hereby by reference as to the Findings of Fact and Conclusions of Law made on the Award for physical brain damage.

No hearing costs are assessed in this matter.

AND IT IS SO AWARDED AND ORDERED.


Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

June 1, 2015

By: Kristi Love, Administrative
Assistant to Commissioner Barden

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

March 4, 2015

Via eCase Upload

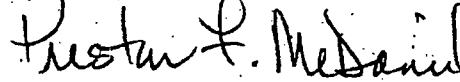
Commissioner Susan S. Barden
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Ted Polansky vs. SC Attorney General's Office
WCC File Nos.: 9922954 & 0024408

Dear Commissioner Barden:

Please find attached our Amended Notice of Witnesses and Written Reports simply adding Ms. Barbara Eaton or other Records Custodian of the McDaniel Law Firm for Business Records Act submissions. By copy of this letter, I am notifying Mr. Leventis of this submission. I look forward to seeing you at the hearing.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Peter P. Leventis, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File Nos: 9922954 & 0024408

Theodore Polansky,)

HEARING DATE: 3-6-15

Employee Claimant,)

v.)

South Carolina Office of)
Attorney General,)

as Employer, and)

South Carolina State)
Accident Fund,)

as Carrier,)
Defendants.)

AMENDED
NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT, THEODORE POLANSKY

TO: PETER P. LEVENTIS, ESQUIRE, ATTORNEY FOR THE EMPLOYER
/CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Claimant, Theodore Polansky,
pursuant to the provisions of the South Carolina Workers'
Compensation Act and South Carolina Code Section 1 23 330 (1976,
as amended), herewith submits the following reports/physician or
other evidence on behalf of the Claimant, to wit:

Tab No.	NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE No.
1	Frank Forsthoefel, M.D. - Reports	07/29/04-07/31/14	1-11
2	Ezra B. Riber, M.D. - Reports	06/30/11-06/30/14	12-14
3	C. Jean Jonet, Ph.D. - Reports	05/22/12-07/31/14	15-19
4	Avie Rainwater, Ph.D.	10/10/01-07/24/14	20-30
5	Nicholas Lind, Ph.D.	09/20/07-05/21/12	31-41
6	Frank Forsthoefel, M.D. Authorized treating psychiatrist Treating Records	01/17/02-02/12/15	42-181
7	Ezra B. Riber, M.D. Authorized treating chronic pain specialist - Treatment Records	06/18/01-02/10/15	182-340 LLLL

8	C. Jean Jonet, Ph.D. Authorized treating psychologist Treatment Records	09/02/04-02/02/15	341-607
9	Jo A. Marturano, M.D.	03/22/05-09/28/09	608-664
10	Kevin Krebs, M.D.	08/17/04-07/15/05	665-668
11	Palmetto Baptist Hospital	02/21/02	669-671
12	Bowman-Gray Medical Center Wake Forest University Gary G. Poehling, M.D.- RSD Specialist Prof. & Chair Dept. of Orthopaedics Jeffrey Feldman, Ph.D.	01/11/01-11/13/00	672-676
13	2001 Social Security and State Retirement Awards		677-679
14	SCWCC Form 20s 1999 and 2000		680
15	Mediation Agreement	11/12/14	681-682
16	Correspondence regarding brain injury - evaluation/treatment	07/27/04-05/14/09	683-700
17	Sealed records - only submitted for rebuttal		706-711

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: The Claimant; Ms. Gale Dubose; Dr. Frank Forsthoefer; Ms. Mee Ling Khor-Gould; Ms. Barbara Eaton or other Records Custodian of the McDaniel Law Firm for Business Records Act submissions; any witness listed,

named or called by the Defendants; and other lay witnesses to be named.

Respectfully submitted,

 (12)

Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
803-771-7211
Attorney for the Claimant

March 4, 2015

CERTIFICATE OF SERVICE

Ted Polansky v. SC Attorney General's Office

WCC File Nos. 9922954 & 0024408

I HEREBY CERTIFY that on this date:

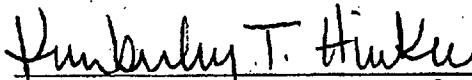
I emailed a copy of the Amended Notice of Witnesses to:

VIA eCASE

Commissioner Susan S. Barden
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

VIA EMAIL ONLY - pleventis@mckayfirm.com

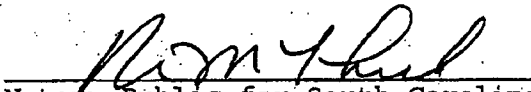
Peter P. Leventis, IV, Esquire
McKay, Cauthen, Settana & Stubley
1303 Blanding Street
Columbia, SC 29201



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this

4 day of MARCH, 2015.


Notary Public for South Carolina (L.S.)

My Commission Expires: 2/4/24

Kim Hinkle

From: Kim Hinkle <kim@pfmcdlaw.com>
Sent: Wednesday, March 04, 2015 12:35 PM
To: Peter P. Leventis, IV, Esquire (pleventis@mckayfirm.com)
Subject: Ted Polansky v. SC Attorney General's Office; WCC File Nos. 9922954 & 0024408
Attachments: Amended Notice of Witnesses 3-4-15.pdf

Importance: High

The attached is being sent to you at the request of Preston F. McDaniel.

Kimberley T. Hinkle, Senior Paralegal
to Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
T: 803-771-7211
F: 803-252-0709



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McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

February 27, 2015

Via eCase Upload

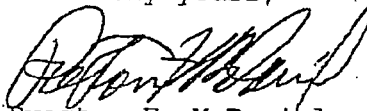
Commissioner Susan S. Barden
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Ted Polansky vs. SC Attorney General's Office
WCC File Nos.: 9922954 & 0024408

Dear Commissioner Barden:

Please find attached our Supplemental Notice of Witnesses and Written Reports simply adding the latest treatment records from the authorized chronic pain medicine specialist for Mr. Polansky which we have just received although we had requested those some time ago. By copy of this letter, I am notifying Mr. Leventis of this submission. I look forward to seeing you at the hearing.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Peter P. Leventis, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File Nos: 9922954 & 0024408

Theodore Polansky,)

HEARING DATE: 3-6-15

Employee Claimant,)

v.)

South Carolina Office of)
Attorney General,)

as Employer, and)

South Carolina State)
Accident Fund,)

as Carrier,)
Defendants.)

SUPPLEMENTAL
NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT, THEODORE POLANSKY

TO: PETER P. LEVENTIS, ESQUIRE, ATTORNEY FOR THE EMPLOYER
/CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Claimant, Theodore Polansky,
pursuant to the provisions of the South Carolina Workers'
Compensation Act and South Carolina Code Section 1 23 330 (1976,
as amended), herewith submits the following reports/physician or
other evidence on behalf of the Claimant, to wit:

Tab No.	NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE No.
1	Frank Forsthoeffel, M.D. - Reports	07/29/04-07/31/14	1-11
2	Ezra B. Riber, M.D. - Reports	06/30/11-06/30/14	12-14
3	C. Jean Jonet, Ph.D. - Reports	05/22/12-07/31/14	15-19
4	Avie Rainwater, Ph.D.	10/10/01-07/24/14	20-30
5	Nicholas Lind, Ph.D.	09/20/07-05/21/12	31-41
6	Frank Forsthoeffel, M.D. Authorized treating psychiatrist Treating Records	01/17/02-02/12/15	42-181
7	Ezra B. Riber, M.D. Authorized treating chronic pain specialist - Treatment Records	06/18/01-02/10/15	182-340 LLLL

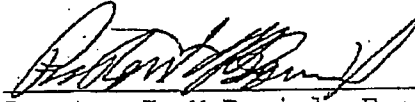
8	C. Jean Jonet, Ph.D. Authorized treating psychologist Treatment Records	09/02/04-02/02/15	341-607
9	Jo A. Marturano, M.D.	03/22/05-09/28/09	608-664
10	Kevin Krebs, M.D.	08/17/04-07/15/05	665-668
11	Palmetto Baptist Hospital	02/21/02	669-671
12	Bowman-Grey Medical Center Wake Forest University Gary G. Poehling, M.D.- RSD Specialist Prof. & Chair Dept. of Orthopaedics Jeffrey Feldman, Ph.D.	01/11/01-11/13/00	672-676
13	2001 Social Security and State Retirement Awards		677-679
14	SCWCC Form 20s 1999 and 2000		680
15	Mediation Agreement	11/12/14	681-682
16	Correspondence regarding brain injury - evaluation/treatment	07/27/04-05/14/09	683-700
17	Sealed records - only submitted for rebuttal		706-711

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: The Claimant; Ms. Gale Dubose; Dr. Frank Forsthoefel; Ms. Mee Ling Khor-Gould; any witness listed, named or called by the Defendants; and other lay witnesses to be named.

Respectfully submitted,



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
803-771-7211
Attorney for the Claimant

February 27, 2015

CERTIFICATE OF SERVICE

Ted Polansky v. SC Attorney General's Office

WCC File Nos. 9922954 & 0024408

I HEREBY CERTIFY that on this date:

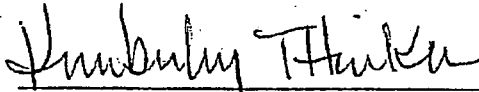
I emailed a copy of the Supplemental Notice of Witnesses to:

VIA eCASE

Commissioner Susan S. Barden
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

VIA EMAIL - pleventis@mckayfirm.com

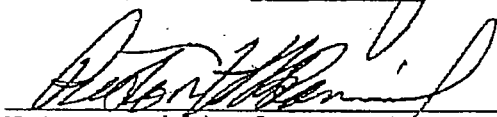
Peter P. Leventis, IV, Esquire
McKay, Cauthen, Settana & Stubley
1303 Blanding Street
Columbia, SC 29201



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this

27th day of February, 2015.



(L.S.)

Notary Public for South Carolina

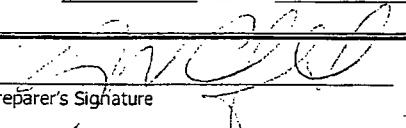
My Commission Expires: 10/28/18

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737.5675 www.wcc.sc.gov



WCC File #: 9922954 & 0024408
Carrier File #:
Carrier Code #:
Employer FEIN #:

COPY

Claimant's Name: Theodore Polansky	SSN: _____	Employer's Name: SC Attorney General's Office
Address: _____		Address: _____
City: _____ State: _____ Zip: _____		City: Columbia State: SC Zip: 29211
Home Phone: _____	Work Phone: _____	Insurance Carrier: State Accident Fund
Claimant's Attorney: Preston F. McDaniel		Employer Carrier Attorney: Peter P. Leventis, IV
Phone: 803-771-7211 Email: preston@pfmcdlaw.com		Phone: 803-256-4645 Email: pleventis@mckayfirm.com
 Preparer's Signature	ATTORNEY/MEDIATOR Title	amy@cofieldlaw.com Email
		12/17/2014 Date

Pursuant to Reg. 67-1803 A. and 67-1809, the undersigned duly qualified Mediator reports the following results of the mediation held on 11/12/2014 (m/d/yyyy):

The following issues mediated and are settled or contested as indicated below:

ISSUE

SEE ATTACHED

SETTLED

SEE ATTACHED

CONTESTED

SEE ATTACHED

Per agreement of the Parties the matter is to be:

- ☐ Rescheduled pursuant to Reg. 67-1804 C. on _____.
- ☐ Set for hearing to determine all issues.
- ☒ Set for hearing to determine remaining issues pursuant to the Forms 58.
- ☐ Returned to General Files pending request for hearing from either Party.

The ☐ Claimant ☐ Defendants shall submit the Final Agreement & Release, Consent Order, Form 16A, or other appropriate documentation regarding the agreement to the Commission.

The costs of the mediation is: \$ 1,784.38.

The cost was shared equally by the Parties.

The total cost was paid by the ☐ Claimant ☐ Defense.

The cost was paid pursuant to an Order of the Commission pursuant to Reg. 67-1807.

Mediator: AMY COFIELD, ESQ. Address: 809 SOUTH LAKE DRIVE, LEXINGTON, SOUTH CAROLINA 29072

Phone: 803-951-0389 Email: amy@cofieldlaw.com

This report is to be returned to the Commission in all cases, whatever the mediation results. This form is used solely for tracking purposes and does not become a part of the Commission file.

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or mediation@wcc.sc.gov. Refer to Regulation 67-1801.

WCC FORM # 70
Created 7/13

70

MEDIATOR REPORT

STATE OF SOUTH CAROLINA)
)
LEXINGTON COUNTY)

MEDIATION AGREEMENT

WCC# 9922954 and #0024408

Theodore Polansk,)
)
Claimant)
)
vs.)
)
SC Attorney General's Office,)
)
Employer.)
)
SC State Accident Fund,)
)
Carrier.)

On November 12, 2014, the parties and their attorneys mediated this action with Amy V. Cofield serving as a mediator.

After considerable work and discussions the following is agreed:

1. Claimant is Permanently and Totally disabled.
2. The issue as to the compensability of the alleged brain injury remains in dispute.
3. Carrier will provide lifetime medical care for all currently accepted medical conditions for which the State Accident Fund is currently paying under the care of the following authorized treating physicians and such other medical providers as these physicians deem necessary to treat the authorized conditions:
 - a. Dr. Forsthoefel
 - b. Dr. Jonet
 - c. Dr. Riber
 - d. Dr. Beasley

3. If any of the named authorized physicians shall become unable to treat the claimant, then the parties will select a mutually agreeable qualified replacement. If no agreement is reached then the new treating physician will be determined by order of the Commission. In either event, consideration will be given to the recommendation of the current treating physician.

I Consent:



Preston McDaniel
Attorney for the Claimant

I Consent:



Peter Leventis
Attorney for Carrier/Employer

November 12, 2014

Lexington, South Carolina

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

February 19, 2015

VIA eCASE UPLOAD

Commissioner Susan S. Barden
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Ted Polansky vs. SC Attorney General's Office
WCC File Nos.: 9922954 & 0024408

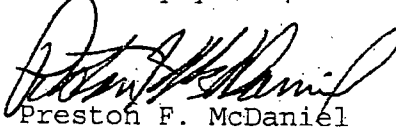
Dear Commissioner Barden:

Please find enclosed a copy of the Claimant's Pre-Hearing Brief in the above referenced matter. By copy of this letter, with enclosures, we are forwarding a copy of our Pre-Hearing Brief and APA submissions to opposing counsel on this date.

I hope this is sufficient for filing this matter with the Commission. However, if additional information is needed, please feel free to contact me at your convenience.

I look forward to seeing you at the hearing and to a resolution in the best interest of all parties concerned.

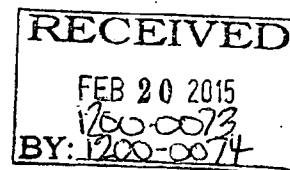
Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Peter P. Leventis, Esquire ✓





PRE-HEARING BRIEF
WCC File Nos: 9922954/0024408

Claimant's Name: Theodore Polansky Employer's Name: SC Attorney General's Office
Address: _____ Address: PO Box 11549
City: _____ State: _____ Zip: _____ City: Columbia State: SC Zip: 29211
Home Phone: () - _____ Work Phone: () - _____ Carrier: State Accident Fund
Preparer's Name: Preston F. McDaniel Preparer's Phone #: (803) 771-7211

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: See Attached. 2. AWW: See Attached. Date of Injury: 10/19/99 & 05/30/00
3. Type of injury and body part(s): Back/left knee/both legs/shoulders/RSD (reflex sympathetic dystrophy) whole person/ (primary affect left leg /back) /psychological /brain(physical brain damage)/kidneys/bladder/sexual dysfunction.
4. _____
5. Facts in controversy: See attached. (Per Mediation Agreement Mr. Polansky is agreed to be totally and permanently disabled and entitled to Lifetime Medical Care per Agreement. Brain damage not addressed nor mediated at mediation.
6. Legal issues involved: See Attached.
7. Unusual aspects: _____
8. Witnesses (designate if expert):* See Notice of Witnesses. Dr. Frank Forsthoefel, M.D.; Ms. Gale DuBose; Ted Polansky; Ms. Kim Hinkle or Other Records Custodian for Business Record Act submissions, if necessary; Ms. Mee Ling Khor-Gould.
9. Exhibits: Claimant requests that WCC File Nos. 9922954 & 0024408 be made a part of the Record. Claimant's medical records are 6 volumes (a banker's box). Only those pertinent to brain damage will be submitted. A copy of the records will be available and Claimant has no objection to an agreed upon copy being provided upon request by the Commissioner.
10. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See Notice of Written Report(s)/Physician(s).
11. Name, address, and specialty, if any, of the treating physician: See Attached.
12. Impairment rating(s); body part(s); physician and date of opinion: _____
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the _____ day of _____ 20____ by; ☒ first class postage ☐ certified mail ☐ personal service.

Signature: _____

Email: preston@pfmcdlaw.com

Date of hearing: 03-06-15

Time needed for hearing: 1-2 hours

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Revised 7/13

58

PRE-HEARING BRIEF

ATTACHMENT TO FORM 58

Ted Polansky vs. SC Attorney General's Office

WCC File Nos.: 9922954 & 0024408

1&2. Mr. Polansky's salary at the time of injury in 1999 was \$45,096.42 which results in an average weekly wage (hereinafter "AWW") of \$867.24 and a compensation rate (hereinafter "C/R") of \$578.19 and at the time of the 2000 injury his income was \$45,604.77 resulting in an AWW of \$877.01 and a C/R of \$589.70 both of which far exceeds the maximum compensation rate for the years of injury in 1999 and 2000; the maximum C/R for 1999 was \$483.47 and for 2000 was \$507.34. Due to the Claimant's average weekly wage being \$877.01 resulting in a C/R of \$589.70, in 2002 when he began receiving temporary weekly compensation the maximum compensation for 2000 of \$507.34 was applied and was applied until 500 weeks of compensation was paid in 2011.

Since a determination of the compensation rate has never been made by the Commission, Mr. Polansky would request a review and that his weekly benefits be increased to the maximum compensation rate at this time based on exceptional circumstances pursuant to SC Code §42-1-40 and the Supreme Court and Court of Appeals decisions thereunder concerning exceptional circumstances and pursuant to the intent of the provisions of §42-9-10(1) and the application of the maximum compensation rate to high wage earners to partially compensate them each year of disability because their C/R exceeds the maximum C/R payable. Since 2000, the average weekly wage in this State has increased from \$507.34 to \$766.05 or 150.99% (3/4%/yr.). If this increase is applied to Mr. Polansky's average weekly wage in 2000 of \$877.01, it results in an average weekly wage of \$1,344.47 today and a compensation rate of \$896.36.

Exceptional circumstances:

Under SC Code §42-1-40 paragraph 2, in determining the average weekly wage when for exceptional reasons the usual method of calculating an average weekly wage will result in an average weekly wage which is, "unfair" or does not properly represent the Claimant's future earning capacity, the Commission may resort to such method as will most nearly approximate the amount which the injured worker, "would be earning were it not for the injury".

Under that proviso, both our Supreme Court and Court of Appeals have increased the compensation rate as a matter of

law. In Booth v. Midland Trane Heating & Air Conditioning, 298 S.C. 251, 379 S.E.2d 730 (SC App. 1989), our Court of Appeals and in Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991) our Supreme Court applied the principle set out by the Supreme Court in Bennett v. Gary Smith Builders, 271 S.C. 94, 245 S.E.2d 129 (1978), that the claimant's loss of "probable future earning capacity" is the factor to be looked at by the Commission. In Stokes, Mr. Stokes had gone back to work but at a much less stressful job and was able to earn a lot less income. If simply a comparison was made between his income (AWW) before the accident and his income (AWW) at the time of the hearing, a C/R of much less than the maximum C/R would apply. However, the Supreme Court affirmed the Commission's Award based on the application of the maximum C/R because the future income he could make at a low-level computer programmer job versus the income he could make being a Vice President or Executive over an entire large corporate computer I.T. Department/Division would be far less, thus resulting in a tremendous loss of future earning capacity in his life and even the application of the maximum C/R would only partially compensate him for that loss. Quoting from Bennett the,

"objective of wage calculation is to arrive at a fair approximation of the Claimant's probable future earning capacity. His disability reaches into the future, not the past; his loss as a result of the injury must be thought of in terms of its impact on probable future earnings."

Following this principle in the case of Sellers v. Pinedale Residential Center, our Appellate Courts reiterated the application of this principle and in that case, a case wherein a young employee age 16 became a paraplegic as a result of the injuries entitling him to lifetime compensation benefits, the Commission and our Appellate Courts applied the principles laid down in Bennett and Booth and held that the claimant was entitled to an ever escalating compensation rate wherein the compensation rate would increase from 1992, the date of the injury, until 2002 to the maximum compensation rate applicable in 1992. Our Appellate Courts also cited in support of that proposition the decision by the Supreme Court in Stokes, supra, which again upheld an Award increasing the claimant to the maximum compensation rate which again was based on the Claimant's future loss of earning capacity. Again in

the case of Elliott v. SC Dept. of Transportation, 362 S.C. 234, 607 S.E.2d 90 (SC App. 2004) our Appellate Courts found that merit based increases in the claimant's wages should be applied prospectively into the future to determine the average weekly wage that would apply in that case. In the case of Forrest v. A.S. Price Mechanical, 373 S.C. 303, 644 S.E.2d 784 (SC App. 2007) reh. den., cert. den., the Court of Appeals held that where a gentleman normally worked year round at two (2) jobs, both a full-time and part-time job, this income justified the "prospective" increase in the average weekly wage and compensation rate going forward. Also, where a Claimant worked dual employment even only during the holiday season, exceptional reasons existed for increasing the Claimant's compensation rate prospectively. Brunson v. Wal-Mart Stores, Inc., 344 S.C. 107, 543 S.E.2d 732 (SC App. 2001). Similar reasons were found to exist in the case of Brown v. Peoplease, 402 S.C. 476, 741 S.E.2d 761 (SC App. 2013) (prior trucking job much higher income and increasing income during 6 mos. of employment).

In the case of James Williams v. Illinois Tool Works, Circuit Court Case# 2009-CP-16-00308, filed June 23, 2010, insurance carrier appeal dismissed by the Court of Appeals, the Circuit Court affirmed the application of the exceptional circumstances as a matter of law under facts identical to those in this case where the Claimant's income at the time of accident far exceeded the maximum C/R for the year of the injury where the Hearing Commissioner applied and raised the Claimant's compensation rate to the maximum C/R for the year of the hearing and for each succeeding year until the maximum C/R equaled to or exceeded the claimant's C/R to which he would have been entitled at the time of the injury.

Also in Williams, the Circuit Court and the Hearing Commissioner both noted that the language of SC Code §42-9-10(1) as to the application of the maximum C/R in any case and particularly in the case of a high wage earner is not tied to the maximum C/R based on the average weekly wage in the State for the year of the accident but is tied to the compensation payable each year to the, average weekly wage in the State for the "preceding year" thus allowing for an increasing compensation rate for high end wage earners to partially compensate them. The language of the statute applying the maximum C/R for the "preceding year" instead of for the year of the injury allows for high earners whose C/R exceeds the maximum C/R to be partially compensated

during each year of disability, just like the statute provides for increased minimum compensation for low end wage earners; \$75.00/week or if your AWW is less than \$75.00/week, your actual AWW.

For these reasons based on the facts in this case and in accordance with the law as established by our Supreme Court and the Court of Appeals, and the Circuit Court in Williams, which the Commission is to apply, the Claimant would submit that his average weekly wage and compensation rate be increased to adequately compensate him for his loss of earning capacity after the accident. Based on this, Mr. Polansky asks nothing more and nothing less than for the Commission to apply a compensation rate based on what he would have been earning at this time but for the injury.

- 4a. Only remaining issue after mediation is Mr. Polansky's entitlement to a lifetime compensation Award for physical brain damage that is severe enough to constitute a hindrance or obstacle to employment under the Supreme Court standard but which in reality is an extremely severe hindrance to employment.

Mr. Polansky after receiving treatment and evaluation for physical brain injury from 2002 to 2011, filed for an Award for lifetime benefits on 5/16/11. Commissioner Campbell ordered mediation in September 2014 which was conducted on November 12, 2014 which resulted in the agreement that:

1. Mr. Polansky is totally and permanently disabled.
2. He is entitled to lifetime medical care for all accepted medical conditions through his authorized treating physicians and providers:
 - Dr. Frank Forsthoefel;
 - Dr. Ezra Riber;
 - Dr. Jean Jonet, Ph.D.; and
 - Dr. John Beasley.

Mediation was concluded on November 14, 2014 without reaching the issue of lifetime compensation for physical brain damage.

This has always been an accepted case for which all compensation benefits and requested and causally related medical care has been authorized and paid for by the Defendants. This has included treatment for organic injury to the brain (encephalopathy) and medications to treat

organic dysfunctions such as severe headaches and memory loss.

Although the Claimant assisted with Second Injury Fund protection in 2009 and 2010, the State Accident Fund refused to agree to an award to the Claimant for physical brain damage and on May 16, 2011 filed for an Award for such. *

For the reasons factually as set forth hereinafter, Mr. Polansky is entitled to a lifetime disability benefits Award on the basis of physical brain damage resulting from the treatment necessary to treat his severe and disabling injuries stemming from the accident with weekly benefits payable from and resumed as of the date that temporary total disability of 500 weeks was paid out on March 8, 2011.

On February 21, 2002, Mr. Polansky was hospitalized due to a severe deterioration in cognitive function which was determined to be due to a drug reaction to Seroquel prescribed to treat his medical conditions (physical/functional) stemming from the accident, which reaction resulted in a chemical encephalopathy of the brain causing physical injury and damage to the brain per the opinion of the authorized treating psychiatrist Dr. Frank Forsthoefel; Dr. Ezra Riber, his treating chronic pain and RSD specialist; Dr. Avie Rainwater, an authorized clinical psychologist (who most importantly had performed neuropsychological testing on October 10th, 15th, 18th and 24th, 2001 prior to the hospitalization on February 21, 2002 and who then re-evaluated him on March 22, 2011 and who performed re-testing at that time); Dr. Nicholas Lind, Ph.D., an authorized clinical psychologist, who saw the client for psychological testing in 2008 without any records, and who re-evaluated him in 2011 with records and who after review of the records including Dr. Rainwater's reports, pre and post 2002 testing records, and the opinion and reports of Dr. Forsthoefel, and the 2002 hospital record, concurred in their opinions; and in the opinion of his authorized treating clinical psychologist since 2004, Dr. C. Jean Jonet, Ph.D.

After the 2002 admission for the drug/drug reaction, Dr. Forsthoefel in 2004 (2001-2004 and 2009 to Present) and Dr. Maturano, in 2005-2007, his authorized treating psychiatrist (2005-2009) found cognitive and other deficits unrelated /unexplained by psychological issues (i.e., physical v.

functional) and they along with the Claimant repeatedly beginning in 2004, 2005, 2006, 2007, through 2008 requested neuropsychological testing, which resulted in the inconclusive testing by Dr. Lind in 2008. Dr. Forsthoefel, his authorized treating psychiatrist who began treating in 2001 for Mr. Polansky's psychological problems who hospitalized him for his severe cognitive decline on February 21, 2002 and who continued to treat him until June 2005 (when he initially began to retire), in reports starting in 2004 noted a tremendous change in the Claimant's brain functioning after the 2002 admission and starting expressing the opinion that his cognitive problems stemmed from organic brain injury/damage. Dr. Maturano's records and reports make the same findings and conclusions.

5. IN CORRELATION WITH RESPONSES UNDER NUMBER 4:

- a. The Supreme Court and Court of Appeals have held that where the Claimant is determined to be totally and permanently disabled under the Act (by agreement in this case) and has suffered physical brain damage (severe enough to constitute a hindrance or obstacle to employment), the Claimant is entitled to weekly compensation benefits for life. Pearson v. JPS Converter, 327 S.C. 393, 489 S.E.2d 219 (S.C. App. 1997) REH. don, Cert. denied (2/5/98).

In Sparks v. Palmetto Hardwood Inc., 406 S.C. 124, 750 S.E.2d 61 (2013) and in Crisp v. Southco, Inc., 401 S.C. 627, 738 S.E.2d 835 (2013) the Supreme Court defined physical brain damage for the Commission to apply to the facts before it which requires an Award of Life Time Benefits where those facts are proved by a preponderance of the evidence:

 "We conclude, therefore, the General Assembly intended "physical brain damage" in §42-9-10C to have a meaning consonant with §42-9-400(d) of permanent physical damage to the brain." Sparks, supra 750 S.E.2d at P63-64.

"S.C. Code Ann. §42-9-400(d) (Supp. 2011), "As used in this section, 'permanent physical impairment' means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee should become unemployed." Crisp, 738 S.E.2d at 843 (Emphasis added).



"The General Assembly meant to require severe permanent impairment of normal brain function.) in order for an injured worker to be deemed physically brain damaged under §42-9-10(C)." Sparks, 750 S.E.2d at P64.

But the Supreme Court declined,

"To impose a requirement that the damage be proved through an 'objective diagnostic medium' since some indisputably physical brain damage may not be revealed by diagnostic instruments that can detect only relatively gross physical abnormalities." Sparks, 750 S.E.2d at P64.

Applying Sparks and Crisp in Baker v. Hilton Hotels 406 S.C. 395, 752 S.E.2d 279 (SC App 2013), the Commission found that the Claimant was totally and permanently disabled but that he did not sustain physical brain damage. The Commission relied on the report of a psychologist Dr. Deysach's report (not a medical doctor or medical opinion) that also included the opinion that the Claimant had sustained an injury to the head with post-concussive symptoms but no restriction as, "a result of the physical brain damage." The Court remanded the case to the Commission requiring the Commission to,

"cite specific evidence to support its determination as to whether Baker sustained physical brain damage." Baker, 752 S.E.2d at P283. (Emphasis added).

11. Frank Forsthofel, MD, Columbia, SC 29220; Ezra Riber, MD, Palmetto Pain Management, Bernardin Avenue, Columbia, SC; C. Jean Jonet, Ph.D., Columbia, SC 29201; Dr. J. Maturano, Palmetto Counseling Association, Columbia, SC 29201; Dr. Avie Rainwater, Florence, SC; Dr. Nicholas Lind, Post Trauma Resources, Columbia, SC.

Respectfully Submitted,

Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
803-771-7211
Attorney for Claimant

February 19, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-16-00308

JAMES WILLIAMS,)

Claimant/Petitioner,)

v.)

ORDER

ILLINOIS TOOL WORKS,)

Employer,)

and)

AMERICAN MANUFACTURERS MUTUAL)
INSURANCE COMPANY,)

Carrier,)

Defendants/Respondents.)

2010 JUN 23 AM 10:18
FILED
CLERK OF COURT
SOUTH CAROLINA
C/A NO. 2009-CP-16-00308

This matter came to be heard by me on March 10, 2010 on the basis of an appeal filed by the Claimant/Petitioner from the Decision of the Appellate Panel of the Workers' Compensation Commission which affirmed in part and reversed in part the Decision of the Hearing Commissioner, reversing that part of the Hearing Commissioner's Order which increased that compensation rate that is applicable in this matter as of the date of the Commissioner's Order. The Petitioner is represented by Preston F. McDaniel and S. Jahue Moore, Sr. of the Richland County and Lexington County Bars respectively; with Mr. McDaniel appearing at the hearing. The Defendants are represented by Byron P.

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Roberts of the Lexington County Bar.

The facts of this case are undisputed and the only issue before the Court is the applicable compensation rate going forward at which Mr. Williams, an admitted paraplegic, will receive benefits for the rest of his life. The Defendants conceded at the hearing before this Court that if this Court finds that S.C. Code §42-1-40 applies, that exceptional circumstances exist to increase the average weekly wage and resulting compensation rate per the Order of the Hearing Commissioner. The claimant/petitioner takes the position that exceptional circumstances paragraph of S.C. Code 42-1-40 applies to the determination of the applicable compensation rate. Further assuming arguendo that §42-1-40 does not apply, the Hearing Commissioner appropriately raised the applicable compensation rate under S.C. Code §42-9-10 pursuant to the wording and intent of that statute based on a liberal interpretation of the Act in favor of the injured worker and on a strict statutory construction of the language of the Act. Initially, the Claimant/Petitioner asks that the decision of the Commission Appellate Panel be reversed as a matter of law or in the alternative since the Panel Decision did address whether exceptional circumstances exists that this matter should at a minimum be reversed and remanded for a decision on that issue. However, based on the concession of the defendants/respondents

END OF REPLY

that exceptional circumstances do exist a remand will not be necessary if this Court finds the Appellate Panel committed errors of law.

The undisputed facts are that Mr. Williams is a high school graduate who attended three (3) years at the Citadel and then transferred to the University of South Carolina where he obtained his Bachelor of Arts degree in history. Subsequent to graduating from college, he found that he had an aptitude in electronics and engineering and returned to school and obtained two separate degrees, one being an Associate Degree in engineering from Florence-Darlington Tech. He then worked in various engineering capacities in mechanical positions prior to going to work for the employer in this matter. At the time of his employment (hiring) with his employer, Illinois Tool Works, he was given a wage chart which showed the employees in his job capacity or position what they could expect as far as raises and promotions within the company given good work performance. Every year at the time of his evaluations he was given satisfactory performance ratings and every year he in fact received the salary increases and promotions that were set out in that chart up until the time of his injury. At the time of his injury in 1998, Mr. Williams was making an annual salary of \$64,735.32, which results in an average weekly wage of \$1,244.91 with a resulting compensation rate of \$629.98.

END OF REVENUE

Under S.C. Code §42-9-10, the maximum compensation rate at which a claimant may be paid at any given time is the average weekly wage in the State for that fiscal year. In 1998 the average weekly wage in the state was 465.18 and Mr. Williams began receiving temporary total disability benefits at that time at that rate. Based on his actual salary and the resulting compensation rate of \$829.98 to which he would be entitled but for the statutory limitation, his compensation rate would have been 180% of the average weekly wage in South Carolina at that time or 80% higher than the average weekly wage in the State. His salary at the time of injury was almost 3 times the average weekly wage in the State for 1998. Since 1998, according to the Commission Website, the average weekly wage in the state itself has risen in South Carolina by 142% so that the maximum compensation rate for fiscal year 2008 was \$661.29. If Mr. Williams had a similar corresponding increase in his salary to that of the average weekly wage in the state, his income would have gone from \$1,178.57 per week to \$1,767.77.

Mr. Williams asked the Hearing Commissioner at the hearing before him to find under S.C. Code §42-1-40 and S.C. Code §42-9-10 and our Appellate Court decision that exceptional circumstances existed to increase the compensation rate to the maximum allowable compensation rate for fiscal year 2008 and then that compensation be paid at the maximum compensation rate

for each succeeding year until such time as the maximum compensation rate based on the average weekly wage in the State in any given fiscal year met or exceeded the compensate rate to which Mr. Williams would have been entitled based on his wages in 1998 which would be \$829.98. While the Defendants/Respondents argued on appeal to the Full Commission that S.C. Code §42-1-40 should not apply because it applies only to the determination of the average weekly wage and not to the resulting compensation rate, I do not see in the Record where this argument was made to the Hearing Commissioner.

Based on a review of the Record, the Briefs, and the arguments of the parties in addition to whether or not the exceptional circumstances section of S.C. Code §42-1-40 applies to this case, I see that the other issue which is important to the decision of this Court on appeal that being the wording and the applicability of the average weekly wage and compensation rate at which a claimant is paid under S.C. Code §42-9-10 was discussed and addressed by the Hearing Commissioner. Based on a review of that discussion and the Hearing Commissioner's Order, it is clear that the Hearing Commissioner based his decision to grant the increase in the average weekly wage and compensation rate at which Mr. Williams would be paid based on both a finding of exceptional circumstances under S.C. Code §42-1-40 and on the wording of S.C. Code §42-9-10.

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On appeal, the Full Commission reversed the Decision by the Hearing Commissioner and held that the Claimant was only entitled to the maximum compensation rate of \$465.18, which is the maximum compensation rate allowable in 1998, the year in which the accident occurred. While the Hearing Commissioner's Decision contains detailed Findings of Fact and Conclusions of Law including an extensive review of the law established by our Appellate Courts on the issue of the average weekly wage and applicable compensation rate, there is only one Finding of Fact in the Full Commission Order that addresses the issue, that Finding of Fact which is basically a Conclusion reads as follows:

7. "The exceptional circumstances do not apply in this case as that applies to the average weekly wage and not to the compensation rate at which the Claimant would be paid. See S.C. Code §42-1-40 and §42-9-10."

There is no analysis by the Full Commission as to whether or not under the undisputed facts, exceptional circumstances existed for an increase in the compensation rate. The Full Commission simply found that the exceptional circumstances section in S.C. Code §42-1-40 did not apply and then restated that position in its Order as a conclusion of law and then in the "Award" section of the Order.

Based on a review of the Record, the Briefs, and arguments of the parties, and the applicable Statutory and Appellate Court law, I find that the appellate panel decision is controlled by an error.

JUDGMENT OF THE COURT

of law and should be and hereby is reversed. S.C. Code §42-9-10, Subsection (A), which is the pertinent part of the Statute to this appeal, reads in pertinent part that:

"When the incapacity for work resulting from an injury is total, the employer shall pay or cause to be paid, as provided in this Chapter, to the injured employee during the total disability a weekly compensation equal to 66 2/3rds percent of his average weekly wages but not less than \$75.00 per week so long as this amount does not exceed his average weekly salary; If this amount does exceed his average weekly salary, the injured worker may not be paid each week less than his average weekly salary. The injured worker may not be paid more each week than the average weekly wage in the State for the preceding fiscal year." (Emp. add.)

First, the Statute clearly states that an injured worker is to be paid 2/3rd of "his average weekly wages". The meaning of his, "average weekly wages," that applies in any given case is defined under S.C. Code §42-1-40. From a reading of S.C. Code §42-9-10, there is no question that the Statute contemplates that the Claimant is to be paid a "weekly compensation," based on 2/3rds of his, "average weekly wages" the, "weekly compensation" to be paid to an injured worker is commonly referred to as the compensation rate which, again is determined based on the, "average weekly wages," of the worker which is defined in S.C. Code §42-1-40. Therefore S.C. Code §42-9-10 has to be read in conjunction with and consideration of S.C. Code §42-1-40 in determining the average weekly wage and resulting

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compensation rate at which the Claimant will be paid. "Statutes dealing with the same subject matter are in pari materia and must be construed together, if possible to produce a single homogenous result." Howell v. United States Fidelity and Guar. Ins. Co., 370 S.C. 505, 636 S.E.2d 626 (2000). "Sections which are part of the same general statutory law of the state should be construed together and each given effect if it can be done by any reasonable construction." Glover by Cauthen v. Suitt Construction Co., 318 S.C. 465, 458 S.E.2d 535 (1995).

S.C. Code §42-1-40 under Paragraph 1 sets forth the usual and ordinary method for determining average weekly wage but Paragraph 2 provides that where, "exceptional reasons," exist, the Commission may resort to such other method of determining the average weekly wage, "as will most nearly approximate the amount which the injured employee would be earning were it not for the injury." (Emp. add.). Thus, it is clear from a reading of §42-1-40, Paragraph 2 that the purpose of the exceptional reasons section of the average weekly wage statute is to project into the future, the average weekly wages that the Claimant would be making but for the injury.

Our Appellate Courts have repeatedly used Paragraph #2 of S.C. Code §42-1-40 to determine a different average weekly wage for an injured worker going into the future that the worker would be making but for the injury, which in turn determines the

compensation rate at which the claimant will be paid. After determining the applicable average weekly wage, the Courts then refer to S.C. Code §42-9-10 to determine the compensation rate at which the claimant will be paid based on that future average weekly wage. Sellers v. Pinedale Residential Center, 350 S.C. 183, 564 S.E.2d 694 (S.C. App. 2002); Elliott v. S.C. Dept. of Transportation, 362 S.C. 234, 607 S.E.2d 90 (S.C. App. 2004); Forrest v. A.S. Price Mechanical, 373 S.C. 303, 644 S.E.2d 784 (S.C. App. 2007), reh. den., cert. den. Therefore, the Decision of the Appellate Panel which is based upon the legal conclusion that the, "exceptional circumstances" section of S.C. Code §42-1-40 applies only to the calculation of the average weekly wage and not to the calculation of the compensation rate, constitutes an error of law and is reversed on that basis. The Defendants having conceded that exceptional circumstances exist for the raising of the average weekly wage and compensation rate, under §42-1-40 and the decision on that issue being reversed as constituting an error of law, this matter is simply reversed and not remanded not the Commission.

Further, the Hearing Commissioner also based his ruling on the wording of S.C. Code §42-9-10. Mr. Williams before the Hearing Commissioner argued and the Hearing Commissioner in his Decision reasoned that under the language of S.C. Code §42-9-10 since the only limitation as to the maximum limit on the weekly

compensation that a claimant may receive is that the claimant may not receive more than, "the average weekly wage in the state for the preceding fiscal year" and since it does not include language further limiting that maximum compensation payment to the, "average weekly wage in the state for the preceding fiscal year in which the accident occurred, legislature did not intend nor does the statute provide for that limitation. Based on a review of the statute by this Court, and the parties agree, there is no wording in the Statute to the effect that the payment of the maximum compensation that is payable which is based on a preceding fiscal year is in anyway limited under the wording to the year in which the accident occurred. Several general statutory and construction concepts and several cases specifically deciding issues in reference to the wording of various statutes in the Workers' Compensation Act are instructive to this Court in reference to the decision as a matter of law as to whether or not a claimant is limited to the maximum compensation rate for the fiscal year in which the injury occurred or is limited only to the payment in any given year to the average weekly wage in the state for the, "preceding fiscal year". The general construction principle is applied by the Courts since its inception is that the Workers' Compensation Act and the provisions of the Act shall be liberally construed in favor of benefits to the injured worker with any reasonable

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doubt as to the construction of the Act to be resolved in favor of the injured worker with its provisions reconciled if possible and its general purposes effectuated to provide benefits to injured workers and their families. Whenever the Commission does not, "liberally" construe the Act but instead, "literally" construes the Act, it is the duty of the Courts to reverse that decision. Hamm v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940). Another statutory construction principle that applies to the construction and the interpretation of the provisions of the Act is that since the Workers' Compensation Act provides an exclusive compensatory system for work-related injuries that is in derogation of the common law rights of the injured worker, the Courts must strictly construe the language of such statutes leaving it to the Legislature to amend and define any ambiguities. Wallace v. Campbell Limestone Co., 198 S.C. 196, 17 S.E.2d 309 (1941); Cox v. BellSouth Communications, 356 S.C. 468, 589 S.E.2d 766 (S.C. App. 2003) reh. den., cert. den.

There are two cases concerning whether language either is or is not contained within a section of the Act and affect that either language being or not being in the Act has on the workers' right to benefits, that are instructive to this Court as to the failure of the Legislature to include words limiting the maximum compensation rate to the average weekly wage for the preceding fiscal year just to the year in which the accident

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occurred. In the case of Cox v. BellSouth Communications,
supra, Ms. Virginia Cox had suffered physical brain damage as a
result of having been struck by an unknown assailant with an
automobile while performing her job duties. Ms. Cox requested
a, "partial" lump sum payment in order to purchase a home. The
Hearing Commissioner granted the application but on appeal the
Appellate Panel found that although she had valid reasons under
§42-9-10 for requesting a lump sum, she was not entitled to a
lump sum payment because the Statute specifically provided that
she could not receive a, "total" lump sum payment of her
lifetime weekly benefits and therefore although they were sorry,
reversed the Decision. In reversing that Decision and
determining that claimants and Ms. Cox are entitled to a,
"partial" lump sum payment, the Court applied the general
statutory construction principles to the language of the statute
including the general principle that all rules of statutory
construction are subservient to the one that the Legislative
intent must prevail if it can reasonably be discovered from the
language that is used and that the language of a statute must be
construed in the light of the intended purpose of the statute.
Also, the Court applied the statutory interpretation principle
that the wording of a statute must be given its plain and
ordinary meaning without resorting to a subtle or forced
construction to limit or expand the statute's operation. The

language must also be read in a sense, which allows it to be harmonized with its subject matter and in accordance with its general purpose. The Court then cited the general black letter law set out above of a liberal construction in the Act in favor of benefits to the injured worker and also a strict construction of the language of the Act and held that,

"Sections 42-9-10 governs payment of compensation for total disability. It provides, in pertinent part: 'not withstanding the provisions of §42-9-301, no total lump sum payment may be ordered by the Commission in any case under this section wherein the injured person is entitled to lifetime benefits.' (Emp. add.)."

The Court then held that since the Legislature chose not to include the word "partial" but only the word, "total" in referending the ability of a claimant to get a lump sum payment that partial lump sum payments were not excluded by the specific language of the statute. Therefore, our Appellate Courts in that case clearly held that if the Legislature does not insert language, the Courts would not insert that language. The case of Ellison v. Frigidaire, 371 S.C. 159, 638 S.E.2d 664 (2006) reh. den., interpreting S.C. Code §42-9-400 concerned the meaning of statutory language, "pre-existing impairment" as to whether or not the, "pre-existing impairment" was limited to pre-existing impairment to one of the body parts involved in the work-related subsequent injury or if it meant instead any impairment whatsoever such as a totally unrelated condition.

Under the statute, if that pre-existing condition combined with the effects of the injury to result in disability, the resulting disability was compensable. After citing to the black letter law principles of a liberal construction in favor of benefits to the injured worker and that since the Workers' Compensation Act is in derogation of the common law that its wording must be strictly construed, the Court held that the Legislature by not putting in language limiting the pre-existing impairment to one of the organs, members or bodily part directly or indirectly injured in the work-related accident but instead used language leaving it open to any pre-existing impairment that combined with the effects of the injury the Legislature was presumed not to do a futile thing and that it meant to accomplish something and therefore Mr. Ellison who had pre-existing unrelated conditions of hypertension, sleep apnea, prostate cancer, diabetes and congestive cardiac disease and whose only injury from the accident was a 20% impairment to his leg was entitled to benefits for the combined effects of these unrelated pre-existing conditions under the wording of the statute which combines with the injury to render him totally disabled.

Therefore in Cox, supra, citing to Glover by Cauthen v. Suitt Construction Co., supra, to the same effect, the Court would not add language that was not placed into the statute by the legislature and in Ellison would not imply a limitation on the

language but applied it in its broadest sense, thus minimizing the limitation on benefits to the injured worker.

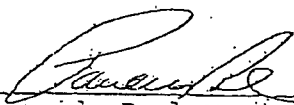
Based on this review of the law and the application of general statutory construction principles and the specific statutory constructions that our Courts have applied, the General Assembly should be left to clear up any ambiguity that exists in the statute if the General Assembly meant to limit the maximum compensation rate payable to the year of the injury. The way the statute is currently written, there is no limitation nor is there any reference to nor connection with the maximum benefits to which a claimant is entitled being paid only at the rate of the average weekly wage for the fiscal year in which his injury occurred. The limitation of limiting the benefits to only the year in which the injury occurred or words to that effect are simply not in the statute. Therefore applying the general rules of statutory construction, the Commission Panel erred as a matter of law by not affording the Claimant benefits at the rate of the average weekly wages for the preceding year for each year in which the Claimant receives benefits from the date of the Order forward until the maximum rate reaches his compensation rate for 1998, per the Hearing Commissioner's Order. The Claimant has not appealed as to whether or not the Commission erred by not providing that he should be paid the maximum compensation rate from hence forth for the average

weekly wage in the State for each preceding fiscal year and therefore the Hearing Commissioner's decision on the maximum compensation rate payable to Mr. Williams is the law of the case. Since the Commission set the compensation rate based on a literal interpretation of the statute and also added the words or meaning to the language of the statute that Mr. Williams is limited to the average weekly wage in the state for the preceding year for the year in which the accident occurred, the Decision of the Full Commission is based on an error of law and the Decision is reversed on that basis also. Wherefore, based on this decision

THEREFORE, IT IS ORDERED that the Decision of the Appellate Panel of the South Carolina Workers' Compensation Commission which is effected by multiple errors of law, and specifically by failing to apply the dictates of S.C. Code §42-1-40 and in its interpretation of the language of S.C. Code §42-9-10, be and hereby is REVERSED. IT IS FURTHER ORDERED that since it is conceded that exceptional reasons exist for granting Mr. Williams the benefits pursuant to the Award made by the Hearing Commissioner, the Decision of the Hearing Commissioner which constitutes an appropriate application of the law be and hereby is reinstated. The Claimant is granted benefits to be paid from the date of the Order of the Hearing Commissioner forward at the maximum rate constituting the average weekly wage for the

preceding fiscal year beginning at the rate of \$661.29, that being the maximum compensation rate for 2008 and to be paid for each year thereafter based on the average weekly wage in the State for that year until such time as the average weekly wage meets or exceeds the rate of \$829.98. Thereafter, compensation shall be paid at the rate of \$829.98 for the remainder of the Claimant's life pursuant to the Order of the Commission.

AND IT IS SO ORDERED.


Honorable Paul M. Burch
CIRCUIT COURT JUDGE,
Fourth Judicial Circuit

June 17th, 2010

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SUGGS
CLERK OF COURT
4th JUDICIAL CIRCUIT, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Theodore Polansky,)

Employee Claimant,)

v.)

South Carolina Office of)

Attorney General,)

as Employer, and)

South Carolina State)

Accident Fund,)

as Carrier,)

Defendants.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File Nos: 9922954 & 0024408

HEARING DATE: 3-6-15

NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT, THEODORE POLANSKY

TO: PETER P. LEVENTIS, ESQUIRE, ATTORNEY FOR THE EMPLOYER
/CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Claimant, Theodore Polansky,
pursuant to the provisions of the South Carolina Workers'
Compensation Act and South Carolina Code Section 1 23 330 (1976,
as amended), herewith submits the following reports/physician or
other evidence on behalf of the Claimant, to wit:

Tab No.	NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE No.
1	Frank Forsthoefel, M.D. - Reports	07/29/04-07/31/14	1-11
2	Ezra B. Riber, M.D. - Reports	06/30/11-06/30/14	12-14
3	C. Jean Jonet, Ph.D. - Reports	05/22/12-07/31/14	15-19
4	Avie Rainwater, Ph.D.	10/10/01-07/24/14	20-30
5	Nicholas Lind, Ph.D.	09/20/07-05/21/12	31-41
6	Frank Forsthoefel, M.D. Authorized treating psychiatrist Treating Records	01/17/02-02/12/15	42-181
7	Ezra B. Riber, M.D. Authorized treating chronic pain specialist - Treatment Records	06/18/01-	182-340

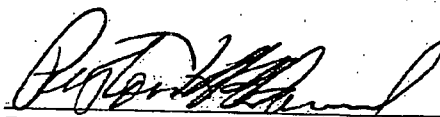
8	C. Jean Jonet, Ph.D. Authorized treating psychologist Treatment Records	09/02/04-02/02/15	341-607
9	Jo A. Marturano, M.D.	03/22/05-09/28/09	608-664
10	Kevin Krebs, M.D.	08/17/04-07/15/05	665-668
11	Palmetto Baptist Hospital	02/21/02	669-671
12	Bowman-Grey Medical Center Wake Forest University Gary G. Poehling, M.D.- RSD Specialist Prof. & Chair Dept. of Orthopaedics Jeffrey Feldman, Ph.D.	01/11/01-11/13/00	672-676
13	2001 Social Security and State Retirement Awards		677-679
14	SCWCC Form 20s 1999 and 2000		680
15	Mediation Agreement	11/12/14	681-682
16	Correspondence regarding brain injury - evaluation/treatment	07/27/04-05/14/09	683-700
17	Sealed records - only submitted for rebuttal		706-711

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: The Claimant; Ms. Gale Dubose; Dr. Frank Forsthoefel; Ms. Mee Ling Khor-Gould; any witness listed, named or called by the Defendants; and other lay witnesses to be named.

Respectfully submitted,



Preston F. McDaniel, Esquire

MCDANIEL LAW FIRM

1315 Elmwood Avenue

Columbia, SC 29201

803-771-7211

Attorney for the Claimant

February 19, 2015

CERTIFICATE OF SERVICE

Ted Polansky v. SC Attorney General's Office

WCC File Nos. 9922954 & 0024408

I HEREBY CERTIFY that on this date:

I mailed a copy of the Pre-Hearing Brief and Notice of
Witnesses only to:

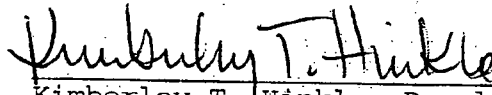
VIA eCASE

Commissioner Susan S. Barden
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

And I mailed a copy of the Claimant's Pre-Hearing Brief,
Notice of Witnesses and Written Reports(s)/ Physician or other
Evidence, and APA Submissions with enclosures to:

HAND DELIVERED

Peter P. Leventis, IV, Esquire
McKay, Cauthen, Settana & Stubley
1303 Blanding Street
Columbia, SC 29201



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this

17th day of February, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: 12/28/18

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

February 27, 2015

Via eCase Upload

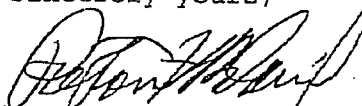
Commissioner Susan S. Barden
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Ted Polansky vs. SC Attorney General's Office
WCC File Nos.: 9922954 & 0024408

Dear Commissioner Barden:

Please find attached our Supplemental Notice of Witnesses and Written Reports simply adding the latest treatment records from the authorized chronic pain medicine specialist for Mr. Polansky which we have just received although we had requested those some time ago. By copy of this letter, I am notifying Mr. Leventis of this submission. I look forward to seeing you at the hearing.

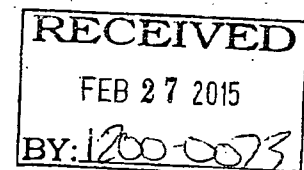
Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Peter P. Leventis, Esquire



1200-0074

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	WORKERS' COMPENSATION COMMISSION
COUNTY OF RICHLAND)	WCC File Nos: 9922954 & 0024408
Theodore Polansky,)	HEARING DATE: 3-6-15
)	
Employee Claimant,)	<u>SUPPLEMENTAL</u>
)	NOTICE OF WITNESSES AND
v.)	WRITTEN REPORT(S)/PHYSICIAN
)	OR OTHER EVIDENCE TO BE
South Carolina Office of)	INTRODUCED ON BEHALF OF
Attorney General,)	CLAIMANT, THEODORE POLANSKY
)	
as Employer, and)	
)	
South Carolina State)	
Accident Fund,)	
)	
as Carrier,)	
Defendants.)	

TO: PETER P. LEVENTIS, ESQUIRE, ATTORNEY FOR THE EMPLOYER
/CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Claimant, Theodore Polansky, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1 23 330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Claimant, to wit:

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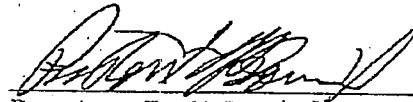
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16	Correspondence regarding brain injury - evaluation/treatment	07/27/04-05/14/09	683-700
17	Sealed records - only submitted for rebuttal		706-711

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: The Claimant; Ms. Gale Dubose; Dr. Frank Forsthoefel; Ms. Mee Ling Khor-Ghould; any witness listed, named or called by the Defendants; and other lay witnesses to be named.

Respectfully submitted,



Preston F. McDaniel, Esquire

MCDANIEL LAW FIRM

1315 Elmwood Avenue

Columbia, SC 29201

803-771-7211

Attorney for the Claimant

February 27, 2015

CERTIFICATE OF SERVICE

Ted Polansky v. SC Attorney General's Office

WCC File Nos. 9922954 & 0024408

I HEREBY CERTIFY that on this date:

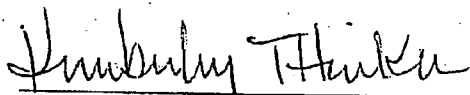
I emailed a copy of the Supplemental Notice of Witnesses to:

VIA eCASE

Commissioner Susan S. Barden
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

VIA EMAIL - pleventis@mckayfirm.com

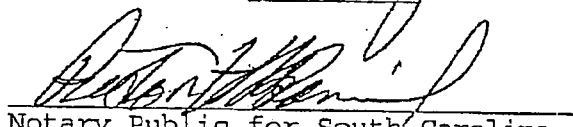
Peter P. Leventis, IV, Esquire
McKay, Cauthen, Settana & Stublely
1303 Blanding Street
Columbia, SC 29201



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this

27th day of February, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 10/28/18

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

February 27, 2015

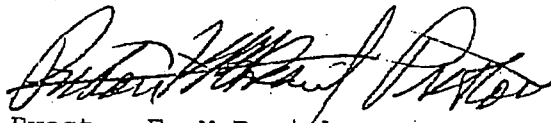
VIA EMAIL ONLY - pleventis@mckayfirm.com
Peter P. Leventis, IV, Esquire
McKay Law Firm
1303 Blanding Street
Columbia, SC 29201

RE: Ted Polansky vs. SC Attorney General's Office
WCC File Nos.: 9922954 & 0024408

Dear Pete:

Please find attached the latest treatment notes on Ted Polansky from Dr. Riber. We had requested these previously but they just came in and I am sure you have no objection to adding these as they are simply the treatment notes from the authorized treating pain management specialist. If you have any objection, please let me know. I am forwarding another letter to the Commissioner noting that we are adding these to the Notice of Witnesses and Written Reports for submission at the time of the hearing.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

Palmetto Pain Management

1655 Bernhardt Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Whitney Suggs, PA

Encounter Date: Feb 10, 2015

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-VOL

Referred By: Edger Deschamps

Vital Signs:

Weight: 189 lbs
Height: 5' 10"
BMI: 27.12
BSA: 2.06
Temperature: 99.4 F (Oral)
BP: 131/78 (Right Arm) (Sitting)
Pulse: 87 (Right brachial) (Sitting)
Respiration: 14
Oxygen: 99 (Room air)

Current Medications:

1. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
2. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
3. Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
4. Topamax 100 Mg Tablet SIG: Take 1 twice daily
5. Topamax 50 Mg Tablet SIG: Take 1 twice daily
6. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily (DISPENSE AS WRITTEN)
7. Teracn Lotion 0.025-25-10 % SIG: apply to affected area up to four times daily
8. Teracn Patch 4-4 % SIG: Apply to affected area every 12 hours
9. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
10. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
11. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
12. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
13. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
14. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
15. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
16. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
17. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
18. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
19. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
20. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
21. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
22. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
23. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines.

Patient: Polansky, Theodore P. DOB: 04/07/1957 Visit: 02/10/2015 Page: 1

p. 340A

- 24 Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
25 Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
26 Oxycodone HCl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
27 Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
28 Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Prescription:

- 1 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
2 Topamax 50 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
3 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00
4 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily (DISPENSE AS WRITTEN) QTY: 180.00

Palmetto Pain Management

1655 Bernardin Avenue Suite 240
Columbia SC 292042039
Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit

Provider: Jennifer Stanislaus, MD
Encounter Date: Jan 23, 2015

Patient: Polansky, Theodore P (0465001)
Sex: Male DOB: Apr 07, 1957 Age: 57 year
Race: White
Address:
Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Vital Signs:
Weight: 182 lbs
Height: 5' 10"
BMI: 26.11
BSA: 2.02
Temperature: 97.0 F
BP: 111/69
Pulse: 107
Respiration: 16
Oxygen: 97

Current Medication:

- 1 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 2 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
- 3 Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
- 4 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 5 Topamax 50 Mg Tablet SIG: Take 1 twice daily
- 6 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily (DISPENSE AS WRITTEN)
- 7 Terocin Lotion 0.025-25-10 % SIG: apply to affected area up to four times daily
- 8 Terocin Patch 4-4 % SIG: Apply to affected area every 12 hours
- 9 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 10 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 11 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 12 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 13 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 14 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 15 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 16 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 17 Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
- 18 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 19 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 20 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 21 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 22 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
- 23 Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
- 24 Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
- 25 Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
- 26 Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 01/23/2015 Page: 1

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27 Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
28 Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note

Provider: Ezra B Riber, MD

Encounter Date: Jan 14, 2015

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:
my headaches are back.**HPI:**

Mr. Polansky is a 57-year-old gentleman with chronic recurrent migraine headaches. We have administered sphenopalatine ganglion blocks in the past with good results, most recently 4 months ago in September of last year. He is here today for repeat treatment. Following review of the procedure including the risks and benefits and alternative treatment options he was agreeable to proceed and consent given.

Vital Signs:

Weight:	185 lbs
Height:	5' 10"
BMI:	26.54
BSA:	2.03
Temperature:	98.3 F
BP:	118/74
Pulse:	100
Respiration:	18
Oxygen:	95

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
2 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 01/14/2015 Page: 1

pain:

3. Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
4. Topamax 100 Mg Tablet SIG: Take 1 twice daily
5. Topamax 50 Mg Tablet SIG: Take 1 twice daily
6. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily (DISPENSE AS WRITTEN)
7. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
8. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
9. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
10. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
11. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
12. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
13. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
14. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
15. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
16. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
17. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
18. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
19. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
20. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
21. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
22. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
23. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
24. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
25. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
26. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Procedures:

Following discussion and consent the patient was taken to the fluoroscopy suite, placed supine with the neck slightly extended and monitors attached. The cervical spine was supported comfortably with a cushion. The fluoroscopy unit provided a lateral view of the nasal bone and turbinates. The nares were anesthetized bilaterally with cotton swabs soaked with 2% lidocaine and 2% lidocaine jelly. With fluoroscopic guidance, the sphenocath was introduced initially into the right nares and guided to a point just below the floor of the frontal sinus. The inner catheter was deployed and positioned posteriorly. 0.5 mL of Isovue 240 was administered, with flow of contrast confirmed along the middle turbinate to the pterygopalatine fossa. Maintaining the position of the sphenocath, the injectate was administered which included 2.5 mL of 4% Lidocaine, Betamethasone 2 mg and Saraph 0.25 mL. The above was first performed on the right side; then repeated in the same fashion on the left side. Patient tolerated the bilateral procedures well, remained supine with the cervical spine slightly extended for 10 minutes and then monitored in a post treatment room for an additional 15 minutes prior to discharge in stable condition.

Diagnosis/Decision Making:

784.0	Headache
346.01	MGRN W AURA W NTRC MGRN
338.4	Chronic Pain Syndrome
724.4	Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
V58.69	Long-Term (Current) use of other Medications
724.2	Lumbago
337.22	Reflex Sympathetic Dystrophy of Lower Limb
719.49	Pain In Joint of Multiple Sites

Treatment Plan (R):

- If there is noticeable but incomplete relief following today's treatment it can be repeated no sooner than 2 weeks.
- If there is very good quality relief once again we can just see patient back as needed.
- We will follow up in 5-7 days to assess the improvement if any.
- Continue with current medications.
- No adjustments recommended today.
- Call between appointments with questions or concerns.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 01/14/2015 Page: 2

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More than 50% of the time spent with the patient today was devoted to counseling and coordination of care.

Prescription:

1. Terocin Lotion 0.025-25-10 % SIG: apply to affected area up to four times daily QTY: 1.00
2. Terocin Patch 4-4 % SIG: Apply to affected area every 12 hours QTY: 1.00

Followup:

One month or sooner if needed. Patient to call with any questions or concerns

This visit note has been electronically signed off by Ezra B Riber, MD.

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Whitney Suggs, PA

Encounter Date: Jan 05, 2015

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 Year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:
headaches.**HPI:**

Theodore Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work-related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with both interventional therapy including a SCS and medical management.

Patient is here for routine follow-up and medication refill. His pain is listed as a 6 out of 10 on the pain scale. The patient has the new complaint today of right knee pain. He states it is sharp and "knifelike" pointing to the medial aspect below his knee. Patient denies new or specific injury to the knee. He denies any buckling or giving way.

Patient continues to have upper extremity shoulder and neck discomfort as well as thoracic and low back pain. Overall, he feels he is doing well this current medication regimen.

Vital Signs:

Weight: 183 lbs

Height: 5' 10"

BMI: 26.25

BSA: 2.02

Temperature: 97.9 F (Oral)

BP: 126/81 (Right Arm) (Sitting)

Pulse: 87 (Right brachial) (Sitting)

Respiration: 16

Oxygen: 99 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.

Eye: Negative except as documented in history of present illness.

Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 01/05/2015 Page: 1

p. 340 R

Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
2. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
3. Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
4. Topamax 100 Mg Tablet SIG: Take 1 twice daily
5. Topamax 50 Mg Tablet SIG: Take 1 twice daily
6. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily (DISPENSE AS WRITTEN)
7. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
8. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
9. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
10. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
11. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
12. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
13. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
14. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
15. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
16. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
17. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
18. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
19. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
20. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
21. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
22. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
23. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
24. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
25. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
26. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD:**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Compliance:

Discrepancies were not noted to be present.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 01/05/2015 Page: 2

p. 3402

Urine Toxicology Compliant.**Examination:**

General Appearance: The patient is a healthy, well appearing male, in no apparent distress. Patient appears stated age.

Cervical Spine: Patient has relatively full ROM with minimal pain associated with cervical spine ROM. Spurling's is negative bilaterally. Patient is NVI in the bilateral upper extremities. Grip strength is equal bilaterally. Mild tenderness over the paracervical and trapezius regions to palpation.

Lungs: clear; no wheezing, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Abdomen: No masses or organomegaly is noted. No tenderness to palpation.

Lumbar Spine: Patient has good ROM with mild limitations noted with minimal pain with extension of the lumbar spine. SLR is negative bilaterally. Patient is NVI in the bilateral lower extremities.

Knees: Right knee - mild effusion is present over the pes anserine bursa with moderate tenderness. No warmth or erythema is noted. Range of motion is 0° to 130°. No abduction/adduction laxity is present. Patella is tracking centrally with negative apprehension. No discomfort to palpation directly over the patella tendon.

Gait: Gait favors the right lower extremity.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Diagnosis/Decision Making:

- 719.46 Pain in Joint of Lower Leg
- 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
- 346.9 Migraine
- 724.2 Lumbago
- 338.4 Chronic Pain Syndrome
- 781.2 Abnormality of Gait
- V58.69 Long-Term (Current) use of other Medications
- 729.5 Pain in Limb
- 719.49 Pain in Joint of Multiple Sites
- 346.01 MGRN W AURA W NTRC MGRN
- 337.22 Reflex Sympathetic Dystrophy of Lower Limb
- 784.0 Headache

Treatment Plan:

Continue with above listed medications. No adjustments recommended today. Call between appointments with questions or concerns.

Patient seems to be presenting with some pes anserine bursitis of the right knee. I did recommend alternating ice and heat to the area as well. He is requesting to see Dr. Fowble at Midlands orthopedics for his knee and a referral was provided today.

Follow-up in one month, sooner if necessary.

Treatment Plan (R):

-More than 50% of the time spent with the patient today was devoted to counselling and coordination of care.

Prescription:

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily (DISPENSE AS WRITTEN) QTY: 180.00
SIG changed to match ordered dose, we
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 3 Topamax 50 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 4 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00
- 5 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily (DISPENSE AS WRITTEN) QTY: 150.00

Followup:

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 01/05/2015 Page: 3

P. 340J

4 Week(s)
or sooner if needed

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 01/05/2015 Page: 4

0.340 K

Palmetto Pain Management

1655 Bernardin Avenue Suite 240
Columbia, SC 292042039
Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B. Riber, MD
Performing: Whitney Suggs, PA

Encounter Date: Dec 05, 2014

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:
headaches.

HPI:

Theodore Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work-related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with both interventional therapy including a SCS and medical management.

Patient is here for routine follow-up and medication refill. His pain is listed as a 6 out of 10 on the pain scale today. Patient states he had recent bladder surgery 2 weeks ago for his incontinence however now he continues to have difficulty with hesitancy and retention. He is being followed by Dr. Beasley for this currently. Patient states both of his knees continues to be a problem however, we do not have copies of the patient's previous x-rays available for review today. The patient has continued neck and low back pain as well.

Vital Signs:

Weight:	183 lbs
Height:	5' 10"
BMI:	26.25
BSA:	2.02
Temperature:	98.4 F (Oral)
BP:	131/89 (Right Arm) (Sitting)
Pulse:	87 (Right brachial) (Sitting) (Regular)
Respiration:	16
Oxygen:	100 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.

Eye: Negative except as documented in history of present illness.

Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P. DOB: 04/07/1957 Visit: 12/05/2014 Page: 1

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Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

- 1 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea.
- 2 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
- 3 Phenegan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
- 4 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 5 Topamax 50 Mg Tablet SIG: Take 1 twice daily
- 6 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily (DISPENSE AS WRITTEN)
- 7 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 8 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 9 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 10 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 11 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 12 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 13 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 14 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 15 Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
- 16 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 17 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 18 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 19 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 20 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
- 21 Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
- 22 Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
- 23 Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
- 24 Oxycodone Hcl 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
- 25 Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
- 26 Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD.**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.
Patient appears stated age.

Patient: Polansky, Theodore P. DOB: 04/07/1957 Visit: 12/05/2014 Page: 2

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HEENT: Alert and Oriented X3. Speech and content are appropriate. Patient is a good historian.
Cervical Spine: Patient has relatively full ROM with minimal pain associated with cervical spine ROM. Spurling's is negative bilaterally. Patient is NVT in the bilateral upper extremities. Grip strength is equal bilaterally. Mild tenderness over the paracervical and trapezius regions to palpation.
Lungs: clear; no wheezing, rales, or rhonchi.
Heart: Regular rate and rhythm without murmur, gallops or rubs.
Abdomen: No masses or organomegaly is noted. No tenderness to palpation.
Lumbar Spine: Patient has good ROM with mild limitations noted with minimal pain with extension of the lumbar spine. SLR is negative bilaterally. Patient is NVT in the bilateral lower extremities. Non-antalgic gait in the office today.
Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.
Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Diagnosis/Decision Making:

- 337.22 Reflex Sympathetic Dystrophy of Lower Limb
- 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
- 346.9 Migraine
- 724.2 Lumbago
- 338.4 Chronic Pain Syndrome
- 781.2 Abnormality of Gait
- V58.69 Long-Term (Current) use of other Medications
- 729.5 Pain in Limb
- 719.49 Pain in Joint of Multiple Sites
- 346.01 MGRN W/AURA W/NTRC MGRN
- 784.0 Headache

Treatment Plan:

Continue with above listed medications. No adjustments recommended today. Call between appointments with questions or concerns.

Treatment Plan (R):

A urine specimen for UDT was taken today in the office for opiate compliance purposes.
More than 50% of the time spent with the patient today was devoted to counselling and coordination of care.

Prescription:

- 1 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 3 Topamax 50 Mg Tablet SIG: Take 1 twice daily QTY: 60.00

Followup:

4 Week(s)
or sooner if needed

This visit note has been electronically signed off by Whitney Suggs, PA.

Palmetto Pain Management

1555 Bernardin Avenue Suite 240

Columbia, SC 29204-2039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B. Ribet, MD

Performing: Mike Robichaud, P.A.

Encounter Date: Nov. 06, 2014**Patient:** Polansky, Theodore P. (0465001)**Sex:** Male **DOB:** Apr 07, 1957 **Age:** 57 year**Race:** White**Address:****Insurance:** STATE ACCIDENT FUND-0015**Referred By:** Edgar Deschamps**Chief Complaints:**

headaches;

- Bilateral shoulder pain and bilateral LE pain.

HPI:

Theodore Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches for which he is currently being treated for SPG block.

Mr. Polansky is in today for follow-up and medication refill. Today he describes his pain as about the same as his last visit, "good days and bad days". On 10/23/14 he had his SCS reprogrammed by Medtronic with improved coverage. He states his right knee pain is bothering him the most. Activity exacerbates his pain and rest makes it better. He denies any change in location of his pain, no new symptoms or injuries. Today he rates his pain as a 6 out of 10 on the pain scale. He denies any side effects with his current medication.

Vital Signs:**Weight:** 180 lbs**Height:** 5' 10"**BMI:** 25.82**BSA:** 2.01**Temperature:** 98.7 F (Tympanic)**BP:** 107/76 (Right Arm) (Sitting)**Pulse:** 88 (Right brachial) (Sitting) (Regular)**Respiration:** 16**Oxygen:** 98 (Room air)**Allergy:**

Quetiapine

ROS:**Constitutional:** Negative except as documented in history of present illness.**Eye:** Negative except as documented in history of present illness.**Patient:** Polansky, Theodore P. **DOB:** 04/07/1957 **Visit:** 11/06/2014 **Page:** 1

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Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
2. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
3. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
4. Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
5. Topamax 100 Mg Tablet SIG: Take 1 twice daily
6. Topamax 50 Mg Tablet SIG: Take 1 twice daily
7. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
8. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
9. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
10. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
11. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
12. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
13. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
14. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
15. Methyl B6-B12 (Other MD) SIG: Take 1 twice daily
16. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
17. Polyethylene Glycol 3350 Pwd (Other MD) SIG: As Directed
18. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
19. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
20. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
21. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
22. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
23. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
24. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
25. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
26. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD.**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 11/06/2014 Page: 2

Patient appears stated age.

HEENT: Alert and Oriented X3. Speech and content are appropriate. Patient is a good historian.

Cervical Spine: relatively full ROM with minimal pain associated with cervical spine ROM.

Spurling's negative Lhermitte's absent.

Symmetrical contour of the shoulders.

Lungs: clear; no wheezing; rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Lumbar Spine: good ROM with mild limitations noted with minimal pain with extension of the lumbar spine.

Knees: right knee tender to palpation.

no swelling or loss of range of motion noted.

Straight Leg Raise: positive right with low back pain; negative left.

Low back and lower extremity exam and complaints are unchanged.

No atrophic or dystrophic changes noted.

Gait: Gait favors the left lower extremity.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Diagnosis/Decision Making:

- 337.22 Reflex Sympathetic Dystrophy of Lower Limb
- 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
- 346.9 Migraine
- 724.2 Lumbago
- 338.4 Chronic Pain Syndrome
- 781.2 Abnormality of Gait
- V58.69 Long-Term (Current) use of other Medications
- 729.5 Pain in Limb
- 719.49 Pain in Joint of Multiple Sites
- 346.01 MGRN W AURA W NTRC MGRN
- 784.0 Headache

Treatment Plan (R):

The following medication adjustments were recommended today: Phenergan not refilled, has at home.

continue all other current medication, refilled today.

- Patient instructed on dosing and side effects.

- Call between appointments with questions or concerns.

- More than 50% of the time spent with the patient today was devoted to counseling and coordination of care.

- Follow up in 4 week.

Prescription:

1 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea QTY: 90.00

2 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00

3 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 150.00

4 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00

5 Topamax 50 Mg Tablet SIG: Take 1 twice daily QTY: 60.00

Followup:

4 Week(s)

or sooner if needed

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Mike Robichaud, P.A.

Encounter Date: Oct 23, 2014

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

headaches.

- bilateral shoulder pain and bilateral LE pain.

HPI:

Theodore Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches for which he is currently being treated for SPG block.

Mr. Polansky returns to clinic today just for SCS reprogramming with Medtronic today. Currently he rates his pain as a 6 out of 10 on the NRS. He describes no changes to in the quality or distribution of his pain.

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.

Eye: Negative except as documented in history of present illness.

Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.

Respiratory: Negative except as documented in history of present illness.

Cardiovascular: Negative except as documented in history of present illness.

Gastrointestinal: Negative except as documented in history of present illness.

Genitourinary: Negative except as documented in history of present illness.

Hematology/Lymphatics: Negative except as documented in history of present illness.

Endocrine: Negative except as documented in history of present illness.

Immunologic: Negative except as documented in history of present illness.

Musculoskeletal: Negative except as documented in history of present illness.

Integumentary: Negative except as documented in history of present illness.

Neurologic: Negative except as documented in history of present illness.

Psychiatric: Negative except as documented in history of present illness.

Current Medication:

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 10/23/2014 Page: 1

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- 1 Lomolil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 2 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
- 3 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 4 Phenegan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
- 5 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 6 Topamax 60 Mg Tablet SIG: Take 1 twice daily
- 7 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 8 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 9 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 10 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 11 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 12 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 13 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 14 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 15 Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
- 16 Nexium Br 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 17 Polyethylene Glycol 3350 Powder (Other MD) SIG: As Directed
- 18 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 19 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 20 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
- 21 Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
- 22 Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
- 23 Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
- 24 Oxycodone Hcl 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
- 25 Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
- 26 Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD.**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.
Patient appears stated age.
Cervical Spine: Patient has relatively full ROM with minimal pain associated with cervical spine ROM.
Spurling's is negative bilaterally. Patient is NVI in the bilateral upper extremities. Grip strength is equal bilaterally. Mild tenderness over the paracervical and trapezius regions to palpation.
Lungs: clear, no wheezing, rales, or rhonchi.
Heart: Regular rate and rhythm without murmur, gallops or rubs.
Abdomen: No masses or organomegaly is noted. No tenderness to palpation.
Lumbar Spine: Patient has good ROM with mild limitations noted with minimal pain with extension of the lumbar spine. SLR is negative bilaterally. Patient is NVI in the bilateral lower extremities. Antalgic gait in the office today, uses crutches.
Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.
Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 10/23/2014 Page: 2

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Diagnosis/Decision Making:

337.22 Reflex Sympathetic Dystrophy of Lower Limb
724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
346.9 Migraine
724.2 Lumbago
338.4 Chronic Pain Syndrome
781.2 Abnormality of Gait
V58.69 Long-Term (Current) use of other Medications
729.5 Pain in Limb
719.49 Pain in Joint of Multiple Sites
346.01 MGRN W AURA W NTRC-MGRN
784.0 Headache

Treatment Plan:

Hopefully the patient will get good improvement from the consecutive SPG procedures. Medications will remain as listed below. Reassessment in one month, sooner if necessary.

Treatment Plan (R):

- Spinal cord stimulator reprogramming with Medtronic today. Patient with improved coverage.
- No change to medication regimen today. If there is very good quality relief one again we can just see patient back as needed.
- Call between appointments with questions or concerns.
- More than 50% of the time spent with the patient today was devoted to counseling and coordination of care.

Followup:

4 Week(s)
or sooner if needed

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Whitney Suggs, PA

Encounter Date: Oct 06, 2014

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT

Referred By: Edgar Deschamps

Chief Complaints:
headaches.**HPI:**

Theodore Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with both interventional therapy including a SCS and medical management.

Mr. Polansky comes in today for routine follow-up and medication refill. Since his last office visit, he had an SPG completed on 9/10, 9/16 and 9/24 without any complications. Following the procedure he reports at least a 50% decrease in the duration of his headaches and a decrease in the intensity of the pain. He also is able to participate in more activities with his family after the procedures. Overall he is very pleased with the outcome.

Today he rates his pain as a 5/10 on the NRS that is in part due to pain in his right knee. The patient has had imaging of his right knee completed at NMED. He does have the actual films with him today to review but no readings. He also complains of a radiating burning sensation in bilateral upper extremities. Mr. Polansky continues to take Exalgo, Percocet, Topamax and Phenergan without any side effects. He continues to use his SCS on daily basis with noticeable effect and adequate coverage.

Vital Signs:

Weight:	182 lbs 4 oz
Height:	5' 10"
BMI:	26.15
BSA:	2.02
Temperature:	98.6 F (Oral)
BP:	137/88 (Right Arm) (Sitting)
Pulse:	81 (Right brachial) (Sitting) (Regular)
Respiration:	12
Oxygen:	99 (Room air)

Allergy:

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 10/06/2014 Page: 1

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Quetiapine**ROS:**

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

- 1 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 2 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed pri diarrhea
- 3 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
- 4 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 5 Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
- 6 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 7 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 8 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 9 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 10 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 11 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 12 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 13 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 14 Methyl B6-H12 (Other MD) SIG: Take 1 twice daily
- 15 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 16 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 17 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 18 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 19 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
- 20 Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
- 21 Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
- 22 Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
- 23 Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
- 24 Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
- 25 Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD:**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 10/06/2014 Page: 2

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Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.

Patient appears stated age.

Cervical Spine: Patient has relatively full ROM with minimal pain associated with cervical spine ROM.

Spurling's is negative bilaterally. Patient is NVI in the bilateral upper extremities. Grip strength is equal bilaterally. Mild tenderness over the paracervical and trapezius regions to palpation.

Lungs: clear; no wheezing, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Abdomen: No masses or organomegaly is noted. No tenderness to palpation.

Lumbar Spine: Patient has good ROM with mild limitations noted with minimal pain with extension of the lumbar spine. SLR is negative bilaterally. Patient is NVI in the bilateral lower extremities. Non-antalgic gait in the office today.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Diagnosis/Decision Making:

337.22 Reflex Sympathetic Dystrophy of Lower Limb
724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
346.9 Migraine
724.2 Lumbago
338.4 Chronic Pain Syndrome
781.2 Abnormality of Gait
V58.69 Long-Term (Current) Use of other Medications
729.5 Pain in Limb
719.49 Pain in Joint of Multiple Sites
346.01 MGRN W AURA W NTRC MGRN
784.0 Headache

Treatment Plan (R):

- Will Increase Topamax to 150 mg bid to assist with upper extremity radicular symptoms.
- Patient signed release to obtain studies from INMED of R knee completed in August 2014.
- No changes to other medications, he will also continue to use his SCS.

Prescription:

- 1 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 2 Topamax 50 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 3 Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea QTY: 60.00
- 4 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00
- 5 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 150.00

Changed/Discontinued Medication(s):

Discontinued: TOPAMAX 100 MG TABLET - per Dr S, increasing dosage.

Followup:

4 Week(s)
or sooner if needed

This visit note has been electronically signed off by Ezra B Riber, MD.

Palmetto Pain Management

1655 Bernard In Avenue Suite 240

Columbia SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note

Provider: Ezra B Riber, MD

Encounter Date: Sep 24, 2014

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address: 331 Regatta Road, Columbia SC 29212

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

headaches, improving with treatment.

HPI:

Mr. Polansky is a 57-year-old gentleman that we have been following since his initial visit here back in 2001 following a work related injury. In 1999, we have treated him for a number of related pain and dysfunction issues most recently chronic intractable headaches. His last treatment, a sphenopalatine ganglion block administered one week ago, and resulted in 50% residual improvement. He is here today for followup treatment in hopes of further enhancing the benefit. Following review of the procedure including the risks and benefits and discussion of alternative treatment options he was agreeable to proceed and consent given.

Vital Signs:

Weight: 180 lbs
Height: 5' 10"
BMI: 25.82
BSA: 2.01
Temperature: 98.2 F (Tympanic)
BP: 137/85 (Right Arm) (Sitting)
Pulse: 73 (Right brachial) (Sitting) (Regular)
Respiration: 12
Oxygen: 98 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/24/2014 Page: 1

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Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Topamax 100 Mg Tablet SIG: Take 1 twice daily
2. Lamotrigine Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
3. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
4. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
5. Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
8. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
9. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
10. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
11. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
12. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
13. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
14. MethyI-B6-b12 (Other MD) SIG: Take 1 twice daily
15. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
16. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
17. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
18. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
19. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
20. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
21. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
22. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
23. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
24. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
25. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.

Social History:

Marital Status: Single

Smoking/Tobacco Use: Patient has never smoked or used tobacco products.

Alcohol Use: He denies alcohol use.

He denies recreational drug use. Patient has Brown eyes.

Procedures:

Following discussion and consent the patient was taken to the fluoroscopy suite, placed supine with the neck slightly extended and monitors attached. The cervical spine was supported comfortably with a cushion. The fluoroscopy unit provided a lateral view of the nasal bone and turbinates. The nares were anesthetized bilaterally with cotton swabs soaked with 2% lidocaine and 2% lidocaine jelly. With fluoroscopic guidance, the sphenocath was introduced initially into the right nares and guided to a point just below the floor of the frontal sinus. The inner catheter was deployed and positioned posteriorly. 0.5 mLs of Isovue 240 was administered, with flow of contrast confirmed along the middle turbinate to the pterygopalatine fossa. Maintaining the position of the sphenocath, the injectate was administered which included 2.5mL of 4% lidocaine, Betamethasone 2 mg and Sarapin 0.25 mL. The above was first performed on the right side, then repeated in the same fashion on the left side. Patient tolerated the bilateral procedures well, remained supine with the cervical spine slightly extended for 10 minutes and then monitored in a post treatment room for an additional 15 minutes prior to discharge in stable condition.

Diagnosis/Decision Making:

346.01	MGRN W AURA W NTRC MGRN -
784.0	Headache
346.9	Migraine
724.4	Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/24/2014 Page: 2

338.4 Chronic Pain Syndrome
724.2 Lumbago
V58.69 Long-Term (Current) use of other Medications
337.22 Reflex Sympathetic Dystrophy of Lower Limb
719.49 Pain in Joint of Multiple Sites

Treatment Plan (R):

- If there is noticeable but incomplete relief following today's treatment it can be repeated no sooner than 2 weeks.
- If there is very good quality relief, once again we can just see patient back as needed.
- We will follow up in 5-7 days to assess the improvement if any.
- Continue with current medications.
- No adjustments recommended today.
- Call between appointments with questions or concerns.

Followup:

For medication refills or sooner if needed. Patient to call with any questions or concerns.

This visit note has been electronically signed off by Ezra B Riber, MD.

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note

Provider: Ezra B Riber, MD

Encounter Date: Sep 17, 2014

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

I still have headaches but they are better.

HPI:

Mr. Polansky is a 57-year-old gentleman here today for a repeat sphenopalatine ganglion block. He is scheduled to get 3 of these in rapid sequence the first of which was administered one week ago on 9/10/14. He reports 100% peak improvement from the pain and has some residual headaches but they are significantly better and intermittent. Following review of the treatment including the risks and benefits he was agreeable to proceed and consent given.

Vital Signs:

Weight: 183 lbs

Height: 5' 10"

BMI: 26.25

BSA: 2.02

Temperature: 99.2 F (Tympanic)

BP: 122/75 (Right Arm) (Sitting)

Pulse: 73 (Right brachial) (Sitting) (Regular)

Respiration: 12

Oxygen: 97 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.

Eye: Negative except as documented in history of present illness.

Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.

Respiratory: Negative except as documented in history of present illness.

Cardiovascular: Negative except as documented in history of present illness.

Gastrointestinal: Negative except as documented in history of present illness.

Genitourinary: Negative except as documented in history of present illness.

Hematology/Lymphatics: Negative except as documented in history of present illness.

Endocrine: Negative except as documented in history of present illness.

Immunologic: Negative except as documented in history of present illness.

Musculoskeletal: Negative except as documented in history of present illness.

Integumentary: Negative except as documented in history of present illness.

Neurologic: Negative except as documented in history of present illness.

Psychiatric: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/17/2014 Page: 1

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Current Medication:

1. Topamax 100 Mg Tablet SIG: Take 1 twice daily
2. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
3. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
4. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
5. Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
8. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
9. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
10. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
11. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
12. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
13. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
14. Methyl B6-B12 (Other MD) SIG: Take 1 twice daily
15. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
16. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
17. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
18. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
19. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
20. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
21. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
22. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
23. Oxycodone Hcl 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
24. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
25. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.

Social History:

Marital Status: Single

Smoking/Tobacco Use: Patient has never smoked or used tobacco products.

Alcohol Use: He denies alcohol use.

He denies recreational drug use. Patient has Brown eyes.

Procedures:

Following discussion and consent the patient was taken to the fluoroscopy suite, placed supine with the neck slightly extended and monitors attached. The cervical spine was supported comfortably with a cushion. The fluoroscopy unit provided a lateral view of the nasal bone and turbinates. The nares were anesthetized bilaterally with cotton swabs soaked with 2% lidocaine and 2% lidocaine jelly. With fluoroscopic guidance, the sphenocath was introduced initially into the right nares and guided to a point just below the floor of the frontal sinus. The inner catheter was deployed and positioned posteriorly. 0.5 mLs of Isovue 240 was administered, with flow of contrast confirmed along the middle turbinate to the pterygopalatine fossa. Maintaining the position of the sphenocath, 2 mLs 4% lidocaine was administered. Betamethasone 2 mg, 2.5mL of 4% Lidocaine, Ketorolac 1.5mg and Sarapin 0.25 mL was added to the injectate. The above was first performed on the right side, then repeated in the same fashion on the left side. Patient tolerated the bilateral procedures well, remained supine with the cervical spine slightly extended for 10 minutes and then monitored in a post treatment room for an additional 15 minutes prior to discharge in stable condition.

Diagnosis/Decision Making:

- 784.0 Headache
- 346.9 Migraine
- 346.01 MGRN W AURA W NTRC MGRN
- 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
- 338.4 Chronic Pain Syndrome
- 724.2 Lumbago

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/17/2014 Page: 2

V58.69 Long-Term (Current) Use of other Medications
337.22 Reflex Sympathetic Dystrophy of Lower Limb
719.49 Pain In Joint of Multiple Sites

Followup:

When medications are due next. Patient to call with any questions or concerns.

Patient: Polensky, Theodore P DOB: 04/07/1957 Visit: 09/17/2014- Page: 3

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Palmetto Pain Management

1655 Barnardin Avenue, Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note

Provider: Ezra B Riber, MD

Encounter Date: Sep 10, 2014

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:
headaches.**HPI:**

Mr. Polansky is here today for a repeat sphenopalatine ganglion block. He is a 57-year-old gentleman last treated on 5/17/14. He reports that SPG providing complete relief for almost a month before his pain began to return back towards baseline. He was scheduled for repeat treatment in hopes that this will further enhance the duration of benefit. Following review of the treatment including the risks and benefits and alternative treatment options he was agreeable to proceed and consent given.

Vital Signs:

Weight: 181 lbs
Height: 5' 10"
BMI: 25.97
BSA: 2.01
Temperature: 99.0 F (Tympanic)
BP: 126/76 (Right Arm) (Sitting)
Pulse: 78 (Right brachial) (Sitting) (Regular)
Respiration: 12
Oxygen: 98 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/10/2014 Page: 1

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Current Medication:

1. Topamax 100 Mg Tablet SIG: Take 1 twice daily
2. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
3. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
4. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
5. Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
8. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
9. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
10. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
11. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
12. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
13. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
14. Methyl B6-B12 (Other MD) SIG: Take 1 twice daily
15. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
16. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
17. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
18. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
19. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
20. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
21. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
22. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
23. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
24. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
25. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.

Procedures:

Following discussion and consent the patient was taken to the fluoroscopy suite, placed supine with the neck slightly extended and monitors attached. The cervical spine was supported comfortably with a cushion. The fluoroscopy unit provided a lateral view of the nasal bone and turbinates. The nares were anesthetized bilaterally with cotton swabs soaked with 2% lidocaine and 2% lidocaine jelly. With fluoroscopic guidance, the sphenocath was introduced initially into the right nares and guided to a point just below the floor of the frontal sinus. The inner catheter was deployed and positioned posteriorly. 0.5 mL's of Isovuc 240 was administered, with flow of contrast confirmed along the middle turbinate to the pterygopalatine fossa. Maintaining the position of the sphenocath, 2 mL's 4% lidocaine was administered. Betamethasone 2 mg, 2.5mL of 4% Lidocaine, Ketorolac 3mg and Sarapin 0.25 mL was added to the injectate. The above was first performed on the right side, then repeated in the same fashion on the left side. Patient tolerated the bilateral procedures well, remained supine with the cervical spine slightly extended for 10 minutes and then monitored in a post treatment room for an additional 15 minutes prior to discharge in stable condition.

Diagnosis/Decision Making:

784.0	Meadache
346.9	Migraine
346.01	MGRN W AURA W NTRC MGRN
724.4	Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
338.4	Chronic Pain Syndrome
724.2	Lumbago
V58.69	Long-Term (Current) use of other Medications
337.22	Reflex Sympathetic Dystrophy of Lower Limb
719.49	Pain in Joint of Multiple Sites

Treatment Plan (R):

- If there is noticeable but incomplete relief following today's treatment it can be repeated no sooner

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/10/2014 Page: 2

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then 2 weeks.

- If there is very good quality relief once again we can just see patient back as needed.

- We will follow up in 5-7 days to assess the improvement if any.

- Continue with current medications.

- No adjustments recommended today.

- Call between appointments with questions or concerns.

Followup:

For medication refill when due. Patient to call with any questions or concerns.

This visit note has been electronically signed off by Ezra B Riber, MD.

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Whitney Suggs, PA

Encounter Date: Sep 05, 2014

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

headaches.

- bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with medical management.

Patient comes in today for routine follow-up and medication refill. He is using Canadian crutches today in the office. The pain is listed as a 6 out of 10 on the pain scale. The patient's knees continue to be a problem for him left greater than right. The patient also continues to battle with chronic headaches. He is scheduled for a series of 3 consecutive SPG procedures to be again next week. He states that since his most recent SPG has worn off he has had increased frequency and intensity of his headaches or migraines. He has had to use Imitrex at the onset for relief.

Vital Signs:

Weight: 182 lbs

Height: 5' 10"

BMI: 25.11

BSA: 2.02

Temperature: 98.6 F (Tympanic)

BP: 140/84 (Right Arm) (Sitting)

Pulse: 76 (Right brachial) (Sitting) (Regular)

Respiration: 12

Oxygen: 97 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.

Eye: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/05/2014 Page: 1

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Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Topamax 100 Mg Tablet SIG: Take 1 twice daily
2. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
3. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
4. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
5. Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
8. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
9. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
10. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
11. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
12. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
13. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
14. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
15. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
16. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
17. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
18. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
19. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
20. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
21. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
22. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
23. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
24. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
25. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD.**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.
Patient appears stated age.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/05/2014 Page: 2

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Cervical Spine: Patient has relatively full ROM with minimal pain associated with cervical spine ROM. Spurling's is negative bilaterally. Patient is NVI in the bilateral upper extremities. Grip strength is equal bilaterally. Mild tenderness over the paracervical and trapezius regions to palpation.

Lungs: clear; no wheezing, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Abdomen: No masses or organomegaly is noted. No tenderness to palpation.

Lumbar Spine: Patient has good ROM with mild limitations noted with minimal pain with extension of the lumbar spine. SLR is negative bilaterally. Patient is NVI in the bilateral lower extremities. Non-antalgic gait in the office today.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Diagnosis/Decision Making:

- 337.22 Reflex Sympathetic Dystrophy of Lower Limb
- 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
- 346.9 Migraine
- 724.2 Lumbago
- 338.4 Chronic Pain Syndrome
- 781.2 Abnormality of Gait
- V58.69 Long-Term (Current) use of other Medications
- 729.5 Pain in Limb
- 719.49 Pain in Joint of Multiple Sites
- 346.01 MGRN W AURA W NTRC MGRN
- 784.0 Headache

Treatment Plan:

Hopefully the patient will get good improvement from the consecutive SPG procedures. Medications will remain as listed below. Reassessment in one month, sooner if necessary.

Prescription:

- 1. Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 2. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00
- 3. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 150.00
- 4. Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea QTY: 60.00

Followup:

- (1) 4 Week(s)
- or sooner if needed
- (2)

SPG Block via sphenocath

Palmetto Pain Management

1655 Bernardin Avenue Suite 240
Columbia, SC 292042039
Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit

Provider:
Supervising: Ezra B Riber, MD
Performing: Whitney Suggs, PA

Encounter Date: Aug 11, 2014

Patient: Polansky, Theodore P (0465001)
Sex: Male DOB: Apr 07, 1957 Age: 57 year
Race: White
Address:
Insurance: STATE ACCIDENT FUND-0013

Referred By: Edgar Deschamps

Chief Complaints:
headaches;
- bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with medical management.

Patient comes in today for routine follow-up and medication refill. He is using Canadian crutches today in the office. The pain is listed as a 6 out of 10 on the pain scale. He complains of bilateral knee pain with both knees wanting to give way. He states he has difficulty with balance. Patient had a previous SPG on June 17 and feels that the most recent procedure gave him 1 weeks improvement without giving him long lasting benefit. This was his second procedure. He felt that the first procedure had a longer relief.

Vital Signs:

Weight:	183 lbs
Height:	5' 10"
BMI:	26.25
BSA:	2.02
Temperature:	98.4 F (Tympanic)
BP:	121/79 (Right Arm) (Sitting)
Pulse:	91 (Right brachial) (Sitting) (Regular)
Respiration:	14
Oxygen:	95 (Room air)

Allergy:
Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 08/11/2014 Page: 1

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Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Topamax 100 Mg Tablet SIG: Take 1 twice daily
2. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
3. Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
4. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
5. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
8. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
9. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
10. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
11. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
12. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
13. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
14. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
15. Nexlum Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
16. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
17. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
18. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
19. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
20. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
21. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
22. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
23. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
24. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
25. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD.**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.
Patient appears stated age.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 08/11/2014 Page: 2

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Cervical Spine: Patient has relatively full ROM with minimal pain associated with cervical spine ROM. Spurling's is negative bilaterally. Patient is NVI in the bilateral upper extremities. Grip strength is equal bilaterally. Mild tenderness over the paracervical and trapezius regions to palpation.

Lungs: clear; no wheezing, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Abdomen: No masses or organomegaly is noted. No tenderness to palpation.

Lumbar Spine: Patient has good ROM with mild limitations noted with minimal pain with extension of the lumbar spine. SLR is negative bilaterally. Patient is NVI in the bilateral lower extremities. Non antalgic gait in the office today.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Diagnosis/Decision Making:

337.22 Reflex Sympathetic Dystrophy of Lower Limb
724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
346.9 Migraine
724.2 Lumbago
338.4 Chronic Pain Syndrome
781.2 Abnormality of Gait
V58.69 Long-Term (Current) use of other Medications
729.5 Pain in Limb
719.49 Pain in Joint of Multiple Sites
346.01 MGRN W AURA W NTRC MGRN
784.0 Headache

Treatment Plan:

The case was discussed today with Dr. Ribber. We are colloid to schedule the patient for an SPG procedure once a week for 3 weeks to see if we can get a longer duration of benefit. Medications remain the same as listed below.

Prescription:

1 Phenergan 25mg SIG: Take 1/2-1 by mouth every 8 hours as needed for nausea QTY: 60.00
2 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
3 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00
4 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 150.00

Changed/Discontinued Medication(s):

Discontinued: PHENERGAN 25MG QTY Change per Whitney

Followup:

(1) 4 Week(s)
or sooner if needed
(2)
SPG Block via sphenocath

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Mike Robichaud, P.A.

Encounter Date: Jul 09, 2014

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

headaches.

-bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with medical management.

Mr. Polansky is in today for follow-up, medication refill, and interrogation and reprogramming of his SCS. Today he describes his pain as worse. He states his bilateral shoulder pain and bilateral knee pain are worse; his headaches and back pain are unchanged. A second SPG Block done on 6/17/14 with no improvement in his headaches. He states he had good results with first SPG Block. He denies any change in location or characteristics of his pain, no new symptoms or injuries. Today he rates his pain as a 6 on a scale of 0 - 10 unchanged from his last visit. He denies any side effects with his current medication.

Vital Signs:

Weight: 184 lbs

Height: 5' 10"

BMI: 26.40

BSA: 2.03

Temperature: 98.4 F (Tympanic)

BP: 131/81 (Right Arm) (Sitting)

Pulse: 72 (Right brachial) (Sitting) (Regular)

Respiration: 16

Oxygen: 98 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 07/09/2014 Page: 1

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Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Topamax 100 Mg Tablet SIG: Take 1 twice daily
2. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
3. Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
4. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
5. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
8. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
9. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
10. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
11. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
12. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
13. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
14. Methyl-B6-b12 (Other MD) SIG: Take 1 twice daily
15. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
16. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
17. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
18. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
19. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
20. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
21. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
22. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
23. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
24. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
25. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD.**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

General Appearance: The patient is a healthy, well appearing male, in no apparent distress.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 07/09/2014 Page: 2

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Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.
Patient appears stated age.
HEENT: Alert and Oriented X 3. Speech and content are appropriate. Patient is a good historian.
Cervical Spine: Patient has full ROM.
Spurling's negative Lhermitte's absent.
Symmetrical contour of the shoulders.
Lungs: clear; no wheezing, rales, or rhonchi.
Heart: Regular rate and rhythm without murmur, gallops or rubs.
Lumbar Spine: Patient has limited ROM with moderate pain in all directions of the lumbar spine.
Knees: reduced range of motion left knee.
Straight Leg Raise: positive on the right with right sided low back pain, negative left.
No atrophic or dystrophic changes noted.
Gait: unsteady gait. Gait favors the left lower extremity.
Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.
Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Diagnosis/Decision Making:

337.22: Reflex Sympathetic Dystrophy of Lower Limb
724.4: Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
346.9: Migraine
724.2: Lumbago
338.4: Chronic Pain Syndrome
781.2: Abnormality of Gait
V58.69: Long-Term (Current) use of other Medications
729.5: Pain in Limb
719.49: Pain in Joint of Multiple Sites
346.01: MGRN W AURA W NTRC MGRN
784.0: Headache

Treatment Plan (R):

- Continue with current medications.
- No adjustments recommended today.
- Patient instructed on dosing and side effects.
- Call between appointments with questions or concerns.
- More than 50% of the time spent with the patient today was devoted to counseling and coordination of care.
- Follow up in 4 weeks.

SCS Interrogated and reprogrammed today with improved coverage.
repeat SCG Block.

Prescription:

1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 150.00 change QTY to #150
2 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
3 Percocet 10/325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00

Changed/Discontinued Medication(s):

Changed: EXALGO ER 16 MG TABLET - change QTY to #150

Followup:

(1) 4 Week(s)
or sooner if needed
(2)
SPG Block via sphenocath

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8037793207 Palmetto Pain Management

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Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 07/09/2014 Page: 4

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Palmetto Pain Management

1655 Bernardin Avenue, Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note

Provider: Ezra B Riber, MD

Encounter Date: Jun 17, 2014

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:
migraine headaches.**HPI:**

Mr. Polansky is a 57-year-old gentleman scheduled today for a fluoroscopically guided sphenopalatine ganglion block. The initial treatment performed more than 6 months ago and resulted in 50-75% improvement for 1 to 2 months. This result was encouraging and repeat treatment is indicated. If he has noticeable but incomplete relief once again I will recommend that the SPG block be repeated while he is still improved from today's anticipated treatment. Following discussion of the risks and benefits and alternative treatment options he was agreeable to proceed and consent given.

Vital Signs:

Weight: 182 lbs
Height: 5' 10"
BMI: 26.11
BSA: 2.02
Temperature: 98.1 F (Tympanic)
BP: 126/79 (Right Arm) (Sitting)
Pulse: 86 (Right brachial) (Sitting) (Regular)
Respiration: 16
Oxygen: 98 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P. DOB: 04/07/1957 Visit: 06/17/2014 Page: 1

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Current Medication:

- 1 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 2 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 3 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
- 4 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 5 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
- 6 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 7 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 8 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 9 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 10 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 11 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 12 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 13 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 14 Methy1 B6-b12 (Other MD) SIG: Take 1 twice daily
- 15 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 16 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 17 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 18 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 19 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
- 20 Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
- 21 Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
- 22 Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
- 23 Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
- 24 Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
- 25 Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.

Social History:

Marital Status: Married.

Smoking/Tobacco Use: Patient denies using tobacco products.

Alcohol Use: He denies alcohol use.

He denies recreational drug use. Patient has Blue eyes.

Procedures:

Following discussion and consent the patient was taken to the fluoroscopy suite, placed supine with the neck slightly extended and monitors attached. The cervical spine was supported comfortably with a cushion. The fluoroscopy unit provided a lateral view of the nasal bone and turbinates. The nares were anesthetized bilaterally with cotton swabs soaked with 2% lidocaine and 2% lidocaine jelly. With fluoroscopic guidance, the sphenocath was introduced initially into the right nares and guided to a point just below the floor of the frontal sinus. The inner catheter was deployed and positioned posteriorly. 0.5 mL's of isovue 240 was administered, with flow of contrast confirmed along the middle turbinate to the pterygopalatine fossa. Maintaining the position of the sphenocath, 2 mL's 4% lidocaine was administered. Betamethasone 2 mg, 2.5mL of 4% Lidocaine and Safapin 0.25 mL was added to the injectate. The above was first performed on the right side, then repeated in the same fashion on the left side. Patient tolerated the bilateral procedures well, remained supine with the cervical spine slightly extended for 10 minutes and then monitored in a post treatment room for an additional 15 minutes prior to discharge in stable condition.

Diagnosis/Decision Making:

- 346.01 MGRN W AURA W NTRC MGRN
- 784.0 Headache
- 338.4 Chronic Pain Syndrome
- 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
- V58.69 Long-Term (Current) use of other Medications

724.2 Lumbago
337.22 Reflex Sympathetic Dystrophy of Lower Limb
719.49 Pain In Joint of Multiple Sites

Treatment Plan (R):

- If there is noticeable but incomplete relief following today's treatment it can be repeated no sooner than 2 weeks.
- If there is very good quality relief once again we can just see patient back as needed.
- We will follow up in 5-7 days to assess the improvement. If any.
- Continue with current medications.
- No adjustments recommended today.
- Call between appointments with questions or concerns.

Followup:

One month or sooner if needed.

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra S Riber, MD

Performing: Mike Robichaud, P.A.

Encounter Date: Jun 09, 2014

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND 0000

Referred By: Edgar Deschamps

Chief Complaints:

headaches.

- bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with medical management.

The patient lists his pain as a 6/10 today. He is using Canadian crutches in the office today. He states a good day of pain for him is a 6/10 while a bad day may be a 8/10 and he may be bedridden on those days. His pain in the left leg is more than the right, but does feel the right leg will give way frequently.

The patient has a scheduled SPG on 6/17/14.

Vital Signs:

Weight: 184 lbs 8 oz

Height: 5' 10"

BMI: 26.47

BSA: 2.03

Temperature: 99.0 F (Tympanic)

BP: 141/87 (Right Arm) (Sitting)

Pulse: 107 (Right brachial) (Sitting) (Regular)

Respiration: 20

Oxygen: 96 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P. DOB: 04/07/1957 Visit: 08/09/2014 Page: 1

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Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Topamax 100 Mg Tablet SIG: Take 1 twice daily
2. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
3. Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
4. Exalgo Er 15 Mg Tablet SIG: Take 3 by mouth twice daily
5. Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
8. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
9. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
10. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
11. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
12. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
13. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
14. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
15. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
16. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
17. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
18. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
19. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
20. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
21. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
22. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
23. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
24. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
25. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD.**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

General Appearance: The patient is a healthy, well appearing male, in no apparent distress.
Patient appears stated age.

TMJ: Not suggestive of TMD.

Cervical Spine: Patient has full ROM with minimal pain only with extension of the lumbar spine. SLR is negative bilaterally. Patient is NVI in the bilateral lower extremities. Non-antalgic gait in the office today.

Lungs: clear, no wheezing, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Abdomen: No masses or organomegaly is noted. No tenderness to palpation.

Lumbar Spine: Patient has limited ROM with moderate pain in all directions of the lumbar spine. SLR is + bilaterally with pain to the left and right legs. Patient is NVI in the bilateral lower extremities. Antalgic gait in the office today. Tenderness over the paralumbar region is noted.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Diagnosis/Decision Making:

- 337.22 Reflex Sympathetic Dystrophy of Lower Limb
- 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
- 346.9 Migraine
- 724.2 Lumbago
- 338.4 Chronic Pain Syndrome
- 346.01 MGRN W AURA W NTRC MGRN
- 719.49 Pain in Joint of Multiple Sites
- 729.5 Pain in Limb
- 781.2 Abnormality of Gait
- 784.0 Headache
- V58.69 Long-Term (Current) use of other Medications

Prescription:

- 1 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 2 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 148.00
- 3 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00

Followup:

- (1) 4 Week(s) or sooner if needed
- (2)

SPG Block via sphenocath

Palmetto Pain Management

1655 Bernardin Avenue, Suite 240

Columbia SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Mike Robichaud, P.A.

Encounter Date: May 12, 2014

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

headaches;

-bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work-related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with medical management.

Mr. Polansky is in today for follow-up and medication refill. He is being followed for headaches, multiple site joint pain, lumbar radicular syndrome and reflex sympathetic dystrophy of the lower limbs. Today he describes his low back pain as worse today but overall his pain is about the same as his last visit. He complains of increased low back pain today without inciting event. He also complains of headaches. Today he rates his pain as a 6 on a scale of 0 - 10. He denies any changes in location of his pain, no new symptoms or injuries. He denies any side effects with his current medication.

Vital Signs:

Weight: 173 lbs

Height: 5' 10"

BMI: 24.82

BSA: 1.97

Temperature: 98.9 F (Tympanic)

BP: 124/77 (Right Arm) (Sitting)

Pulse: 71 (Right brachial) (Sitting) (Regular)

Respiration: 20

Oxygen: 97 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.

Eye: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 05/12/2014 Page: 1

P. 340 NW

Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
- 5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
- 6 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 7 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 8 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 9 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 10 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 11 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 12 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 13 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 14 Methyl 86-b12 (Other MD) SIG: Take 1 twice daily
- 15 Nexlum Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 16 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 17 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 18 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 19 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
- 20 Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
- 21 Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
- 22 Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
- 23 Oxycodone Hcl 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
- 24 Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
- 25 Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD:**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.
Patient appears stated age.
Straight Leg Raise is negative.

No atrophic or dystrophic changes noted.

Other: reduced ROM bilateral knees L>R.

HEENT: Alert and Oriented X 3. Speech and content are appropriate. Patient is a good historian.

Lungs: Lungs clear to auscultation bilaterally, no wheezes, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Neck and upper extremity exam and complaints unchanged.

Gait: The patient has a gait that favors the left lower extremity; is assisted by crutches.

Spine:

LUMBAR SPINE: Range of motion is restricted with movement in all planes.

General Appearance: The patient is a healthy, well appearing male, in no apparent distress.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Integumentary: skin warm and dry.

Diagnosis/Decision Making:

- 337.22 Reflex Sympathetic Dystrophy of Lower Limb
- 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
- 346.9 Migraine
- 724.2 Lumbago
- 338.4 Chronic Pain Syndrome
- 781.2 Abnormality of Gait
- V58.69 Long-Term (Current) use of other Medications
- 729.5 Pain in Limb
- 719.49 Pain in Joint of Multiple Sites
- 346.01 MGRN W AURA W NTRC MGRN
- 784.0 Headache

Treatment Plan (R):

- Continue with current medications.
- No adjustments recommended today.
- Patient instructed on dosing and side effects.
- Call between appointments with questions or concerns.
- More than 50% of the time spent with the patient today was devoted to counseling and coordination of care.
- Follow up in 4 weeks.
- schedule SPG Block via sphenocath.

Prescription:

- 1 Exalgo ER 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 148.00
- 2 Percocet 10-325 Mg Tablet SIG: Take 1/2-1 by mouth twice daily as needed for breakthrough pain QTY: 60.00
- 3 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00

Changed/Discontinued Medication(s):

Discontinued: EXALGO ER 16 MG TABLET - QTY Decrease

Discontinued: PERCOCET 10-325 MG TABLET - QTY Change

Followup:

- (1) 4 Week(s)
- or sooner if needed
- (2)
- SPG Block via sphenocath

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit

Provider: Ezra B Riber, MD

Encounter Date: Apr 29, 2014

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Allergy:

Quetiapine

Current Medication:

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
- 5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
- 6 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 7 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 8 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 9 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 10 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 11 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 12 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 13 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 14 MethyI 86-b12 (Other MD) SIG: Take 1 twice daily
- 15 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 16 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 17 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 18 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 19 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
- 20 Tmitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
- 21 Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
- 22 Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
- 23 Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
- 24 Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
- 25 Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002).

RSD.

Social History:

Marital Status: Married.

Smoking/Tobacco Use: Patient denies using tobacco products.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 04/29/2014 Page: 1

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Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Diagnosis/Decision Making:

V58.69	Long-Term (Current) use of other Medications
338.4	Chronic Pain Syndrome
764.0	Headache
346.01	MGRN W AURA W NTRC MGRN
724.4	Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
337.22	Reflex Sympathetic Dystrophy of Lower Limb
724.2	Lumbago
729.5	Pain in Limb

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Caitlin Wood

Encounter Date: Apr 11, 2014

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 57 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0019

Referred By: Edgar Deschamps

Chief Complaints:

Headaches;

- bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 57-year-old gentleman seen in our office since 2001 for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with medical management.

Patient is back today for routine follow up and medication refill. Being followed here for headaches, multiple site joint pain, lumbar radicular syndrome and reflex sympathetic dystrophy of lower limbs. Doing well with his current medication. He denies any side effects at this time. His hand is healing well from fracture and he started PT this week, twice weekly x 4 weeks. He has been having to take Percocet four times daily as his SCS is poorly functioning. Denies any new problems, concerns, questions, or complaints. Pain is a 6 on the 0 - 10 scale. His pain is unchanged from his previous visit. He denies changes in location or characteristics of pain, no new injuries.

Vital Signs:

Weight: 172 lbs

Height: 5' 10"

BMI: 24.68

BSA: 1.96

Temperature: 98.8 F (Tympanic)

BP: 129/81 (Right Arm) (Sitting)

Pulse: 88 (Right brachial) (Sitting) (Regular)

Respiration: 14

Oxygen: 99 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 04/11/2014 Page: 1

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Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
2. Topamax 100 Mg Tablet SIG: Take 1 twice daily
3. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
4. Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
5. Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
8. Dxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
9. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
10. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
11. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
12. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
13. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
14. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
15. Nexlun Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
16. Polyethylene Glycol 3350 Pwd (Other MD) SIG: As Directed
17. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
18. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
19. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
20. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
21. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
22. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
23. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
24. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
25. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
Permanent placement of SCS (2002):

RSD:**Social History:**

Marital Status: Married.
Smoking/Tobacco Use: Patient denies using tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.
Patient appears stated age.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 04/11/2014 Page: 2

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Straight Leg Raise is negative.
Stands on heels and toes without difficulty.
Other: 5/5 strength all 4 extremities.
Lungs: Lungs clear to auscultation bilaterally, no wheezes, rales, or rhonchi.
Heart: Regular rate and rhythm without murmur, gallops or rubs.
Back and lower extremity exam and complaints unchanged.
Neck and upper extremity exam and complaints unchanged.
Gait: The patient has a gait that favors the left lower extremity, is assisted by crutches.

Spine:

LUMBAR SPINE: Range of motion is restricted with movement in all planes.

General Appearance: The patient is a healthy, well appearing male, in no apparent distress.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Diagnosis/Decision Making:

337.22 Reflex Sympathetic Dystrophy of Lower Limb
724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
346.9 Migraine
724.2 Lumbago
338.4 Chronic Pain Syndrome
781.2 Abnormality of Gait
V58.69 Long-Term (Current) use of other Medications
729.5 Pain in Limb
719.49 Pain in Joint of Multiple Sites
346.01 MGRN W AURA W NTRC MGRN
784.0 Headache

Impression:

UDT discussed with Dr. Riber.

Treatment Plan:

Continue with current medications, refilled today.
No changes recommended.
Patient was reinstructed on dosing and side effects.
Follow up with this office in 4 weeks, or sooner if needed.
Patient can call our office with any questions or concerns.

Medications:

Lomofil and Phenergan not refilled today as patient has at home.

SCS to be interrogated and reprogrammed by Medtronic at his next visit.
Patient was discussed with and seen by Dr. Riber today.

Prescription:

1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00
2 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00
3 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00

Discussion:

More than 50% of the time spent with the patient today, was devoted to counseling, education and coordination of care.

Followup:

4 Week(s)
or sooner if needed

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 04/11/2014 Page: 3

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Wed 25 Feb 2015 05:13:21 PM EST

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Palmetto Pain Management

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Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 04/11/2014 Page: 4

D. 340 EEE

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Mike Robichaud, P.A.

Encounter Date: Mar 10, 2014

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address:

Insurer: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

headaches

- bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 56-year-old gentleman that we have been following for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is being treated with medical management.

Patient is back today for routine follow up and medication refill. Being followed here for headaches, multiple site joint pain, lumbar radicular syndrome and reflex sympathetic dystrophy of lower limbs. Doing well with his current medication. He denies any side effects with his current medications. Denies any new problems, concerns, questions, or complaints. Pain is a 6 on the 0-10 scale. His pain is about the same as his last visit. Since his last visit he took a fall at home and fractured his left hand. He is being followed by Dr. Green, for his hand, and has a follow-up appointment in three weeks. He denies changes in location or characteristics of his pain, no other new symptoms or injuries. He will have cataract surgery on his left eye next month. He wants to wait until after his eye surgery to schedule a repeat SFG block.

Vital Signs:

Weight: 173 lbs

Height: 5' 10"

BMI: 24.82

BSA: 1.97

Temperature: 99.7 F (Tympanic)

BP: 126/81 (Right Arm) (Sitting)

Pulse: 71 (Right brachial) (Sitting) (Regular)

Respiration: 14

Oxygen: 94 (Room air)

Allergy:

Quetiapine

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 03/10/2014 Page: 1

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RQS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medications:

1. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
2. Topamax 100 Mg Tablet SIG: Take 1 twice daily
3. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed pm diarrhea
4. Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
5. Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Lamotrigine 25 Mg Tablet (Other MD)
8. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
9. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
10. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
11. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
12. Wellbutrin XL 150 Mg Tablet (Other MD)
13. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
14. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
15. Imitrex 50 Mg Tablet (Other MD) SIG: As Needed
16. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
17. Methy1 B6-b12 (Other MD) SIG: Take 1 twice daily
18. Nexlun Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
19. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
20. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
21. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
22. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
23. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
24. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
25. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
26. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
27. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
28. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Medical History:

Patient is not currently taking a blood thinner.
RSV
placement of a SCS 2002.

Social History:

Marital Status: Married.
Smoking/Tobacco Use: Patient has never smoked or used tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has blue eyes.

Family History:

Patient's family history is noncontributory.

Patient: Polansky, Theodore P DOB: 04/07/1967 Visit: 03/10/2014 Page: 2

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Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today. Patient appears stated age. Spurling's negative. Lhermitte's absent. Symmetrical contour of the shoulders.

Straight Leg Raise negative.

Stands on heels and toes without difficulty.

Other: 5/5 strength all 4 extremities

Left limp, no foot drop

Spill on left hand.

HEENT: Alert and Oriented X 3. Speech and content are appropriate. Patient is a good historian.

Lungs: Lungs clear to auscultation bilaterally, no wheezes, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Back and lower extremity exam and complaints unchanged.

Neck and upper extremity exam and complaints unchanged.

Gait: The patient has antalgic gait, is assisted by crutches.

General Appearance: The patient is a healthy, well appearing male, in no apparent distress.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Diagnosis/Decision Making:

784.0 Headache 346.9 Migraine 337.22 Reflex Sympathetic Dystrophy of Lower Limb 724.4

Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 724.2 Lumbago 338.4

Chronic Pain Syndrome 781.2 Abnormality of Gait V58.69 Long-Term (Current) use of other

Medications 729.5 Pain in Limb 719.49 Pain in Joint of Multiple Sites 346.01 MGRN W AURA

W NTRC MGRN

Treatment Plan:

Follow-up with this office in 4 week(s) or sooner, if needed.

A urine specimen for UDT was taken today, for plate compliance purposes.

MEDICATIONS:

Lomotil and Phenergan not refilled today, has at home.

continue all other current medication, refilled today.

Patient was reinstructed on dosing and side effects.

Patient is to call the office with any questions or concerns.

SCS works well for his LE symptoms but does not cover his back pain.

for repeat SPG Block via sphenocath once he has recovered from bilateral cataract surgery.

follow-up with Dr. Green.

Prescription:

1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00

2 Percocet 10/325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00

3 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00

Discussion:

More than 50% of the time spent with the patient today, was devoted to counseling, education and coordination of care.

Followup:

4 Week(s)

or sooner if needed

Patient: Polansky, Theodore P. DOB: 04/07/1967 Visit: 03/10/2014 Page: 3

P. 340 HHH

Wed 25 Feb 2015 05:13:21 PM EST

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Palmetto Pain Management

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Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 03/10/2014 Page: 4

P- 340 III

Palmetto Pain Management

1655 Bernardin Avenue, Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit

Provider: Ezra S Riber, MD

Encounter Date: Mar 10, 2014

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address:

Insurance: STATE ACCIDENT

Referred By: Edgar Deschamps

Current Medication:

1. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
2. Topamax 100 Mg Tablet SIG: Take 1 twice daily
3. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
4. Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
5. Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
6. Ambien CR 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Lamotrigine 25 Mg Tablet (Other MD)
8. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
9. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
10. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
11. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
12. Wellbutrin XL 150 Mg Tablet (Other MD)
13. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
14. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
15. Imitrex 50 Mg Tablet (Other MD) SIG: As Needed
16. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
17. Methyl B5-b12 (Other MD) SIG: Take 1 twice daily
18. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
19. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
20. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
21. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
22. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime
23. Imitrex 50 Mg Tablet (Other MD) SIG: As needed for migraines
24. Lamictal 100 Mg Tablet (Other MD) SIG: Take 1 by mouth three times daily
25. Myrbetriq Er 25 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning
26. Oxybutynin Cl Er 15 Mg Tablet (Other MD) SIG: Take 2 by mouth in the morning
27. Prazosin 2 Mg Capsule (Other MD) SIG: Take 1 by mouth at bedtime
28. Wellbutrin XL 150 Mg Tablet (Other MD) SIG: Take 1 by mouth in the morning (450MG)

Diagnosis/Decision Making:

V58.69 Long-Term (Current) use of other Medications 338.4 Chronic Pain Syndrome 724.4
Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 724.2 Lumbago 337.22
Reflex Sympathetic Dystrophy of Lower Limb 719.49 Pain in Joint of Multiple Sites 784.0
Headache 346.01 MGRN W AURA W NTRC MGRN

Prescription:

1. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00
2. Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 03/10/2014 Page: 1

9. 340 J5J

3 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 03/10/2014 Page: 2

D. 340 KKK

Palmetto Pain Management

1655 Bernardin Avenue Suite 240
Columbia SC 292042039
Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Ribery, MD

Performing: Mike Robichaud, P.A.

Encounter Date: Feb 10, 2014

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address:

12

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

headaches.

- bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 56-year-old gentleman that we have been following for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. We discussed his medication regimen with different providers and none of the medication adjustments have help with his headaches, which are now frequent and intractable. They're limiting his activity of daily living and affecting his sleep and seemingly unresponsive to his current medications.

Patient is back today for routine follow up and medication refill. Being followed here for headaches, multiple site joint pain, lumbar radicular syndrome and reflex sympathetic dystrophy of lower limbs. Doing well with his current medication. He denies any side effects with his current medications. Denies any new problems, concerns, questions, or complaints. Pain is a 6 on the 0-10 scale. His pain is unchanged since his last visit. I am "doing OK". He denies changes in location or characteristics of his pain, no new injuries. He has had cataract surgery on his right eye with excellent results. He will have cataract surgery on his left eye in March. He wants to wait until after his surgery in March to schedule a repeat SPG Block.

Vital Signs:

Weight: 171 lbs

Height: 5' 10"

BMI: 24.53

BSA: 1.96

Temperature: 99.5 F (Tympanic)

BP: 125/68 (Right Arm) (Sitting)

Pulse: 86 (Right brachial) (Sitting) (Regular)

Respiration: 14

Oxygen: 97 (Room air)

Allergy:

Quetiapine

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 02/10/2014 Page: 1

P. 340 LLL

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
- 5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
- 6 Ambien-Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 7 Lamotrigine 25 Mg Tablet (Other MD)
- 8 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 9 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 10 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 11 Raxedyne Er 8-Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 12 Wellbutrin XL 150-Mg Tablet (Other MD)
- 13 Cymbalta 60-Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 14 Donepezil Hcl 5-Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 15 Imitrex 50 Mg Tablet (Other MD) SIG: As Needed
- 16 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 17 Methy1 B6-b12 (Other MD) SIG: Take 1 twice daily
- 18 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 19 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 20 Traxodone 150-Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 21 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 22 Amitriptyline Hcl 50-Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime

Medical History:

Patient is not currently taking a blood thinner.

RSV

placement of a SCS 2002.

Social History:

Marital Status: Married.

Smoking/Tobacco Use: Patient has never smoked or used tobacco products.

Alcohol Use: He denies alcohol use.

He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.

Patient appears stated age. Stands on heels and toes without difficulty.

Other: 5/5 strength all 4 extremities.

no limp or foot drop.

HEENT: Alert and Oriented X3. Speech and content are appropriate. Patient is a good historian.

Lungs: Lungs clear to auscultation bilaterally; no wheezes, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Back and lower extremity exam and complaints unchanged.

Neck and upper extremity exam and complaints unchanged.

Gait: The patient has antalgic gait; is assisted by crutches.

General Appearance: The patient is a healthy, well appearing male, in no apparent distress.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Diagnosis/Decision Making:

784.0 Headache 346.9 Migraine 337.22 Reflex Sympathetic Dystrophy of Lower Limb 724.4

Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 724.2 Lumbago 338.4

Chronic Pain Syndrome 781.2 Abnormality of Gait V58.69 Long-Term (Current) use of other

Medications 729.5 Pain in Limb 719.49 Pain in Joint of Multiple Sites 346.01 MGRN W AURA

W NTRC MGRN

Treatment Plan:

Continue with current medications, refilled today.

No changes recommended.

Follow-up with this office in 4 week(s) or sooner, if needed.

Patient was re-instructed on dosing and side effects.

Patient is to call the office with any questions or concerns.

SCS interrogated and reprogrammed his last visit by Medtronic with improved coverage. SCS works well for his LE symptoms but does not cover his back pain.

for repeat SPG Block vis sphenocath once he has recovered from bilateral cataract surgery.

UDT next visit.

Prescription:

1 Exalgo Er 15 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00

2 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00

3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea QTY: 90.00

4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00

5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea QTY: 30.00

Discussion:

More than 50% of the time spent with the patient today, was devoted to counseling, education and coordination of care.

Followup:

4 Week(s)

or sooner if needed.

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Mike Robichaud, P.A.

Encounter Date: Jan 07, 2014

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

My headaches are getting worse.

- bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 56-year-old gentleman that we have been following for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. We discussed his medication regimen with different providers and none of the medication adjustments have help with his headaches, which are now frequent and intractable. They're limiting his activity of daily living and affecting his sleep and seemingly unresponsive to his current medications.

Patient is back today for routine follow up, medication refill, and to have his SCS interrogated and reprogrammed by Medtronic. Being followed here for headaches, multiple site joint pain, lumbar radicular syndrome and reflex sympathetic dystrophy of lower limbs. Doing well with his current medication. He denies any side effects with his current medications. Denies any new problems, concerns, questions, or complaints. Pain is a 7 on the 0-10 scale. His pain is unchanged since his last visit. He denies changes in location or characteristics of his pain, no new injuries. An SPG Block done 12/12/13 without positive results. He is to have cataract surgery tomorrow on his right eye.

Vital Signs:

Weight:	162 lbs
Height:	5' 10"
BMI:	23.24
BSA:	1.90
Temperature:	98.6 F (Tympanic)
BP:	121/70 (Right Arm) (Sitting)
Pulse:	74 (Right brachial) (Sitting) (Regular)
Respiration:	18
Oxygen:	98 (Room air)

Allergy:

Quetiapine

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 01/07/2014 Page: 1

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Exalgo ER 16 Mg Tablet SIG: Take 3 by mouth twice daily
2. Topamax 100 Mg Tablet SIG: Take 1 twice daily
3. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
4. Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
5. Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Lamotrigine 25 Mg Tablet (Other MD)
8. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
9. Oxytrol 3.9 Mg/24hr Patch-Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
10. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
11. Razadyne ER 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
12. Wellbutrin XL 150 Mg Tablet (Other MD)
13. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
14. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
15. Imitrex 50 Mg Tablet (Other MD) SIG: As Needed
16. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
17. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
18. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
19. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
20. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
21. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
22. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime

Medical History:

Patient is not currently taking a blood thinner.
RSV
placement of a SCS 2002.

Social History:

Marital Status: Married.
Smoking/Tobacco Use: Patient has never smoked or used tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Unaccompanied today.
Patient appears stated age. Spurling's negative. Lhermitte's absent. Symmetrical contour of the shoulders. Straight Leg Raise negative. No atrophic or dystrophic changes noted. Stands on heels and toes without difficulty.

Others: 5/5 strength all 4 extremities
no limp or foot drop.

HEENT: Alert and Oriented X 3. Speech and content are appropriate. Patient is a good historian.

Lungs: Lungs clear to auscultation bilaterally; no wheezes, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Back and lower extremity exam and complaints unchanged.

Neck and upper extremity exam and complaints unchanged.

Gait: The patient has antalgic gait; is assisted by crutches.

General Appearance: The patient is a healthy, well appearing male, in no apparent distress.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Diagnosis/Decision Making:

784.0 Headache 346.9 Migraine 337.22 Reflex Sympathetic Dystrophy of Lower Limb 724.4

Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 724.2 Lumbago 338.4

Chronic Pain Syndrome 781.2 Abnormality of Gait V58.69 Long-Term (Current) use of other

Medications 729.5 Pain in Limb 719.49 Pain in Joint of Multiple Sites 346.01 MGRN W AURA

W NTRC MGRN

Treatment Plan:

Follow-up with this office in 4 week(s) or sooner, if needed.

MEDICATIONS:

loromotil not refilled today, has at home.

continue all other current medication, refilled today.

Patient was re-instructed on dosing and side effects.

Patient is to call the office with any questions or concerns.

SCS interrogated and reprogrammed today by Medtronic with improved coverage.

for repeat SPG Block via sphenocath once he has recovered from bilateral cataract surgery.

Discussion:

More than 50% of the time spent with the patient today, was devoted to counseling, education and coordination of care.

Followup:

4 Week(s)

or sooner if needed

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note

Provider: Ezra B Riber, MD

Encounter Date: Dec 12, 2013

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

Chronic intractable headaches.

HPI:

Mr. Polansky is a 56-year-old gentleman that we have been following for a number of years with several different pain syndromes that developed following a remote work-related injury. He is here today for a scheduled sphenopalatine ganglion block using the sphenocath technique. Following discussion of the risks and benefits he was agreeable to proceed and consent given.

Vital Signs:

Weight:	160 lbs
Height:	5' 10"
BMI:	22.96
BSA:	1.89
Temperature:	97.2 F (Tympanic)
BP:	107/59 (Right Arm) (Sitting)
Pulse:	74 (Right brachial) (Sitting) (Regular)
Respiration:	14
Oxygen:	96 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 12/12/2013 Page: 1

D. 340 RPR

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
- 5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
- 6 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 7 Lamotrigine 25 Mg Tablet (Other MD)
- 8 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 9 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 10 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 11 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 12 Wellbutrin XL 150 Mg Tablet (Other MD)
- 13 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 14 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 15 Imitrex 50 Mg Tablet (Other MD) SIG: As Needed
- 16 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 17 Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
- 18 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 19 Polyethylene Glycol 3350 Powder (Other MD) SIG: As Directed
- 20 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 21 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 22 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime

Medical History:

Assistive Devices: Patient is not currently taking a blood thinner.
 Patient uses bilateral braces on upper extremities for dystrophy of lower extremities.

Social History:

Marital Status: Single

Smoking/Tobacco Use: Patient has never smoked or used tobacco products.

Alcohol Use: He denies alcohol use.

He denies recreational drug use. Patient has Brown eyes. Patient is not married but is accompanied by his long term partner Mrs. Dubose, but they have not gotten legally married.

Procedures:

Following discussion and consent the patient was taken to the fluoroscopy suite, placed supine with the neck slightly extended and monitors attached. The cervical spine was supported comfortably with a cushion. The fluoroscopy unit provided a lateral view of the nasal bone and turbinates. The nares were anesthetized bilaterally with cotton swabs soaked with 2% lidocaine and 2% lidocaine jelly. With fluoroscopic guidance, the sphenocath was introduced initially into the right nares and guided to a point just below the floor of the frontal sinus. The inner catheter was deployed and positioned posteriorly. 0.5 mL's of Isovue 240 was administered, with flow of contrast confirmed along the middle turbinate to the pterygopalatine fossa. Maintaining the position of the sphenocath, 2 mL's 4% lidocaine was administered. Betamethasone 3 mg, 1.5mL of 4% Lidocaine and Sarapin 0.25 mL was added to the injectate. The above was first performed on the right side, then repeated in the same fashion on the left side. Patient tolerated the bilateral procedures well, remained supine with the cervical spine slightly extended for 10 minutes and then monitored in a post treatment room for an additional 15 minutes prior to discharge in stable condition.

Diagnosis/Decision Making:

784.0 Headache 346.9 Migraine 346.01 MGRN W AURA W NTRC MGRN 338.4 Chronic Pain Syndrome 724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified V58.69 Long-Term (Current) use of other Medications 337.22 Reflex Sympathetic Dystrophy of Lower Limb 724.2 Lumbago 729.5 Pain in Limb 719.49 Pain in Joint of Multiple Sites

Followup:

Patient to call with any questions or concerns.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 12/12/2013 Page: 2

p. 340 SSS

Wed 25 Feb 2015 05:13:21 PM EST

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Palmetto Pain Management

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Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 12/12/2013 Page: 3

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Palmetto Pain Management

1655 Bernardin Avenue Suite 240
Columbia, SC 292042039
Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD

Performing: Mike Robichaud, P.A.

Encounter Date: Dec 11, 2013

Patient: Polansky, Theodore P (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

My headaches are getting worse.

-bilateral shoulder pain and bilateral LE pain.

HPI:

Mr. Polansky is a 56-year-old gentleman that we have been following for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. We discussed his medication regimen with different providers and none of the medication adjustments have help with his headaches, which are now frequent and intractable. They're limiting his activity of daily living and affecting his sleep and seemingly unresponsive to his current medications.

Patient is back today for routine follow up and medication refills. Being followed here for headaches, multiple site joint pain, lumbar radicular syndrome and reflex sympathetic dystrophy of lower limbs. Doing well with current medication. He denies any side effects with his current medications. Denies any new problems, concerns, questions, or complaints. Pain is a 6 on the 0 - 10 scale. His pain is up and down, but overall worse today secondary to weather changes. He denies changes in location or characteristics of pain, no new injuries. He had a steroid injection performed on his left foot last week by his podiatrist with improvement in his pain. Mr. Polansky continues to have frequent migraine headaches and would benefit from the SPG block via Sphenocath procedure.

Vital Signs:

Weight: 160 lbs

Height: 5' 10"

BMI: 22.96

BSA: 1.89

Temperature: 99.7 F (Tympanic)

BP: 131/82 (Right Arm) (Sitting)

Pulse: 102 (Right brachial) (Sitting) (Regular)

Respiration: 12

Oxygen: 97 (Room air)

Allergy:

Quetiapine

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 12/11/2013 Page: 1

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ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Exalgo ER 16 Mg Tablet SIG: Take 3 by mouth twice daily
2. Topamax 100 Mg Tablet SIG: Take 1 twice daily
3. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
4. Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
5. Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
6. Ambien CR 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Lamotrigine 25 Mg Tablet (Other MD)
8. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
9. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
10. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
11. Razadyne ER 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
12. Wellbutrin XL 150 Mg Tablet (Other MD)
13. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
14. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
15. Imitrex 50 Mg Tablet (Other MD) SIG: As Needed
16. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
17. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
18. Nexlum DR 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
19. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
20. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
21. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
22. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime

Medical History:

Patient is not currently taking a blood thinner.
RSV
placement of a SCS 2002.

Social History:

Marital Status: Married.
Smoking/Tobacco Use: Patient has never smoked or used tobacco products.
Alcohol Use: He denies alcohol use.
He denies recreational drug use. Patient has Blue eyes.

Family History:

Patient's family history is noncontributory.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Accompanied by Significant other Gail.
Patient appears stated age.
Other: 5/5 strength all 4 extremities.

Lungs: Lungs clear to auscultation bilaterally, no wheezes, rales, or rhonchi.
Heart: Regular rate and rhythm without murmur, gallops or rubs.
Back and lower extremity exam and complaints unchanged.
Neck and upper extremity exam and complaints unchanged.
Gait: The patient has antalgic gait; is assisted by crutches.
General Appearance: The patient is a healthy, well appearing male, in no apparent distress.
Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.
Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Diagnosis/Decision Making:

784.0 Headache
346.9 Migraine
337.22 Reflex Sympathetic Dystrophy of Lower Limb
724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified
338.4 Chronic Pain Syndrome
719.49 Pain in Joint of Multiple Sites
724.2 Lumbago
729.5 Pain in Limb
781.2 Abnormality of Gait
V58.69 Long-Term (Current) use of other Medications

Treatment Plan:

Continue with current medications, refilled today.
No changes recommended.
Follow-up with this office in 4 week(s) or sooner, if needed.
A urine specimen for UDT was taken today, for opiate compliance purposes.
Patient was instructed on dosing and side effects.
Patient is to call the office with any questions or concerns.

We are continuing to seek authorization for SPG block via Sphenocath which is medically necessary for relief of the patient's headaches.

Prescription:

1 Exalgo Er 15 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00
2 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea QTY: 90.00
4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00
5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea QTY: 30.00

Discussion:

More than 50% of the time spent with the patient today, was devoted to counseling, education and coordination of care.

Followup:

4 Week(s)
or sooner if needed

Palmetto Pain Management

1655 Bernardin Avenue, Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B. Riber, MD

Performing: Caitlin Wood

Encounter Date: Dec 11, 2013

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address: 3

Insurance: STATE ACCIDENT FUND 2013

Referred By: Edgar Deschamps

Current Medication:

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
- 5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
- 6 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 7 Lamotrigine 25 Mg Tablet (Other MD)
- 8 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 9 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 10 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 11 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 12 Wellbutrin XL 150 Mg Tablet (Other MD)
- 13 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 14 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 15 Immitrex 50 Mg Tablet (Other MD) SIG: As Needed
- 16 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 17 Methyl B6-512 (Other MD) SIG: Take 1 twice daily
- 18 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 19 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 20 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 21 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 22 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime

Diagnosis/Decision Making:

724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 337.22 Reflex
Sympathetic Dystrophy of Lower Limb 784.0 Headache 346.9 MIGRAINE 729.5 Pain in Limb
338.4 Chronic Pain Syndrome V58.69 Long-Term (Current) use of other Medications

Prescription:

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea QTY:
90.00
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00
- 5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea QTY: 30.00

Patient: Polansky, Theodore P. DOB: 04/07/1957 Visit: 12/11/2013 Page: 1

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Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 12/11/2013 Page: 2

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Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia, SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit

Provider: Ezra B Riber, MD

Encounter Date: Dec 11, 2013

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address: ?

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Current Medication:

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
- 5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
- 6 Ambien CR 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 7 Lamotrigine 25 Mg Tablet (Other MD)
- 8 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 9 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 10 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 11 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 12 Wellbutrin XL 150 Mg Tablet (Other MD)
- 13 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 14 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 15 Imiltrex 50 Mg Tablet (Other MD) SIG: As Needed
- 16 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 17 Methyl B6-B12 (Other MD) SIG: Take 1 twice daily
- 18 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 19 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 20 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 21 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 22 Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime

Diagnosis/Decision Making:

V58.69 Long-Term (Current) use of other Medications 338.4 Chronic Pain Syndrome 784.0
Headache 345.01 MGRN:W:AURA W NTRC MGRN:724.4 Thoracic or Lumbosacral Neuritis or
Radiculitis Not Otherwise Specified 337.22 Reflex Sympathetic Dystrophy of Lower Limb 724.2
Lumbago 729.5 Pain in Limb

Prescription:

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea QTY: 90.00
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00
- 5 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea QTY: 30.00

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 12/11/2013 Page: 1

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Patient: Polansky, Theodore P. DOB: 04/07/1957 Visit: 12/11/2013 Page: 2

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Palmetto Pain Management

1655 Bernardin Avenue Suite 240
Columbia SC 292042039
Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD
Performing: Mike Robichaud, P.A.

Encounter Date: Nov 11, 2013

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address: ?

Insurance: STATE ACCIDENT FOND 0013

Referred By: Edgar Deschamps

Chief Complaints:

My headaches are getting worse.
bilateral shoulder pain and bilateral LE pain.

HPX:

Mr. Polansky is a 56-year-old gentleman that we have been following for pain and dysfunction that developed following a remote work related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. We discussed his medication regimen with different providers and none of the medication adjustments have help with his headaches, which are now frequent and intractable. They're limiting his activity of daily living and affecting his sleep and seemingly unresponsive to his current medications.

Patient is back today for scheduled follow-up. Being followed here for headaches, multiple site joint pain, and reflex sympathetic dystrophy of lower limbs. Denies any new problems, concerns, questions, or complaints. Pain is a 7 on the 0 - 10 scale. His pain is unchanged since his last visit. He continues to have headaches 3-4/week. He also complains of toe pain left foot and is seeing a Podiatrist for this. He is in today for medication refill. We have recommended a SPG Block via Sphenocath which is pending approval.

Vital Signs:

Weight:	154 lbs
Height:	5' 10"
BMI:	22.09
BSA:	1.86
Temperature:	96.9 F (Tympanic)
BP:	125/77 (Right Arm) (Sitting)
Pulse:	84 (Right brachial) (Sitting) (Regular)
Respiration:	12
Oxygen:	100 (Room air)

Allergy:

Quetiapine

ROS:

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 11/11/2013 Page: 1

p. 340 BBBB

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Exalgo ER 16 Mg Tablet SIG: Take 3 by mouth twice daily
2. Topamax 100 Mg Tablet SIG: Take 1 twice daily
3. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
4. Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
5. Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea
6. Ambien CR 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Lamotrigine 25 Mg Tablet (Other MD)
8. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
9. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
10. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
11. Razadyne ER 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
12. Wellbutrin XL 150 Mg Tablet (Other MD)
13. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
14. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
15. Imilrex 50 Mg Tablet (Other MD) SIG: As Needed
16. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
17. Methyl B6-B12 (Other MD) SIG: Take 1 twice daily
18. Naxium DR 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
19. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
20. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
21. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
22. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime

Medical History:

Patient is not currently taking a blood thinner.

Social History:

Marital Status: Married. He denies smoking cigarettes or use of any tobacco products.

Alcohol Use: He denies alcohol use.

He denies recreational drug use. Patient has Blue eyes.

Examination:

Patient is pleasant, no acute distress, alert and oriented, good historian. Accompanied by Significant other Gail.

Patient appears stated age. Spurling's negative. Lhermitte's absent. Symmetrical contour of the shoulders. No winging of the scapulae. Straight Leg Raise negative. No atrophic or dystrophic changes noted. Stands on heels and toes without difficulty.

Other: 5/5 strength all 4 extremities

no limp or foot drop.

Lungs: Lungs clear to auscultation bilaterally, no wheezes, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Back and lower extremity exam and complaints unchanged.

Neck and upper extremity exam and complaints unchanged.

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 11/11/2013 Page: 2

P. 340 CCC

Gait: Patient ambulates without a device. Gait of the patient is normal.
General Appearance: The patient is a healthy, well appearing male, in no apparent distress.
Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.
Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Diagnosis/Decision Making:

784.0 Headache 346.9 migraine 719.49 Pain in Joint of Multiple Sites 729.5 Pain in Limb
724.4 Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 337.22 Reflex
Sympathetic Dystrophy of Lower Limb 724.2 Lumbago V58.69 Long-Term (Current) use of
other Medications 781.2 Abnormality of Gait 338.4 Chronic Pain Syndrome

Treatment Plan:

Follow-up with this office in 4 weeks(s) or sooner, if needed.

MEDICATIONS:

discontinue Zofran, add Phenergan
Lomotil not refilled today, has at home
continue all other current medication, refilled today.

SPG Block via Sphenocath pending approval.

Prescription:

- 1 Exalgo ER 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00
- 2 Phenergan 25mg SIG: Take 1 by mouth daily as needed for nausea QTY: 30.00
- 3 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00

Followup:

4 Week(s)

For a SPG block as soon as approved

Palmetto Pain Management

1655 Bernardin Avenue Suite 240

Columbia SC 292042039

Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit

Provider: Ezra B. Riber, MD

Encounter Date: Oct 11, 2013

Patient: Polansky, Theodore P. (0465001)

Sex: Male DOB: Apr 07, 1957 Age: 56 year

Race: White

Address:

Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

My headaches are getting worse.

HPI:

Mr. Polansky is a 56-year-old gentleman that we have been following for pain and dysfunction that developed following a remote work-related injury back in 1998. We have been following him since 2000 and have treated him for various conditions including lower extremity radiculopathy and RSD with chronic intractable back and lower extremity pain. He also has bilateral shoulder pain and over the last year or so has developed a rather significant headaches. He is discussed his medication regimen with different providers and none of the medication adjustments have help with his headaches, which are now frequent and intractable. They're limiting his activity of daily living and affecting his sleep and seemingly unresponsive to his current medications.

Vital Signs:

Weight:	147 lbs
Height:	5'10"
BMI:	21.09
BSA:	1.81
Temperature:	98.0 F (Tympanic)
BP:	119/71 (Right Arm) (Sitting)
Pulse:	67 (Right brachial) (Sitting)
Respiration:	15
Oxygen:	98 (Room air)

Allergy:

Quetiapine

ROS:

Constitutional: Negative except as documented in history of present illness.
Eye: Negative except as documented in history of present illness.
Ear/Nose/Mouth/Throat: Negative except as documented in history of present illness.
Respiratory: Negative except as documented in history of present illness.
Cardiovascular: Negative except as documented in history of present illness.
Gastrointestinal: Negative except as documented in history of present illness.
Genitourinary: Negative except as documented in history of present illness.
Hematology/Lymphatics: Negative except as documented in history of present illness.
Endocrine: Negative except as documented in history of present illness.
Immunologic: Negative except as documented in history of present illness.
Musculoskeletal: Negative except as documented in history of present illness.

Patient: Polansky, Theodore P. DOB: 04/07/1957 Visit: 10/11/2013 Page: 1

P-34P EEE

Integumentary: Negative except as documented in history of present illness.
Neurologic: Negative except as documented in history of present illness.
Psychiatric: Negative except as documented in history of present illness.

Current Medication:

1. Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
2. Topamax 100 Mg Tablet SIG: Take 1 twice daily
3. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed pm diarrhea
4. Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
5. Zofran Odt 4 Mg Tablet SIG: Take 1 twice daily
6. Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
7. Lamotrigine 25 Mg Tablet (Other MD)
8. Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
9. Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
10. Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
11. Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
12. Wellbutrin XL 150 Mg Tablet (Other MD)
13. Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
14. Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
15. Imitrex 50 Mg Tablet (Other MD) SIG: As Needed
16. Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
17. Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
18. Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
19. Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
20. Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
21. Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
22. Amitriptyline Hcl 50 Mg Tab (Other MD) SIG: Take 1 by mouth at bedtime

Medical History:

Patient is not currently taking a blood thinner.

Social History:

Marital Status: Married. He denies smoking cigarettes or use of any tobacco products.

Alcohol Use: He denies alcohol use.

He denies recreational drug use. Patient has Blue eyes.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Accompanied by Significant Other Gail. Patient appears stated age.

HEENT: Alert and Oriented X3. Speech and content are appropriate. Patient is a good historian. No somnolence exhibits no pain behavior, but is very focused on any solution we may have for the debilitating headaches.

Cervical Spine: Range of motion reasonably full not tested to the extremes Spurling's negative. Lhermitte's absent. Symmetrical contour of the shoulders. No winging of the scapulae.

Lungs: clear, no wheezing, rales, or rhonchi.

Heart:

Upper Extremities: Similar in appearance bilaterally.

Neck and upper extremity exam and complaints are unchanged. Low back and lower extremity exam and complaints are unchanged.

Gait: Grossly atalgic and he uses crutches to ambulate.

Integumentary: Cool and dry throughout.

Diagnosis/Decision Making:

784.0	Headache
346.9	Migraine
719.49	Pain in Joint of Multiple Sites
729.5	Pain in Limb
724.4	Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 10/11/2013 Page: 2

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337.22 Reflex Sympathetic Dystrophy of Lower Limb
724.2 Lumbago
V58.69 Long-Term (Current) use of other Medications
781.2 Abnormality of Gait
338.4 Chronic Pain Syndrome

Treatment Plan (R):

- Continue with current medications.
- No adjustments recommended today.
- Patient instructed on dosing and side effects.
- Follow up One month or sooner if needed if approved for treatment.
- Call between appointments with questions or concerns.
- More than 50% of the time spent with the patient today was devoted to counseling and coordination of care. Sphenopalatine ganglion block discussed including using models
- Recommended proceeding with the treatment using the sphenocath technique
- He was agreeable to proceed and consent given
- We will schedule him at the earliest mutually convenient time once we receive authorization
- He can call between appointments with any questions or concerns.

Prescription:

- 1 Exalgo Er 10 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00
- 2 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 3 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea QTY: 90.00
- 4 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00
- 5 Zofran Odt 4 Mg Tablet SIG: Take 1 twice daily QTY: 60.00

Followup:

For a SPG block as soon as approved

Palmetto Pain Management

1655 Bernardin Avenue Suite 240
Columbia SC 292042039
Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit**Provider:**

Supervising: Ezra B Riber, MD
Performing: Mike Robichaud, P.A.

Encounter Date: Sep 11, 2013

Patient: Polansky, Theodore P (0465001)
Sex: Male DOB: Apr 07, 1957 Age: 56 year
Race: White
Address: ???
Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Chief Complaints:

Cramping in both legs pain in the tips of both feet mostly great toes.

HPI:

Mr. Polansky is a 56-year-old gentleman that we have been following for an initial diagnosis of CRPS and radicular syndrome in the lower extremities, following a remote work related incident. He is currently being treated with medical management.

Patient is back today for scheduled follow-up. Being followed here for leg pain and back pain. Pain is a 6 on the 0-10 scale. His pain is unchanged since his last visit. He is taking the Theramine with some positive results but does not feel the Sentra PM helps him sleep. He is in today for medication refill.

Vital Signs:

Weight: 142 lbs
Height: 5'10"
BMI: 20.37
BSA: 1.78
Temperature: 97.3 F (Tympanic)
BP: 113/66 (Right Arm) (Sitting)
Pulse: 80 (Right brachial) (Sitting) (Regular)
Respiration: 15
Oxygen: 98 (Room air)

Allergy:

Quetiapine

ROS:

Per HPI

Current Medication:

1. Exalgo-Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
2. Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
3. Phenergan 25 Mg Tablet SIG: Take 1 daily
4. Topamax 100 Mg Tablet SIG: Take 1 twice daily
5. Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
6. Theramine SIG: Take 1-2 by mouth twice a day on an empty stomach.
7. Sentra Pm SIG: Take 1-2 by mouth at bedtime

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/11/2013 Page: 1

p. 340 HHHH

- 8 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
9 Lamotrigine 25 Mg Tablet (Other MD)
10 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
11 Lometil Tablet 2.5-0.025 Mg (Other MD)
12 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
13 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
14 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
15 Wellbutrin XL 150 Mg Tablet (Other MD)
16 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
17 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
18 Imitrex 50 Mg Tablet (Other MD) SIG: As Needed
19 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
20 Methyl B6-b12 (Other MD) SIG: Take 1 twice daily
21 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
22 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
23 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
24 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily

Medical History:

Patient is not currently taking a blood thinner.
RSV
placement of a SCS 2002.

Social History:

Marital Status: Married. He denies smoking cigarettes or use of any tobacco products.

Alcohol Use: He denies alcohol use.

He denies recreational drug use. Patient has blue eyes.

Examination:

Pleasant, no acute distress, alert and oriented, good historian. Accompanied by friend / significant other.

Patient appears stated age. Symmetrical contour of the shoulders. Straight Leg Raise negative. No atrophic or dystrophic changes noted. Stands on heels and toes without difficulty.

Other: 5/5 strength all 4 extremities.

no limp or foot drop.

Lungs: Lungs clear to auscultation bilaterally, no wheezes, rales, or rhonchi.

Heart: Regular rate and rhythm without murmur, gallops or rubs.

Back and lower extremity exam and complaints unchanged.

Gait: Patient ambulates without a device. Gait of the patient is normal.

General Appearance: The patient is a healthy, well appearing male, in no apparent distress.

Psychiatric: Patient is conscious, cooperative and well oriented to time, place and person. There are no mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Integumentary: Gross inspection of skin demonstrates no evidence of abnormality. Hair and nails are also normal. Skin is warm and dry.

Diagnosis/Decision Making:

337.22 Reflex Sympathetic Dystrophy of Lower Limb 781.2 Abnormality of Gait 724.4
Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 729.5 Pain in Limb 719.49
Pain in Joint of Multiple Sites 724.2 Lumbago 338.4 Chronic Pain Syndrome V58.69
Long-Term (Current) use of other Medications

Treatment Plan:

Follow-up with this office in 4 weeks(s) or sooner, if needed.

Patient can call our office with any questions or concerns.

A urine specimen for UDT was taken today, for opiate compliance purposes.

MEDICATIONS:

medication adjustment: discontinue Phenergan
add Zofran 4mg one BID #60 for nausea.

Patient: Polansky, Theodore P DOB: 04/07/1967 Visit: 09/11/2013 Page: 2

P. 340 FFI

Sentra PM and Theramine not refilled today, not covered by his provider.

Prescription:

- 1 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00
- 2 Zofran Odt 4 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 3 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 4 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00
- 5 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea QTY: 90.00

Changed/Discontinued Medication(s):

Discontinued: LOMOTIL TABLET 2.5-0.025 MG - duplicate

Changed: PERCOCET 10-325 MG TABLET

Discontinued: PHENERGAN 25 MG TABLET - per Dr Riber

Discontinued: Sentra PM - on DND for medical foods

Discontinued: Theramine - on DND for medical foods

Discussion:

More than 50% of the time spent with the patient today, was devoted to counseling, education and coordination of care.

Followup:

4 Week(s)

Palmetto Pain Management

1655 Bernardin Avenue Suite 240
Columbia SC 292042039
Phone: 803-779-3263 Fax: 803-779-3207

Visit Note - Office Visit

Provider: Ezra B Riber, MD
Encounter Date: Sep 11, 2013

Patient: Polansky, Theodore P. (0465001)
Sex: Male DOB: Apr 07, 1957 Age: 56 year
Race: White
Address
Insurance: STATE ACCIDENT FUND-0015

Referred By: Edgar Deschamps

Current Medication:

- 1 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily
- 2 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily
- 3 Phenergan 25 Mg Tablet SIG: Take 1 daily
- 4 Topamax 100 Mg Tablet SIG: Take 1 twice daily
- 5 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea
- 6 Theramine SIG: Take 1-2 by mouth twice a day on an empty stomach.
- 7 Sentra Pm SIG: Take 1-2 by mouth at bedtime
- 8 Ambien Cr 12.5 Mg Tablet (Other MD) SIG: Take 1 by mouth at bedtime
- 9 Lamotrigine 25 Mg Tablet (Other MD)
- 10 Latanoprost 0.005% Eye Drops (Other MD) SIG: 1 drop in each eye in the evening
- 11 Lomotil Tablet 2.5-0.025 Mg (Other MD)
- 12 Oxytrol 3.9 Mg/24hr Patch Mg/24 Hr (Other MD) SIG: Apply 1 patch twice a week
- 13 Provigil 100 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily (200MG)
- 14 Razadyne Er 8 Mg Capsule (Other MD) SIG: Take 1 by mouth three times daily
- 15 Wellbutrin XL 150 Mg Tablet (Other MD)
- 16 Cymbalta 60 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily
- 17 Donepezil Hcl 5 Mg Tablet (Other MD) SIG: Take 1 by mouth twice daily
- 18 Imitrex 50 Mg Tablet (Other MD) SIG: As Needed
- 19 Lidocaine Hcl 2% Gel (Other MD) SIG: Apply as needed
- 20 Methyl B6-512 (Other MD) SIG: Take 1 twice daily
- 21 Nexium Dr 40 Mg Capsule (Other MD) SIG: Take 1 by mouth daily
- 22 Polyethylene Glycol 3350 Powd (Other MD) SIG: As Directed
- 23 Trazodone 150 Mg Tablet (Other MD) SIG: Take 1 by mouth every bed time
- 24 Geodon 20 Mg Capsule (Other MD) SIG: Take 1 by mouth twice daily

Diagnosis/Decision Making:

V58.69 Long-Term (Current) use of other Medications 338.4 Chronic Pain Syndrome 724.4
Thoracic or Lumbosacral Neuritis or Radiculitis Not Otherwise Specified 724.2 Lumbago 337.22
Reflex Sympathetic Dystrophy of Lower Limb 729.5 Pain in Limb 719.49 Pain in Joint of Multiple
Sites

Prescription:

- 1 Percocet 10-325 Mg Tablet SIG: Take 1 by mouth four times daily QTY: 120.00
- 2 Zofran Odt 4 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 3 Topamax 100 Mg Tablet SIG: Take 1 twice daily QTY: 60.00
- 4 Exalgo Er 16 Mg Tablet SIG: Take 3 by mouth twice daily QTY: 180.00
- 5 Lomotil Tablet 2.5-0.025 Mg SIG: Take 2 by mouth 4 times daily as needed prn diarrhea QTY: 90.00

Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/11/2013 Page: 1

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Wed 25 Feb 2015 05:13:21 PM EST

8037793207

RECEIVED 02/25/2015 17:38

Palmetto Pain Management

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Patient: Polansky, Theodore P DOB: 04/07/1957 Visit: 09/11/2013 Page: 2

P. 340 LLLL

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

August 19, 2014

Commissioner Aisha Taylor
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Ted Polansky vs. SC Attorney General's Office
WCC File Nos.: 9922954 & 0024408

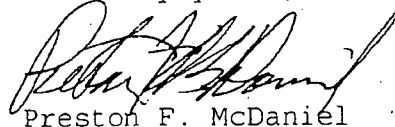
Dear Commissioner Taylor:

Please find enclosed a copy of the Claimant's Pre-Hearing Brief in the above referenced matter. By copy of this letter, with enclosures, we are forwarding a copy of our Pre-Hearing Brief and APA submissions to opposing counsel on this date.

I hope this is sufficient for filing this matter with the Commission. However, if additional information is needed, please feel free to contact me at your convenience.

I look forward to seeing you at the hearing and to a resolution in the best interest of all parties concerned.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Peter P. Leventis, IV, Esquire

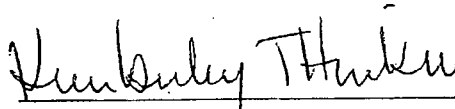
CERTIFICATE OF SERVICE BY MAIL

SCWCC File Nos: 9922954 & 0024408

I hereby certify that I have on this day served the following in the matter of Theodore Polansky vs. South Carolina Office of Attorney General with a copy of the Claimant's Pre-Hearing Brief, Notice of Witnesses and Written Reports(s)/ Physician or other Evidence, and APA Submissions, with enclosures, by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

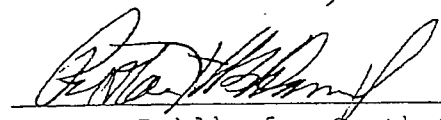
Commissioner Aisha Taylor
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Peter P. Leventis, IV, Esquire
McKay, Cauthen, Settana & Stubley
1303 Blanding Street
Columbia, SC 29201



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
17th day of AUGUST, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/24/18



Claimant's Name: Theodore Polansky Employer's Name: SC Attorney General's Office
Address: _____ Address: PO Box 11549
City: _____ State: _____ Zip: _____ City: Columbia State: SC Zip: 29211
Home Phone: () - _____ Work Phone: () - _____ Carrier: State Accident Fund
Preparer's Name: Preston F. McDaniel Preparer's Phone #: (803) 771-7211

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: See attached
2. AWW: See attached Date of Injury: 10/19/99 & 05/30/00
3. Type of injury and body part(s): Back/left knee/both legs/shoulders/RSD (reflex sympathetic dystrophy) whole person/ (primary affect left leg /back) /psychological /brain(physical brain damage)/kidneys/bladder/sexual dysfunction
4. _____
5. Facts in controversy: See attached.
6. Legal issues involved: See attached.
7. Unusual aspects: _____
8. Witnesses (designate if expert):* See Notice of Witnesses. Dr. Frank Forsthoefel, M.D. ^{will} testify.
9. Exhibits: Claimant requests that WCC File Nos. 9922954 & 0024408 be made a part of the Record. Claimant's medical records are 6 volumes (a banker's box). Only those pertinent to total and permanent and listed for future care and brain damage will be submitted. A copy of the records will be available and Claimant has no objection to an agreed upon copy being provided upon request of the Commission.
10. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See Notice of Written Report(s)/Physician(s).
11. Name, address, and specialty, if any, of the treating physician: See attached.
12. Impairment rating(s); body part(s); physician and date of opinion: _____
12. I am amending my Form 50/51 in the following manner: _____

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the _____ day of _____ 20____ by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature:  Email: preston@pfmcdlaw.com
Date of hearing: ~~9-24-00~~ Time needed for hearing: 1-2 hours

Instructions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

ATTACHMENT TO FORM 58

Ted Polansky vs. SC Attorney General's Office

WCC File Nos.: 9922954 & 0024408

1&2. Mr. Polansky's salary at the time of injury in 1999 was \$45,096.42 which results in an average weekly wage of \$867.24 and a compensation rate of \$578.19 and at the time of the 2000 injury his income was \$45,604.77 resulting in an average weekly wage (hereinafter "AWW") of \$877.01 and a compensation rate of \$589.70 both of which far exceeds the maximum compensation rate (hereinafter "C/R") for the years of injury in 1999 and 2000; the maximum C/R for 1999 was \$483.47 and for 2000 was \$507.34. Due to the Claimant's average weekly wage being \$877.01 resulting in a C/R of \$589.70, in 2002 when he began receiving temporary weekly compensation the maximum compensation for 2000 of \$507.34 was applied and was applied until 500 weeks ran in 2011.

Since a determination of the compensation rate has never been made by the Commission, the claimant would request a review and that his weekly benefits be increased to the maximum compensation rate at this time based on exceptional circumstances pursuant to SC Code §42-1-40 and the Supreme Court and Court of Appeals decisions thereunder concerning exceptional circumstances and pursuant to the intent of the provisions of §42-9-10(1) and the application of the maximum compensation rate to high wage earner to partially compensate them each year of disability because their C/R exceeds the maximum C/R. Since 2000, the average weekly wage in this State has increased from \$507.34 to \$752.16 or 148.26%. If this increase is applied to Mr. Polansky's average weekly wage in 2000 of \$877.01, it results in an average weekly wage of \$1,300.26 today and a compensation rate of \$866.88.

Exceptional circumstances:

Under SC Code §42-1-40 paragraph 2, in determining the average weekly wage when for exceptional reasons the usual method of calculating an average weekly wage will result in an average weekly wage which is, "unfair" or does not properly represent the Claimant's future earning capacity, the Commission may resort to such method as will most nearly approximate the amount which the injured worker, "would be earning were it not for the injury".

Under that proviso, both our Supreme Court and Court of Appeals have increased the compensation rate as a matter of law. In Booth v. Midland Trane Heating & Air Conditioning,

298 S.C. 251, 379 S.E.2d 730 (SC App. 1989), our Court of Appeals and in Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991) our Supreme Court applied the principle set out by the Supreme Court in Bennett v. Gary Smith Builders, 271 S.C. 94, 245 S.E.2d 129 (1978), that the claimant's loss of "probable future earning capacity" is the factor to be looked at by the Commission. In Stokes, Mr. Stokes had gone back to work but at a much less stressful job and was able to earn a lot less income. If simply a comparison was made between his income (AWW) before the accident and his income (AWW) at the time of the hearing, a C/R of much less than the maximum C/R would apply. However, the Supreme Court affirmed the Commission's Award based on the application of the maximum C/R because the future income he could make at a low-level computer programmer job versus the income he could make being a Vice President or Executive over an entire large corporate computer I.T. Department/Division would be far less, thus resulting in a tremendous loss of future earning capacity in his life and even the application of the maximum C/R would only partially compensate him for that loss. Quoting from Bennett the,

"objective of wage calculation is to arrive at a fair approximation of the Claimant's probable future earning capacity. His disability reaches into the future, not the past; his loss as a result of the injury must be thought of in terms of its impact on probable future earnings."

Following this principle in the case of Sellers v. Pinedale Residential Center, our Appellate Courts reiterated the application of this principle and in that case, a case wherein a young employee age 16 became a paraplegic as a result of the injuries entitling him to lifetime compensation benefits, the Commission and our Appellate Courts applied the principles laid down in Bennett and Booth and held that the claimant was entitled to an ever escalating compensation rate wherein the compensation rate would increase from 1992, the date of the injury, until 2002 to the maximum compensation rate applicable in 1992. Our Appellate Courts also cited in support of that proposition the decision by the Supreme Court in Stokes, supra, which again upheld an Award increasing the claimant to the maximum compensation rate which again was based on the Claimant's future loss of earning capacity. Again in the case of Elliott v. SC Dept. of Transportation, 362 S.C.

234, 607 S.E.2d 90 (SC App. 2004) our Appellate Courts found that merit based increases in the claimant's wages should be applied prospectively into the future to determine the average weekly wage that would apply in the case. In the case of Forrest v. A.S. Price Mechanical, 373 S.C. 303, 644 S.E.2d 784 (SC App. 2007) reh. den., cert. den., the Court of Appeals held that where a gentleman normally worked year round at two (2) jobs, both a full-time and part-time job, this income justified the prospective increase in the average weekly wage and compensation rate going forward. Also, where a Claimant worked dual employment even only during the holiday season, exceptional reasons existed for increasing the Claimant's compensation rate prospectively. Brunson v. Wal-Mart Stores, Inc., 344 S.C. 107, 543 S.E.2d 732 (SC App. 2001). Similar reasons were found to exist in the case of Brown v. Peoplease, 402 S.C. 476, 741 S.E.2d 761 (SC App. 2013) (prior trucking job much higher income and increasing income during 6 mos. of employment). In the case of James Williams v. Illinois Tool Works, Circuit Court Case# 2009-CP-16-00308, filed June 23, 2010, appeal dismissed by the Court of Appeals, the Circuit Court affirmed the application of the exceptional circumstances as a matter of law under facts identical to those in this case where the Claimant's income at the time of accident far exceeded the maximum C/R for the year of the injury and the Hearing Commissioner applied the maximum C/R for the year of the hearing and for each succeeding year until the maximum C/R equaled to or exceeded the claimant's C/R to which he would have been entitled at the time of the injury.

Also in Williams, the Court and Hearing Commissioner noted that the language of SC Code §42-9-10(1) as to the application of the maximum C/R to the high wage earner is not tied to the maximum C/R of the year of the accident but to just the, "preceding year" thus allowing for an increasing compensation rate for high end wage earners. The language of the statute applying the maximum C/R for the "preceding year" instead of for the year of the injury allows for high earners whose C/R exceeds the maximum C/R to be partially compensated during each year of disability, just like the statute provides for increased minimum compensation for low end wage earners; \$75.00/week or if your AWW is less than \$75.00/week, your actual AWW.

For these reasons based on the facts in this case and in accordance with the law as established by our Supreme Court and the Court of Appeals, and the Circuit Court in

Williams, which the Commission must apply, the Claimant would submit that his average weekly wage and compensation rate should be increased to adequately compensate him for his loss of earning capacity after the accident. Based on this, Mr. Polansky asks nothing more and nothing less than for the Commission to apply a compensation rate based on what he would have been earning at this time but for the injury.

4a This has always been an accepted case for which all compensation benefits and requested and causally related medical care has been authorized and paid for by the Defendants.

Mr. Polansky went out of work after the 2000 injury but had so much accrued leave he did not start receiving T.T. until October 9, 2001. Although he has been totally and permanently disabled for many years based on the opinion of his treating physicians and psychological professionals and has been declared totally disabled by the Police Officers Retirement Fund and by the Social Security Administration, he has never been declared by an Award of the Commission to be totally and permanently disabled and entitled on a permanent basis to the benefits of such an Award. Therefore Mr. Polansky requests a decision by the Commission that he is totally and permanently disabled with accompanying lifetime medical care based on that decision for any and all causally related medical care that will provide relief for his disabling symptoms and condition.

For the reasons set forth herein below, he would request that he be granted a lifetime disability benefits Award on the basis of physical brain damage resulting from the treatment necessary to treat his severe and disabling injuries stemming from the accident with weekly benefits payable from and resumed as of the date that temporary total disability of 500 weeks ran out on March 8, 2011.

In 2002, Mr. Polansky was hospitalized due to a drug-drug interaction between medications needed to treat his medical conditions (physical/functional) stemming from the accident, which reaction resulted in a chemical encephalopathy of the brain causing physical injury and damage to the brain per the opinion of the authorized treating psychiatrist Dr. Frank Forsthoefel; his treating chronic pain and RSD specialist, Dr. Ezra Riber; an authorized clinical psychologist, Dr. Avie Rainwater (who had performed neuropsychological testing just prior to the

hospitalization in 2002 and who then re-evaluated him on October 18, 2011 and performed re-testing at that time); Dr. Nicholas Lind, Ph.D., an authorized clinical psychologist (who saw the client for testing in 2008 and re-evaluated him in 2011 in light of Dr. Rainwater's repeat testing and the opinion of Dr. Forsthoefel, who concurs in their opinions); and the opinion of his authorized treating clinical psychologist since 2004, Dr. C. Jean Jonet, Ph.D.

After the 2002 admission for the drug/drug reaction, Dr. Forsthoefel, Dr. Maturano (another authorized treating psychiatrist) found cognitive and other deficits unrelated /unexplained by psychological issues (i.e., physical v. functional) and they along with the Claimant repeatedly in and since 2004, 2005, 2006, 2007, 2008 requested neuropsychological testing, which was attempted by Dr. Lind in 2008. Dr. Forsthoefel, the treating psychiatrist both before and after 2002, in a report in 2004; noted a tremendous change in the Claimant's brain functioning after the 2002 admission.

- b. The Claimant due to his total and permanent disability requests an award for lifetime medical care for any and all conditions stemming from the accident and treatment necessary to treat his injuries stemming from the accident. The Claimant would request also that his current authorized treating physicians be set out as his authorized treating physicians and medical and psychological providers in the Order for the conditions as set forth below for which treatment is currently being provided. The Claimant would request also that conditions for which he is being treated as set out in the medical evidence which in the opinion of his doctors is related be set out in the Order and provide that treatment for all causally related medical care or as is determined to be causally related be provided by these providers or such other medical providers as these providers deem just and appropriate to fully and completely treat the Claimant's disabling symptoms and conditions stemming from the work-related accident. Current authorized medical providers to be set out in the Order are:

1) Dr. John Beasley, M.D., neurogenic bladder/urinary incontinence, erectile dysfunction.

2) Dr. Frank Forsthoefel, M.D., psychiatrist, for any and all psychological conditions stemming from the work-related injury and for care of his physical brain

damage stemming from the drug-drug interaction encephalopathy to include any and all psychological diagnosis and conditions as set forth in the records of the treating psychological professionals but to include specifically treatment for Mr. Polansky's bipolar, manic and depressive states, chronic pain syndrome, psychological effects stemming from the RSD, schizoaffective affective schizophrenia.

3) Dr. C. Jean Jonet, Ph.D., psychological counseling which has been provided since 2004 by Dr. Jonet.

4) Dr. Ezra B. Riber, M.D., chronic pain medicine specialist for treatment of any and all, and for coordination of treatment for any and all physical problems related to the injuries and specifically including to the Claimant's back, left leg; involving both shoulders and both upper extremities; both legs, lower extremities and specifically to include the diagnoses of RSD of the lower limb and back, abnormality of gait, thoracic and lumbosacral neuritis and radiculitis, pain in limb and multiple joints, lumbago, chronic pain syndrome, chronic irretractable pain of the left leg, chronic low back pain, radicular syndrome, spinal cord stimulator and for any and all physical problems as determined to be related to the work-related injury and its aftermath; and to include all physical, medical treatment in reference to the Claimant's physical brain injury.

5. IN CORRELATION WITH RESPONSES UNDER NUMBER 4:

a. The Claimant's entitlement to an Award for total and permanent disability based on:

1) §42-9-10 and §42-1-120 defines total disability under §42-9-10; Coleman v. Quality Concrete Products, Inc., 245 S.C. 645, 142 S.E.2d 43 (1965); Colvin v. E.I. Dupont DeNemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955); Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699; in Stephenson the Supreme Court specifically held that even if the claimant is employed is irrelevant to the decision of whether the claimant is totally disabled under the Act. The question is whether based on the claimant's age, education, background and experience and the physical facts of the injury the services a claimant can perform are so limited in quality, quantity or dependability that a reasonably stable market for them does not exist.

2) §42-9-30(19) Linen v. Ruscon Construction Company, 286 S.C. 67, 332 S.E.2d 211 (1985); Lyles v. Quantum Chemical Company, 315 S.C. 440, 434 S.E.2d 292 (S.C. App. 1993); Bateman v. Town & Country Furniture, 287 S.C. 158, 336 S.E.2d 890 (S.C. App 1985);

3) The Supreme Court and Court of Appeals have held that where the Commission determines that the Claimant is totally and permanently disabled under the Act and has suffered physical brain damage the Claimant is entitled to weekly compensation benefits for life. Pearson v. JPS Converter, 327 S.C. 393, 489 S.E.2d 219 (S.C. App. 1997) REH. don, Cert. denied (2/5/98).

In Sparks v. Palmetto Hardwood Inc., 406 S.C. 124, 750 S.E.2d 61 (2013) and in Crisp v. Southco, Inc., 401 S.C. 627, 738 S.E.2d 835 (2013) the Court then defined physical brain damage for the Commission to apply to the facts before it which requires an Award of Life Time Benefits where those facts are proved by a preponderance of the evidence:

"We conclude, therefore, the General Assembly intended "physical brain damage" in §42-9-10C to have a meaning consonant with §42-9-400(d) of permanent physical damage to the brain." Sparks, supra 750 S.E.2d at P63-64.

"S.C. Code Ann. §42-9-400(d) (Supp. 2011) ("As used in this section, 'permanent physical impairment' means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee should become unemployed.") Crisp, 738 S.E.2d at 843 (Emphasis added).

"The General Assembly meant to require severe permanent impairment of normal brain function.) in order for an injured worker to be deemed physically brain damaged under §42-9-10(C)." Sparks, 750 S.E.2d at P64.

But the Supreme Court declined,

"To impose a requirement that the damage be proved through an 'objective diagnostic medium' since some indisputably physical brain damage may not be revealed by

diagnostic instruments that can detect only relatively gross physical abnormalities."
Sparks; 750 S.E.2d at P64.

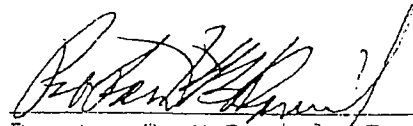
Applying Sparks and Crisp in Baker v. Hilton Hotels 406 S.C. 395, 752 S.E.2d 279 (SC App 2013), the Commission found that the Claimant was totally and permanently disabled but that he did not sustain physical brain damage. The Commission relied on the report of a psychologist Dr. Deysach's report (not a medical doctor or medical opinion) that also included the opinion that the Claimant had sustained an injury to the head with post-concussive symptoms but no restriction as, "a result of the physical brain damage." The Court remanded the case to the Commission requiring the Commission to,

"cite specific evidence to support its determination as to whether Baker sustained physical brain damage." Baker, 752 S.E.2d at P283. (Emphasis added).

b. Lifetime medical care due to the Claimant's total and permanent disability pursuant to S.C. Code §42-15-60; and Dykes v. Daniel Construction Co., 262 S.C. 98, 202 S.E.2d 646; Dodge v. Bruccoli, et al., 334 S.C. 574, 514 SE2d 593 (SC App 1999);

10. Frank Forsthofel, MD, Columbia, SC 29220; Ezra Riber, MD, Palmetto Pain Management, Bernardin Avenue, Columbia, SC; C. Jean Jonet, Ph.D., Columbia, SC 29201; Dr. J. Maturano, Palmetto Counseling Association, Columbia, SC 29201; Dr. Avie Rainwater, Florence, SC; Dr. Nicholas Lind, Post Trauma Resources, Columbia, SC.

Respectfully Submitted,



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
803-771-7211
Attorney for Claimant

August 19, 2014

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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for over 25 years.

Preston F. McDaniel
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

April 16, 2014

Virginia L. Crocker, Judicial Director
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

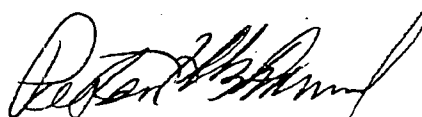
RE: Theodore Polansky v. SC Attorney General's Office
WCC File Nos.: 9922954 & 0024408

Dear Ms. Crocker:

Please find enclosed for filing with the Commission the original and three (3) copies of our MOTION TO SET HEARING PURSUANT TO COMMISSION REGULATION 67-601 AND 67-613(B)(4) with MEMORANDUM IN SUPPORT OF SAME in the above-referenced matter. I am, by copy of this letter, serving opposing counsel with a copy of the same.

I hope this is sufficient for filing with the Commission; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Ellen Goodwin, Attorney at Law

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File Nos: 9922954 & 0024408

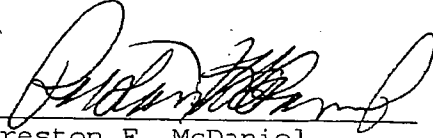
Theodore Polanksy,)
Employee-Claimant,)
v.)
SC Attorney General's Office,)
as Employer, and)
State Accident Fund,)
as Carrier,)
Respondent-Defendants.)

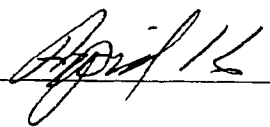
MOTION TO SET HEARING
PURSUANT TO COMMISSION
REGULATION 67-601
AND 67-613(B)(4)

TO: ELLEN GOODWIN, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that On the 10th day after service hereof or as soon thereafter as the Claimant may be heard, the Claimant will move before the Commission to have this matter set for hearing pursuant to statute and the Commission Regulations. Said motion is based upon the Memorandum attached hereto and incorporated herein by reference.

I SO MOVE.


Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
Attorney for Claimant

, 2014

SCWCC
APR 17 2014
JUDICIAL

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) WORKERS' COMPENSATION COMMISSION
COUNTY OF RICHLAND) WCC File No: 9922954 & 0024408

Theodore Polanksy,)
)
Employee-Claimant,)
)
v.) MEMORANDUM IN SUPPORT OF
) MOTION TO SET HEARING
SC Attorney General's Office,) PURSUANT TO COMMISSION
) REGULATION 67-601
as Employer, and) AND 67-613 (B) (4)
)
)
State Accident Fund,)
)
as Carrier,)
)
Respondent-Defendants.)
_____)

The Claimant would respectfully show unto the Commission as follows:

1. That the Claimant originally filed a Form 50 in this accepted case for a termination of his entitlement of permanent benefits on May 12, 2011 which was withdrawn due to the Claimant having a re-implantation of a spinal cord stimulator in Colorado in August of 2011 and after recovery it was refiled on March 2, 2012. The case was set before Commissioner Melanie James in May 2012 but after a Motion she ordered a continuance of the case and ordered that the Claimant submit to an evaluation pursuant to that Order. The Order resulted in an appeal and at the time of the Appellate Panel hearing set for November 14, 2012, the parties were verbally advised that no hearing would be held as the appeal

was premature in the opinion of the Commission. That verbal decision resulted in a Writ of Mandamus and a Writ of Prohibition being filed in the Circuit Court and the parties reached an agreement in the Circuit Court matter as set forth in the Consent Agreement filed with the Circuit Court that, "the parties in the underlined workers' compensation claim have reached an agreement which upon consummation and approval by the South Carolina Workers' Compensation Commission will resolve the issues that gave rise to the filing of the Writs of Prohibition and Mandamus." That agreement was entered and approved by the Court on April 22, 2013.

2. That the agreement in this claim had already been entered into with Counsel for the State Accident Fund, Ms. Ellen Goodwin, as of that filing in the Circuit Court and a draft of the Agreement had been forwarded to her on April 16, 2013. A copy of that draft is attached hereto and incorporated herein by reference. Thereafter when the Agreement was not signed and returned for filing with the Commission, on May 1, 2013 Counsel for the Claimant forwarded a Request pursuant to Commission Regulation 67-613 to the Commission requesting that the matter be reset for hearing. (That Regulation specifically provides that where a hearing is postponed, "all hearings other than those set pursuant to §42-9-260 are postponed only until the following

month. If the Commissioner cannot hear the case the following month, the hearing will not be reset until the moving party files a written request with the judicial department.") To this date no hearing has been set by the Commission. A copy of that Request is attached hereto and incorporated herein by reference.

3. That subsequent thereto on June 13, 2013, Counsel wrote Counsel for the Defense with a draft Motion advising that if the Consent Agreement was not returned that counsel would move before the Commission for an Order to have this matter reset for hearing. A copy of that redacted letter and draft Motion is attached hereto and incorporated herein by reference.

4. That thereafter in September 2013, counsel for the Defendants advised Claimant's counsel that the Agreement had not been signed due to an oversight and it was thereafter signed and was submitted to the Commission to Commissioner Beck per the Commission's direction on September 5, 2013. The Order was not signed until November 7, 2013.

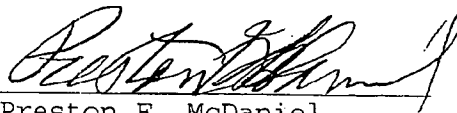
5. That ever since the Agreement was entered into back in April of 2013 and through the current date, no appointment has ever been set up with Dr. Frierson per the Consent Agreement which is now a period of over one (1) year.

6. That while Commission Regulation 67-613 requires only a request be made by the moving party for a hearing to be reset,

counsel for the Claimant is filing this Motion after being told that this is the fastest and quickest way for a hearing to be reset in this matter. Based on the filing of this Motion, the Claimant would request that the filing fee be reimbursed as part of hearing costs by the Commission.

WHEREFORE, counsel for the Claimant would request that this matter be set for hearing as soon as the Commission calendar will allow and finding that due to the fact that the Defendants have failed to procure the evaluation through the date of this Motion that the Defendants be deemed to have waived and are estopped from hereinafter setting the evaluation. The Claimant would also request reimbursement for the filing fee for the filing of this Motion and for the costs of this Motion pursuant to the Commission's authority to order costs for any hearing.

Respectfully submitted:



Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
Attorney for Employee/Claimant

4/16, 2014

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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for over 25 years.

Preston F. McDaniel
Justin S. Byars
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

April 16, 2013

VIA EMAIL ONLY - egoodwin@saf.sc.gov

Ellen H. Goodwin, Attorney
State Accident Fund
Post Office Box 102100
Columbia, SC 29221-5000

Re: Theodore Polansky vs. South Carolina Attorney
General's Office
WCC File No: 9922954 & 0024408

Dear Ellen:

Please find attached the Consent Agreement to allow for the independent medical evaluation that the State Accident Fund wanted performed. Please review it and I am pretty sure it is in agreement with our discussions and if so, please sign it. If not, give me a call to discuss so we can get it out so we can get this evaluation performed. I look forward to hearing from you.

Sincerely yours,



Preston F. McDaniel

PFM/kic
Enclosure

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 9922954 & 0024408

THEODORE POLANKSY,)
Employee-Claimant,)
v.)
SC ATTORNEY GENERAL'S OFFICE,)
as Employer, and)
STATE ACCIDENT FUND,)
as Carrier,)
Respondent-Defendants.)

CONSENT AGREEMENT TO
EVALUATION PERFORMED IN
COLUMBIA, SC BY
DR. RICHARD FRIERSON, MD
PURSUANT TO SC CODE §42-15-80

By and through the respective attorneys of the parties, the parties in the above-referenced matter have entered into an agreement resolving the issues that gave rise to the original Motion to Compel the Claimant to submit to an examination pursuant to the right of the Defendants under SC Code §42-15-80 to have an independent medical evaluation performed on the Claimant as to the issues that are pending before the Commission.

The parties have entered into the following agreement concerning those issues:

1. That the parties agree and the Claimant will submit to an examination by Dr. Richard Frierson with the USC School of Medicine Neurology Clinic in Columbia who is licensed physician or surgeon in the State of South Carolina for the purpose of an

examination performed pursuant to SC Code §42-15-80. Such examination shall include any and all testing and examination felt to be necessary by Dr. Frierson to complete the examination.

2. That since this examination is being performed pursuant to the right of the Defendants to have an independent medical examination performed by a duly qualified physician or surgeon under SC Code §42-15-80, there will be no interference with the independent examination to be performed by either party as to what Dr. Frierson feels is necessary to properly and completely evaluate and examine the Claimant as to the issues presented to him for examination which are pending before the Commission. Dr. Frierson shall state in writing before any type of tests are to be performed, if any, as part of his examination as to whether in his opinion the Claimant is capable in his current condition both physically and mentally to undergo such tests. Dr. Frierson may consult with the authorized treating psychologists and medical doctors treating Mr. Polansky as to his current condition.

3. That it is agreed that Dr. Frierson will be forwarded a copy of this Order and that Claimant's Counsel will be privy to all communication with Dr. Frierson's office from this date forward necessary for the scheduling of and conducting the independent medical examination performed by Dr. Frierson.

WE SO MOVE AND CONSENT:

Preston F. McDaniel, Esquire
Attorney for Claimant

Ellen Goodwin, Attorney
Attorney for Defendants

ORDER OF CONFIRMATION

After due and proper consideration of the above-referenced agreement entered into by and between the parties, it is hereby ordered that the Agreement be and hereby is confirmed as the Order of this Commission.

AND IT IS SO ORDERED..

SC WORKERS' COMPENSATION COMMISSION

Commissioner

April _____, 2013

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
Justin S. Byars
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

May 1, 2013

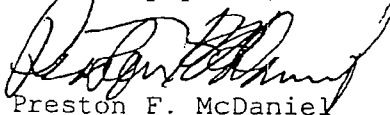
Virginia L. Crocker, Judicial Director
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Ted Polansky vs. SC Attorney General's Office
WCC File No.: 9922954 & 0024408

Dear Ginger:

As I know Eleanor Duffy Cleary has advised Gary Cannon, we have agreed to dismiss the Complaint for a Writ of Prohibition and Writ of Mandamus on the basis of an agreement I reached with the State Accident Fund through Ms. Ellen Goodwin agreeing to an evaluation by a local physician under SC Code §42-15-80 concerning the Defendants right to an independent medical evaluation by a licensed physician or surgeon. We are in the process of consummating that agreement which is simply an agreement to have that evaluation performed pursuant to Statute and we should be submitting the Consent Order within the next week. There is no reason that this evaluation can now not be performed within the next month but definitely no more than two (2) months and we should be ready for hearing either in July and absolutely no later than August. This case has been delayed long enough and I would request that it be put back on the Commission's calendar for the July/August term. By copy of this letter, I am notifying Defense Counsel Ellen Goodwin of this request and requesting that we move as fast as possible to get the Consent Order filed with the Commission. As always, I appreciate all the courtesies and kindnesses shown to me by the Commission and if you have any questions about this matter, please feel free to call me at your convenience.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Ellen Goodwin, Attorney

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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for over 25 years.

Preston F. McDaniel
Justin S. Byars
Matthew C. Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

June 13, 2013

VIA EMAIL ONLY - egoodwin@saf.sc.gov

Ellen H. Goodwin, Attorney
State Accident Fund
Post Office Box 102100
Columbia, SC 29221-5000

Re: Theodore Polansky vs. South Carolina Attorney
General's Office
WCC File No: 9922954 & 0024408

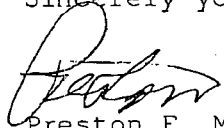
Dear Ellen:

Please find attached a Draft of a Motion that I will be filing with the Commission and serving on you personally this coming Thursday so that hopefully this matter can be heard before I leave on vacation on June 28, 2013. If you can draft or will agree to the one I drafted we can get the Consent Agreement done there is absolutely no reason that we cannot have this evaluation performed, if it is possible to be performed, within thirty (30) days and this matter heard thirty (30) days thereafter. Everything is done from my side and as far as I know everything is done from your side including the deposition of the Claimant and everything else except this evaluation.

Ellen H. Goodwin, Attorney-At-Law
June 13, 2013
Page 2 of 2

Finally, I have to file this Motion to get something moving
as nothing is moving on this file on the Consent Agreement.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Preston", with a stylized flourish at the end.

Preston F. McDaniel

PFM/pkb
Enclosure

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
COUNTY OF RICHLAND) WORKERS' COMPENSATION COMMISSION
WCC File No: 9922954

Theodore Polanksy,)
Employee-Claimant,)
v.)
SC Attorney General's Office,)
as Employer, and)
State Accident Fund,)
as Carrier,)
Respondent-Defendants.)

MOTION CONFIRMING CONSENT
AGREEMENT AND ORDERING MATTER
BE SET FOR HEARING

TO: ELLEN GOODWIN, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Claimant on the 10th day after service hereof or at such other time as designated by the Commission, Counsel for the Claimant will move for an Order of the Commission compelling compliance with the previous Consent Agreement entered into by Counsel for the parties and Ordering that this matter be set for hearing within sixty (60) days. Said motion is based upon the Memorandum attached hereto and incorporated herein by reference.

I SO MOVE.

Preston F. McDaniel
Attorney for Employee/Claimant
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

June 11, 2013

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
COUNTY OF RICHLAND) WORKERS' COMPENSATION COMMISSION
WCC File No: 9922954

Theodore Polanksy,)
Employee-Claimant,)
v.) MEMORANDUM IN SUPPORT OF
SC Attorney General's Office,) MOTION CONFIRMING CONSENT
as Employer, and) AGREEMENT AND ORDERING MATTER
State Accident Fund,) BE SET FOR HEARING
as Carrier,)
Respondent-Defendants.)

The movant would respectfully show unto the Commission as follows:

1. That a Petition and Complaint for a Writ of Mandamus and Writ of Prohibition were filed in the Circuit Court concerning an Order of the Commission that had been issued concerning a Motion that had been filed by the Defendant's in the above-referenced matter.

2. That the Defendants were represented at the time of the filing and prior to the untimely death of Aljernal Danley by the Danley Law Firm and specifically by Andrew Fajardo, an associate with the firm.

3. That as set forth in the Affidavit, that is attached hereto and is incorporated herein by reference of Counsel for the

*****UNCORRECTED FROM THIS POINT FORWARD*****

Claimant, prior to Mr. Danley's death Andrew Fajardo as Counsel for the Defendants contacted Counsel for the Claimant notifying him that they had found a local medical doctor that would perform an evaluation pursuant to S.C. Code §42-15-80 and based upon that Counsel for the parties entered into an agreement for that evaluation. Based upon that agreement Counsel for the Claimant, the Petitioner before the Circuit Court, notified Counsel for the Defendants in the Circuit Court matter, Ms. Elner Clary Duffy, of the agreement and notified the Court and entered into a Consent Agreement with Counsel for the Defendants in the Circuit Court matter dismissing the action and the Motion to Dismiss that had been filed in that action without prejudice and returning this matter to the Commission for purposes of having the evaluation performed and for this matter to then be set for hearing. Said Consent Agreement and correspondence concerning such is attached hereto and incorporated herein by reference as Exhibit B.

4. That subsequent thereto Mr. Aljernal Danley passed away and his law firm was closed and his files were transferred to other attorneys for handling. During this time Counsel for the Movant had conversations with Ellen Goodwin, Staff Attorney for the State Accident Fund, as to who would be handling the files.

5. That based on those conversations Counsel for the Claimant was advised that Ms. Goodwin was trying to find out the name of the local doctor who had agreed to perform the evaluation and that the files would immediately be handled by Ms. Clausen for the purposes of entering into the Consent Agreement as Andrew Fajardo had been terminated from employment due to the untimely death of Aljernal Danley and the closing of his law firm.

6. That subsequent thereto Ms. Goodwin as Staff Counsel for the Defendants, the State Accident Fund, notified Counsel for the Claimant of the name of the physician that would be performing the evaluation and correspondence was provided between the two Counsels as to the Consent Agreement.

7. That as set forth in the last correspondence it has now been a period of over two (2) months and the Consent Agreement has not been drafted nor entered into nor has any evaluation been scheduled. Upon information and belief Ms. Clausen is not handling the file and Counsel has been given the name of no other Counsel of Record other than Ms. Ellen Goodwin in reference to the handling of this file.

8. That pursuant to the last Order of this Commission this matter was held up to allow the Defendants the opportunity to have the evaluation performed which has now been entered into by Consent and the doctor has been agreed upon but nothing has been

done to move this case forward and the Claimant is desirous of moving his case to a conclusion.

WHEREFORE, based on the above the Claimant would move for an immediate hearing before the Commission and for an Order confirming the Consent Agreement entered into by the parties; Ordering that the evaluation be performed within thirty (30) days of the date of that Order and that a hearing be held no later than thirty (30) days after the date of that Order thus giving a total period of sixty (60) days from the date of the Order to have the evaluation performed and a hearing to be held in this matter.

Respectfully submitted:

Preston F. McDaniel
Attorney for Employee/Claimant
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

June 11, 2013

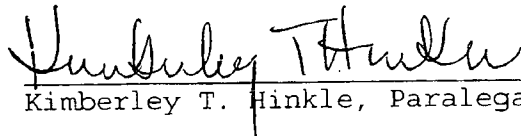
CERTIFICATE OF SERVICE

SCWCC File Nos.: 9922954 & 0024408

I hereby certify that I have on this day served the following in the matter of Theodore Polansky vs. SC Attorney General's Office with a copy of the MOTION TO SET HEARING PURSUANT TO COMMISSION REGULATION 67-601 AND 67-613(B)(4) with MEMORANDUM IN SUPPORT OF SAME in the United States Mail, with adequate postage thereon, addressed as follows:

Virginia L. Crocker, Judicial Director
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Ellen Goodwin, Attorney at Law
State Accident Fund
Post Office Box 102100
Columbia, SC 29221-5000



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this

16 day of April, 2014.



Notary Public for South Carolina (L.S.)

My Commission Expires: 10/08/15

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

THEODORE P. POLANSKY,

Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.

SC WORKERS' COMPENSATION
COMMISSION,

Defendant(s)

(Please Print)

Submitted By: Preston F. McDaniel, Esquire

Address: McDaniel Law Firm

1315 Elmwood Avenue

Columbia, SC 29201

SC Bar #: 3770

Telephone #: 803-771-7211

Fax #: 803-252-0709

Other:

E-mail: mcdaniellaw@hotmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings and other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☒ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (610)		

Submitting Party Signature:

Date: November 29, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

THEODORE P. POLANSKY,
Plaintiff

vs.

SC WORKERS' COMPENSATION
COMMISSION,

Defendant.

IN THE CIRCUIT COURT FOR THE
FIFTH JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
FROM ADR

DOCKET NO.

JEANETTE W. McBRIDE
C.C.P. & G.S.

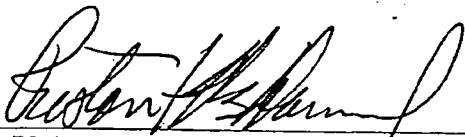
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FILED

I certify that this action is exempt from ADR because:

- ☒ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☐ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Preston F. McDaniel, Esquire
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
803-771-7211



Plaintiff/Attorney for Plaintiff

Defendant/Attorney(s) for Defendant(s)

Date: November 29, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

THEODORE P. POLANSKY,)
)
Plaintiff,)
)
v.)
)
SC WORKERS' COMPENSATION)
COMMISSION,)
)
Defendant.)

C/A NO. _____

SUMMONS

2012 NOV 29 PM 4:13
JEANETTE W. McBRIDE
C.C.P. & G.S.

IN RE:)
)
THEODORE P. POLANSKY,)
)
Employee/Claimant,)
)
v.)
)
SC OFFICE OF THE)
ATTORNEY GENERAL,)
)
Employer,)
)
and)
)
STATE ACCIDENT FUND,)
)
Carrier,)
)
Defendants.)

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the Plaintiff's attorney, Preston F. McDaniel, at his office, 1315 Elmwood Avenue, Columbia, South Carolina 29201, within thirty (30) days after the

service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written over a horizontal line.

Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

Attorney for the Plaintiff

November 29, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

THEODORE P. POLANSKY,)
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Plaintiff,)
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v.)
)
SC WORKERS' COMPENSATION)
COMMISSION,)
)
Defendant.)

C/A NO. _____

IN RE:)
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THEODORE P. POLANSKY,)
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Employee/Claimant,)
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v.)
)
SC OFFICE OF THE)
ATTORNEY GENERAL,)
)
Employer,)
)
and)
)
STATE ACCIDENT FUND,)
)
Carrier,)
)
Defendants.)

COMPLAINT FOR WRIT (S) OF
PROHIBITION AND MANDAMUS

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JEANETTE W. HOBBS
C.C.P. & G.S.

FILED

The Plaintiff complaining of the Defendant would petition and
would show unto this Court that:

1. The Plaintiff is a citizen and resident of the County of
Lexington, State of South Carolina, and he is the injured

worker/claimant in the matter of Theodore P. Polanski v. SC Office of the Attorney General, Employer, and State Accident Fund, Carrier, Defendants; SCWCC File Nos. 9922954 and 0024408

2. That the Defendant is an Agency and Commission of the State of South Carolina charged with administering the Workers' Compensation Laws of our State, SC Code §42-1-10, et. seq. with its principle place of business and operation being in Richland County, South Carolina, located at 1333 Main Street, Suite 500, Columbia, South Carolina, 29202-1715, with Gary M. Cannon being the Executive Director of the Commission.

3. That the Plaintiff as the Claimant in his workers' compensation claim(s) (hereinafter referred to as Plaintiff) filed a SCWCC Form 50 Request for Hearing on March 15, 2011 alleging that he had sustained physical brain injury as part of the injuries resulting from the original work-related injury and its aftermath specifically including the treatment needed therefore.

4. That thereafter on or about August 4, 2011, Counsel for the Defendants in the workers' compensation claim, that being the SC Office of the Attorney General as employer and the State Accident Fund as carrier, placed the Plaintiff on notice that they were requiring that the Plaintiff submit himself for an evaluation by, "Mark Williams, Ph.D.," for neuropsychological testing and evaluation.

5. That thereafter by letter dated August 17, 2011, Plaintiff's counsel in the workers' compensation action notified the Defendants of the Plaintiff's objection to the Plaintiff being required to submit to this evaluation setting out specifically as follows:

"Next, please be advised that we will not submit to the neuropsychological testing by Dr. Williams. There is no provision under the Act for neuropsychological testing and evaluation except where it is recommended and ordered by an authorized treating physician or other medical doctor as part of his evaluation. This is an accepted case and medical care is being provided by the authorized treating psychiatrist, Dr. Frank Forsthoefel, M.D., and the chronic pain medicine doctor, Dr. Ezra Riber.

We will consent to neuropsychological testing if ordered by one of those doctors with a neuropsychologist chosen by one of those doctors."

6. That subsequent to the filing of this objection, the Plaintiff had to undergo additional authorized medical care involving the reimplantation of a spinal cord stimulator and the requested hearing was cancelled. The Plaintiff then refiled his request for hearing on March 2, 2012. A Hearing was set on that request for benefits for June 5, 2012 and then approximately 6 weeks after the Plaintiff had refiled his request for benefits, the Defendants on April 17, 2012 again notified the Plaintiff that they were scheduling him for an appointment with, "Mark Williams, Ph.D." for the purpose of neuropsychological testing and evaluation. The Plaintiff again notified the Defendants of his objection to such

examination and the reasons for that objection. On April 20th based on the Plaintiff's objection and refusal to submit to such examination by the neuropsychologist, the Defendants filed a, "Motion to Compel Neuropsychological Exam". The relief requested by that Motion is as follows:

"The Defendants...hereby file this Motion to Compel, which seeks to compel Claimant to submit for neuropsychological examination by an expert chosen by Defendants. Defendants respectfully request that a hearing be scheduled on the Motion..., and further request an Order of the Commission granting this motion. Finally, Defendants request that hearing on Claimant's Form 50, which is scheduled for June 5, 2012, be continued to facilitate neuropsychological evaluation which otherwise could have been completed in a timely manner but for Claimant's refusal." (Emphasis added).

In paragraphs 2 and 3 of the Motion, the Defendants specifically sought and stated that:

"2. In order to address the Claimant's allegation of physical brain damage, Defendants scheduled an evaluation with an expert neuropsychologist to occur on August 22, 2011 and May 1, 2012. The Claimant has repeatedly and unjustifiably refused to attend both appointments in violation of SC Code Ann. §42-15-80.

3. SC Code §42-15-80 clearly holds that 'after an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the Commission, shall submit himself to examination, at reasonable times and places by a qualified physician or surgeon designated and paid by the employer or the Commission." (Emphasis added).

7. That thereafter at the motion hearing held on the Motion on May 16, 2012, the Defendants added to and changed their request as was set out in their Motion as follows,

"In addition, in the event that you find that for whatever reason Dr. Mark Williams (sic Ph.D.), his evaluation cannot be compelled, we have also contacted Dr. Thomas Gualtieri in North Carolina as an alternative. He is both a medical doctor and a neuropsychologist, and while we don't feel like the spirit of 42-15-80 necessarily requires that only a medical doctor can perform these type of evaluations, Dr. Gualtieri's qualifications I believe will clearly get us around any such requirement." (Emphasis added). (Tr., p. 9, ll. 2-12).

The Defendants went on to argue that in the event that the Commission would not order the evaluation with the neuropsychologist Mark Williams, Ph.D. they requested that the Plaintiff be ordered to attend the evaluation with Dr. Gualtieri in North Carolina and that due to that doctor's schedule that they be granted a continuance of at least sixty (60) days to allow the Defendants to have the evaluation performed and to allow for, "additional requests our expert may or may not have at that time to make his evaluation." (Tr., p. 10, ll. 1-3).

8. That thereafter on May 25th, the Hearing Commissioner, Commissioner Melody L. James, issued her notes asking the Defense Attorney to draft an Order and in that request set out the following Findings of Fact which are contained almost verbatim in the actual Order that was issued as her Findings of Fact:

- "1. The Clamant is correct that under §42-15-80 there is no authority to compel attendance for examination, unless it is a qualified physician or surgeon.

2. IME examination by a neuropsychologist would have been complete if Claimant had attended appointment.
3. Claimant to submit to an examination of a neuropsychiatrist of the choice of the Defendants. Defendants to seek a neuropsychiatrist in South Carolina. If availability is an issue in SC, then travel expenses to be paid for out of state appointment.
4. Matter continued for additional discovery and protection of Mr. Fajardo for the week of June 4th (higher Court). Therefore, return to general files."

9. That in interpreting and applying the provisions of the SC Workers' Compensation Act there are two (2) statutory construction principles that have been applied by our Appellate Courts to the provisions of the SC Workers' Compensation Act with those being:

A. It is the established law of this State that any reasonable doubt as to the construction of the workers' compensation law must be resolved in favor of the claimants, its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties directed toward the end of providing coverage rather than non-coverage. See for example, Hamm v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940).

B. Since the Workers' Compensation Statutes provide an exclusive compensatory system in derogation of common law rights, our Appellate Courts must strictly construe such statutes, leaving it to the Legislature to amend and to define any ambiguities. Cox.

v. BellSouth Telecommunications, 356 S.C. 468, 589 S.E.2d 766 (SC App. 2003), reh. den., cert. den. Under this second construction principle, the statutory construction principle is also applied that words shall be given their established legal meaning or the meaning which the Legislature intended and the Court or the Commission is not justified in so construing it as to do violence to a specific requirement of the Act. In applying these principles in the Cox case, the Court stated and held that since under the specific wording of SC Code §42-9-10 there was only a prohibition against, "total" lump sum payments that the Statute and its wording did not prohibit, "partial" lump sum payments of benefits.

10. That in reference to the Defendants obtaining or having independent medical evaluations performed, SC Code §42-15-80 specifically addresses that issue and gives the Commission the following authority and it is under that section that the Defendants made application to be allowed to have neuropsychological testing performed:

"After an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the Commission, shall submit himself to examination at reasonable times and places, by a qualified physician or surgeon designated and paid by the employer or the Commission." S.C. Code Ann. §42-15-80 (1976, as amended) (Emphasis added).

11. That in addition to the Commission being limited to ordering an examination by only a, "qualified physician or surgeon",

parties are required to be given notice of the issues they are to confront at any hearing and quoting from Ham v. Mullins Lumber Company, 193 S.C. 66, 7 S.E.2d 712 (1940):

"If there is such a thing as due process of law, under it a litigant is entitled to notice of the issues to be met on trial, hearing or appeal. The notice of the Commission stated the issue to which both sides and the Commission should address themselves. Counsel did so, and did not argue questions of fact or law not germane to the question stated in the notice. However, the Commission did not confine itself to that question, but rewrote the entire case. If it were correct in doing so, then it seems to me that every party who goes before the Commission on appeal must argue every point of law and fact in the case which might conceivably enter into it, regardless of the scope of the exceptions of the party appealing, and must ask that further evidence of the most exhaustive kind to be taken on all such points.... Moreover, in my opinion, such procedure would be violative of due process of law and contrary to orderly judicial procedure and the administration of justice.... The necessity of due notice and an opportunity of being heard is described as among the immutable principles of justice which inhere in the very ideal of free government which no member of the Union may disregard." (Emphasis added).

12. That in this case the Defendants filed a Motion to Compel a, "Neuropsychological Examination," by an, "expert" chosen by Defendants, and noted that the Defendants had scheduled, "an examination with an expert neuropsychologist". They then argued in their Motion that they were making this request under the provisions of S.C. Code §42-15-80 which provides as set out in their Motion,

"If so requested by his employer or ordered by the Commission shall submit himself to examination at

reasonable times and places by a qualified physician or surgeon designated and paid by the employer or the Commission." (Emphasis added).

The Plaintiff filed a response answering that request and came to that hearing prepared to answer that request which is the only issue of which he had notice. The Plaintiff as he had done for over a year objected to the examination by a neuropsychologist, "Mark Williams, Ph.D." because this neuropsychologist is not a qualified "physician or surgeon" which is the only examination to which the Defendants are entitled. For the Commissioner to go outside of the issues presented to her for determination and of which the Plaintiff had notice denied the Plaintiff fundamental due process of law. "A litigant is entitled to notice of the issues to be met on . . . hearing . . ." Ham, supra.

Therefore, the Commission does not have the authority under the Statute to order an examination by a neuropsychologist under the wording of the Statute and may only order an examination by a qualified physician or surgeon and the Commissioner went outside of the issues presented by the Motion.

13. That as is noted above, at the hearing for the first time the Defendants morphed their request for a neuropsychological testing and examination by a neuropsychologist to being allowed to have the Plaintiff examined by a neuropsychiatrist outside of the state of South Carolina. The Plaintiff was thus not placed on

notice of this issue and was only placed on notice of the issues as contained in the Motion to Compel, i.e., neuropsychological exam by a neuropsychiatrist. Therefore the Plaintiff was not given notice of the issues that were to be decided and when the Commissioner ordered the Plaintiff to submit to an examination by a neuropsychiatrist outside of the state of South Carolina, she went beyond the issues of which the Plaintiff had notice.

14. That further SC Code §42-15-80 provides for an examination by a qualified physician or surgeon at, "**reasonable times and places...**". Our Supreme Court has held in the case of Singleton v. Young Lumber Company, 236 S.C. 454, 114 S.E.2d 837 (1960) that where the claimant lives in Beaufort and there are qualified physicians in the area where he lives it is a reasonable excuse for a claimant to refuse to even travel to Charleston for the purpose of an examination. In all such cases, our Appellate Courts have based their decision on the evidence presented necessitating out of area travel. In this case not only did the Defendants' request morph from requesting an examination by Mark Williams, Ph.D., a psychologist, to an examination by not only a qualified physician or surgeon but then added that it be by a neuropsychiatrist, and then added a further requirement that the Plaintiff be required to travel out-of-state. First there is absolutely no requirement that a claimant be required to travel

outside of his area where there are duly qualified physicians or surgeons that can perform the evaluation in his area. Second, in this case there is no evidence of travel being necessary.

15. That in addition to a request for an Order requiring the Plaintiff to see a neuropsychiatrist and to travel out of State to do so in her Findings of Fact and ruling, the Hearing Commissioner also added and ordered that:

"W.C.C. File Nos. 9922954 & 0024408 are hereby returned to general files pending the completion of all necessary discovery."

SC Code §42-17-40 provides for hearings before the Commission to determine the issues between the parties (see also, SC Code §42-3-170) and SC Code §42-3-30 provides that the Commission shall promulgate all regulations relating to the administration of the workers' compensation laws necessary to implement the provisions of the Workers' Compensation Act and which are, "consistent therewith". In that regard, in reference to postponements of requested hearings the Commission adopted Reg. 67-613 which in reference to how long a postponement shall be allowed under Subsection 4 provides in pertinent part as follows:

"(4) All hearings other than those set pursuant to §42-9-260 are postponed only until the following month."

In this case, the Commissioner did not postpone the case to the following month but indefinitely until, "all necessary discovery" was completed.

16. That subsequent to the filing of the Order of the Hearing Commissioner, on June 27, 2012 (a period of approximately 6 weeks after the original hearing date on the motion and 3 weeks subsequent to the date that this matter had originally been set for hearing), the Plaintiff filed a Form 30 Request for Review by the Full Commission on July 10, 2012. Briefs were timely submitted respectfully by the Plaintiff/Appellant on September 11, 2012 and by the Defendants/Respondents on October 6, 2012 and a hearing was set on that Request for Review on November 14, 2012, initially at 9:00 o'clock a.m., which was changed to 2:30 o'clock p.m. the day before hearing with the Appellate Panel and being composed of Commissioners: Susan S. Barden, Andrea C. Roche, and Derrick L. Williams.

17. That pursuant to Commission request, the parties appeared at 2:00 o'clock p.m. for the 2:30 o'clock p.m. hearing and after the parties in the appeal prior to this claim exited the hearing room, a young lady exited the Full Commission hearing room and then reentered the hearing room and then came back out and advised the parties that the Three Member Panel constituted to hear this appeal had decided that the Plaintiff's Request for

Review was being denied because they had determined that the Order was interlocutory. She also advised that the parties would be receiving an Order to that effect. She then reentered the room and the parties were not allowed to appear before nor talk with nor were told this by the Hearing Panel. Thus the Full Commission decision was entered without hearing.

18. That since the Commission ruled that this is an interlocutory decision, the Plaintiff is foreclosed from further appeal to the SC Court of Appeals. Further, an appeal to the SC Court of Appeals will take six (6) months at a minimum which has a chilling effect on the Plaintiff's due process right to a timely hearing on his claim for benefits.

19. That the ancient prerogative writ of prohibition will issue under our common law system of jurisprudence but should only be issued with forbearance and caution and only in cases of necessity and will issue to prevent an excess or the assumption of jurisdiction on the part of an inferior tribunal or to prevent a great outrage based upon the settled principles of law and procedure but should not be issued where there is an adequate or applicable remedy by appeals. (Emphasis added).

In this case, there is no question that the Hearing Commissioner exceeded her authority under the Act by ordering the Plaintiff to submit to any examination based on a Motion filed

under SC Code §42-15-80 for an examination by a neuropsychologist wherein the statute only gives the Commission authority to order an examination by a qualified physician or surgeon. The determination that the Commissioner exceeded her authority under the wording of the Statute is in accordance with our Supreme Court decisions specifically ruling on this identical point interpreting almost identical language as to what constitutes a qualified, "physician" or surgeon and whether a Court can order an evaluation by a psychologist. In the case of Green by Green v. Louis Truck Lines, Inc., 314 S.C. 303, 443 S.E.2d 906 (1994), a case involving a request for an examination by a neuropsychologist pursuant to Rule 35, SCRCP, the Court applied the standard statutory construction concepts as set out herein before which apply to both statutes and rules of Court in that the words of a Court Rule or a statute are to be given their plain and ordinary meaning without resort to subtle or force construction to limit or expand the Statute or Rule. The Court then specifically held in Green in reference to the request for an examination under the Rule which provided for a physical or mental examination, "by a physician" that the language of the Rule did not include the ability of the Circuit Court to order an examination by a clinical psychologist holding that, "a clinical psychologist is not a physician". Identically in this case, identically a neuropsychologist is not

a, "qualified physician or surgeon". Like the Green case, the Defendants here filed a Motion to Compel and gave Plaintiff notice that the issue to be addressed at the Motion hearing was whether or not the Plaintiff should be required to submit to a, "neuropsychological exam" by a neuropsychologist. The Commissioner went outside of the issue noticed in the Motion and ordered an examination, first, by a neuropsychiatrist which had not been requested by the Defendants in their pleadings and second ordered in derogation of the requirement that the Plaintiff be required to submit to examination at reasonable times and places to require the Plaintiff to travel out of state for such examination. Clearly the Commissioner exceeded the authority granted to her by statute and therefore the Writ of Prohibition is proper to prohibit the Commission from enforcing the extra judicial Order requiring the Plaintiff to submit to an examination by a neuropsychiatrist where examination by a neuropsychologist was requested and by requiring that the Plaintiff not only to travel out of area but out of state and especially where there is no Finding of Fact that there is no qualified physician or surgeon in his area, i.e., Columbia, SC, who can perform such examination. Further in derogation of the statutory law and the Rules of the Commission that the Commission has the right to postpone a hearing only to the next month, the Commissioner in this case returned

this case to the general files and postponed it indefinitely until all discovery is completed, both of which exceed her authority under the Commission's own Rules as adopted pursuant to statute.

20. That the Writ of Mandamus is the highest judicial Writ known to the common law and is only to be issued when there is a specific right to be enforced, a positive duty to be performed and no other specific remedy. It requires a public official to perform an administrative act and will only be issued to compel a public official to perform a mandatory legal duty. The Plaintiff would submit that the Writ of Mandamus should be issued directing the Commission to immediately schedule a hearing and to not apply the Decision and Order of the Hearing Commissioner based on the Plaintiff's specific legal rights under the Workers' Compensation Act specifically including:

A. His right under the Workers' Compensation Act to not be required to appear for examination before any expert other than a qualified physician and surgeon and then required only to appear before such qualified physician or surgeon at reasonable times and places. The Commissioner through her Order specifically violated the Plaintiff's specific rights in this regard as set forth hereinabove.

B. To have a hearing set on his claim for benefits. Commission Reg. 67-613 provides that a postponement shall only be

allowed until the following month. Therefore, pursuant to the provisions of the Act and the Administrative Procedures Act and the Commission's own Rules, the Commission should be ordered after vacation of the Hearing Commissioner's Decision and Order, to perform the administrative act of setting a hearing immediately, with 30 days' notice to all parties as is required by the Workers' Compensation Act and the SC Administrative Procedures Act, specifically SC Code §1-23-320.

WHEREFORE, the Plaintiff would respectfully pray that this Court:

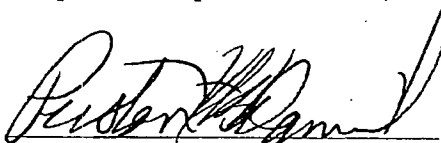
1. Issue a Writ of Prohibition to the Defendant, SC Workers' Compensation Commission, vacating and prohibiting the enforcement of the original Hearing Commissioner Melody James' Order, which Order exceeds the substantive jurisdictional authority of the Commission in reference to ordering examinations under SC Code §42-15-80; and which exceeds the authority granted to the Commissioner for postponement of hearings; and which exceeds the authority granted to the Commissioner under the pleadings and the notice of the issues of which the Plaintiff was given notice and required to respond as set forth in the Motion, and;

2. Issue a Writ of Mandamus ordering the Commission to set this matter for hearing as soon as possible, with 30 days' notice,

as required by law before a Commissioner not involved with this original hearing process which specifically excludes Commissioner Melody James, Commissioner Susan S. Barden, Commissioner Andrea C. Roche, Commissioner Derrick L. Williams and including Commissioner Beck and Commissioner McCaskill due to their recusal due to their prior employment with the SC Attorney General's Office and therefore setting this matter for hearing before the remaining Commissioner, Commissioner Avery B. Wilkerson, Jr.

Further, the Plaintiff would request attorney's fees and costs pursuant to SC Code §15-77-300 and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

Attorney for the Plaintiff.

November 29, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2012 CP 4007911
CASE NO. CP-4007911

Theodore P. Polansky,

Plaintiff,

vs.

SC Workers' Compensation Commission,

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

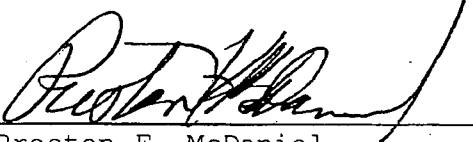
Plaintiff's Attorney: Preston F. McDaniel, Bar No. 3770 Address: 1315 Elmwood Avenue Columbia, SC 29201 Phone: 803-771-7211 Fax 803-252-0709 E-mail: mcdaniellaw@hotmail.com		Defendant's Attorney: _____, Bar No. ____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Pursuant to Rule 65(f)(1) Estimated Time Needed: 1 hour Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____			
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☒ Other: Motion Required per SCRCP Rule 65			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

VERIFICATION

PRESTON F. McDANIEL, being duly sworn, says that he is the Attorney of Record for the Plaintiff herein, and has read the foregoing Complaint for Writ(s) of Prohibition and Mandamus and knows the contents thereof, that the same is true of his own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters he believes them to be true. This Verification is made pursuant to SCRCP Rule 11(c) and the requirements of Rule 65(f)(1).


Preston F. McDaniel
Attorney for the Plaintiff

SWORN TO BEFORE ME this
29th day of November, 2012.

Dwight T. Hinkle (L.S.)
Notary Public for South Carolina
My Commission Expires: 4-26-20

2012 NOV 29 PM 4:13
FILED
JEANETTE W. MCBRIDE
CLERK OF COURT
S.C. CP & S.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

THEODORE P. POLANSKY,)
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Plaintiff,)
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v.)
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SC WORKERS' COMPENSATION)
COMMISSION,)
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Defendant.)

C/A NO. _____

IN RE:)
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THEODORE P. POLANSKY,)
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Employee/Claimant,)
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v.)
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SC OFFICE OF THE)
ATTORNEY GENERAL,)
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Employer,)
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and)
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STATE ACCIDENT FUND,)
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Carrier,)
)
Defendants.)

NOTICE OF MOTION AND
MOTION PURSUANT
SCRCF RULE 65(f) (E)

JEANETTE W. MCNEEL
C.C.P. & G.S.

2012 NOV 29 PM 4:12

FILED

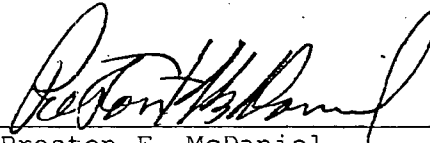
TO: GARY M. CANNON, EXECUTIVE DIRECTOR, SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION; AND ANDREW W. FAJARDO, ATTORNEY OF
RECORD FOR THE STATE ACCIDENT FUND AND THE SC OFFICE OF THE
ATTORNEY GENERAL IN THE WORKERS' COMPENSATION CLAIM; AND ALAN
T. WILSON, ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA:

YOU WILL PLEASE TAKE NOTICE that on the tenth (10th) day after
service hereof or as soon thereafter as Counsel may be heard or at

such other designated time as the Court may direct, Counsel for the Plaintiff will move for a Writ of Mandamus and a Writ of Prohibition directed to the SC Workers' Compensation Commission prohibiting the Commission and directing that the Commission perform its ministerial acts as more fully set out in the Complaint which is attached hereto and incorporated herein by reference in support of the Motion made in this matter. This Motion is made pursuant to SC Rules of Civil Procedure, Rule 65(f)(1) as is the Verification of Counsel of Record for the Plaintiff, attached to the Complaint.

I SO MOVE.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written over a horizontal line.

Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803)771-7211

Attorney for the Plaintiff

November 29, 2012

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov



WC File #: 0024408
Carrier File #: 2000-3303
Carrier Code #: SF 0500
Employer FEIN #:

Claimant's Name: Theodore Polansky SSN: Employer's Name: SC Attorney General's Office
Address: Address: Post Office Box 11549
City: State: Zip: City: Columbia State: SC Zip: 29211
Home Phone: () - Work Phone: () - Insurance Carrier: State Accident Fund
Date of Injury: Preparer's Name: Andrew Fajardo Law Firm: The Danley Law Firm Preparer's Phone #: (803) 254-2269

Date of Injury or Illness: 05/30/00

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is **Admitted** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: Defendants admit injury to the back and psychological only. However, all other body parts and extent of disability are denied.
2. It is **Admitted** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is **Admitted** the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is **Admitted** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is **Admitted** notice of injury was given the employer. The reasons for denial are:
6. It is **Denied** the employee **Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of: Carrier has paid out 500 weeks of temporary total benefits.
8. It is **Denied** the employee is permanently disabled. The reasons for denial are: Claimant has already been paid out 500 weeks of temporary total benefits.
9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 877.01 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: Defense of Laches. Additionally, Defendants generally deny all allegations made in the attachment to Claimant's Form 50. Further, Defendants allege that Claimant's Form 50 violates Section 42-1-700.
12. Estimated time-needed for hearing: 1 hour

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Preston F. McDaniel, Esquire

Address: McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201.

on the 30th day of March, 2012, by ☒ first class mail, ☐ personal service, ☐ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: Andrew Fajardo Attorney for Defendants
Title

afajardo@thedanleylawfirm.com
Email

March 30, 2012
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 9/07

51

Employer's Answer to Request for Hearing

CERTIFICATE OF SERVICE

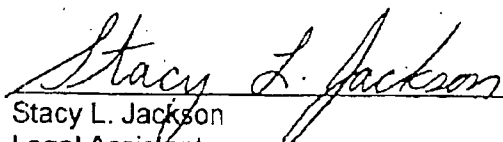
I, Stacy L. Jackson, legal assistant, of The Danley Law Firm, P.C., attorney(s) for the Defendants, do hereby certify that I have, this date, served the following parties with the following document(s) by United States Mail to the following address(es):

Case Caption: Theodore Polansky vs. SC Attorney General's Office and State Accident Fund

W.C.C. File No.: 0024408

Document(s): Form 51

Parties Served: Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201


Stacy L. Jackson
Legal Assistant

March 30, 2012
Columbia, South Carolina

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

March 2, 2012

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Theodore Polansky vs. SC Attorney General's Office
WCC File #(s): 9922954

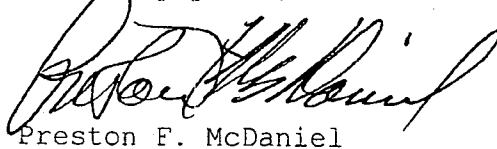
Dear Ms. Crocker:

Enclosed herewith is my Form 50 requesting a hearing with regards to the above-referenced matter along with my proof of service upon the carrier and/or opposing counsel in this matter. I have also enclosed this firm's check in the amount of \$25.00 representing the appropriate filing fee.

I am requesting that this matter be set for hearing as soon as the Commission calendar will permit.

I hope this is sufficient for filing with the Commission. Should you require anything further, kindly advise.

Sincerely yours,



Preston F. McDaniel

PFM/gh

Enclosures

cc: Theodore Polansky
Mee Ling Khor -Gould, Adjuster /State Accident Fund
Ellen Goodwin, Attorney-At-Law



WCC File #: 9922954
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Theodore Polansky SSN: Employer's Name: SC Attorney General's Office
Address: Address: P.O. Box 11549
City: State: Zip: City: Columbia State: SC Zip: 29211
Home Phone: (803) Work Phone: Insurance Carrier: State Accident Fund
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 10/19/99 & 05/30/01

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to See 1(b) Below (Part(s) of Body Injured) On 10/19/99 (Month/Day/Year) in Richland County, State of SC.
1b. Body part(s) affected are: Back / left knee/ whole person due to RSD / Psychological/brain
Briefly describe how the accident occurred: While Claimant was using a hand truck to move boxes he slipped on the stairs and injured his left knee.
Accepted Claims (See Attached)

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 10/29/99 (Month/Day/Year) in the following manner:

Written notice to Bill Gambrell, Dir. Of Medicine and Wilma Goings, Human Resources in Attorney General's Office; Accepted Claim

- ☒ 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: life time medical care due to total disability for back/ knee/ RSD/ Psychological/Brain Damage
- ☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
Claimant received weekly TT benefits for 500 weeks and would ask that weekly compensation be resumed from the date of last payment on 03/08/11 under an award for lifetime disability due to brain damage.
- ☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☒ (1) General Disability: ☒ Total ☐ (2) Specific Disability: ☐ Total
☒ (3) Wage Loss ☐ Partial ☐ Partial
- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: N/A
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$ (See Attached), and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None
- 11a. Further grounds or unusual aspects of claim: Any and all other benefits applicable under the Act; Claimant requests an award for total and permanent disability with lifetime benefits and lifetime medical care for having sustained brain damage.
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See attached list
- 11c. To the best of your knowledge, did you have any prior permanent disability? N/A
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: 1 hour

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: Preston F. McDaniel, Esq.
Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

Claimant's Attorney
Title

mcdaniellaw@hotmail.com
Email

March 2, 2012
Date

ATTACHMENT TO FORM 50

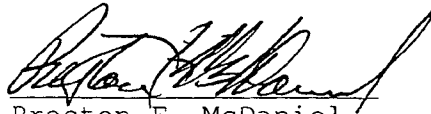
Theodore Polansky vs. South Carolina
Attorney General's Office
WCC File #(s): 9922954

1B. In 2002, Mr. Polansky was hospitalized due to a drug interaction between medications needed to treat his medical conditions stemming from the accident, which reaction resulted in a chemical encephalopathy of the brain causing physical injury to the brain per the opinion of the authorized treating psychiatrist Dr. Frank Forsthoefel and the clinical psychologist, Dr. Avie Rainwater who had performed neuropsychological testing just prior to the hospitalization and who performed re-testing in 2011.

The request for this Award was delayed due to two (2) facts: 1) that although requested, the complete records for the 2002 BMCC admission were just recently received. BMCC kept sending the wrong admission records due to the multiple admissions to that facility of the Claimant during 2001, 2002, 2003, and 2004; and 2) repeat evaluation as to whether the Claimant had physical brain damage was not authorized.

Dr. Forsthoefel, Dr. Maturano and the claimant have repeatedly in and since 2004, 2005, 2006, 2007, 2008 requested neuropsychological testing. The treating psychiatrist in a report in 2004 attached hereto and incorporated herein by reference, noted a tremendous change in the Claimant's brain functioning after the admission.

10A. Due to Claimant's average weekly wage being \$877.01 resulting in a compensation rate of \$589.70 in 2002, the maximum compensation for 2002 of \$507.34 was applied and at which the claimant has received temporary total weekly compensation benefits. Since a determination of the compensation rate has never been made by the Commission, the claimant would request a review and that his weekly benefits be increased to the maximum compensation rate at this time pursuant to SC Code §42-1-40 and §42-9-10(1) and the Supreme Court and Court of Appeals decisions there under. Since 2000, the average weekly wage in this State has increased from \$507.34 to \$704.92 or \$138.944%. If this increase is appealed to his average weekly wage in 2000 of \$877.01 it results in an average weekly wage of \$1,218.56 and a compensation rate of \$812.41.


Preston F. McDaniel

March 2, 2012

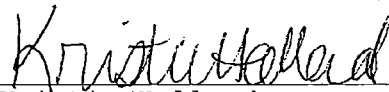
CERTIFICATE OF SERVICE BY MAIL

SC WCC File #: 0024408

I hereby certify that I have on this day served the following in the matter of Theodore Polansky vs. SC Attorney General's Office with a copy of the **Form 50 Request for Hearing** by depositing the same in the United States Mail with adequate postage thereon, addressed as follows:

Mee Ling Khor -Gould, Adjuster
State Accident Fund
Post Office Box 102100
Columbia, SC 29221-5000

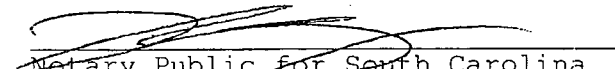
Ellen H. Goodwin, Attorney-At-Law
State Accident Fund
Post Office Box 102100
Columbia, SC 29221-5000



Kristin Holland

SWORN TO BEFORE ME this

2nd day of March, 2012.


Notary Public for South Carolina
My Commission Expires: 11-18-14

(L.S.)

South Carolina Workers' Compensation Commission

1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov



WC File #: 9922954
Carrier File #: 1999-3671
Carrier Code #: _____
Employer FIDIN #: _____

Claimant's Name: Theodore Polanksy SSN: _____ Employer's Name: Attorney General's Office
Address: _____ Address: Rembert C. Dennis Office Bldg.
City: _____ State: _____ Zip: _____
Home Phone: () - _____ Work Phone: () - _____ City: Columbia State: SC Zip: 29211
Date of Injury: 10/19/99 Insurance Carrier: State Accident Fund
Preparer's Name: Matthew C. Robertson, Esq. Law Firm: State Accident Fund Preparer's Phone #: (803) 896-5896

Date of Injury or Illness: 10/19/99

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is Admitted the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Defendants admit injury to the left knee only; however, extent of injury and all other body parts affected are denied.
2. It is Admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:

3. It is Admitted the relationship of employer and employee existed at the time in question. The reasons for denial are:

4. It is Admitted at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:

5. It is Admitted notice of injury was given the employer. The reasons for denial are:

6. It is Denied the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
To be determined as Carrier has filed an appeal with the Full Commission.
7. It is Denied the employee is entitled to temporary total disability for the period(s) of :
All benefits have been paid under WCC File No.: 0024408. Carrier has paid 500 weeks of benefits.
8. It is Denied the employee is permanently disabled. The reasons for denial are:
Disability, if any, to be determined by W.C.C.
9. It is Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of **\$ 877.01 (for WCC File No.: 0024408)** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:

12. Estimated time needed for hearing: 30 minutes

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Preston F. McDaniel, Esquire Judicial Director, SCWCC

Address: 1315 Elmwood Avenue, Columbia, SC 29201 P.O. Box 1715, Columbia, SC 29202-1715

on the 8th day of June, 2011 by ☒ first class mail ☐ personal service ☐ certified mail.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Chief Counsel Title: MRobertson@saf.sc.gov Email: _____ Date: 6-7-11

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 9/07

51**Employer's Answer to Request for Hearing**

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File #: 9922954 / 0024408

Carrier File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: Theodore Polansky SSN: _____ Employer's Name: SC Attorney General's Office
Address: _____ Address: P.O. Box 11549
City: _____ State: _____ Zip: _____ City: Columbia State: SC Zip: 29211
Home Phone: (803) Work Phone: () Insurance Carrier: State Accident Fund
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 10/19/99 & 05/30/00

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to See 1(b) Below (Part(s) of Body Injured) On 10/19/99 & 05/30/00 (Month/Day/Year) In Richland County, State of SC.

1b. Body part(s) affected are: Back / left knee/ whole person due to RSD / Psychological/brain

Briefly describe how the accident occurred. 1999 Injury: While Claimant was using a hand truck to move boxes he slipped on the stairs and injured his left knee. 2000 Injury: While Claimant was moving evidence he injured his back. Accepted Claims (See Attached)

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on 10-29-99 (Month/Day/Year) in the following manner:

1999 Injury: Written notice to Bill Gambrell, Dir. Of Medicine and Wilma Golings, Human Resources in Attorney General's Office; 2000 Injury: email was sent to Tammy Wilson, (Bill Gambrell-supervisor) Personnel Director

☒ 6. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: life time medical care for back/ knee/ RSD/ Psychological

☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:

Claimant received weekly TT benefits for 500 weeks and would ask that weekly compensation be resumed from the date of last payment on 03/08/11 under an award for lifetime disability due to brain damage.

☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability:

☒ Total

☐ (2) Specific Disability:

☐ Total

☒ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: N/A

10a. At the time of the injury, the Claimant was paid weekly wages of \$ (See Attached), and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

None

11a. Further grounds or unusual aspects of claim: Any and all other benefits applicable under the Act; Claimant requests an award for total and permanent disability with lifetime benefits and lifetime medical care for having sustained brain damage.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See attached list

11c. To the best of your knowledge, did you have any prior permanent disability? N/A
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1 hour

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: Preston F. McDaniel, Esq.

Claimant's Attorney
Title _____

mcdaniellaw@hotmail.com
Email _____

May 12 2011
Date _____

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

50

Employee's Notice of Claim and/or
Request for Hearing

RECEIVED
MAY 27 2011
LEGISLATIVE
STATE ACCIDENT FUND

ATTACHMENT TO FORM 50

Theodore Polansky vs. South Carolina
Attorney General's Office
WCC File #(s): 9922954 / 0024408

1B. In 2002, Mr. Polansky was hospitalized due to a drug interaction between medications needed to treat his medical conditions stemming from the accident, which reaction resulted in a chemical encephalopathy of the brain causing physical injury to the brain per the opinion of the authorized treating psychiatrist Dr. Frank Forsthoefel and the clinical psychologist, Dr. Avie Rainwater who had performed neuropsychological testing just prior to the hospitalization and who performed re-testing in 2011.

The request for this Award was delayed due to fact that although requested, the complete records for the 2002 BMCC admission were just recently received. BMCC kept sending the wrong admission records due to the multiple admissions to that facility of the Claimant during 2001, 2002, 2003, and 2004.

Dr. Forsthoefel, Dr. Maturano and the claimant have repeatedly in and since in 2004, 2005, 2006, 2007, 2008 requested neuropsychological testing. The treating psychiatrist in a report in 2004 attached hereto and incorporated herein by reference, noted a tremendous change in the Claimant's brain functioning after the admission.

10A. Due to Claimant's average weekly wage being \$877.01 resulting in a compensation rate of \$589.70 in 2002, the maximum compensation for 2002 of \$507.34 was applied and at which the claimant has received temporary total weekly compensation benefits. Since a determination of the compensation rate has never been made by the Commission and the claimant would request a review and that his weekly benefits be increased to the maximum compensation rate at this time pursuant to SC Code §42-1-40 and §42-9-10(1) and the Supreme Court and Court of Appeals decisions there under. Since 2000, the average weekly wage in this State has increased from \$507.34 to \$704.92 or 138.944%. If this increase is applied to his average weekly wage in 2000 of \$877.01 it results in an average weekly wage of \$1,218.56 and a compensation rate of \$812.41.


Preston F. McDaniel

5/12, 2011

CERTIFICATE OF SERVICE BY MAIL
SC WCC File #: 0024408

I hereby certify that I have on this day served the following in the matter of Theodore Polansky vs. SC Attorney General's Office with a copy of the Form 50/ Request for Hearing by depositing the same in the United States Mail with adequate postage thereon, addressed as follows:

Mee Ling Khor -Gould, Adjuster
State Accident Fund
Post Office Box 102100
Columbia, SC 29221-5000

Ellen H. Goodwin, Attorney-At-Law
State Accident Fund
Post Office Box 102100
Columbia, SC 29221-5000

Christina Will-Me

SWORN TO BEFORE ME this
26th day of May, 2011.

Lee Henderson (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/12/2020

State of South Carolina	)	
	)	In the Circuit Court
County of Richland	)	
	)	
Theodore Polansky,	)	
	)	
Plaintiff,	)	2015-CP-40-07380
	)	
versus	)	May 20, 2016
	)	
SC Attorney General,	)	Columbia, South Carolina
	)	
Defendant.	)	
	)	

TRANSCRIPT OF RECORD

B E F O R E:

The Honorable Casey Manning

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

Preston McDaniel, Esquire
Attorney for the Plaintiff

Temus Miles, Jr., Esquire
Attorney for the Defendant

PROVIDED FOR: Temus Miles, Jr., Esquire

FOR COPIES CONTACT: DeeAnne Varnadoe
Official Court Reporter
Fifth Judicial Circuit, At-Large
dvarnadoe@sccourts.org

THIS TRANSCRIPT WAS PREPARED FOR TEMUS MILES, JR., ESQ.

P R O C E E D I N G S

1
2 THE COURT: This is an appeal. It's Polansky versus
3 the Attorney General's Office.

4 Come on up, gentlemen, Mr. Miles and Mr. McDaniel. Am
5 I right so far?

6 MR. MCDANIEL: Yes, sir.

7 MR. MILES: Yes, sir.

8 THE COURT: All right. And a moment ago, as I walked
9 in, I talked to Mr. Miles and Mr. McDaniel. This case has
10 a long, tortured history. How long is it? Is it 12 years
11 old?

12 MR. MCDANIEL: 1999.

13 MR. MILES: Seventeen years total.

14 THE COURT: All right. Actually, I had a full hearing
15 with you and I was waiting to get a file from the Worker's
16 Comp Commission.

17 MR. MILES: Correct.

18 THE COURT: But I don't necessarily need to look
19 through that entire file. I think both of you, gentlemen,
20 have briefed it and provided a memorandum. All I need from
21 y'all now is a proposed order and I'll sign one or the
22 other. It's going to be appealed either way, I do believe
23 -- and it should be -- and I'll let it rest with that.

24 Mr. McDaniel, I know you always like to talk, so what
25 do you want to add?

THIS TRANSCRIPT WAS PREPARED FOR TEMUS MILES, JR., ESQ.

1 MR. MCDANIEL: Oh, no, no, no, no. I was just going
2 to say it's only been in litigation -- it's the second case
3 and it's only been in litigation since 2012. The only
4 issue is the lifetime benefits for the brain damage.

5 THE COURT: Yes.

6 MR. MCDANIEL: And we ---

7 THE COURT: And he's going to say you're entitled to
8 them and he's going to say no.

9 MR. MCDANIEL: That's correct. And we've narrowed it
10 down to three issues.

11 THE COURT: Okay. That's good enough. How long do
12 y'all need? Are y'all ready now or do you want ten days?

13 MR. MCDANIEL: Actually, I was hoping you were going
14 to rule today, so I was going to -- I've already got a
15 proposed order.

16 THE COURT: Do you have a proposed order?

17 MR. MILES: No, sir. I'll take ten days, if you would
18 be so kind.

19 THE COURT: Let's give you five days.

20 MR. MILES: That will work.

21 THE COURT: So I'll shorten it a little bit. You're
22 ready, give him a copy of yours. And send your copy to Mr.
23 McDaniel. And within the next ten days, as soon as I get
24 both of them, I'm going to sign one or the other on the
25 very day.

THIS TRANSCRIPT WAS PREPARED FOR TEMUS MILES, JR., ESQ.

1 MR. MCDANIEL: I sincerely appreciate it, Your Honor,
2 because, you know, we've been trying to get an expedited
3 hearing since November.

4 THE COURT: Are you going to talk me out of it?

5 MR. MCDANIEL: No, Your Honor.

6 THE COURT: Okay. Anything else?

7 MR. MILES: Your Honor, there's actually two different
8 appeals. There's our appeal and then his cross appeal.
9 Would you like separate orders on those?

10 THE COURT: That's up to you, gentlemen. You can
11 combine them in one or you can do separate orders.

12 MR. MILES: I think it would be best if we did
13 separate orders, Your Honor.

14 MR. MCDANIEL: Yes, Your Honor, I do. And if you
15 would, I would appreciate it if you would make a ruling on
16 their primary appeal and then I will not have any problem
17 with you holding in abeyance my -- the decision on mine for
18 approximately 30 days.

19 THE COURT: All right. That's the way we'll proceed.

20 MR. MCDANIEL: Thank you, Your Honor.

21 THE COURT: Thank you, both.

22 MR. MILES: Thank you, Your Honor.

23 (WHEREUPON, the hearing in the above-
24 entitled matter was concluded.)

25

THIS TRANSCRIPT WAS PREPARED FOR TEMUS MILES, JR., ESQ.

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF RICHLAND)

Be it known that I, the undersigned DeeAnne Varnadoe, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, before the Court of Common Pleas for Richland County, South Carolina, so given on May 20, 2016, to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand this 4th day of August, 2016.

S/DeeAnne Varnadoe
DeeAnne Varnadoe
Official Court Reporter
Notary Public for South Carolina
My commission expires 3/14/2026.

THIS TRANSCRIPT WAS PREPARED FOR TEMUS MILES, JR., ESQ.

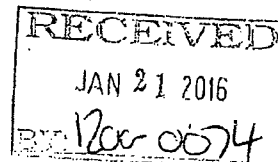
STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC NOS. 9922954 AND 0024408

Theodore P. Polansky,)
Claimant,)
v.)
SC Attorney General's Office,)
Defendant.)
-----)

FULL COMMISSION PANEL HEARING

Monday, September 21, 2015
3:52 p.m. - 4:25 p.m.

The full commission panel hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 21st day of September, 2015 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

COMMISSION PANEL:

Avery Wilkerson, Chair
Melody James
Mike Campbell

Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
Attorney for the Claimant

Peter P. Leventis, IV, Esquire
McKay, Cauthen, Settana & Stublely, P.A.
1303 Blanding Street
Columbia, South Carolina 29201
Attorney for the Defendant

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EXHIBITS

(There were no exhibits marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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1 COURT REPORTER: Today is September 21st, 2015.

2 This is South Carolina Workers' Compensation
3 Case Numbers 9922954 and 0024408. This is the
4 case of Theodore Polansky, Claimant, versus
5 South Carolina Office of Attorney General,
6 Employer, and State Accident Fund is the
7 carrier. This is a Cross Appeal. The First
8 Appellant is the Defendant represented by Peter
9 Leventis. The Second Appellant is the Claimant
10 represented by Preston McDaniel.

11 MR. LEVENTIS: Your Honors, may it please the
12 commission. And it sounds like, when you were
13 calling the case, I'm first to go on our appeal
14 as to the brain injury and the severity thereof
15 and the compensability thereof. The briefs --
16 and I'm never going to tell you everything I've
17 got to tell you, but I know I've got to give it
18 a try. The briefs in this case, the
19 pre-hearing briefs, are in excess of 1,000
20 pages. The order in this case in excess of 50
21 pages, so let me just say, obviously, I'm going
22 to have to rely on my brief and the evidence in
23 the record for a number of things. I am going
24 to hit several of the points that I think are
25 most important, and on reply to the cross



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1 appeal, I'll address the issues with average
2 weekly wage and compensation rate. One of the
3 objections in this case, and I think was an
4 important trial objection to that of the
5 inclusion of the report of Dr. Avie Rainwater.
6 That objection was overruled and that report
7 did come into the record. There are two
8 primary reports of Dr. Avie Rainwater: One was
9 back in 2001 evaluating whether or not he was
10 an appropriate candidate a spinal cord
11 stimulator. The second one, back -- if I'm not
12 mistaken, approximately in March of 2011 or
13 2012 as a referral for an IME evaluation by his
14 attorney. It is tough to do without getting --
15 there are so many facts. This is a 1999 and
16 2000 compensable admitted injuries. The
17 primary issue for y'all in today's hearing is
18 that in 2002, there was a hospitalization due
19 to a drug-drug interaction with the drug
20 Seroquel which was then provided by the
21 defendants as a compensable part of this claim.
22 At the time -- oh, let me get back to the trial
23 objection, and I'll -- and it's very difficult
24 to do in the time that we have, but was that
25 Avie Rainwater and the defendants were in pitch



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1 litigation, not at the time of that report,
2 however was filed later that year. And the
3 contract and issues of payment, which were the
4 subject of that lawsuit between the State
5 Accident Fund and Avie Rainwater, and if you
6 look at the attachments, and this was put into
7 the record, as well, in the complaint, go back
8 several years prior to that. The fact of the
9 matter is that having that report in there or
10 permitting that report in there, I would argue
11 is per se prejudicial to the defendants,
12 similarly if I was a judicial officer or
13 hearing commissioner, and one of the parties in
14 front of me was somebody who I was in pitch
15 litigation with or contemplating just about
16 being in pitch litigation with, I may have the
17 patience of Jobe and the wisdom of Solomon, but
18 the fact of the matter is, it's so clear that
19 there would potentially be prejudice, that I
20 don't think most people would hear a case under
21 those circumstances. Therefore, we believe it
22 should have been kept out. One thing noted in
23 in record ---

24 MS. JAMES: Even if you leave it out, it seems to me
25 looking at the record that a large portion



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1 relied on is Dr. Forsthoefel, however you
2 pronounce it, it was his opinion -- he was a
3 treating provider. I know he was like in and
4 out of the case at one point.

5 MR. LEVENTIS: That's correct, Your Honor, and one
6 thing that was noted in the order was that
7 Rainwater's opinion was not relied on by the
8 hearing commissioner. It was also not
9 necessary or pivotal to the underlying hearing
10 commissioner's opinion. However, even
11 Dr. Forsthoefel notes the importance of having
12 Dr. Rainwater's opinions, because he takes a
13 look of that of a snapshot of the claimant both
14 before and after the 2002 drug-drug
15 interaction. I'll have to go on other issues,
16 but the -- one of the issues with that, Your
17 Honors, is, with the alleged 2002 drug-drug
18 interaction, Dr. Forsthoefel asked him --
19 because the claimant had a significant
20 number -- the way he got to the severity, a
21 severity lynchpin of the Crispin-Sparks'
22 analysis for a physical brain injury was, he
23 says that, "The severity and the causation was
24 that the claimant did have quite a number of
25 pre-existing mental conditions and disorders".



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1 He used the DSM for a diagnosis of a mood
2 rating to determine the physical brain injury,
3 and he said he felt that even though it wasn't
4 normally used for that, he felt he could tie it
5 into this, but the problem in my opinion is,
6 for a person who's got so much pre-existing
7 significant and severe depression,
8 schizoaffective disorder, OCD, agoraphobia,
9 issues with his memory, all of these prior to
10 -- and had been hospitalized, in-patient
11 hospitalization and several weeks, months,
12 outpatient hospitalization prior to the 2002
13 injury. To determine a severe and significant
14 physical brain injury, if you -- don't worry
15 about taking time to look through the records
16 to find the EEG or the CT scan or the MRI scan
17 that's going to show this, because you're not
18 going to find that. These are based on the
19 clinical findings of Dr. Forsthoefel, and the
20 way that he gets to that is he says, "Well, the
21 mood issues were staying the same, but these
22 cognitive issues over time ..." -- which he
23 says he recognized in about 2010 that he
24 believed were from dementia which related back
25 to the 2002 brain injury. The problem from the



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1 defendant's standpoint is a couple-fold. One,
2 when -- we had argued Laches -- was had argued
3 Laches that he did not bring this prior. Under
4 42-15-70, no doubt by the defendants, I will
5 concede, that if there's medical malpractice or
6 some kind of issue or further injury that
7 arises in treatment from the Workers'
8 Compensation claim, that that's going to be
9 compensable, don't doubt it, don't dispute it.
10 However, if it's not brought up until over 10
11 years after the fact, the defendant's ability
12 to get that added into the Second Injury
13 Fund -- which is an issue in this case.
14 There's a prior order of the Second Injury Fund
15 on some of the issues, not the brain, because
16 it wasn't raised at that time. The Statute of
17 Limitations for the defendants to go back under
18 medical malpractice under 42-15-7 to go back
19 under product's liability against the drug
20 manufacturer or anyone is gone, even the
21 Statute of Repose, which would be eight years
22 in this case, is gone, and the defendants
23 believe that they have been prejudiced by that.
24 Contrary to that view, opposing counsel had
25 raised that the defendants were actually the



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1 ones who were stopped from now saying that the
2 brain is not compensable, because the
3 defendants have been providing treatment for
4 that hospital visit and had been providing
5 treatment all along after that. I asked
6 Dr. Forsthoefel on the stand right here, I
7 said, "Well, the only thing you changed in your
8 treatment was that you took out the Seroquel,
9 which was problematic. The rest of what you
10 did was essentially the same treatment you were
11 doing before the drug-drug interaction. He
12 said, "Yes, and how, as a lay person, am I
13 supposed to realize that I'm now apparently
14 treating him for a physical brain injury and no
15 longer treating him for just all these mood
16 disorders which have been aggravated and
17 exacerbated by the pain and issues with his
18 physical injuries", and he said he wasn't
19 really clear on that. He went back many times
20 to his clinical findings. However, these are
21 clinical -- he says "clinical findings". These
22 aren't clinical tests that he has results from.
23 These are his clinical findings. And I did ask
24 him -- I said, "Well, Doctor, how do you break
25 down if you give this person a 30 to 40 on this



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1 DSM Scale, 100 being perfect no problems, and
2 zero being, you know, almost comatose or in a
3 coma? How do you give him a 30 to 40, which he
4 read the examples of what that is, somebody who
5 lays in bed all day, somebody who is not very
6 functional, and I said, "Well, since he had
7 significant pre-existing depression and a sense
8 of compulsive disorder and hallucinations and
9 had to be hospitalized at times? Prior to
10 this, couldn't somebody have a 30 to 40 from
11 that?" He conceded that's true, that he could
12 be that from that. I said, "How do you break
13 it away that that's what's causing it, the
14 physical brain injury, and not all these
15 pre-existing conditions", and he said, "Well,
16 this again is ..." -- his testimony was that
17 the mood congruent issues stayed the same, but
18 his cognitive abilities went down. I have two
19 points on that: One, it's logically
20 inconsistent to say that the State Accident
21 Fund and the defendants knew or should have
22 known back then that this was for a physical
23 brain injury, yet, at the same time, the
24 claimant himself did not even know until 2011
25 that that's what was going on, that that's what



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1 had caused this drop. The other problem that
2 I have with that is I don't have a definitive
3 test showing that. I know the Supreme Court
4 has said, "I don't need a definitive test
5 showing what this is, you know, answers six out
6 of seven or so many blood parts per million or
7 whatever. However, I also asked Dr.
8 Forsthoefel if the mood issues or psychological
9 issues had been aggravated by this, and he
10 said, "Yes, all these psychological issues have
11 been aggravated by the physical brain injury",
12 and then, I said, "Well, Doctor, now ..." --
13 and I said -- and it's in the transcript, so
14 "Not being coy, but how then am I to know ..."
15 -- me being anyone -- "... how am I to know
16 that indeed -- you said it was because he was
17 stable, and the cognitive went down, but if
18 it's been aggravated -- you know, how am I
19 really to figure out which is which, and he
20 said, "Well, you know, he did through
21 Providence treatment, luck or whatever, get his
22 mood stabilized back under control, but the
23 cognitive was down". I'd point out a few
24 things in the record. From 2000 to 2004 and
25 particularly after he left the hospital,

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1 according to Dr. Adams, according to Dr.
2 Forsthoefel, according to the EEG testing that
3 he had at that time, Page 670 in the record,
4 his neuropsychological testing was within
5 normal limites after, quote "full remission".
6 The symptoms and issues ---

7 (Whereupon, the timer buzzer went off.)

8 COMMISSIONER WILKERSON: Go ahead and finish your
9 thought.

10 MR. LEVENTIS: The symptoms and issues that predated
11 the hospital visit, but the encephalopathy took
12 place at the hospital. The brain scan at that
13 time was within normal limits, good reading and
14 good comprehension of what he read. His memory
15 returned to normal. He did have memory
16 problems predating the 2002 hospitalization,
17 but at least at that time, it had returned back
18 to normal. Thank you, Your Honors. I'll save
19 the rest for follow-up.

20 MR. MCDANIEL: Thank you. First off, I'm just going
21 to hand you up a couple very important parts
22 just from the record, and a lot of these pages
23 probably won't even come into play, but the
24 first two -- or the first three are what I'm
25 going to try to speak to. First off, the



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1 authorized treating chronic pain medicine
2 specialist since 2001 has been Dr. Ezra Riber.
3 He stated to a reasonable degree of medical
4 certainty that Mr. Polansky has suffered severe
5 and permanent brain damage as a result of his
6 chemical encephalopathy. What we're talking
7 about in 2002 is a physical brain injury. This
8 man had massive swelling and was hospitalized
9 for 25 days. They paid for everything.
10 Everybody knew he had a brain injury. Nobody
11 is denying that. Counsel did not deny that.
12 Nobody denies that in 2002 he had a brain
13 injury. We both knew then the same thing after
14 that. What you're going to find in the first
15 two pages is this. Dr. Forsthoefel in 2004
16 said "I would appreciate if you'd look at
17 whether or not he's got an organic brain
18 problem. Okay. He requested a neurological
19 examination in 2004. In addition to that,
20 Dr. Riber in 2005 requested a neurological
21 examination, and on the second page of that,
22 you're going to find Dr. Machirano.
23 Dr. Forsthoefel was cutting back on his
24 practice in 2005 and treatment was transferred
25 for a period of four years to Dr. Machirano,



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1 who says, "I believe we've got an organic brain
2 problem going on. I want a neurological
3 examination, and I want neuropsychological
4 testing. Also, they sent him to Dr. Julian
5 Adams, and Dr. Julian Adams says, "If memory is
6 your issue, then I recommend that he have
7 neuropsychological testing". You'll see in the
8 record were numerous letters from us in 2004,
9 2005, communication in 2006 and 2007 requesting
10 the neuropsychological testing. They finally
11 provided neuropsychological testing in 2007 and
12 2008, and they found massive cognitive
13 dysfunction, but it was inconclusive, because
14 unknown to us, the State Accident Fund didn't
15 send them over the records from the 2002
16 hospitalization. Now, the doctor that
17 performed those tests, Dr. Lynn, when he saw
18 him said, "This explains it. This guy has got
19 organic brain damage", and he joins in the
20 opinion. All this came about -- so, what you
21 find out is, they delayed in 2004 to 2008 while
22 providing all this treatment, Aricept, if
23 anybody is familiar with -- I'm sure -- that
24 treats organic brain dysfunction. I'm sure
25 that you're all aware of that, probably

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1 painfully aware of that, but in any event,
2 there are some other drugs -- Geodon, that you
3 will see referenced in here, and so we all knew
4 the same thing. Now, in 2009, we've been
5 asking for neuropsychological testing and a
6 neurological examination, and in 2009, they
7 asked for our help with the Second Injury Fund.
8 What do I write is on Page 3. I say, "We
9 believe that Ted had neuropsychological -- we
10 believe he's got organic brain damage. Let me
11 know the State Accident's position on that, or
12 are they going to -- do we have to fight over
13 this since we've helped you out with Second
14 Injury Fund and all that", no response --
15 you're going to find no response until 2011,
16 and you're going to find no response then until
17 I file a Form 50, and we filed a Form 50 seven
18 days after Dr. Forsthoefel, who's been the
19 authorized treating physician since 2002 --
20 now, Dr. Riber, Dr. Forsthoefel, Dr./PhD Jon
21 Benet, she -- all of those say that he has
22 organic brain damage that is severe, and how
23 severe it is, is I'm going to refer to -- on
24 Page -- if you'll look at Page 11 -- and let's
25 remember this, too. Ted has got RSD, Reflex

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1 Sympathetic Dystrophy. He's got one of the
2 highest suicide rates in the country. Yes, he
3 had massive psychological problems. That's
4 what's caused him to go into the hospital
5 multiple times in 2001, and that's what caused
6 him to go into it, stemming from the severe and
7 excruciating pain he was having in his leg and
8 in his hip, and then he had -- he had the back
9 injury in 2002, so it's involving his back.
10 So, he's got -- he has a spinal cord
11 stimulator. It breaks. He has to have it
12 reimplanted. We had to fight to get that
13 approved. The only doctor in the world that
14 would reimplant it was the doctor that created
15 the spinal cord stimulator, and we're finding
16 out through this case. Now, I want to speak
17 real briefly. So, we have all the authorized
18 treating doctors saying this guy has got
19 massive and severe chronic brain damage. We
20 filed seven days after we get an opinion
21 saying, "Yes, he has sustained permanent
22 residual brain damage", which is our
23 responsibility. We filed seven days after that
24 in 2011, and it's taken us all this time to get
25 this case finally heard. On Page 11, you'll

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1 find Dr. Forsthoefels' recitation. Take away
2 -- you know, take away the RSD, take away the
3 spinal cord stimulator, take away all the
4 psychological problems, all the problems with
5 his back, and your opinion based pure on his
6 cognitive brain injury and the cognitive
7 deficit, is he employable -- unemployable. So,
8 simply based on his organic brain damage, this
9 man can't write a check. He can't sign a
10 check. The commissioner, based on her
11 observation from the bench and the testimony,
12 appointed him a guardian ad litem at the
13 hearing. Yes, it's severe. Now, in reference
14 to Dr. Avie Rainwater, he was an authorized
15 treating physician in 2001, and in 2011, he did
16 the same exact repeat testing. The value in
17 that is, he's the only psychologist that saw
18 him before 2001, and I think you can probably
19 assume from the record, you know, he was sent
20 to Florence then, but he didn't see him in
21 2011. However ---

22 (Whereupon, timer buzzer went off.)

23 COMMISSIONER WILKERSON: Finish your thought.

24 MR. MCDANIEL: -- here's the thing. In reference to
25 that report, it does not go to the



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1 admissibility. If anything, it would go to the
2 weight. It does not go to the admissibility,
3 and Dr. Forsthoefer said, if you look at my
4 brief, and it's perfect from his testimony, he
5 said, "That had little or nothing to do with my
6 opinion. My opinion is based my years of
7 treatment." So, we've got the psychologist,
8 psychiatrist, pain management doctor, the
9 doctor that did the neuropsychological testing
10 in 2008 all saying this guy has got severe
11 chronic residual physical brain damage. There
12 is absolutely no evidence contrary in the
13 record, and I'd ask you to affirm the decision.
14 When should I speak to my -- I guess
15 should ...

16 COMMISSIONER WILKERSON: Do you have any reply?

17 MR. LEVENTIS: This is my reply to that, and I'm the
18 appellant.

19 COMMISSIONER WILKERSON: He told me he only needed
20 two minutes.

21 MR. MCDANIEL: I only need a minute.

22 MR. LEVENTIS: Do you him to address it first, the
23 average weekly wage and comp rate?

24 COMMISSIONER WILKERSON: Yes, then that will be the
25 full rebuttal of everything.



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1 MR. LEVENTIS: I'm fine with that.

2 MR. MCDANIEL: Ted was a high wage earner. He made
3 it way over. All of our Court of Appeals
4 cases, all our Supreme Court cases, you know,
5 say that, you know, that the statute is created
6 on the high end to allow you to increase the
7 compensation rate each year to apply to
8 compensate the high wage earner, just like the
9 statute under the low end compensates somebody
10 -- if they're making less than \$75.00, they
11 actually get their actual weekly wage as a
12 compensation rate. All we're asking for is
13 that -- Ted's compensation rate would far
14 exceed the maximum compensation rate back then.
15 We'd ask the commission to rate it at least to,
16 you know, the maximum compensation rate now,
17 you know, going forward or raise it to some
18 degree, you know, something that you feel like
19 is fair to compensate him for his -- that he's
20 -- I mean, he's loss massive -- the concept of
21 wage -- loss of earning capacity is that. It's
22 loss of earning capacity. It's not loss of
23 wages. That's one of the biggest things I
24 disagree with a lot of people on, having tried
25 this case many times before Court of Appeals



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1 and Supreme Court. If you compensate him and
2 increased it to the average week wage -- I
3 mean, the compensation rate now, that's not
4 even going to fully adequately compensate him,
5 because he's never going to work again.

6 COMMISSIONER JAMES: Mr. McDaniel, how would that
7 not apply to every claimant that had a larger
8 earning wages, because it's not like he was
9 just finishing college and then his future
10 wages were going to be something of a larger
11 realm. So, you're talking about -- I have no
12 idea statistically what it would be, but then
13 it would be basically changing the legislative
14 purpose on a number of claimants.

15 MR. MCDANIEL: Well, as a matter of fact, I don't
16 think it actually changes the legislative
17 purposes. When you read the Statute 42-9-10,
18 what it says is, is "It's tied to the average
19 weekly wage in the state for the preceding
20 year, not of the accident". They didn't -- and
21 remember, we have to apply the words, and just
22 like on the low end, the legislature said,
23 "Okay. If you make over \$75.00 a week, but
24 it's only \$80.00, you get \$75.00. Now, if you
25 make below \$75.00, you get your comp rate."



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1 So, they -- in the statute, the wording
2 specifically is to help the low wage earner,
3 and on the high end, I think the wording is
4 implied, but all I'm asking you to do is
5 increase it at least to what his average weekly
6 wage was at the time of the accident, which is
7 less than the maximum compensation rate now.

8 In other words ---

9 COMMISSIONER JAMES: And I know there can be
10 exceptional reasons, but what I'm saying is, I
11 don't know if it was intended for us to do like
12 bulk exceptional reasons. That's for
13 individual cases, but if we did that, that
14 would apply -- I mean, I couldn't just apply it
15 just to your claimant. The argument would
16 stand true for everybody else.

17 MR. MCDANIEL: And personally, quite frankly, I
18 think that's what the legislature intended. I
19 mean, I think they intended for high wage
20 earners -- so, you're making \$2,000.00 a week,
21 and y'all can only pay him at the time of the
22 injury, and yet, I'm 40 years old, and if you
23 take the normal -- the average weekly wage
24 increases about 3 percent. I know y'all have
25 all heard me make that argument before, which



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1 if you trace it back 20 years, it's actually
2 increased about 3 or 3-and-a-half percent every
3 week. So, in other words, if you throw that
4 in -- you know, yes, I think that the
5 legislature contemplated when they tied it to
6 the average weekly wage in the state to the
7 preceding year, not to the preceding year of
8 the date of the injury, and you're right, it
9 would apply to everybody that's a high wage
10 earner, but I think that's what was intended.
11 I don't think it would be fair to any one of
12 y'all to be locked into that amount of money.
13 I mean ...

14 COMMISSIONER JAMES: But you're basically putting
15 this on the date of the hearing, though.

16 MR. MCDANIEL: I'm sorry?

17 COMMISSIONER JAMES: We're basically putting this on
18 the date of hearing, which I can see it being
19 in November and December, that if there's
20 reasons for a continuance, somebody is going to
21 fall into another wage level because of the
22 fact that the hearing was continued, even for
23 illness of a commissioner or otherwise, and I'm
24 just trying to make that make sense.

25 MR. MCDANIEL: Yes, and so ---



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1 COMMISSIONER WILKERSON: Can we wrap it up, because
2 you're about 19 minutes into your 6 minute
3 argument.

4 MR. MCDANIEL: See, that's what you get for giving
5 me those minutes -- no, but I understand your
6 concern, and I can tell you that the Court of
7 Appeals was considering that in one of my
8 cases. In the Williamson case, the Circuit
9 Court affirmed the order of this commission
10 raising it up until it equaled his average
11 weekly wage at the time of the accident, which
12 is what I'm asking for here, and I think that
13 only partially compensates: I mean, if we
14 started at the maximum compensation rate if one
15 of y'all had gotten hurt right now, and we
16 increased it every year, we'd never fairly
17 compensate y'all for your loss of income or
18 defense counsel. Now, me, that might be a
19 different story.

20 COMMISSIONER WILKERSON: Well, the Circuit Court may
21 find something different. That's why you've
22 got to -- our cases are heard in Circuit Court,
23 right, if we get hurt?

24 MR. MCDANIEL: That's right, and I'll be glad to
25 take your case.



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1 COMMISSIONER WILKERSON: Thank you. All right.

2 MR. LEVENTIS: May it please the commission. I'm
3 going to try do this two-fold. I'll let you
4 know where I break, but first, in response to
5 the other -- you know, one of the things
6 opposing counsel mentioned was about this
7 comprehensive trail making tests at the
8 beginning of his argument on this. I'd just
9 like to go back to the star witness,
10 Dr. Forsthoefel, who came here and testified,
11 Page 54 of the record, in reference to the
12 comprehensive trail making tests, which is
13 basically, I believe, performing and learning
14 the various types of what -- going through
15 decision making tests and batteries,
16 comprehensive trail making tests as to
17 Dr. Forsthoefel. I'm not familiar. Questions
18 go on after that, but the point is that, as I
19 argued before, I think most of this is based
20 off of mood disorders that the claimant had,
21 which is not, in my opinion, been properly
22 fettered out from what's alleged to be a
23 physical brain injury. Moreover, he was sent
24 to Dr. Julian Adams in 2004 after getting a
25 clean bill of health in 2002 with testing after



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1 the 2002 injury and 2004. Dr. Forsthoefel sees
2 him July 15th of 2004, notes he believes
3 probable malingering by the claimant in his
4 thing, but he notes that if his memory issues
5 are a point, then he needs further
6 psychological testing, but what I can point out
7 in that regard is, in 2001, the claimant had
8 memory issues. At Page 674 of the record, in
9 2001, prior to this 2002 accident, he's
10 referred for further neurological testing in
11 regards to, among other things, his memory
12 disorder, or issues with his memory, I should
13 say, rather. So, in those regards, we don't
14 think that it meets the burden both of the
15 severity from specifically the physical brain
16 damage injury, alleged injury, and two, we
17 believe that it's logically incongruent,
18 temporal discontinuity, inconsistent, however
19 you want to say it, to hold at one time -- the
20 defendants obviously knew this entire time that
21 they were paying for issues with his brain for
22 all these psychological, pharmacological
23 medications that they're paying for and therapy
24 and testing and treatments. At the same time,
25 the claimant was not aware of that until he

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1 filed in 2011. So, it can be one or the other,
2 but it certainly can't be both, and the
3 defendants are barred because they knew about
4 this and have been paying for a permanent
5 physical brain injury since '02. Yet, at the
6 same time, the claimant apparently wasn't even
7 aware of this until 2011. And let me point out
8 again that the treatment did not change. The
9 pre-2001 treatment, 2001 treatment, the injury
10 in 2002 and afterwards, primary change, they
11 took out Seroquel, because that's what he had
12 the drug and drug interaction with.

13 (Whereupon, the buzzer timer went off.)

14 COMMISSIONER WILKERSON: Finish your thought.

15 MR. LEVENTIS: And now, may I briefly address the
16 comp rate issue?

17 COMMISSIONER WILKERSON: Now, I gave you another
18 minutes, and you spent all your time on one
19 side of it, but how long is briefly? This will
20 be the longest appeal we've ever had, because
21 we give you a little bit of leeway, and you
22 take a mile. I'll give you two minutes.

23 MR. LEVENTIS: Your Honors, on the average weekly
24 wage and comp rate, it's a two-part test based
25 on the arguments of opposing counsel. Number



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1 one, are there unusual and extraordinary
2 circumstances here? There were only two things
3 argued, number one, that average weekly wage
4 has gone up consistently, and that would be the
5 case in any case. Number two, the claimant was
6 a high wage earner. That's the case in so many
7 cases that someone was a high wage earner.
8 Never has the Court of Appeals or Supreme Court
9 issued an opinion where they raised the average
10 weekly wage and comp rate based on that. The
11 second question is, even if you agree, can you
12 raise it above the average weekly wage and comp
13 rate for the year from the date of the injury,
14 which is basically fiscal year, July to July,
15 state's fiscal year, and I believe that read in
16 congruence with the other statutes in the act
17 as far as lump sum, future payments, the per
18 annum discount rate and the fact that we have
19 changed in the past even 10 years to where they
20 prefer lump sum payments, actually, over the
21 other, that would be in direct contradiction to
22 the fact that that would hurt a high earning
23 wage earning claimant, essentially, if you were
24 to do that. If you were to lump sum it, when
25 the average weekly wage is going up all the

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1 time, you're hurting them. I don't think
2 that's the purpose of the act, number one, and
3 number two, in contradiction to the issue with
4 the \$75.00 comp rate when somebody goes down,
5 that has consistently stayed the same. This
6 would be finding in effect that, if you're at
7 the bottom, yes, that's where you stay. They
8 have not continued to up that to \$75 or \$100 or
9 \$150. That has stayed the same, but this would
10 somehow launch high earning wage earners up at
11 the time -- I know Jamie Young says real wages
12 in the United States haven't gone up since
13 1996. That's partially true. Real wages in
14 the United States haven't gone up since 1977.
15 However, that's in real dollars and earning
16 power, getting back off in our soapbox. The
17 point being that, to do so, would actually be
18 to reward high earning wage earners without
19 exceptional circumstances. I think the act as
20 written, it means what it says, and it's fairly
21 written of the intent of legislature as it's
22 been decided by the Supreme Court and Court of
23 Appeals for the past 50 years on this
24 particular point. Thank you.

25 COMMISSIONER WILKERSON: You have two minutes in



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1 reply.

2 MR. MCDANIEL: First off, I think it's really
3 important, something we've sort of glossed over
4 about mood congruent, and what that means is,
5 as Dr. Forsthoefel explained is, is that, if
6 it's coming from a psychological problem, as
7 you improve that psychological condition, get
8 it under control and get the depression and
9 anxiety under control, then the cognitive
10 dysfunction, the memory, executive function,
11 all that will improve, but if it's from an
12 organic brain injury, it doesn't get any
13 better. And that's what he saw and what all
14 these doctors saw over the years. Everyone of
15 these doctors have asked for a neurological
16 examination and neuropsychological tests. When
17 you've got organic brain damage -- another
18 thing, too, remember, there is diagnosis of
19 Aphasia, and Aphasia is strictly caused by an
20 organic brain injury, organic brain damage, and
21 that's what we have here. That's what causes
22 you to not be able to -- like, he cannot read
23 a newspaper, but he can -- let's say he can
24 read a newspaper, and then you ask him, "What
25 did you read, Ted", it will take him all day to



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1 read one article, Dr. Forsthoefel and look at
2 Dr. Benet on Page 10 of the brief, you know,
3 quoting from her, "He's college educated, yet,
4 he can't write a check, cannot count change,
5 cannot use tools or perform household chores.
6 He frequently becomes derailed while talking
7 requiring redirecting prompts." You know, in
8 other words -- and he can't write a check. If
9 you get him to read an article in a newspaper,
10 it would take him all day. Then you ask him
11 like, "Ted, what did you read?" He couldn't
12 tell you. If you read it to him and then asked
13 him to read it back, he couldn't tell you.
14 That's organic brain damage. That's not-- it
15 has nothing to do with -- as I said, that's why
16 Dr. Forsthoefel talked about mood congruency.
17 In other words, if you get the depression and
18 anxiety -- and this is something we all ought
19 to keep in mind in reference to all these
20 things as we go through these cases, but in
21 other words, it was just wonderful -- he
22 volunteered to come and testify.

23 (Whereupon, the timer buzzer went off.)

24 COMMISSIONER WILKERSON: Finish your thought.

25 MR. MCDANIEL: But anyway, that's very important.



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1 There's absolutely no contrary medical evidence from
2 all the opinions expressed. This man is severely
3 brain damaged. Thank you.

4 (Whereupon, the hearing concluded at 4:25 p.m.)
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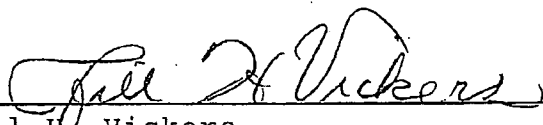
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CERTIFICATE

This is to certify that the within hearing consisting of thirty-one (31) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on January 15, 2016.


Jill H. Vickers
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: July 5, 2016



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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NOS. 9922954 & 0024408

EMPLOYEE/CLAIMANT: THEODORE P. POLANSKY

EMPLOYER: SC OFFICE OF ATTORNEY GENERAL

CARRIER: STATE ACCIDENT FUND

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 6TH DAY OF
MARCH, 2015, COMMENCING AT THE HOUR OF 1:49 P.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN S.
BARDEN, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

ORIGINAL

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

PRESTON F. McDANIEL, ESQUIRE, OF THE
McDANIEL LAW FIRM
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE CLAIMANT,

PETER P. LEVENTIS, IV, ESQUIRE, OF THE FIRM
McKAY, CAUTHEN, SETTANA & STUBLEY, PA
POST OFFICE BOX 7217
COLUMBIA, SOUTH CAROLINA 29202

ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MS. GALE DUBOSE

I N D E X

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * *

6 BY COMMISSIONER BARDEN:

7 TODAY'S DATE IS MARCH 6TH, 2015. THIS IS SOUTH
8 CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER -- ACTUALLY, THERE ARE TWO THAT ARE BEING
10 ADJUDICATED AND HEARD TODAY. THEY ARE 9922954, WITH
11 AN ADMITTED ACCIDENT DATE OF OCTOBER 19TH, 1999, AND
12 0024408, WITH AN ADMITTED ACCIDENT DATE OF MAY 30TH,
13 2000. THESE ARE THE CLAIMS OF THE CLAIMANT, MR.
14 THEODORE POLANSKY, WHO IS PRESENT TODAY AND
15 REPRESENTED BY ATTORNEY PRESTON McDANIEL, VERSUS THE
16 EMPLOYER, THE SOUTH CAROLINA ATTORNEY GENERAL'S
17 OFFICE, AND ITS CARRIER, THE STATE ACCIDENT FUND,
18 BOTH OF WHICH ARE REPRESENTED BY ATTORNEY PETER
19 LEVENTIS. THE PURPOSE OF TODAY'S HEARING IS TO
20 DETERMINE ISSUES RAISED IN THE CLAIMANT'S FORM 50
21 AND THE DEFENDANTS' FORM 51. THE PARTIES DO NOT
22 AGREE AS TO THE CORRECT -- THEY AGREE AS TO THE
23 CORRECT AND APPROPRIATE AVERAGE WEEKLY WAGE AND
24 CORRESPONDING COMPENSATION RATES AS FAR AS THE
25 BENEFITS HAVE BEEN PAID THUS FAR. 500 WEEKS OF

1 BENEFITS WERE PAID AT THE 2000 RATE WITH AN AVERAGE
2 WEEKLY WAGE OF \$877.01, WHICH YIELDS THE MAXIMUM
3 COMPENSATION RATE, I BELIEVE, OF \$507.34. THAT WAS
4 ATTRIBUTABLE TO THE 2000 CLAIM, AND THE 500 WEEKS
5 WERE PAID AT THAT RATE. THE CLAIMANT CONTENDS THAT
6 -- THE CLAIMANT CONTENDS THAT THE AVERAGE WEEKLY
7 WAGE AND COMPENSATION RATE SHOULD BE INCREASED BASED
8 UPON EXCEPTIONAL CIRCUMSTANCES SUCH THAT THE CORRECT
9 COMPENSATION RATE IS ACTUALLY \$896.36. THE CLAIMANT
10 HAS SUBMITTED A LEGAL MEMO AND -- IN SUPPORT OF HIS
11 POSITION THAT FUTURE EARNING CAPACITY SHOULD BE
12 CONSIDERED ALONG THE LINES OF SELLERS AND OTHER
13 CASES AND, THEREFORE, THAT IT WOULD BE INAPPROPRIATE
14 AND UNFAIR FOR THE CLAIMANT TO BE PAID ANY FURTHER
15 BENEFITS AT THE 2000 RATE AND, INSTEAD, THAT RATE
16 SHOULD BE INCREASED. THE DEFENDANTS, OF COURSE,
17 CONTEND THAT THE 2000 COMPENSATION RATE CONTROLS AND
18 THAT THAT CANNOT BE DEVIATED FROM IN THAT THERE
19 WOULD NEVER BE ANY CERTAINTY AS FAR AS WHAT AN
20 AVERAGE WEEKLY WAGE AND COMPENSATION RATE WOULD BE
21 IF THE CLAIMANT'S THEORY IS SUBSCRIBED TO. SO THAT
22 IS AN ISSUE THAT WILL HAVE TO BE ADJUDICATED.
23 AGAIN, THE DATES OF THESE ACCIDENTS WERE OCTOBER
24 19TH, 1999, AND MAY 30TH, 2000.

25 I'M GOING TO PREEMPT THE LAWYERS BECAUSE THEY

1 DO HAVE A SERIES OF OBJECTIONS, WHICH WE TOOK UP
2 DURING THE PREHEARING CONFERENCE. I'M GOING TO
3 START WITH THE CLAIMANT'S OBJECTION, WOULD BE TO A
4 P.I. REPORT AS CONTAINED IN THE DEFENDANTS' APA
5 NUMBER 41, AND I NOTE THAT FOR THE RECORD IN CASE
6 ANYONE WHO IS REVIEWING THE RECORD OR MY DECISION
7 WILL NOTE THAT NUMBER 41 IS, IN FACT, MISSING. I
8 HAVE SUSTAINED THAT OBJECTION ON THE GROUNDS THAT I
9 DO NOT -- UNLESS THERE IS SOME ISSUE WITH
10 IDENTIFICATION OF THE PARTICULAR CLAIMANT OR THE
11 SUBJECT OF THE VIDEO, IN THAT SMALL EXCEPTION I
12 WOULD CERTAINLY ENTERTAIN THE REPORT OF A PRIVATE
13 INVESTIGATOR. BUT AS I TOLD THE ATTORNEYS IN THE
14 PREHEARING, AND NOT TO BE FLIPPANT, BUT REALLY AS
15 THE BEST EXAMPLE I CAN THINK OF, THE DIFFERENCE IN
16 WATCHING SURVEILLANCE AND READING A PRIVATE
17 INVESTIGATOR'S REPORT IS TO ME LIKE EITHER WATCHING
18 A MOVIE OR READING A REVIEW OF IT, AND I ONLY WATCH
19 THE ACTUAL TAPE BECAUSE I BELIEVE THE SUBJECTIVE
20 COMMENTS OF A THIRD PERSON ARE ACTUALLY
21 INAPPROPRIATE, AND THEY PUT TOO MUCH DECISION POWER
22 AS TO WHETHER A PERSON WAS LIMPING OR WHAT THE
23 PERSON WAS DOING. AND, AGAIN, I ONLY WATCH. I WILL
24 WATCH SURVEILLANCE, OBVIOUSLY, BUT I DO NOT
25 GENERALLY ALLOW INTO EVIDENCE -- THIS IS NOT PICKING

1 ON MR. LEVENTIS OR HIS CLIENTS, BUT I DON'T ALLOW
2 THOSE INTO EVIDENCE UNLESS THERE IS AN
3 IDENTIFICATION PROBLEM OR A QUESTION AS FAR AS TO
4 WHO, IN FACT, THE PERSON FEATURED ON THE VIDEO IS OR
5 WAS.

6 I'M GOING TO ADDRESS THE DEFENDANTS' OBJECTIONS
7 AT THIS TIME, AND THERE ARE MANY, AND LET ME -- AND
8 THEY ARE AS FOLLOWS. FIRST OF ALL, THE DEFENDANTS
9 WOULD OBJECT TO THE UPDATED OPINION FROM. DR.
10 RAINWATER BECAUSE OF SOME LITIGATION THAT MAY BE
11 CURRENTLY OR SOME TYPE OF CLAIM CURRENTLY EXISTING
12 OR TRANSPERING BETWEEN DR. RAINWATER AND THE FUND.
13 I'M NOT AWARE OF THE CIRCUMSTANCES, DON'T NEED TO
14 KNOW THE CIRCUMSTANCES, DON'T WANT TO KNOW THE
15 CIRCUMSTANCES. BUT THE DEFENDANTS BELIEVE THAT
16 THERE IS SOME SORT OF CONFLICT THERE, AND THEY
17 BELIEVE THAT THAT DOCUMENT SHOULD BE DISREGARDED AND
18 EXCLUDED. MY RESPONSE TO THAT, BASED UPON HEARING
19 THE ARGUMENTS OF THE PARTIES, IS THAT DR. RAINWATER,
20 PRIOR TO ANY KIND OF DISPUTE OR CLAIM OR CONTROVERSY
21 BETWEEN DR. RAINWATER AND THE FUND, DR. RAINWATER
22 WAS, IN FACT, INVOLVED IN THIS CASE, AND I BELIEVE
23 THAT IN WEIGHING THE RESPECTIVE EQUITIES OF THE
24 PARTIES AND THE ARGUMENTS, THAT IT WOULD BE GROSSLY
25 UNFAIR TO THE CLAIMANT TO HAVE THIS EXPERT OR TO BE

1 RELYING ON THIS EXPERT AND THEN TO BE NO LONGER ABLE
2 TO USE THE EXPERT. SO, I CERTAINLY RESPECTED MR.
3 LEVENTIS' COGENT ARGUMENT ON THAT ISSUE, AND I
4 CERTAINLY DID CONSIDER IT, BUT THAT OBJECTION IS
5 OVERRULED.

6 MR. LEVENTIS, ON BEHALF OF HIS CLIENTS, OBJECTS
7 TO THE CIRCUIT ORDER THAT MR. McDANIEL, ON BEHALF OF
8 HIS CLIENT, HAD ATTACHED TO HIS PREHEARING BRIEF OR
9 LEGAL MEMORANDUM REGARDING THAT PARTICULAR CIRCUIT
10 COURT CASE. AS I HAVE ADVISED THE PARTIES, THERE IS
11 NO PRECEDENTIAL VALUE WITH THAT. ALTHOUGH, I DO
12 THINK I CERTAINLY CAN TAKE JUDICIAL NOTICE AND
13 SHOULD TAKE JUDICIAL NOTICE OF ANY ORDER OF ANY
14 HIGHER COURT. I DON'T KNOW THAT THAT'S GOING TO BE
15 THE LYNCHPIN OF ANYBODY'S CASE, AS I'VE DESCRIBED TO
16 THEM, AND THAT WILL BE ALLOWED INTO EVIDENCE.

17 THE -- MR. LEVENTIS OBJECTS TO THE CLAIMANT'S
18 APA OR EXHIBIT, AT LEAST IT'S NOTED TO BE NUMBER 13,
19 WHICH DEALS WITH THE SOCIAL SECURITY
20 ADMINISTRATION'S FINDING THAT THE CLAIMANT WAS
21 PERMANENTLY AND TOTALLY DISABLED. WE HAD A GOOD BIT
22 OF DISCUSSION ABOUT THIS IN THE PREHEARING
23 CONFERENCE, AND MY RULING ON THAT ISSUE IS, NUMBER
24 ONE, THE STANDARDS USED IN WORKERS' COMP AND SOCIAL
25 SECURITY ARE DIFFERENT. THEY ARE NOT IDENTICAL.

1 AND, TWO, THE CLAIMANT HAS ALREADY EXHAUSTED HIS 500
2 WEEKS OF DISABILITY SUCH THAT HE HAS, BY JUST -- BY
3 PAYMENT OF THE COMPENSATION OF 500 WEEKS, BEEN FOUND
4 -- OR NOT FOUND, BUT HAS BEEN -- HAS RECEIVED THE
5 FULL COMPLEMENT OF 500 WEEKS, WHICH WOULD BE
6 TANTAMOUNT TO PERMANENT AND TOTAL DISABILITY. SO
7 IT'S RATHER MOOT, AND I DON'T THINK THAT IT'S OF ANY
8 VALUE. SO I HAVE SUSTAINED THAT OBJECTION, AND THAT
9 HAS BEEN REMOVED.

10 MR. LEVENTIS, ON BEHALF OF HIS CLIENTS, OBJECTS
11 TO PAGE 663 OF THE CLAIMANT'S SUBMISSIONS, WHICH IS
12 A NOTE THAT WAS IN DR. MARTURANO'S FILE. I AM
13 INCLINED TO LEAVE THAT IN BECAUSE IT IS A DOCUMENT
14 IN A MEDICAL FILE. IT IS CLEARLY NOT ON LETTERHEAD,
15 AND THIS IS A CONCERN RAISED BY MR. LEVENTIS. IT IS
16 NOT ON LETTERHEAD OF ANY PHYSICIAN OR ANY PROVIDER,
17 AND IT CLEARLY IS NOT -- I DON'T THINK, IS MEANT FOR
18 THAT TO BE THAT OR INTENDED TO SUGGEST THAT IT IS IN
19 THAT IT CLEARLY SAYS AT THE BOTTOM THAT IT WAS,
20 QUOTE, TYPED BY HIS GIRLFRIEND. TO AUTHENTICATE
21 THIS, AND IF IT'S EVEN NECESSARY, IT'S A 2005
22 DOCUMENT. I UNDERSTAND THAT THE PERSON WHO IS
23 DESCRIBED AS GIRLFRIEND IS PRESENT TODAY AND CAN
24 TESTIFY TO AUTHENTICATE IT OR TO ANSWER ANY
25 QUESTIONS RELATING TO IT. SO THAT WILL REMAIN IN

1 EVIDENCE.

2 MR. LEVENTIS OBJECTS TO PAGE 664, WHICH APPEARS
3 TO ME IT WAS ALSO IN A -- I BELIEVE, IN DR.
4 MARTURANO'S FILE. IT APPEARS TO BE A LIST OF THE
5 MEDICATIONS THAT THE CLAIMANT IS TAKING AND THE
6 PROVIDERS WHO HAVE PRESCRIBED THESE MEDICATIONS. I
7 AM HOLDING THIS IN ABEYANCE. I DON'T KNOW THAT,
8 AGAIN, IT'S THE LYNCHPIN OF ANYBODY'S CASE. AND
9 MORE IMPORTANT THAN THIS DOCUMENT AND ALL THE
10 DOCUMENTS THAT I CAN GO AHEAD UNEQUIVOCALLY AND
11 STATE THAT I WOULD GIVE GREATER WEIGHT TO THOSE
12 DOCUMENTS WOULD BE THE ACTUAL PRESCRIPTIONS NOTED IN
13 THE NARRATIVE NOTES. SO, IT LOOKS TO ME LIKE THIS
14 IS A SUMMARY, BUT IF THIS SUMMARY DOESN'T MATCH UP
15 WITH THE DOCUMENTS, THE ACTUAL NARRATIVE DOCUMENTS,
16 THEN OBVIOUSLY THAT THE NARRATIVE DOCUMENTS WOULD
17 CONTROL. SO, I DON'T KNOW THAT THIS IS EVEN
18 SOMETHING THAT I WOULD EVEN -- I MEAN, OBVIOUSLY I
19 REVIEW EVERY PAGE THAT I'M GIVEN, BUT IT DOESN'T
20 LOOK LIKE ANYTHING THAT I WOULD EVEN BE ISSUING A
21 FINDING ON BECAUSE I WOULD ACTUALLY RELY ON THE
22 ACTUAL MEDICAL RECORDS AND NOT A SUMMARY OF
23 MEDICATIONS.

24 AND I HOPE, FINALLY -- I MAY HAVE MISSED ONE,
25 AND MR. LEVENTIS WILL CERTAINLY CORRECT ME -- IS

1 THAT THE DEFENDANTS OBJECT TO -- WELL, THERE ARE
2 ACTUALLY A COUPLE MORE, BUT I'M GOING TO DEAL WITH
3 THOSE. PAGE 20 IS A MEMO FROM DR. RAINWATER TO DR.
4 (SIC) McDANIEL, AND IT'S NOT CONCERNING THE EXTENT
5 OF THE BRAIN INJURY, WHICH, OF COURSE, IS THE -- IS
6 A PIVOTAL ISSUE BEFORE ME, BUT, RATHER, DEALING WITH
7 THE LOGISTICS OF USING A MAIL ORDER PHARMACY AND DR.
8 RAINWATER'S CONCERNS ABOUT THAT. I'M GOING TO HOLD
9 THAT OBJECTION IN ABEYANCE, AND I CERTAINLY WILL
10 ADDRESS ALL OF THESE IN MY ORDER INSTRUCTIONS. BUT
11 BECAUSE THIS DOESN'T GO TO THE HEART OF THE ISSUE,
12 OR LEAST I DON'T THINK IT DOES, THEN I'M GOING TO
13 HOLD THAT OBJECTION IN ABEYANCE. I DON'T REALLY
14 KNOW WHETHER THIS -- IT DOESN'T LOOK LIKE ANYTHING
15 THAT DEALS WITH THE HEART OF THE ISSUE WITH WHICH
16 I'M CHARGED, BUT THAT ISSUE IS HELD IN ABEYANCE.

17 THERE IS -- EXCUSE ME. THE SOCIAL SECURITY
18 ISSUE WAS NUMBER 13 OF THE CLAIMANT'S. AND,
19 FINALLY, THE DEFENDANTS OBJECT TO PAGE 657, WHICH IS
20 A -- IT'S NOT -- DOESN'T HAVE ANY LETTERHEAD, AND IT
21 LOOKS LIKE IT'S A QUESTIONNAIRE REGARDING BIPOLAR --
22 LOOKS LIKE BIPOLAR MANIA, IS WHAT IT SAYS. THERE IS
23 SOME HOLE PUNCHING AT THE TOP, BUT I BELIEVE THAT'S
24 WHAT IT SAYS. AND MY -- AND I HAVE SUSTAINED MR.
25 LEVENTIS' OBJECTION, AND ONE CONCERN I HAD IS THAT

1 IT APPEARS TO BE A PART OF A QUESTIONNAIRE. IT ONLY
2 DEALS WITH SECTION TWO AND SECTION THREE, AND THEY
3 REFER BACK TO SECTION ONE. SO I DO THINK IT'S AN
4 INCOMPLETE DOCUMENT. AGAIN, I DON'T THINK IT'S THE
5 LYNCHPIN OF ANYBODY'S CASE. IT DID COME FROM A
6 MEDICAL FILE, AND SO, THEREFORE, I WOULD TEND TO LET
7 IT IN ON THAT BASIS ALONE, BUT BECAUSE IT IS
8 INCOMPLETE I AM SUSTAINING THE OBJECTION. BUT I
9 DON'T THINK ---

10 BY MR. McDANIEL:

11 AND ALSO BY AGREEMENT.

12 BY THE COMMISSIONER:

13 BY AGREEMENT FOR THAT; YES, SIR. YOU SURE DID,
14 AFTER I SAID I -- YOU ABSOLUTELY DID. GENTLEMEN,
15 HAVE I TAKEN UP ALL THE OBJECTIONS BEFORE I TALK
16 ABOUT YOUR RESPECTIVE POSITIONS? I THINK I HAVE,
17 BUT IF I'M IN ERROR I'D LIKE TO BE CORRECTED.

18 BY MR. LEVENTIS:

19 ANY FROM THE DEFENSE YOU HAVE, YOUR HONOR.

20 BY THE COMMISSIONER:

21 THANK YOU SO MUCH. MR. -- ARE YOU SATISFIED?

22 BY MR. McDANIEL:

23 YES.

24 BY THE COMMISSIONER:

25 OKAY; ALL RIGHT. IT IS THE CLAIMANT'S POSITION

1 THAT NOT ONLY IS HE PERMANENTLY AND TOTALLY DISABLED
2 AS EVIDENCED BY THE FACT THAT THE DEFENDANTS PAID
3 THE FULL COMPLEMENT OF 500 WEEKS OF COMPENSATION,
4 THAT HE HAS SUFFERED PHYSICAL BRAIN DAMAGE, NOT JUST
5 A PHYSICAL BRAIN INJURY, FOR WHICH HE HAS RECEIVED
6 TREATMENT. BUT IT IS HIS POSITION AND HE IS
7 ALLEGING, BECAUSE THE DEFENDANTS DO DENY THAT HE HAS
8 SUSTAINED PHYSICAL BRAIN DAMAGE, BUT THE CLAIMANT
9 WOULD CONTEND THAT HE HAS, IN FACT, SUSTAINED
10 PHYSICAL BRAIN DAMAGE IN THAT IT IS OF -- IT IS,
11 PURSUANT TO THE CRISP AND SPARKS CASE, MOST SERIOUS,
12 SEVERE, PERMANENT, AND NO OBJECTIVE DIAGNOSTIC
13 TESTING PURSUANT TO THOSE CASES IS NECESSARY.. SO
14 THE CLAIMANT BELIEVES THAT HE READILY MEETS HIS
15 BURDEN AS TO A FINDING THAT HE HAS SUSTAINED
16 PHYSICAL BRAIN DAMAGE, AND, THEREFORE, HE IS
17 ENTITLED TO RECEIVE LIFETIME COMPENSATION.

18 HE IS ALREADY, BY VIRTUE OF A MEDIATION WHICH
19 OCCURRED EARLIER THIS YEAR, TO BE FOUND TO BE
20 PERMANENTLY AND TOTALLY DISABLED AND ENTITLED TO
21 RECEIVE LIFETIME CAUSALLY-RELATED MEDICALS. PRIOR
22 TO THAT MEDIATION THERE WAS NO FINDING THAT THE
23 CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED. HE
24 WAS JUST PAID THE FULL COMPLEMENT OF 500 -- THE FULL
25 BENEFITS FOR PERMANENT AND TOTAL DISABILITY. HE WAS

1 NOT FOUND TO BE PERMANENTLY AND TOTALLY DISABLED BY
2 A COMMISSIONER OR BY CONSENT ORDER, BUT THE
3 MEDIATION SPELLS OUT THAT HE IS, IN FACT,
4 PERMANENTLY AND TOTALLY DISABLED. IT'S HIS POSITION
5 THAT HE IS ENTITLED TO RECEIVE LIFETIME
6 COMPENSATION.

7 IT'S HIS POSITION THAT THE DEFENDANTS ARE
8 ACTUALLY ESTOPPED FROM DENYING A PHYSICAL BRAIN --
9 DENYING PHYSICAL BRAIN DAMAGE. IT'S HIS POSITION
10 NOT ONLY HAS HE SUFFERED A PHYSICAL BRAIN JURY
11 PURSUANT TO REGULATION 67-1101 -- I THINK I SAID
12 THAT RIGHT -- BUT THAT HE ALSO HAS SUSTAINED
13 PHYSICAL BRAIN DAMAGE PURSUANT TO SECTION 42-9-10,
14 AND, THEREFORE, AGAIN, ENTITLED TO RECEIVE LIFETIME
15 COMPENSATION. AGAIN, HE BELIEVES THAT BECAUSE THE
16 DEFENDANTS HAVE PROVIDED -- AND LET ME BACK UP. HE
17 BELIEVES THAT THAT IS EITHER CAUSED OR AGGRAVATED BY
18 MEDICATION THAT HE HAS TAKEN, AND THERE MAY BE
19 EVIDENCE AS WELL.

20 AGAIN, THE COMMISSIONERS ONLY RECEIVE THE APAs
21 AT THE TIME OF THE HEARING, SO I HAVE NOT READ THEM,
22 AND I AM NOT FAMILIAR WITH THEM, BUT I DO WANT TO
23 COMPLIMENT THESE ATTORNEYS BECAUSE THEY ABSOLUTELY
24 HAVE AN ENCYCLOPEDIC KNOWLEDGE OF THEIR RESPECTIVE -
25 - WELL, NOT ONLY THEIR RESPECTIVE APAs, BUT THE

1 OTHER SIDE'S AS WELL. BUT, IN ANY EVENT, THE
2 CLAIMANT BELIEVES THAT THE DEFENDANTS NOT ONLY KNEW
3 THAT THE CLAIMANT HAD SUSTAINED PHYSICAL BRAIN
4 DAMAGE, BUT HAVE PROVIDED BENEFITS, INCLUDING BUT
5 NOT LIMITED TO TREATMENT FOR THE CLAIMANT'S PHYSICAL
6 BRAIN DAMAGE. THE CLAIMANT -- THE DEFENDANTS
7 ABSOLUTELY KNEW AND PROVIDED TREATMENT FOR THE
8 PROBLEMS -- THE REACTIONS THAT THE CLAIMANT HAD FROM
9 SEROQUEL AND, PERHAPS, OTHER MEDICATIONS AS WELL.

10 THE CLAIMANT BELIEVES THAT, AGAIN, THAT THIS IS
11 NOT MILD -- A MILD BRAIN INJURY SUCH THAT HE WOULD
12 ONLY BE -- HE WOULD BE SUBJECT TO THE 500 WEEK
13 LIMITATION, BUT THAT HE WOULD BE, OBVIOUSLY,
14 LIFETIME COMPENSATION BECAUSE IT, AGAIN, IS MOST
15 SERIOUS AND SEVERE. BUT THE DEFENDANTS -- THE
16 CLAIMANT BELIEVES THAT THE DEFENDANTS ARE ESTOPPED
17 AND THAT THEY HAVE WAIVED ANY OBJECTION TO OR DENIAL
18 OF A PHYSICAL BRAIN DAMAGE CLAIM.

19 CONVERSELY, THE DEFENDANTS BELIEVE THAT ANY
20 BENEFITS OTHER THAN THE LIFETIME CAUSALLY-RELATED
21 MEDICAL TREATMENT THAT THE CLAIMANT IS RECEIVING,
22 WHICH THEY CONCEDE HE IS ENTITLED TO THOSE,
23 INCLUDING BUT NOT LIMITED TO THE TREATMENT THAT HE
24 IS RECEIVING FROM HIS CURRENT PROVIDERS, INCLUDING
25 BUT NOT LIMITED TO THE REACTION FROM THE DRUGS THAT

1 HE WAS GIVEN IN TREATMENT OF HIS CONDITION, THE
2 DEFENDANTS BELIEVE THAT THERE IS NO PHYSICAL BRAIN
3 DAMAGE. THE DEFENDANTS BELIEVE THAT IT IS MILD AT
4 BEST. IT DOES NOT MEET THE THRESHOLD REQUIREMENTS
5 OF MOST SERIOUS AND SEVERE, AND, THEREFORE, THE --
6 AND THIS IS AS TO THE MERITS. I'M GOING TO GET TO
7 SOME PROCEDURAL ISSUES AS WELL, AND I HAVE BEEN
8 BLANKETED WITH PAPER, SO I APOLOGIZE FOR NOT BEING A
9 LITTLE MORE ORGANIZED UP HERE -- THAT THE CLAIMANT
10 CANNOT MEET HIS BURDEN OF PROOF THAT IT IS A BRAIN
11 INJURY THAT MERITS OR WARRANTS OR IS ENTITLED TO
12 RECEIVE LIFETIME COMPENSATION.

13 . PROCEDURALLY, THE DEFENDANTS BELIEVE THAT THE
14 CLAIMANT IS ESTOPPED FROM RAISING THIS ISSUE. THAT
15 THE CLAIMANT KNEW OR SHOULD HAVE KNOWN THAT HE HAD
16 BRAIN -- IF HE DID HAVE BRAIN DAMAGE, HE CERTAINLY
17 KNEW HE HAD A BRAIN INJURY BACK IN THE EARLY 2000'S,
18 YET IS JUST NOW BRINGING THIS ISSUE TO BEAR BEFORE
19 THE COMMISSION. SO, THEREFORE, THE DEFENDANTS
20 BELIEVE THAT THEIR DUE PROCESS RIGHTS HAVE BEEN
21 VIOLATED IF ANY LIFETIME BENEFITS ARE AWARDED IN
22 THIS CASE. THAT THE CLAIMANT IS ESTOPPED FROM JUST
23 NOW BRINGING IT UP AND THAT HE HAS WAIVED HIS RIGHT
24 TO A -- TO PURSUING LIFETIME COMPENSATION.

25 THE DEFENDANTS BELIEVE THAT THIS DELAY THAT THE

1 CLAIMANT HAS BROUGHT UPON THE DEFENDANTS IS NOT
2 ACCOMPANIED BY ANY REASONABLE EXCUSE AND THE
3 DEFENDANTS HAVE BEEN PREJUDICED BY NOW, AFTER ALL
4 THIS TIME, BEING ASKED TO DEFEND A PHYSICAL BRAIN
5 DAMAGE CLAIM WHEN THE CLAIMANT KNEW AND COULD HAVE
6 BROUGHT THIS YEARS, LITERALLY YEARS, BEFORE. SO THE
7 DEFENDANTS BELIEVE THAT PROCEDURALLY AND ON A MERITS
8 BASIS THAT BENEFITS SHOULD BE DENIED. AND I DID NOT
9 MENTION LACHES AS WELL. THAT WOULD BE THE DELAY
10 EXCUSE OF PREJUDICE ARGUMENT THAT I MENTIONED.

11 SO WE HAVE THE UNREASONABLE DELAY, -- MAKE SURE
12 I MENTIONED EVERYTHING -- LACHES, WAIVER, ESTOPPEL,
13 DUE PROCESS CONCERNS AS WELL. AND I HAVE ALREADY
14 GONE OVER THE AVERAGE WEEKLY WAGE AND COMPENSATION
15 RATE ISSUE AS FAR AS THE DEFENDANTS' POSITION, AND
16 SO I WON'T REITERATE THAT. BUT DEFENDANTS BELIEVE
17 THAT ANY FURTHER BENEFITS OTHER THAN THE MEDICAL
18 TREATMENT THAT THE CLAIMANT IS CURRENTLY RECEIVING,
19 TO WHICH THE DEFENDANTS CONCEDED HE IS ENTITLED,
20 SHOULD BE DENIED.

21 AND, GENTLEMEN, WE SAID A LOT MORE AND YOU SAID
22 IT A LOT BETTER, BUT IN THE INTEREST OF TIME -- AND
23 YOU KNOW IT IS MY WANT AND HABIT TO REGURGITATE, SO
24 TO SPEAK, OR REITERATE WHAT YOU ALL TOLD ME IN THE
25 PREHEARING CONFERENCE IN THE INTEREST OF TIME. NOW,

1 IF THERE IS ANYTHING THAT I HAVE MISCHARACTERIZED OR
2 MISSTATED -- BECAUSE, AGAIN, I HAVE JUST RECEIVED
3 ALL THESE APAs -- I CERTAINLY WILL STAND TO BE
4 CORRECTED.

5 NOW, MR. McDANIEL, YOU'RE THE MOVING PARTY, SO
6 I STARTED WITH YOUR POSITION, UNLESS YOU'RE
7 SATISFIED WITH THAT?

8 BY MR. McDANIEL:

9 I'M VERY SATISFIED WITH THAT, YOUR HONOR. THE
10 ONLY THING THAT I THINK I BROUGHT UP, AND I BELIEVE
11 I HANDED THE CASE UP TO YOU ALREADY.

12 BY THE COMMISSIONER:

13 YES, SIR; YOU HANDED THE JERVEY CASE UP? IS
14 THAT ---

15 BY MR. McDANIEL:

16 YEAH, THE JERVEY CASE. YOU KNOW, WHILE I AGREE
17 WITH EVERYTHING YOU SAID, THEY HAVE ACCEPTED THIS
18 BRAIN INJURY FOR A LONG TIME. BUT IN RESPONSE TO
19 THEIR ACCUSATION OR POSITION DEFENSE THAT WE HAVE --
20 WERE SUBJECT TO THE ISSUE OF LACHES, I WOULD SUBMIT
21 THE JERVEY CASE FOR THE PROPOSITION THAT THEY ARE
22 SUBJECT TO THE ISSUE OF LACHES BECAUSE THEY HAVE
23 ACCEPTED AND PAID FOR ALL THE BRAIN INJURY SINCE
24 2004, AND NOW, AT THE LAST MINUTE, THEY TRY TO
25 ALLEGE THAT THEY HAVE NOT ACCEPTED THAT AND HAVE NOT

1 PAID FOR THAT AND THAT WE'RE DILATORY. SO I WOULD
2 SUBMIT THAT -- AS YOU KNOW, ONE OF THE OTHER
3 EQUITABLE PRINCIPLES ---

4 BY THE COMMISSIONER:

5 WELL, I DO THINK HE HAS CONCEDED THAT THEY HAVE
6 PAID FOR IT.

7 BY MR. McDANIEL:

8 CORRECT.

9 BY THE COMMISSIONER:

10 RIGHT.

11 BY MR. McDANIEL:

12 AND SO I WOULD SUBMIT UNDER THE JERVEY CASE
13 THAT THEY WOULD BE SUBJECT TO LACHES FOR FAILING TO
14 DENY THE BRAIN INJURY.

15 BY THE COMMISSIONER:

16 OKAY. AND I ---

17 BY MR. McDANIEL:

18 THE ONLY THING THAT REALLY IS AT ISSUE, IN MY
19 OPINION, IS THE DEGREE.

20 BY THE COMMISSIONER:

21 ALL RIGHT. OKAY. MR. LEVENTIS?

22 BY MR. LEVENTIS:

23 YOUR HONOR, JUST A COUPLE OF BRIEF POINTS.

24 BY THE COMMISSIONER:

25 YES, SIR. HAPPY TO HEAR FROM YOU.

1 BY MR. LEVENTIS:

2 ONE ADDITIONAL DEFENSE TO THE AVERAGE WEEKLY
3 WAGE AND COMP RATE, I'D JUST WITHOUT FURTHER
4 ARGUMENT JUST NOTE THAT IN ADDITION TO IT BEING
5 LIMITED BY THE YEAR, ALSO THAT WE DON'T BELIEVE,
6 OTHER THAN BEING A HIGH WAGE EARNER, THERE WAS AN
7 EXCEPTIONAL CIRCUMSTANCE FOR ---

8 BY THE COMMISSIONER:

9 OKAY; THANK YOU.

10 BY MR. LEVENTIS:

11 --- RAISING IT.

12 BY THE COMMISSIONER:

13 ALL RIGHT.

14 BY MR. LEVENTIS:

15 SECONDLY, YOUR HONOR, AS TO LACHES I WOULD JUST
16 ASK, AS YOU MAY, TAKE JUDICIAL NOTICE OF 1-23-400 OF
17 THE CERTAIN LACHES CASES, I BELIEVE, RAISED IN THE
18 BRIEFS. BUT ---

19 BY THE COMMISSIONER:

20 UNDER THE ADMINISTRATIVE PROCEDURES ---

21 BY MR. LEVENTIS:

22 --- RICHEY V. DICKINSON AND MUIR VERSUS C.R.
23 BARD. ALSO, YOUR HONOR, AS TO THE AGREEMENT THAT
24 ALL TREATMENT PROVIDED TO DATE WAS PAID FOR, I THINK
25 AN OPEN QUESTION EXISTS, YOUR HONOR, BECAUSE THE

1 CLAIMANT WAS TREATING FOR MULTIPLE SIGNIFICANT
2 PSYCHOLOGICAL INJURIES ---

3 BY THE COMMISSIONER:

4 AND YOU DID MENTION THAT TO ME, SIR. I
5 NEGLECTED TO MENTION THAT YOU BELIEVE THAT THOSE ARE
6 THE SOURCE OF THE PROBLEMS VERSUS A MOST SERIOUS OR
7 SEVERE BRAIN INJURY.

8 BY MR. LEVENTIS:

9 AND, FURTHERMORE, YOUR HONOR, WE HAD PUT IN THE
10 RECORD A COUPLE OF -- AT LEAST ONE FORM 40 HEARING
11 REQUEST FOR TREATMENT TO BE PROVIDED FOR OTHER ITEMS
12 SUBSEQUENT TO 2002, BUT THAT THE BRAIN FIRST CAME UP
13 ON A FORM 50. WE BELIEVE THAT THERE'S NEVER BEEN A
14 CONCESSION THAT THERE'S BEEN A PERMANENT PHYSICAL
15 BRAIN INJURY BY THE DEFENDANTS.

16 BY THE COMMISSIONER:

17 DAMAGE OR AN INJURY?

18 BY MR. LEVENTIS:

19 NEVER BEEN A PERMANENT PHYSICAL BRAIN -- A
20 PERMANENT PHYSICAL BRAIN INJURY.

21 BY THE COMMISSIONER:

22 INJURY, OKAY. ALL RIGHT. ALL RIGHT. ARE WE
23 READY TO HEAR FROM THE WITNESSES?

24 BY MR. McDANIEL:

25 YES, COMMISSIONER.

1 BY THE COMMISSIONER:

2 ALL RIGHT.

3 BY MR. McDANIEL:

4 I'M NOT GOING TO BELABOR IT, YOU KNOW.

5 BY THE COMMISSIONER:

6 OKAY.

7 BY MR. McDANIEL:

8 YOU'LL READ IT.

9 BY THE COMMISSIONER:

10 I KNOW WHERE YOU STAND. ALL RIGHT. THANK YOU,
11 SIR, FOR YOUR PATIENCE. IF YOU'LL RAISE YOUR RIGHT
12 HAND.

13 * * * * *

14 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
15 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
16 MATTER HEREIN:

17 FRANK EUGENE FORSTHOEFEL, M.D.,

18 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

19 BY THE COMMISSIONER:

20 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

21 BY THE WITNESS:

22 FRANK EUGENE FORSTHOEFEL.

23 BY THE COMMISSIONER:

24 THANK YOU SO MUCH. PLEASE ANSWER ANY QUESTIONS
25 THAT MR. McDANIEL HAS FOR YOU FIRST.

1 BY MR. McDANIEL:

2 FIRST OFF, COMMISSIONER, WE HAVE STIPULATED TO
3 DR. FORSTHOEFEL'S CREDENTIALS AS A BOARD-CERTIFIED
4 PSYCHIATRIST.

5 BY THE COMMISSIONER:

6 TERRIFIC. THANK YOU.

7 BY MR. McDANIEL:

8 AND I'D SUBMIT HIS CURRICULUM VITAE JUST FOR
9 THE RECORD.

10 BY THE COMMISSIONER:

11 ALL RIGHT. AND DOES MR. ---

12 BY MR. LEVENTIS:

13 THE DEFENDANTS WOULD SO STIPULATE, YOUR HONOR.

14 BY THE COMMISSIONER:

15 THANK YOU. AND DO YOU HAVE A COPY OF THIS?

16 BY MR. LEVENTIS:

17 I'VE RECEIVED ONE, YES.

18 BY THE COMMISSIONER:

19 ALL RIGHT. THANK YOU. ALL RIGHT. THANK YOU.

20 WHENEVER YOU'RE READY.

21 DIRECT EXAMINATION BY MR. McDANIEL:

22 Q. DR. FORSTHOEFEL, AS JUST A PRELIMINARY, I'M GOING TO
23 LEAD YOU IF I CAN.

24 A. OKAY.

25 Q. YOU FIRST STARTED SEEING TED POLANSKY IN 2001 AS

- 1 PART OF THE BAPTIST INPATIENT AND OUTPATIENT
2 COUNSELING PROGRAM AND SAW HIM IN 2001 IN REFERENCE
3 TO HOSPITALIZATIONS THEN; IS THAT CORRECT?
- 4 A. THAT'S TRUE.
- 5 Q. AND FROM THAT POINT ON YOU WERE HIS TREATING
6 PSYCHOLOGIST -- PSYCHIATRIST AS APPROVED BY THE
7 STATE ACCIDENT FUND FROM 2001 THROUGH 2005, WHEN YOU
8 FIRST THOUGHT YOU WERE GOING TO RETIRE?
- 9 A. THAT'S TRUE.
- 10 Q. ALL RIGHT. AND THEN YOU TRANSFERRED HIS CARE TO DR.
11 CRIBBS, AND AFTER A COUPLE MONTHS HE WAS TRANSFERRED
12 TO THE CARE OF DR. MARTURANO; IS THAT YOUR
13 UNDERSTANDING?
- 14 A. THAT'S TRUE.
- 15 Q. AND THEN AGAIN YOU DECIDED TO COME OUT OF RETIREMENT
16 OR SEMI-RETIRE, AND IN 2009 YOU STARTED TAKING
17 CERTAIN LIMITED NUMBER OF PRIVATE PATIENTS, AND TED
18 AGAIN CAME UNDER YOUR CARE AS HIS AUTHORIZED
19 TREATING PSYCHIATRIST; IS THAT CORRECT?
- 20 A. THAT'S TRUE.
- 21 Q. AND YOU HAVE TREATED HIM FROM 2009 THROUGH THE
22 PRESENT TIME?
- 23 A. THAT'S TRUE.
- 24 Q. AND TO YOUR KNOWLEDGE DR. JEAN JONET HAS BEEN HIS
25 TREATING PSYCHOLOGIST, AS AUTHORIZED BY THE STATE

1 ACCIDENT FUND, FROM 2004?

2 A. THAT'S TRUE.

3 Q. ALL RIGHT. AND AS PART OF YOUR PRACTICE IN TREATING
4 TED POLANSKY AS PART OF HIS -- AS HIS TREATING
5 PSYCHIATRIST, YOU ALSO HAD OCCASION TO WORK WITH DR.
6 AVIE RAINWATER IN 2001, WHEN DR. RAINWATER PERFORMED
7 PSYCHOLOGICAL TESTING ON MR. POLANSKY?

8 A. THAT'S TRUE.

9 Q. ALL RIGHT. AND THEN AGAIN DR. RAINWATER SAW MR.
10 POLANSKY, I BELIEVE, IN 2011. I'LL LOOK AT THE
11 RECORDS IN A MINUTE. BUT HE RE-EVALUATED AND DID
12 RE-PSYCHOLOGICAL TESTING AT THAT POINT IN TIME?

13 A. THAT'S TRUE.

14 Q. DR. RAINWATER, PRELIMINARILY, WHY IS THAT -- WELL,
15 LET ME ASK YOU A COUPLE MORE QUESTIONS BEFORE I ASK
16 YOU THAT QUESTION. IN 2002 TED WAS HOSPITALIZED BY
17 YOU FOR A -- I BELIEVE THE RECORDS ---

18 BY MR. McDANIEL:

19 COMMISSIONER, THOSE CAN BE FOUND AT TAB 11.

20 BY THE COMMISSIONER:

21 AND LET ME MAKE SURE WE'VE GOT THE CORRECT
22 PSYCHOLOGIST'S NAME. IS IT JONET, J-O-N-E-T? IS
23 THAT RIGHT?

24 BY MR. McDANIEL:

25 YEAH, J-O-N-E-T.

1 BY THE COMMISSIONER:

2 THANK YOU. ALL RIGHT. GO AHEAD, SIR.

3 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

4 Q. HE WAS HOSPITALIZED ON FEBRUARY 21ST, 2002, FOR A
5 DRUG-DRUG INTERACTION FOR SEROQUEL, AND SEROQUEL WAS
6 ONE OF THE DRUGS INVOLVED?

7 A. YEAH. IT WAS A PROBABLY DRUG-DRUG INTERACTION.
8 THERE WAS ALSO A BACKGROUND OF OVERUSING, UNDERUSING
9 THE PRESCRIBED MEDICATIONS. HOW MUCH SEROQUEL WAS
10 INVOLVED IS A TECHNICAL QUESTION, BUT I DO BELIEVE
11 THAT SEROQUEL WAS VERY MUCH INVOLVED TO SOME EXTENT
12 IN WHAT THE CLINICAL FINDINGS -- THE CLINICAL
13 FINDINGS PRESENTED THEMSELVES IN TERMS OF WHEN THE
14 SEROQUEL WAS STARTED AND THE CLINICAL FINDINGS AT
15 THE TIME.

16 Q. AND AS A RESULT OF THAT HE SUSTAINED, I BELIEVE, AN
17 ENCEPHALOPATHY?

18 A. YES.

19 Q. ALL RIGHT. DUE TO THE DRUG-DRUG INTERACTION?

20 A. YES.

21 Q. AND I BELIEVE THAT INVOLVED, ACCORDING TO THE
22 RECORD, SWELLING OF THE HANDS AND FEET AND, OF
23 COURSE, THE ENCEPHALOPATHY. CAN YOU TELL ME JUST
24 ABOUT YOUR MEMORY AND RECOLLECTION -- OF COURSE,
25 YOU'VE GONE OVER THE RECORDS?

1 A. RIGHT, RIGHT.

2 Q. WHAT ALL WAS INVOLVED?

3 A. MY MEMORY IS QUITE VIVID OF IT. HE WAS AGITATED,
4 WRITHING, ALTERED MENTAL STATUS, CONFUSED, HIS FACE
5 WAS SWOLLEN, HIS ANKLES WERE SWOLLEN, DELIRIOUS,
6 INCOHERENT. AND SO THAT WAS TIME LIMITED OVER THE
7 COURSE OF TWO OR THREE DAYS, AND IT REMITTED. WE
8 STOPPED ALL OF THE MEDICATIONS, AND FORTUNATELY, YOU
9 KNOW, HE RECOVERED.

10 Q. AND THEN AFTER THAT HE WAS DISMISSED FROM THE
11 HOSPITAL ON MARCH -- I BELIEVE AT THAT TIME -- MARCH
12 7TH, AND AT THAT TIME HE WAS ACTUALLY SEEN BY A
13 NEUROLOGIST, DR. JULIAN ADAMS, IN THE HOSPITAL, AND
14 HE ALSO CONCURRED IN YOUR DIAGNOSIS OF A DRUG-DRUG
15 INTERACTION ENCEPHALOPATHY?

16 A. THAT'S TRUE.

17 Q. AND IN REFERENCE TO ENCEPHALOPATHY, DOCTOR, THAT IS
18 A GLOBAL SYNDROME INVOLVING A PHYSICAL ALTERATION OF
19 THE BRAIN STRUCTURE; IS THAT CORRECT?

20 A. THAT'S TRUE.

21 Q. IN OTHER WORDS, AN ORGANIC INJURY TO THE BRAIN?

22 A. THAT'S TRUE.

23 Q. ALL RIGHT. NOW, WHICH -- AND A TOXIC ENCEPHALOPATHY
24 IS A DEGENERATIVE NEUROLOGICAL DISORDER OF THE BRAIN
25 STRUCTURE? IN OTHER WORDS, THE PHYSICAL STRUCTURE

1 OF THE BRAIN; IS THAT CORRECT?

2 A. USING THE WORD TOXIC, YOU CAN HAVE AN ACUTE TOXIC
3 REACTION.

4 Q. CORRECT.

5 A. WHICH I THINK THIS DRUG-DRUG INTERACTION
6 ENCEPHALOPATHY COULD QUALIFY AS AN ACUTE TOXIC
7 ENCEPHALOPATHY. NOW, YOU CAN HAVE ENCEPHALOPATHIES
8 THAT ARE TOXIC IN A CHRONIC WAY, CHRONIC DAMAGE.
9 SO, I GUESS IT'S HOW WE'RE USING OUR WORDS.

10 Q. ALL RIGHT. NOW, IN REFERENCE TO AFTER HE WAS
11 DISCHARGED FROM THE HOSPITAL, YOU BEGAN -- CONTINUED
12 TO SEE HIM AS HIS TREATING PSYCHIATRIST?

13 A. THAT'S TRUE.

14 Q. AND AT THIS POINT I WANT TO ASK YOU WHAT IS THE
15 IMPORTANCE OF DR. AVIE RAINWATER IN REFERENCE TO
16 HAVING SEEN HIM BEFORE THIS ENCEPHALOPATHY AND HIS
17 RETESTING AND -- TESTING THEN AND THEN RETESTING HIM
18 ON 2011, IN YOUR OPINION? YOU REVIEWED HIS REPORT?

19 A. I DID, RIGHT. THE RELEVANCE IS THAT DR. RAINWATER
20 SAW TED BEFORE THE DRUG-DRUG INTERACTION
21 ENCEPHALOPATHY AND GAVE TED VERY STANDARD
22 PSYCHOMETRIC TESTING BECAUSE TED WAS ALREADY HAVING
23 EPISODES OF BIPOLAR MOOD SWINGS THAT CAME LATER TO
24 BE DIAGNOSED AS SCHIZOAFFECTIVE DISORDER. AT THE
25 TIME IT WAS REALLY VERY UNCLEAR IN 2001, YOU KNOW,

1 WHAT KIND OF MOOD DISORDER HE WAS HAVING OR THINKING
2 DISORDER HE WAS HAVING. HE WAS ALREADY SUBJECT TO
3 EPISODES OF CONFUSION, HALLUCINATIONS, MEMORY
4 PROBLEMS DUE TO THE ASPECTS OF THE PSYCHIATRIC
5 CONDITION. AND SO DR. RAINWATER NICELY DOCUMENTED
6 THIS AFFECTIVE DISORDER, AND IT'S IN THE RECORDS.
7 THE FORTUNATE THING ABOUT THE -- DR. RAINWATER'S
8 EVALUATION AND RE-EVALUATION IS THAT HE SAW TED A
9 NUMBER OF YEARS LATER, AND THE FINDINGS -- THERE
10 WERE ADDITIONAL FINDINGS AT THAT TIME CONSISTENT
11 WITH MY ADDITIONAL FINDINGS AFTER THE
12 HOSPITALIZATION IN 2002 FOR THE DRUG-DRUG
13 ENCEPHALOPATHY, THAT MY FINDINGS BECAME INCREASINGLY
14 OBVIOUS TO ME THAT THERE WAS SOMETHING ELSE GOING ON
15 IN TED'S MIND OTHER THAN HIS PSYCHIATRIC CONDITION.
16 AND THAT BECAME EVIDENT TO ME AND TO DR. RAINWATER
17 AS WELL, IS THAT THERE WAS SOMETHING ORGANIC,
18 PHYSICAL GOING ON IN HIS BRAIN AND THAT THIS IS VERY
19 WELL DOCUMENTED. WHAT BECAME APPARENT TO ME WITH
20 TIME -- AND IT TOOK A LOT OF TIME BECAUSE TED'S MOOD
21 DISORDER WAS A CONTINUING PROBLEM FOR YEARS, AND SO
22 WITH TIME HIS MOOD DISORDER STABILIZED OUT IN THAT
23 HE WASN'T AS MOODY OR AS DEPRESSED AND AT TIMES --
24 AND THIS HAS JUST BEEN RECENTLY, OVER THE PAST MAYBE
25 TWO, THREE, FOUR YEARS -- THAT HE'S NOT NEARLY AS

1 DEPRESSED AS HE WAS, WE'LL SAY, THE FIRST TEN YEARS
2 OF MY CARE. SO THAT WHAT BECAME EVIDENT TO ME IS
3 THAT HE HAD SOME OTHER KIND OF COGNITIVE PROBLEM NOT
4 RELATED TO HIS PSYCHIATRIC CONDITION, MEANING THAT
5 THERE WAS SOMETHING PHYSICALLY GOING ON IN HIS BRAIN
6 THAT DESPITE MORE NORMATIVE MOODS HIS COMPREHENSION
7 WAS INCREASINGLY -- HIS COMPREHENSION ABILITIES
8 CONTINUED TO DETERIORATE, AS WELL AS HIS ATTENTION
9 SPAN, MEMORY, SENSORY -- WHAT WE CALL SENSORY
10 APHASIA, EXPRESSIVE APHASIA. THIS BECAME CLEAR TO
11 ME ---

12 BY THE COMMISSIONER:

13 AND THAT'S AN INABILITY TO TALK OR FORM WORDS
14 OR ---

15 BY THE WITNESS:

16 YEAH, TO UNDERSTAND.

17 WITNESS RESUMES:

18 A. THE SENSORY APHASIA WOULD BE THE INABILITY TO
19 UNDERSTAND WHAT HE'S READING OR WHAT HE'S
20 COMPREHENDING AND THEN THE RELATIVE INABILITY TO
21 EXPRESS HIMSELF. THE SENSORY APHASIA HAS BEEN
22 PROFOUND. THE EXPRESSIVE APHASIA IS THERE. IT'S
23 NOT NEARLY AS PROFOUND. SO, IN THE SUMMARIES I TALK
24 ABOUT, AND DR. RAINWATER ALSO TALKS ABOUT AND
25 VALIDATES WITH HIS TESTING, THAT HIS MOOD PROBLEMS

1 PRE-HOSPITALIZATION 2002 -- THAT HIS MOOD DISORDER
2 WAS -- OR, RATHER, HIS CONFUSION WAS WHAT WE CALL
3 MOOD CONGRUENT. THAT BEFORE THE SECOND
4 HOSPITALIZATION TED'S CONFUSION, WHICH IS OBVIOUS TO
5 ME CLINICALLY ALL THE TIME, THAT WHEN HE WAS IN
6 THESE TERRIBLE DEPRESSIONS HE WAS HEARING VOICES,
7 SEEING THINGS, DISORIENTED, IT WAS ALL RELATED TO
8 HIS DEPRESSION, HIS PSYCHIATRIC CONDITION, WHICH
9 CAME TO BE KNOWN AS SCHIZOAFFECTIVE. BUT THAT --
10 AFTER THE DRUG-DRUG ISSUE, HOSPITALIZATION IN 2002,
11 WITH TIME, YEARS, IT BECAME OBVIOUS TO ME THAT ONCE
12 HIS DEPRESSION WAS MINIMIZED BY ANTI-DEPRESSANTS AND
13 NEUROLEPTICS AND ALL OF THAT, THAT HE DID STABILIZE
14 OUT VERY NICELY PSYCHIATRICALY, NOT CURED, BUT
15 STABILIZED OUT VERY NICELY. AND -- BUT THERE WERE
16 INCREASING COGNITIVE DEFICITS THAT WERE NOT MOOD
17 CONGRUENT. THOSE MOODS ARE NOW STABILIZED AND, YET,
18 WE HAVE SOMETHING ELSE PROGRESSING, AND THAT HAD TO
19 DO WITH HIS INCREASING INABILITY TO COMPREHEND WHAT
20 HE WAS READING IN THE NEWSPAPER, THE INABILITY TO
21 REMEMBER WHAT HE HAD READ, EVEN TO EXPRESS WHAT HE
22 HAD READ, AND NOT JUST RELATED TO THE NEWSPAPER BUT
23 RELATING TO HIS ABILITY TO KEEP UP HIS FINANCES, USE
24 THE TELEPHONE, WHATEVER. SO THE COMPREHENSION
25 PROBLEMS -- AND THIS IS A SENSORY THING -- THAT THAT

1 BECAME INCREASINGLY OBVIOUS AND PROFOUND TO THE
2 POINT WHERE HIS FUNCTIONING WAS, YOU KNOW, EVEN MORE
3 IMPAIRED, YOU KNOW, WITH THE SECOND DIAGNOSIS, YOU
4 SEE, OF BRAIN INJURY OR DAMAGE, WHATEVER YOU WANT TO
5 CALL IT.

6 BY MR. McDANIEL:

7 THE -- COMMISSIONER, PAGE 11 OF TAB ONE.

8 BY THE COMMISSIONER:

9 OKAY.

10 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

11 Q. ON JULY 29TH, 2004 -- AND I WANT TO TALK JUST A
12 MINUTE -- YOU HAVE THOROUGHLY EXPLAINED THIS, BUT AM
13 I CORRECT, FIRST OFF IN REFERENCE TO -- YOU'RE USING
14 THE TERM MOOD CONGRUENT, AND IN REFERENCE TO ORGANIC
15 BRAIN PROBLEMS OR, IN OTHER WORDS, COGNITIVE
16 DYSFUNCTIONS, OKAY?

17 A. RIGHT.

18 Q. IF IT'S RELATED TO -- NOW, I'M GOING TO USE ALSO
19 ANOTHER TERM, TWO TERMS, ASK YOU TO DEFINE THOSE.
20 WHEN YOU USE THE TERM FUNCTIONAL AND WHEN YOU USE
21 THE TERM ORGANIC, WHAT DO THOSE TWO TERMS REFER TO?

22 A. WELL, YOU CAN BE FUNCTIONAL OR DYSFUNCTIONAL. LET'S
23 USE THE WORD DYSFUNCTION. YOU CAN BE -- HE WAS
24 ALREADY DYSFUNCTIONAL WITH HIS PSYCHIATRIC
25 CONDITION.

1 Q. DUE TO HIS PURELY PSYCHOLOGICAL PROBLEMS?

2 A. YEAH. WELL, RIGHT, DUE TO THE PSYCHIATRIC DIAGNOSIS
3 HE WAS DYSFUNCTIONAL ANYWAY. SO, AFTER THE SECOND
4 HOSPITALIZATION HE BECOMES EVEN MORE DYSFUNCTIONAL
5 WITH THE ADDED ORGANIC FINDINGS RELATED TO THE DRUG-
6 DRUG ISSUE.

7 Q. AND THE ORGANIC REFERS TO ACTUALLY THE PHYSICAL
8 BRAIN?

9 A. PHYSICAL DAMAGE DUE TO THE DRUG-DRUG ---

10 Q. OF THE STRUCTURE OF THE BRAIN?

11 A. YES.

12 Q. NOW, IN REFERENCE TO THE MOOD CONGRUENT AND IN
13 REFERENCE TO THE COGNITIVE DYSFUNCTIONS, AM I
14 CORRECT THAT WHAT YOU MEAN BY THAT IS WHENEVER -- IF
15 IT'S SIMPLY DUE TO HIS FUNCTION, HIS PSYCHOLOGICAL
16 PROBLEMS, AS HIS MOOD IMPROVES YOU WOULD EXPECT
17 THOSE COGNITIVE DYSFUNCTIONS TO IMPROVE? AM I RIGHT
18 ON THAT?

19 A. THAT'S ---

20 Q. WILL YOU EXPLAIN THAT A MINUTE?

21 A. WELL, RIGHT. THAT PRE-2002 THAT THE EVIDENCE IN MY
22 RECALL IS THAT HIS MOODINESS HAD A BIPOLAR QUALITY
23 TO HIS MOODINESS. THAT THE WORSE -- THAT ISN'T
24 QUITE THE RIGHT WORD. THE WORSE -- THAT ISN'T THE
25 RIGHT WORD. WELL, WE'LL USE IT ANYWAY. THE WORSE

1 OFF HIS MOOD PROBLEM WAS PRE-2002, THE MORE CONFUSED
2 HE WAS, YOU KNOW. AND SO, THE MOOD CONGRUENCE AT
3 THAT TIME WAS THAT WITH THE GREATER LABILITY OF HIS
4 MOODS, WHETHER IT BE MANIC OR DEPRESSIVE, YOU KNOW,
5 THE GREATER THE MOOD LABILITY, THE GREATER
6 CONFUSIONAL STATE OR COGNITIVE DYSFUNCTION BASED
7 UPON THE MOOD PROBLEM, YOU SEE.

8 Q. ALL RIGHT.

9 A. AND SO -- AND THEN LATER AFTER HIS HOSPITALIZATION
10 IN 2002, AS HIS MOODS IMPROVED, YOU KNOW, HIS
11 CONFUSION CONTINUED AND -- WHICH BECAME OBVIOUS TO
12 ME AFTER A NUMBER OF YEARS, BECAUSE IT TOOK ME A
13 NUMBER OF YEARS TO GET HIM STABILIZED WITH THE
14 MEDICATIONS, ETCETERA.

15 Q. SO, IN REFERENCE TO THAT 2004 REPORT, BY THAT POINT
16 IN TIME, BASED ON YOUR OBSERVATIONS OF TED BETWEEN
17 2002 AND 2004, YOU WANTED A REFERRAL TO A
18 NEUROLOGIST AND NEUROPSYCHOLOGICAL TESTING TO ---

19 A. RIGHT. SEE, EVEN AT THIS TIME, 2004, SEE, THIS IS
20 JUST TWO YEARS AFTER HIS HOSPITALIZATION. SO IT WAS
21 ALREADY OBVIOUS TO ME -- I DIDN'T QUITE REMEMBER IT
22 QUITE THAT WAY, BUT I WROTE IT DOWN, IN WHICH I
23 SAID, FURTHER, HE SUSTAINED AN ALLERGIC
24 ENCEPHALOPATHY TO SEROQUEL A COUPLE OF YEARS AGO,
25 WHICH I BELIEVE ADDED TO HIS CONCENTRATION AND

1 MEMORY PROBLEMS. RECENTLY, FOR NO APPARENT REASON
2 HE HAS SUFFERED A COGNITIVE DECLINE, IN WHICH HE
3 CANNOT PERFORM EVEN SIMPLE CALCULATIONS, ETCETERA.
4 SO EVEN AT THAT TIME I WAS SUSPICIOUS THAT THERE WAS
5 SOMETHING ELSE GOING ON IN HIS BRAIN OTHER THAN THE
6 BIPOLAR MOOD PROBLEM. SO, EVEN IN 2004 IT'S
7 BECOMING SOMEWHAT CLEAR TO ME THAT HE HAS AN
8 ADDITIONAL PROBLEM.

9 Q. AND THEN SO AT THAT POINT IN TIME YOU WANTED
10 EVALUATIONS BY A NEUROLOGIST AND NEUROPSYCHOLOGIST
11 TESTING?

12 A. THAT'S TRUE.

13 Q. OKAY. AND WHAT YOU FELT LIKE WAS GOING ON WAS AN
14 ORGANIC, OR IN OTHER WORDS A PHYSICAL, DAMAGE TO THE
15 BRAIN, CORRECT?

16 A. THAT'S TRUE.

17 Q. ALL RIGHT.

18 BY THE COMMISSIONER:

19 I'M GOING TO GIVE YOU THOSE AS WELL WHILE
20 YOU'RE STANDING THERE. THANK YOU.

21 BY MR. McDANIEL:

22 OKAY. THANK YOU.

23 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

24 Q. NOW, LET'S GO FORWARD. YOU ISSUED -- WE HAD -- MR.
25 POLANSKY WAS RE-EVALUATED, AS WE DISCUSSED, BY DR.

1 AVIE RAINWATER.

2 BY MR. McDANIEL:

3 AND, COMMISSIONER, THOSE RECORDS CAN BE FOUND
4 AT TAB FOUR, THE REPORTS OF DR. RAINWATER AS TO HIS
5 FINDINGS BOTH IN 2002 -- EXCUSE ME; 2001 -- ON
6 OCTOBER 18TH, 2001 -- OCTOBER 10TH AND 15TH AND
7 18TH, THOSE CAN BE FOUND UNDER TAB FOUR AT PAGE --
8 BEGINNING AT PAGE 24 THROUGH -- EXCUSE ME; THROUGH
9 30. AND THEN HIS RETESTING EVALUATION REPORT
10 PERFORMED ON MARCH 22ND, 2011, CAN BE FOUND ON PAGE
11 21 THROUGH, ACTUALLY, 22 OR 23.

12 BY THE COMMISSIONER:

13 AND UNDER THE SAME TAB, JUST FOR THE RECORD,
14 MR. LEVENTIS HAS A RUNNING OBJECTION TO PAGE 20,
15 WHICH IS NOT ONE OF THOSE RECORDS YOU MENTIONED.
16 BUT JUST SO THAT ---

17 BY MR. McDANIEL:

18 CORRECT.

19 BY THE COMMISSIONER:

20 --- HE KNOWS THAT HE HAS THAT PRESERVED FOR THE
21 RECORD.

22 BY MR. McDANIEL:

23 CORRECT.

24 BY THE COMMISSIONER:

25 ALL RIGHT. GO AHEAD.

1 BY MR. McDANIEL:

2 ALL RIGHT.

3 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

4 Q. AND YOU'VE REVIEWED THOSE RECORDS AND YOU REVIEWED
5 THOSE BACK THEN; IS THAT CORRECT?

6 A. RIGHT.

7 Q. ALL RIGHT. I BELIEVE YOU ISSUED A SERIES OF REPORTS
8 ALONG WITH YOUR -- WHILE YOU WERE CONTINUING TO
9 TREAT MR. POLANSKY AT THAT TIME, BEGINNING ON MARCH
10 3RD, 2011, APRIL 5TH, 2011, AND THEN MAY 5TH --
11 EXCUSE ME; APRIL 5TH, 2011, AND MAY 5TH, 2011.

12 BY MR. McDANIEL:

13 THOSE CAN BE FOUND, COMMISSIONER, AT PAGE
14 SEVEN, EIGHT, NINE, AND TEN.

15 BY THE COMMISSIONER:

16 THANK YOU.

17 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

18 Q. AND I WANT TO ASK YOU -- IN THOSE YOU EXPRESS THE
19 OPINION THAT HE HAS SUSTAINED PHYSICAL BRAIN DAMAGE
20 AS A RESULT OF THOSE. HOWEVER, I WANT TO ASK YOU
21 ABOUT -- IF YOU'LL LOOK AT THAT REPORT FROM APRIL
22 5TH AND TELL ME ABOUT THE COGNITIVE PROBLEMS, THE
23 NEUROLOGICAL COGNITIVE PROBLEMS THAT HE WAS HAVING
24 AT THAT TIME.

25 A. WELL, THE MOST OBVIOUS THING, MY RECALL, IS THE

1 INCREASING SENSORY APHASIA. NAMELY HE WASN'T TAKING
2 IN THE SENSORY ASPECTS, OR IF HE WAS TAKING IN
3 SENSORY ASPECTS TO WHAT HE WAS READING OR TALKING
4 ABOUT, THAT HE COULD NOT REALLY PULL IT TOGETHER TO
5 COMPREHEND, INCREASING INABILITY TO COMPREHEND
6 WHATEVER SENSORY INPUT WAS THERE. SO WE CALL THAT A
7 SENSORY APHASIA. AND, SECONDARILY, MUCH LESS OF A
8 PROBLEM, BUT COMPROMISED NEVERTHELESS, THE
9 EXPRESSIVE APHASIA, THE ABILITY -- SAY HE REMEMBERED
10 OR HE COMPREHENDED A LITTLE -- SAY IF WE ALL
11 COMPREHENDED ON A SEVENTH GRADE LEVEL, WE'LL SAY, A
12 HUNDRED PERCENT, HE COULD COMPREHEND, WE'LL SAY, TWO
13 PERCENT. WELL, THEN MAYBE HE COULD EXPRESS, YOU
14 KNOW, MAYBE ONE PERCENT, YOU KNOW. OR IT MIGHT EVEN
15 VARY. MAYBE HE WAS ABLE TO EXPRESS HIMSELF THREE
16 PERCENT BUT NOT ON THE SAME LEVEL THAT WE WOULD BE
17 ABLE TO EXPRESS OURSELVES. HE'S ALWAYS BEEN PRETTY
18 GOOD AT EXPRESSING HIMSELF. NOW, THE QUALITY OF HIS
19 EXPRESSIONS HAS ALWAYS BEEN COMPROMISED AS RELATING
20 TO THE SENSORY APHASIA. NOW, IN DAY-TO-DAY THINGS,
21 LIKE TALKING HERE AND HIS UNDERSTANDING HERE AND HIS
22 ABILITY TO TALK BACK TO US, THAT IS NOT VERY MUCH
23 COMPROMISED. THAT'S A DIFFERENT BALLPARK. THE
24 BALLPARK WE'RE TALKING ABOUT IS THE BALLPARK OF,
25 WE'LL SAY, READING DAY-TO-DAY THINGS IN THE PAPER,

1 READING INSTRUCTIONS, READING QUALITY OF LIFE,
2 ACTIVITIES OF DAILY LIVING, PROJECTS THAT HE IS
3 SUPPOSED TO DO, ETCETERA. TO COMPREHEND ALL OF THAT
4 AND TO TELL US WHAT HE IS GOING TO BE DOING THAT
5 DAY, YOU KNOW, THAT SEQUENCE, THAT CIRCUIT,
6 DIFFICULTY UNDERSTANDING, YOU KNOW, THE PLANS OF THE
7 DAY OR THE PLANS OF THE WEEK, THE PLANS FOR
8 TOMORROW, WHAT PLANS WERE YESTERDAY, AND THE ABILITY
9 TO EXPRESS IT BACK AS TO WHAT HE'S GOING TO DO OR
10 NEEDS TO DO, TERRIBLY COMPROMISED. AND IT'S PRETTY
11 MUCH LOCALIZED TO THAT AREA. NOW, THE
12 HALLUCINATIONS AND THAT AREA IS ANOTHER AREA. BUT I
13 THINK THE AREA THAT IS VERY SIGNIFICANT IS THIS AREA
14 OF SENSORY AND EXPRESSIVE APHASIA THAT SO
15 COMPROMISES HIS DAY-TO-DAY FUNCTIONING AND INABILITY
16 TO LEARN NEW THINGS AND REMEMBERING NEW THINGS AND
17 FUNCTION ACCORDINGLY, YOU SEE. THAT IS TERRIBLY
18 COMPROMISED.

19 Q. SO COULD HE READ THE NEWSPAPER?

20 A. HE TRIES TO READ THE NEWSPAPER. HE DOES NOT READ
21 THE NEWSPAPER IN THE USUAL SENSE OF THE WORD. HE
22 PROBABLY CAN READ WORDS AND SENTENCES, BUT I DON'T
23 KNOW -- HE DOES NOT COMPREHEND -- AND GALE CAN
24 CONFIRM THAT, AND I HAVE CONFIRMED IT MYSELF IN
25 TESTING HIM. HE CANNOT COMPREHEND WHAT HIS -- WHAT

1 HE'S READING, YOU KNOW, MUCH LESS EXPRESS BACK WHAT
2 HE HAS READ. THAT'S TERRIBLY COMPROMISED.

3 Q. OKAY. AND IN REFERENCE TO -- HOW DO YOU ASSESS HIS
4 RECENT AND PAST MEMORY?

5 A. WELL, THAT'S AN INTERESTING QUESTION. HIS PAST
6 MEMORY, YOU KNOW, IN -- IF -- FOR INSTANCE, WHEN THE
7 -- WHEN HIS PAST MEMORY IS CONFINED TO, SAY, REGULAR
8 PATTERNS OF DRIVING OR WHERE THERE ARE PATTERNS OF
9 BEHAVIOR, LIKE FEEDING THE DOG, YOU KNOW, TAKING THE
10 DOG TO THE VETERINARIAN, WHEN THERE ARE REGULAR
11 CIRCUMSCRIBED AREAS THAT HE HAS PATTERNED HIMSELF
12 AFTER, HE DOES FAIRLY WELL. GET HIM OFF OF HIS
13 REGULAR PATTERNS -- REMEMBER, HE WAS EARLIER A VERY
14 OBSESSIVE COMPULSIVE PERSON, AND THAT HAS SERVED HIM
15 WELL IN TERMS OF THE MARGINAL FUNCTIONING THAT HE
16 STILL HAS BECAUSE HE CAN COMPULSIVELY KNOW TO TURN
17 OFF THIS EXIT, HE GOES ON THIS ROAD TO GO TO HIS
18 FATHER'S HOME, YOU KNOW, ETCETERA, ETCETERA. SO
19 THAT AREA IS -- THAT REMOTE MEMORY -- THOSE REMOTE
20 MEMORIES STILL ARE VERY MUCH IN PLACE, YOU SEE.
21 BUT, YOU KNOW, IT'S MORE THE RECENT MEMORY THAT IS A
22 PROBLEM, AND ALSO REMOTE MEMORIES AWAY FROM
23 STRUCTURED, PATTERNED RESPONSES. REMOTE MEMORIES
24 FOR TRIPS AND ONE THING TO ANOTHER ARE TERRIBLE.

25 Q. OKAY. AND SO, FOR EXAMPLE, HE CAN DRIVE?

- 1 A. YES.
- 2 Q. BUT -- AND HE CAN DRIVE TO YOUR OFFICE, DR. JONET'S
- 3 OFFICE?
- 4 A. YES.
- 5 Q. TO HIS MEDICAL -- DR. RIBER'S OFFICE, WHERE HE
- 6 NORMALLY GOES?
- 7 A. RIGHT.
- 8 Q. ALL RIGHT. BUT WHAT IS YOUR OPINION IF HE WAS TO GO
- 9 -- IF I WAS TO GIVE HIM AN ADDRESS IN CAMDEN, SOUTH
- 10 CAROLINA, AND TELL HIM TO GO THERE? OR JUST TELL
- 11 HIM TO GO TO CAMDEN?
- 12 A. HE WOULD NOT BE ABLE TO DO IT.
- 13 Q. OKAY. ALL RIGHT. LET'S TALK ABOUT -- NOW, YOU'VE
- 14 WOVEN THESE IN. LET ME JUST TALK -- ASK YOU A
- 15 QUESTION AND ASK YOU HOW TED IS AFFECTED IN THESE
- 16 VARIOUS AREAS OF COGNITIVE DYSFUNCTION THAT I HAVE
- 17 GLEANED FROM RESEARCH AND ALSO READING ALL THESE
- 18 NEUROCOGNITIVE AND NEUROPSYCHOLOGICAL TESTING. LET
- 19 ME ASK YOU, FIRST, ABOUT ATTENTION.
- 20 A. OKAY.
- 21 Q. JUST TELL ME HOW TED IS IMPAIRED. AND BEFORE WE GO
- 22 THROUGH THESE, HOW HAVE THESE -- OR, HAVE THESE
- 23 CHANGED AND HOW HAVE THEY CHANGED BETWEEN, LET'S SAY
- 24 FOR EXAMPLE, 2009 AND TODAY.
- 25 BY THE COMMISSIONER:

1 WELL, AND I'M GOING TO ADD AN ADDITIONAL
2 QUESTION, JUST IN THE INTEREST OF TIME, RATHER THAN
3 HE ASK YOU ALL THESE AND IT COMES TO ME. SO, IF YOU
4 COULD KIND OF COMBINE THIS.

5 BY THE WITNESS:

6 OH, SURE.

7 BY THE COMMISSIONER:

8 I'M NOT -- TODAY -- I MEAN, I KNOW MR. McDANIEL
9 WANTS TO KNOW WHAT THE DIFFERENCE IS IN THE
10 CONTINUUM OF TREATMENT, BUT AS TODAY I WOULD LIKE TO
11 KNOW WHAT YOUR OPINION IS ON THE SEVERITY. THAT IS
12 WHAT IS CRUCIAL TO MY DECISION HERE. SO I NEED TO
13 KNOW SEVERITY, WHETHER YOU THINK IT'S MILD, WHETHER
14 YOU THINK IT'S MODERATE, WHETHER ---

15 BY THE WITNESS:

16 RIGHT.

17 BY THE COMMISSIONER:

18 WHATEVER THE ACTIVITY IS THAT MR. McDANIEL IS
19 GOING TO ASK YOU ABOUT, IF YOU WOULD KIND OF KEEP
20 THAT IN MIND AND FACTOR THAT IN.

21 BY THE WITNESS:

22 RIGHT.

23 BY MR. McDANIEL:

24 AND I'LL ---

25 BY THE COMMISSIONER:

1 AND MAYBE YOU -- MAYBE I PREEMPTED YOU THERE

2 AND I DIDN'T ---

3 BY MR. McDANIEL:

4 NO, YOU DIDN'T. AS A MATTER OF FACT, YOU WERE
5 BASICALLY GOING TO ASK -- YOU ARE ASKING THE
6 QUESTION THAT I WAS GOING TO CONCLUDE WITH AND ASK
7 IT A LITTLE BIT DIFFERENTLY, BUT I -- IF -- I DON'T
8 MIND IF, DR. FORSTHOEFEL, YOU JUST GO AHEAD AND
9 ANSWER THAT RIGHT NOW.

10 BY THE COMMISSIONER:

11 I'D JUST KIND OF LIKE TO CUT TO THE CHASE, IF
12 WE COULD.

13 WITNESS ANSWERS:

14 A. THIS IS -- THIS IS ---

15 BY THE COMMISSIONER:

16 YOU'RE HOLDING A BOOK THERE.

17 WITNESS RESUMES:

18 A. CUTTING TO THE CHASE ALSO, I BROUGHT THIS LITTLE
19 HANDBOOK ALONG, WHICH IS STANDARD AMERICAN
20 PSYCHIATRIC ASSOCIATION DIAGNOSTIC CRITERIA FOR DSM-
21 4, AND THIS IS -- AS YOU KNOW, DSM-5 HAS JUST COME
22 OUT WITHIN THE PAST SIX MONTHS. SO THIS IS CURRENT,
23 I'M SURE, YOU KNOW. THEY HAVE IN PSYCHIATRY A
24 GLOBAL ASSESSMENT OF FUNCTIONING SCALE. ON OUR
25 DIAGNOSTIC CONTINUUM WE HAVE FIVE ORDERS OF

1 DIAGNOSES, AND THEY'RE ALL EQUALLY IMPORTANT. THE
2 LAST DIAGNOSTIC CATEGORY IS CALLED G.A.F. IT'S
3 CALLED GLOBAL ASSESSMENT OF FUNCTIONING SCALE.
4 OKAY? THE RANGE IS FROM A HUNDRED TO ZERO. OKAY?
5 NOW, WHAT ARE CONSIDERED -- WHAT IS CONSIDERED IN
6 THE GLOBAL ASSESSMENT OF FUNCTIONING SCALE ARE
7 PSYCHOLOGICAL, SOCIAL, OCCUPATIONAL FUNCTIONING ON A
8 HYPOTHETICAL CONTINUUM OF MENTAL HEALTH ILLNESSES,
9 DO NOT INCLUDE IMPAIRMENT IN FUNCTIONING DUE TO
10 PHYSICAL OR ENVIRONMENTAL LIMITATIONS. NOW, THIS IS
11 STRICTLY PSYCHIATRIC, BUT I THINK WE COULD VERY
12 NICELY -- WHAT WOULD BE THE WORD? THE WORD WOULD BE
13 TO -- WOULD EQUALLY -- IT WOULD BE EQUALLY
14 APPLICABLE FROM A PHYSICAL POINT OF VIEW BECAUSE
15 DEMENTIAS -- AND TED DOES HAVE A DEMENTIA --
16 DEMENTIA IS PART OF THE DIAGNOSTIC CATEGORIES IN
17 PSYCHIATRY. EVEN THOUGH IT'S A PHYSICAL CONDITION,
18 IT'S IN THE PSYCHIATRIC NOMENCLATURE. SO, I THINK
19 IT QUALIFIES. THIS LITTLE G.A.F. SCORE IS --
20 DEMENTIA DOES QUALIFY. THE HUNDRED -- TO GO DOWN
21 THE RANKINGS, RATINGS, HUNDRED MEANS SUPERIOR
22 FUNCTION IN A WIDE RANGE OF ACTIVITIES. LIFE'S
23 PROBLEMS NEVER SEEM TO GET OUT OF HAND, ETCETERA. A
24 HUNDRED IS THE BEST. OKAY? ZERO TO TEN IS THE
25 WORST, AND IT READS, PERSISTENT DANGER OF SEVERELY

1 HURTING SELF OR OTHERS, RECURRENT VIOLENCE OR
2 PERSISTENT INABILITY TO MAINTAIN MINIMAL PERSONAL
3 HYGIENE OR SERIOUS SUICIDAL ACTS, ETCETERA,
4 ETCETERA. HE CERTAINLY DOES NOT QUALIFY FOR THAT.
5 WHERE HE DOES QUALIFY IS IN THE RANGE OF 30 TO 40,
6 AND I'LL READ YOU WHAT 40 IS. SOME IMPAIRMENT
7 REALITY TESTING OR COMMUNICATION; SPEECH IS AT TIMES
8 ILLOGICAL, OBSCURE OR IRRELEVANT; MAJOR IMPAIRMENT
9 IN SEVERAL AREAS, SUCH AS WORK, SCHOOL, FAMILY
10 RELATIONSHIPS, JUDGMENT, THINKING, OR MOOD.
11 DEPRESSED MEN AVOID FRIENDS, NEGLECTS FAMILY, UNABLE
12 TO WORK. CHILD FREQUENTLY BEATS UP YOUNGER
13 CHILDREN, BLAH, BLAH, BLAH. ALSO, THAT -- NOW, THAT
14 WOULD BE LIKE 40. THIRTY IS, OR INABILITY TO
15 FUNCTION IN ALMOST ALL AREAS. STAYS IN BED ALL DAY,
16 NO JOB, HOME, OR FRIENDS. NOW, HE'S NOT QUITE THAT
17 WAY, BUT HE'S SOMEWHERE IN THE RANGE BETWEEN 30 AND
18 40, WHICH MEANS TO ME VERY, VERY SERIOUSLY IMPAIRED.

19 BY THE COMMISSIONER:

20 THANK YOU.

21 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

22 Q. LET ME GO THROUGH AND ASK YOU JUST A COUPLE MORE
23 QUESTIONS.

24 BY MR. McDANIEL:

25 IF I COULD HAVE JUST A MOMENT.

1 BY THE COMMISSIONER:

2 SURE. AND I HATE TO DO THIS, BUT I WANT TO
3 SPEAK TO THE ATTORNEYS BRIEFLY. AND I HATE TO DO
4 THIS, DR. FORSTHOEFEL, AND I PROMISE YOU IT WILL
5 JUST BE A COUPLE OF MINUTES. I'M GOING TO HAVE TO
6 EXCUSE YOU.

7 BY THE WITNESS:

8 OKAY.

9 BY THE COMMISSIONER:

10 AND, AGAIN, IT WILL JUST BE -- IT'S NOT GOING
11 TO BE LIKE A PREHEARING CONFERENCE; IT'S JUST GOING
12 TO BE A COUPLE OF MINUTES.

13 (OFF THE RECORD)

14 BY THE COMMISSIONER:

15 WE ARE BACK ON THE RECORD, AND I WANT TO THANK
16 EVERYONE FOR BEING EXCUSED AND FOR THE BRIEF BREAK
17 THAT WE HAD WHERE I NEEDED TO HAVE A DISCUSSION WITH
18 THE LAWYERS. THERE WAS A CONCERN OF MINE BASED UPON
19 THE TESTIMONY THAT WE'VE HAD FROM DR. FORSTHOEFEL
20 THAT THE CLAIMANT MAY NEED, FOR PURPOSES OF
21 LITIGATION ONLY, A GUARDIAN AD LITEM, AND THE REASON
22 FOR THAT IS THE LAW REQUIRES, WHERE THERE MAY BE
23 SOME COMPROMISED ABILITY TO GIVE TESTIMONY -- THIS
24 ISN'T ANY KIND OF LONG-TERM SITUATION; THIS IS JUST
25 FOR PURPOSES OF THIS WORKERS' COMPENSATION HEARING

1 -- THE LAW REQUIRES ME TO APPOINTMENT A GUARDIAN,
2 AND BASED UPON THE TESTIMONY OF THIS WITNESS WE ARE
3 GOING TO DO JUST THAT, JUST OUT OF AN ABUNDANCE OF
4 CAUTION. IT'S JUST FOR THIS HEARING. IT IS JUST TO
5 ENSURE THAT EVERYONE'S RIGHTS ARE PROTECTED. THAT I
6 AM GOING TO APPOINT -- AND I UNDERSTAND THE MOTION
7 FROM YOU WOULD BE GALE ---

8 BY MR. McDANIEL:

9 GALE DUBOSE.

10 BY THE COMMISSIONER:

11 MS. DUBOSE.

12 BY MS. DUBOSE:

13 YES.

14 BY THE COMMISSIONER:

15 NOW, MS. DUBOSE, YOU HAVE BEEN IN HERE THE
16 ENTIRE TIME. I EVEN SEE THAT YOU'VE BEEN TAKING
17 NOTES, AND YOU CERTAINLY HAVE BEEN VERY ATTENTIVE,
18 AND I ASSUME YOU HAVE HEARD EVERYTHING THAT DR.
19 FORSTHOEFEL HAS TESTIFIED TO TODAY?

20 BY MS. DUBOSE:

21 YES.

22 BY THE COMMISSIONER:

23 YOU HAVE SEEMED TO BE VERY ENGAGED AND PAYING
24 VERY, VERY RAPT ATTENTION TO WHAT WE'RE DOING. SO,
25 DO YOU HAVE ANY PROBLEMS OR DISAGREEMENTS WITH

1 SERVING IN THIS CAPACITY JUST FOR PURPOSES OF THIS
2 HEARING TODAY?

3 BY MS. DUBOSE:

4 NO.

5 BY THE COMMISSIONER:

6 THANK YOU, MA'AM. ALL RIGHT.

7 BY MR. McDANIEL:

8 COMMISSIONER, FOR PURPOSES OF THE RECORD, GALE
9 IS A LICENSED PRACTICING ATTORNEY IN THE STATE OF
10 SOUTH CAROLINA.

11 BY THE COMMISSIONER:

12 THANK YOU, MA'AM. WE APPRECIATE YOUR SERVICE.
13 ALL RIGHT. MR. McDANIEL, IF YOU CAN REMEMBER WHERE
14 YOU WERE.

15 BY MR. McDANIEL:

16 AND I'M GOING TO ASK TWO QUESTIONS ---

17 BY THE COMMISSIONER:

18 OKAY.

19 BY MR. McDANIEL:

20 --- OF DR. FORSTHOEFEL.

21 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

22 Q. DR. FORSTHOEFEL, IN REFERENCE TO TED'S ABILITY TO
23 HANDLE HIS FINANCIAL AFFAIRS, IN YOUR OPINION IS HE
24 COMPETENT OR INCOMPETENT TO HANDLE ---

25 A. HE'S INCOMPETENT.

1 Q. OKAY. IN REFERENCE TO THE ABILITY TO -- CAN HE --
2 COULD HE TESTIFY IN HIS OWN DEFENSE?

3 A. I BELIEVE HE COULD TESTIFY IN HIS OWN DEFENSE.

4 BY MR. LEVENTIS:

5 OBJECTION. DEFENSE?

6 BY THE COMMISSIONER:

7 WELL, YEAH. WELL, LET'S -- YEAH. WHY DON'T
8 YOU -- HE'S NOT BEING -- THIS IS NOT A CRIMINAL
9 TRIAL WHERE HE IS ---

10 BY MR. McDANIEL:

11 WELL, IN OTHER WORDS, COULD HE TESTIFY.

12 BY THE COMMISSIONER:

13 ON HIS BEHALF, YOU MEAN.

14 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

15 Q. COULD HE TESTIFY ON HIS BEHALF?

16 A. YES.

17 Q. OKAY.

18 BY THE COMMISSIONER:

19 BUT I DO HAVE A QUESTION ABOUT THAT. YOU HAVE
20 STATED THAT HE IS, QUOTE, TERRIBLY COMPROMISED; HE
21 HAS MARGINAL FUNCTIONING; HIS MEMORY, REMOTE MEMORY,
22 IS TERRIBLE; AND HE IS VERY SERIOUSLY IMPAIRED. SO,
23 DO YOU BELIEVE THAT -- DO YOU STILL HOLD THAT
24 OPINION THAT HE COULD TESTIFY, OR WOULD YOU HAVE ANY
25 RESERVATIONS ABOUT THAT?

1 BY THE WITNESS:

2 I THINK HE COULD EXPLAIN HIMSELF AS BEST HE
3 COULD UNDER THE CIRCUMSTANCES OF HIS MENTAL AND
4 PHYSICAL IMPAIRMENTS.

5 BY THE COMMISSIONER:

6 OKAY; ALL RIGHT. THANK YOU, SIR. MR.
7 McDANIEL.

8 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

9 Q. DR. FORSTHOEFEL, I'M GOING TO TRY TO -- WE TALKED
10 ABOUT ATTENTION. I'M GOING TO GO THROUGH A COUPLE
11 OF THESE OTHER COGNITIVE DEFICITS, AND IF YOU COULD
12 JUST EXPLAIN. WE'VE REALLY SORT OF BEEN THROUGH
13 THESE, BUT I'M JUST TRYING TO GET MYSELF BACK INTO A
14 -- TO ASK THE ULTIMATE QUESTIONS I WANTED TO ASK
15 YOU, INTENDED TO ASK YOU. DECISION-MAKING, WHICH IS
16 ONE OF THE COGNITIVE DYSFUNCTIONS OR FUNCTIONS.

17 A. RIGHT. WELL, BECAUSE OF HIS INABILITY TO COMPREHEND
18 THE WRITTEN WORD AND AT TIMES THE SPOKEN WORD, HIS
19 ABILITY TO MAKE DECISIONS WOULD BE SERIOUSLY
20 IMPAIRED ACCORDINGLY.

21 Q. OKAY. I SEE A LOT OF REFERENCE TO EXECUTIVE
22 FUNCTIONS. WHAT IS THE EXECUTIVE FUNCTION?

23 A. WELL, EXECUTIVE FUNCTIONING MEANS THE ABILITY TO
24 MAKE DECISIONS. THE -- THAT CAN INCLUDE FINANCIAL
25 DECISIONS, SOCIAL DECISIONS, PRACTICAL DECISIONS:

1 IT'S THE AREA OF THE BRAIN THAT IS THE -- WHAT MAKES
2 US MOST HUMAN IS OUR ABILITY TO MAKE DECISIONS.
3 THAT'S HOW ADVANCED WE ARE IN TERMS OF PULLING
4 TOGETHER OUR SENSORY FINDINGS AND OUR ABILITY TO
5 EXPRESS OURSELVES. THAT LEADS TO DECISION-MAKING,
6 YOU SEE. AND HIS ABILITY TO MAKE DECISIONS,
7 ESPECIALLY CONSISTENTLY GOOD DECISIONS, WOULD BE
8 SERIOUSLY IMPAIRED.

9 Q. NOW, NEXT WOULD BE -- OF COURSE, I THINK YOU'VE
10 DISCUSSED ABOUT LEARNING NEW THINGS. BECAUSE OF
11 THOSE OTHER INABILITIES HE IS VERY LIMITED IN THAT;
12 IS THAT CORRECT?

13 A. TRUE, TRUE.

14 Q. MEMORY, WE'VE DISCUSSED MEMORY?

15 A. RIGHT.

16 Q. PLANNING, WOULD THAT ---

17 A. WELL, IT ALL GOES BACK TO WHAT I'VE SAID. SENSORY
18 INPUT, HIS ABILITY TO UNDERSTAND THE WRITTEN WORD,
19 UNDERSTAND THE SPOKEN WORD, WE CALL SENSORY APHASIA,
20 LEADING TO PROBLEMS OF COMPREHENSION, LEADING TO
21 PROBLEMS EXPRESSING HIMSELF AND PROBLEMS MAKING
22 DECISIONS. YOU SEE, ALL OF THAT IS TIED TOGETHER,
23 AND HE IS VERY, VERY, VERY IMPAIRED ALONG THOSE
24 LINES.

25 Q. AND IN REFERENCE TO -- AGAIN, IN REFERENCE TO

1 APHASIA, SENSORY APHASIA, EXPRESSIVE APHASIA,
2 APHASIA IS A GROUP OF CONDITIONS THAT STEMS FROM AN
3 ORGANIC INJURY TO THE BRAIN?

4 A. YEAH, A GROUP OF SYMPTOMS.

5 Q. GROUP OF SYMPTOMS?

6 A. SYMPTOMS INDICATING PHYSICAL DAMAGE, ORGANIC DAMAGE.

7 Q. AND EVERYTHING WE'RE TALKING ABOUT IN REFERENCE TO
8 THE APHASIA IS ---

9 A. ORGANIC PHYSICAL ---

10 Q. --- PHYSICAL ORGANIC BRAIN DAMAGE? I'M GOING TO ASK
11 YOU JUST A COUPLE OF QUESTIONS ALONG HERE AND THEN
12 JUST -- THIS GOES BACK TO 2008. IN 2008 ---

13 BY THE COMMISSIONER:

14 COMMISSIONER, UNDER TAB FIVE DR. LIND DID --
15 THERE IS A REPORT FROM DR. LIND AT PAGE 31 AND PAGE
16 32 WHEREIN YOU'LL FIND THAT HE WAS -- IN 2008 HE WAS
17 NOT GIVEN ANY RECORDS OR TOLD WHY HE WAS ASKED TO DO
18 NEUROPSYCHOLOGICAL TESTING, AND THEN HE UPDATES --
19 HE WAS THEN PROVIDED THOSE RECORDS, AND THIS REPORT
20 ADDRESSES HIS OPINIONS HAD HE KNOWN ABOUT THE 2002
21 ENCEPHALOPATHY AND ALL OF THAT. BUT WHAT I WANT TO
22 ASK DR. FORSTHOEFEL IS IN REFERENCE TO HIS ---

23 BY THE COMMISSIONER:

24 SO DR. LIND IS YOUR I.M.E.?

25 BY MR. McDANIEL:

1 NO. HE'S -- NO.

2 BY THE COMMISSIONER:

3 HE'S A TREATING ---

4 BY MR. McDANIEL:

5 NO, HE'S A TREATING ---

6 BY THE COMMISSIONER:

7 TREATING.

8 BY MR. McDANIEL:

9 EVERYBODY WE'RE TALKING ABOUT ---

10 BY THE COMMISSIONER:

11 IS TREATING?

12 BY MR. McDANIEL:

13 --- IS TREATING.

14 BY THE COMMISSIONER:

15 OKAY. AND YOU ALL UNDERSTAND I DON'T RECEIVE

16 THE RECORDS UNTIL THE TIME OF THE HEARING, SO ---

17 BY MR. McDANIEL:

18 I UNDERSTAND.

19 BY THE COMMISSIONER:

20 OKAY. THANK YOU FOR THAT CLARIFICATION.

21 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

22 Q. AND I WANT TO REFER TO DR. LIND'S TESTING RESULTS.

23 HE SAID THAT HE DID ---

24 BY MR. McDANIEL:

25 AND, COMMISSIONER, HERE AGAIN, I'M NOT GOING TO

1 GO -- FOR THE SAKE OF TIME, HE ---

2 BY THE COMMISSIONER:

3 YES. I WILL READ ALL OF THIS, SO I THINK YOU
4 CAN WRAP IT UP.

5 BY MR. McDANIEL:

6 RIGHT.

7 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

8 Q. HE DID A WHOLE BATTERY OF NEUROPSYCHOLOGICAL
9 TESTING, AND BASICALLY HE -- ONE OF THOSE TESTS IS
10 THE MEMORY TEST, AND HE SAID THAT IN DELAYED MEMORY,
11 RETENTION MEMORY, THAT HE WAS SEVERELY IMPAIRED.
12 WOULD YOU AGREE WITH THAT?

13 A. YES.

14 Q. IN REFERENCE TO HIS INTELLIGENCE SCALE, IN REFERENCE
15 TO VERBAL PERFORMANCE AND FULL SCALE HE WAS
16 EXTREMELY LOW. WOULD YOU AGREE WITH ALL THAT?

17 A. I WOULD AGREE.

18 Q. IN REFERENCE TO COMPREHENSIVE TRAIL-MAKING TESTS,
19 WHICH IS BASIC, I BELIEVE, PERFORMING THE LEARNING
20 -- THE VARIOUS TYPES OF WHAT WE REFER TO LEARNING,
21 PLANNING, DECISION-MAKING AND ALL THAT, I BELIEVE
22 "THAT'S IN REFERENCE TO THAT. ARE YOU FAMILIAR WITH
23 THAT, THAT SPECIFIC TEST BATTERY CALLED THE
24 COMPREHENSIVE TRAIL-MAKING TEST?

25 A. I'M NOT THAT FAMILIAR WITH IT, NO.

1 Q. HE FOUND IN EVERY CATEGORY THAT HE WAS SEVERELY
2 IMPAIRED ---

3 A. RIGHT.

4 Q. --- EXCEPT FOR ONE?

5 BY THE COMMISSIONER:

6 AND I'LL READ THOSE.

7 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

8 Q. NOW, IN REFERENCE TO -- YOU'VE TALKED ABOUT TED'S
9 ABILITY -- DR. JONET TALKS ABOUT HER FINDINGS, WHICH
10 ARE THE SAME THAT YOU'VE TALKED ABOUT, ABOUT HE
11 CAN'T READ AND COMPREHEND THE NEWSPAPER. HE CAN
12 READ IT, BUT HE DOESN'T COMPREHEND ANYTHING. YOU'VE
13 TALKED ABOUT HIS ABILITY TO DRIVE AND BE ABLE TO GO
14 SOMEWHERE OTHER THAN WHERE HE NORMALLY GOES ON A
15 REGULAR BASIS. TELL -- ALSO, THERE'S ONE OTHER
16 THING THAT STANDS OUT. WHAT ABOUT HIS ABILITY TO
17 ORGANIZE HIS DRUGS AND TAKE THOSE ON A DAILY BASIS?
18 IS HE CAPABLE OF DOING THAT?

19 A. NO, HE'S NOT ABLE TO DO THAT AND HAS HISTORICALLY
20 BECOME CONFUSED DOING THAT BY HIMSELF SO THAT GALE
21 DOES THAT FOR HIM AND HAS BEEN DOING THAT FOR HIM
22 FOR YEARS.

23 Q. OKAY. BASICALLY, SHE WRITES ALL THE CHECKS AND DOES
24 ALL THAT BECAUSE HE CAN'T -- HE CAN'T EVEN WRITE A
25 CHECK?

1 A. RIGHT. SHE DOES ALL THE COGNITIVE WORK FOR HIM.

2 Q. OKAY. ALL RIGHT. NOW, LET'S SAY THAT TED DIDN'T
3 HAVE R.S.D., DOESN'T HAVE A SPINAL CORD STIMULATOR,
4 AND DOESN'T HAVE THE SEVERE PROBLEMS HE'S GOT WITH
5 HIS BACK AND ALL OF THESE OTHER PHYSICAL PROBLEMS
6 THAT HE HAS, IN YOUR OPINION, BASED ON PURELY HIS
7 ORGANIC BRAIN INJURY AND THE COGNITIVE DEFICITS HE
8 HAS, IS HE EMPLOYABLE OR NOT EMPLOYABLE?

9 A. UNEMPLOYABLE.

10 Q. SO, SIMPLY BASED ON HIS ORGANIC BRAIN DAMAGE THAT
11 YOU'VE TESTIFIED IN YOUR OPINION TO A REASONABLE
12 DEGREE OF MEDICAL CERTAINTY HE IS INCAPABLE OF
13 EMPLOYMENT?

14 A. TOTALLY INCAPABLE.

15 BY MR. McDANIEL:

16 COMMISSIONER, I HAVE NO FURTHER QUESTIONS.

17 BY THE COMMISSIONER:

18 ALL RIGHT. THANK YOU. PLEASE ANSWER ANY
19 QUESTIONS THAT MR. LEVENTIS HAS.

20 CROSS EXAMINATION BY MR. LEVENTIS:

21 Q. OKAY, DOCTOR. WELL, I APPRECIATE YOUR BEING HERE
22 TODAY AND YOUR PATIENCE WITH US. YOU WERE JUST
23 ASKED A QUESTION SPECIFICALLY IF YOU TOOK AWAY THESE
24 PHYSICAL IMPAIRMENTS THAT MR. POLANSKY HAS HE WOULD
25 STILL BE UNEMPLOYABLE, AND YOU ANSWERED YES; IS THAT

1 CORRECT?

2 A. THAT'S TRUE.

3 Q. OKAY. AND YOU SAID JUST BASED ON THE BRAIN INJURY,
4 THE PHYSICAL BRAIN INJURY; IS THAT CORRECT?

5 A. THAT'S TRUE.

6 Q. OKAY. IN ADDITION TO THE PHYSICAL INJURY, DOES HE
7 ALSO HAVE PSYCHOLOGICAL OR MOOD DISORDERS THAT ARE
8 NOT RELATED TO THE PHYSICAL BRAIN INJURY?

9 A. THAT'S A COMPLICATED QUESTION. I THINK THE ORGANIC
10 ISSUES THAT WE'VE BEEN TALKING ABOUT, DRUG-DRUG
11 ORGANIC ISSUES, I THINK HAS AFFECTED HIM. THE
12 PSYCHIATRIC SIDE OF IT, HIS MOOD PROBLEMS, I DO
13 THINK THAT'S BEEN AGGRAVATED BY THE COGNITIVE
14 DECLINE.

15 Q. OKAY. WELL, LET ME START BY ASKING WAS THE -- DID
16 THE BIPOLAR PREEXIST ---

17 A. YES.

18 Q. --- THE 2002 DRUG-DRUG INTERACTION?

19 A. YES, YES.

20 Q. OKAY. THE -- AND I'M GOING TO SAY IT WRONG BECAUSE
21 I'M NOT TRAINED. BUT THE SCHIZOAFFECTIVE DISORDER,
22 ---

23 A. YES.

24 Q. --- IS THAT SCHIZOPHRENIA?

25 A. NO, IT'S NOT. THERE'S A -- AS AN ASIDE ONLY,

1 THERE'S WIDE DISCUSSION BASED UPON THE LACK OF
2 CONTROLLED STUDIES ABOUT SCHIZOAFFECTIVE DISORDER
3 BEING A FIRM DIAGNOSIS.

4 Q. OKAY.

5 A. SO IT'S FREQUENTLY -- FROM TECHNICAL PURPOSES ONLY,
6 NOT CLINICAL PURPOSES, BUT TECHNICAL PURPOSES, IT'S
7 EITHER SKEWED TOWARDS SCHIZOPHRENIA OR IT'S SKEWED
8 TOWARDS BIPOLAR BECAUSE OF THE LACK OF CONTROLLED
9 EVIDENCE. BUT CLINICALLY WE USE IT ALL THE TIME.

10 Q. YOU STATED JUST A MOMENT AGO THAT THAT'S ACTUALLY
11 BEEN AGGRAVATED OR MADE WORSE BY THE ORGANIC BRAIN
12 INJURY?

13 A. IT'S BEEN -- IT'S BEEN AGGRAVATED BY IT, YES.

14 Q. OKAY. BUT THEN A MOMENT AGO, WHEN ANSWERING
15 QUESTIONS OF OPPOSING COUNSEL, YOU HAD STATED THAT
16 THOSE THINGS ACTUALLY HAD LEVELED OUT AND GOTTEN
17 BETTER; IS THAT CORRECT?

18 A. YES; THAT'S TRUE.

19 Q. OKAY. SO, AND I'M NOT BEING COY, BUT WHICH IS IT?
20 ARE THOSE THINGS WORSE NOW OR BETTER NOW?

21 A. WELL, THEY WERE AGGRAVATED, BUT DUE TO MY
22 INTERVENTIONS OR SKILLS OR COMBINATIONS OF
23 PROVIDENCE OR WHATEVER GOD'S GIFTS TO ME WERE, I WAS
24 ABLE TO GET THE MOOD PROBLEMS, THE SCHIZOAFFECTIVE
25 PROBLEMS, UNDER BETTER CONTROL WITH MEDICATIONS OVER

1 YEARS.

2 Q. OKAY. LET ME GO BACK FOR A SECOND. YOU SAID THE
3 APHASIA IS BASED ON THE ORGANIC BRAIN INJURY; IS
4 THAT CORRECT?

5 A. THAT'S TRUE.

6 Q. OKAY. CAN SOMEONE -- BECAUSE YOU SAID THAT WAS WHAT
7 HE HAD IT FROM. CAN SOMEONE ALSO HAVE APHASIA FROM
8 THE PSYCHOLOGICAL DISORDERS THAT MR. POLANSKY'S
9 SUFFERING FROM?

10 A. THE WORD IS NOT USED -- THE WORD IS NOT CUSTOMARILY
11 USED UNDER THE PSYCHIATRIC SIDE OF IT. IT'S USED
12 UNDER THE ORGANIC SIDE OF IT.

13 Q. OKAY. IN DR. AVIE RAINWATER'S REPORT, WHICH I
14 BELIEVE YOU MENTIONED YOU WERE FAMILIAR WITH; IS
15 THAT CORRECT? HIS RECORDS?

16 A. YES.

17 Q. OKAY.

18 BY MR. LEVENTIS:

19 AND I'M AT PAGE 22, YOUR HONOR.

20 BY THE COMMISSIONER:

21 OKAY.

22 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

23 Q. WHEN HE MENTIONS UNDER ONE OF THE CODES COGNITIVE
24 DISORDER N.O.S., HE MENTIONS MILD APHASIA AND
25 RECEPTIVE LANGUAGE DIFFICULTY SECONDARY TO

- 1 ENCEPHALOPATHY. IS THAT CORRECT IN YOUR OPINION?
- 2 A. THAT'S TRUE.
- 3 Q. OKAY. SO WOULD YOU SAY HIS APHASIA IS MILD?
- 4 A. I WOULD SAY HIS APHASIA IS SEVERE.
- 5 Q. WELL, LISTEN TO ME CLOSELY, BECAUSE A SECOND AGO I
- 6 JUST READ TO YOU WHERE HE SAID MILD APHASIA AND YOU
- 7 SAID THAT'S TRUE.
- 8 A. OH, I ---
- 9 Q. AND I'M NOT TRYING TO TRICK YOU, SO I WANT TO LET
- 10 YOU CLARIFY.
- 11 A. THAT'S TRUE IN TERMS OF WHAT HE SAID. IT'S NOT WHAT
- 12 I'M SAYING, BUT IT'S TRUE IN TERMS OF WHAT HE SAID.
- 13 Q. OKAY. BUT YOU WOULD SAY THAT IT'S ---
- 14 A. NO, I WOULD NOT SAY IT WAS MILD.
- 15 Q. OKAY. HE ALSO MENTIONS PSYCHOLOGICAL FACTORS
- 16 AFFECTING A PHYSICAL CONDITION. AND IS HE TALKING
- 17 THERE ABOUT THE BIPOLAR DISORDER OR DEPRESSION?
- 18 A. PROBABLY, PROBABLY.
- 19 Q. OKAY. IN RESPONSE TO ATTORNEY McDANIEL'S QUESTIONS
- 20 TO YOU WHEN YOU RATED HIM ON A SCALE OF ONE TO A
- 21 HUNDRED AND YOU SAID YOU'D RATE HIM BETWEEN A 30 AND
- 22 A 40?
- 23 A. YES.
- 24 Q. OKAY. YOU MENTIONED THAT HE DOES HAVE DEMENTIA; IS
- 25 THAT CORRECT?

1 A. THAT'S TRUE.

2 Q. OKAY. IS THAT FROM -- DO YOU BELIEVE THE DEMENTIA
3 IS FROM THIS DRUG-DRUG INTERACTION?

4 A. YES.

5 Q. OKAY. WHAT IS YOUR BASIS FOR BELIEVING THAT?

6 A. CLINICAL FINDINGS SUPPORTED BY THE TESTING FINDINGS
7 BY DR. RAINWATER, DR. LIND; ALSO SUPPORTED BY DR.
8 ADAMS' FINDINGS; ALSO SUPPORTED BY DR. CARNES, A
9 NEUROLOGIST THAT I CONSULTED WITH ABOUT TED'S
10 ORGANIC CONDITION AND FINDINGS. SO, MY REASONING IS
11 FIRMLY GROUNDED IN OTHER -- WITH OTHER CONSULTANTS'
12 OPINIONS AS WELL.

13 Q. YOU WROTE A LETTER ON MARCH 3RD, 2011.,

14 BY MR. LEVENTIS:

15 THIS IS APA PAGE NINE, YOUR HONOR.

16 BY THE COMMISSIONER:

17 OKAY. THANK YOU.

18 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

19 Q. YOU MENTIONED TED'S PREEXISTING COGNITIVE DECLINE
20 HAS OCCURRED OVER MANY YEARS AND HAS BEEN FAIRLY
21 CONGRUENT WITH HIS MOOD FLUCTUATIONS. IS THAT --
22 YOU SAY A PREEXISTING COGNITIVE DECLINE. DO YOU
23 MEAN PRIOR TO THE 2002 DRUG-DRUG INTERACTION?

24 A. RIGHT, YEAH. THE PRE -- THE PRE-DRUG-DRUG PROBLEM,
25 HE HAD REALLY KIND OF LIKE BIPOLAR MOOD SWINGS WITH

- 1 COGNITIVE DYSFUNCTION, CONFUSION, VOICES, IMAGES.
- 2 Q. HALLUCINATIONS?
- 3 A. HE WAS -- YEAH. SO HE WAS -- HAD A VERY CONFUSIONAL
- 4 PRESENTATION A LOT OF THE TIME BEFORE THE DRUG-DRUG
- 5 ISSUE COMES ALONG.
- 6 Q. OKAY. PRIOR TO THE 2002 DRUG INTERACTION WHEN HE
- 7 WAS HOSPITALIZED, HAD YOU SEEN HIM OR DO YOU KNOW IF
- 8 HE WAS HOSPITALIZED FOR APPROXIMATELY THREE WEEKS
- 9 INPATIENT?
- 10 A. I SAW HIM IN 2001 IN THE HOSPITAL, AND I SAW HIM IN
- 11 2002 IN THE HOSPITAL.
- 12 Q. OKAY. DO YOU KNOW IF SUBSEQUENT TO THE STAY THAT HE
- 13 DID IN THE HOSPITAL THAT HE WAS ALSO IN AN INTENSIVE
- 14 OUTPATIENT PROGRAM FOR A FEW MONTHS AFTER THAT?
- 15 A. I SAW HIM IN THAT SETTING AS WELL.
- 16 Q. OKAY. ONE OF THE THINGS YOU MENTIONED WHEN YOU SAID
- 17 HE WAS BETWEEN A 30 AND A 40 ON THAT SCALE ---
- 18 A. RIGHT.
- 19 Q. LET ME START BY ASKING, DOES ANYBODY SCORE A HUNDRED
- 20 PERCENT? IS IT LIKE, YOU KNOW, TOP LINE CREDIT?
- 21 A. I'VE NEVER SEEN A HUNDRED PERCENT.
- 22 Q. OKAY. DO MANY PEOPLE SCORE ABOVE 90 PERCENT? IS
- 23 THAT COMMON?
- 24 A. I DON'T SEE -- I DON'T SEE ANYBODY ABOVE 90 EITHER.
- 25 Q. OKAY. WELL, THAT'S FAIR. YOU SAID THAT THAT'S --

1 EVEN THOUGH YOU MENTION THE DEMENTIA IS A PHYSICAL
2 COMPONENT, YOU SAID THAT THAT FROM A DSN-4 IS
3 PRIMARILY BASED ON MOOD DISORDERS; IS THAT WHERE
4 THAT USUALLY IS USED, THAT SCALE?

5 A. MY INFORMATION COMES FROM THE DSN-4, YES.

6 Q. OKAY. ONE OF THE THINGS YOU READ WHEN YOU WENT KIND
7 OF ALL THE WAY TO 30 IS YOU LISTED STAYING -- KIND
8 OF STAYING IN BED ALL DAY ESSENTIALLY?

9 A. THAT WOULD BE PROBABLY LIKE ABOUT 30.

10 Q. OKAY. COULDN'T THOSE FACTORS, SOMEBODY TAKING SOME
11 OF THE EXACT SAME ACTIONS, SUCH AS STAYING IN BED
12 ALL DAY, BE RELATED TO PSYCHOLOGICAL ISSUES, SUCH AS
13 DEPRESSION?

14 A. YES, YES. YOU COULD HAVE ---

15 Q. DOES ---

16 A. YOU COULD HAVE 30, 20, 10, 40, ALL ON THE
17 PSYCHIATRIC BASIS ALONE.

18 Q. OKAY. AND DOES MR. POLANSKY SUFFER FROM DEPRESSION?

19 A. YES, HE CONTINUES TO SUFFER FROM DEPRESSION.

20 Q. OKAY. AND WAS HE SUFFERING FROM DEPRESSION PRIOR TO
21 THE 2002 DRUG INTERACTION?

22 A. YES.

23 Q. OKAY. WHEN YOU PUT HIM BETWEEN A 30 AND 40, DO YOU
24 HAVE A WAY TO SEPARATE OUT WHETHER HE'S A 30 OR 40
25 FROM THE ORGANIC BRAIN INJURY, THE PHYSICAL BRAIN

1 INJURY, THE PSYCHOLOGICAL CONDITIONS THAT HE HAS, OR
2 BOTH TOGETHER? IS THERE A WAY FOR YOU TO DO THAT?

3 A. WELL, THAT'S A CLINICAL FINDING. THOSE ARE BASED
4 UPON MY CLINICAL BACKGROUND. AND WORKING WITH HIM
5 FOR NOW 15 YEARS I CAN CLINICALLY SAY THAT THERE'S
6 BEEN A DETERIORATION OF HIS COGNITIVE FUNCTIONS
7 INDEPENDENT OF ANY MOOD PROBLEMS, YOU SEE,
8 INDEPENDENT. THAT'S REALLY CLEAR TO ME.

9 Q. OKAY. DID YOU -- WERE YOU INVOLVED IN THE DISCHARGE
10 OF TED AFTER THE 2002 HOSPITALIZATION; DO YOU
11 RECALL?

12 A. I'M SURE I WAS INVOLVED BECAUSE I TREATED HIM IN THE
13 HOSPITAL. I WOULD HAVE HAD TO WRITE THE DISCHARGE
14 SUMMARY. I WOULD -- OF COURSE I WOULD HAVE BEEN
15 INVOLVED.

16 Q. OKAY. DID YOU DO IT BEFORE YOU -- DID YOU GIVE HIM
17 A GOOD BILL OF HEALTH AFTER THAT? WAS HE BACK
18 WITHIN NORMAL LIMITS WITH HIS TESTING; DO YOU
19 RECALL?

20 A. WELL, I WOULDN'T SAY THAT. I MEAN, HE WAS OBVIOUSLY
21 BETTER. THE DELIRIUM HAD REMITTED. BUT TO SAY THAT
22 HE WAS WELL OR MOSTLY WELL, I COULD NEVER SAY
23 ANYTHING LIKE THAT. HE WAS OBVIOUSLY BETTER.
24 OTHERWISE WE WOULD HAVE KEPT HIM IN THE HOSPITAL.

25 BY MR. LEVENTIS:

1 THIS IS APA PAGE 731, YOUR HONOR.

2 BY THE COMMISSIONER:

3 OKAY.

4 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

5 Q. DOCTOR, THIS IS A LETTER THAT I BELIEVE YOU WROTE ON
6 MARCH 8TH OF 2002.

7 BY MR. LEVENTIS:

8 YOUR HONOR, I DON'T KNOW IF YOU HAVE A
9 PREFERENCE IF I READ OR LET DR. ---

10 BY THE COMMISSIONER:

11 EITHER WAY YOU WANT TO DO IT. IF YOU WANT TO
12 REFRESH HIS MEMORY, HE MIGHT WANT TO SEE IT.

13 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

14 Q. OKAY. I'LL LET YOU TAKE A LOOK AT IT FIRST, DOCTOR,
15 AND THEN IF YOU DON'T MIND I'LL READ IT.

16 A. SURE.

17 BY THE COMMISSIONER:

18 AND YOU SAID ---

19 BY MR. LEVENTIS:

20 SEVEN THIRTY-ONE, YOUR HONOR.

21 BY THE COMMISSIONER:

22 THANK YOU. OKAY; 731. MINE GO TO -- MAYBE

23 THIS IS SUPPLEMENTAL.

24 BY MR. LEVENTIS:

25 THIS IS MINE, YOUR HONOR.

1 BY THE COMMISSIONER:

2 OH, THAT'S WHY. THANKS.

3 BY MR. LEVENTIS:

4 I BELIEVE IT IS TAB 24.

5 BY THE COMMISSIONER:

6 OKAY; GOT IT.

7 BY THE WITNESS:

8 YOU'RE GOING TO HAVE TO EXCUSE ME. I HAVE

9 RHINITIS AS WE ---

10 BY MR. LEVENTIS:

11 YOU'RE FINE.

12 BY THE WITNESS:

13 I'M GOING TO HAVE TO TAKE A LITTLE BREAK HERE.

14 EXCUSE ME. OKAY. I'M FINE.

15 BY MR. LEVENTIS:

16 OKAY.

17 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

18 Q. DOCTOR, YOU NOTED --- AND THIS IS NOT A REPORT,
19 ACTUALLY; THIS IS A LETTER. BUT YOU NOTED THAT THE
20 CLINICAL AND COGNITIVE DETERIORATION HAD FULLY
21 REMITTED AS OF THAT TIME?

22 A. YES.

23 Q. AS OF MARCH 8, 2002. WAS THAT YOUR OPINION?

24 A. I DID WRITE THAT, AND IT WAS MY OPINION AT THE TIME.

25 Q. OKAY. AND DID YOU --- TO REACH THAT OPINION, IN

1 ADDITION TO JUST EVALUATING MR. POLANSKY, DID YOU
2 ALSO DO ANY OBJECTIVE TESTING, SUCH AS BRAIN SCANS
3 OR EEGs?

4 A. I FORGET WHAT WE DID AT THAT TIME. MY RECALL FOR
5 THAT IS NOT GOOD.

6 Q. OKAY. WELL, IF YOU NOTICE ---

7 A. I ASSUME THAT WE DID.

8 Q. OKAY. IF YOU NOTE IN THE LETTER THAT YOU DID DO IT
9 AND IT WAS WITHIN NCRMAL LIMITS, WOULD YOU HAVE ANY
10 REASON TO NOT BELIEVE THAT WAS THE CASE AT THE TIME?

11 A. WELL, I THINK THOSE -- THE FINDINGS THAT I REPORT
12 ON, I WOULD SAY, ARE POSITIVE BUT TENTATIVE. I
13 MEAN, WHEN PEOPLE -- WHEN PEOPLE GET BETTER, THEY
14 STAY BETTER FOR A FEW DAYS, A FEW WEEKS, AND THEN
15 THEY GET WORSE OR THEY STAY BETTER. THE DISCHARGE
16 FINDINGS, I WOULD SAY, WERE GREAT, BUT LOOKING AT IT
17 AS A CLINICIAN RETROSPECTIVELY, I WOULD SAY THAT WAS
18 MOST TENTATIVE. IT WAS CERTAINLY OPTIMISTIC. IT
19 CERTAINLY REMAINS TENTATIVE UNDER THE BEST OF
20 CIRCUMSTANCES.

21 Q. ONE OF THE -- I DON'T KNOW IF YOU WANT TO CALL IT
22 DIAGNOSTIC TEST OR ONE OF THE DIAGNOSTIC SYMPTOMS
23 YOU'VE REFERENCED FOR MR. POLANSKY FOR THE ORGANIC
24 BRAIN INJURY AFTER 2002 IS THE CONFUSION THAT HE
25 HAS; IS THAT CORRECT?

1 A. THAT'S TRUE.

2 Q. OKAY. ONE OF THEM YOU MENTIONED IN RESPONSE TO
3 OPPOSING COUNSEL'S QUESTIONS WAS CONFUSION WITH HIS
4 MEDICATION; IS THAT CORRECT?

5 A. RIGHT.

6 Q. BUT DID HE NOT HAVE CONFUSION WITH HIS MEDICATION
7 PRIOR TO THIS?

8 A. I DON'T -- I -- MY RECALL OF THAT, THAT THERE WAS
9 SOME -- OR A LOT OF CONFUSION JUST BEFORE GOING INTO
10 THE HOSPITAL, THE BASIS OF WHICH COULD HAVE BEEN DUE
11 TO HIS PSYCHIATRIC DEPRESSION, MOOD LABILITY
12 SECONDARY TO TAKING THE SEROQUEL, THE COMBINATION OF
13 FACTORS. PROBABLY OVERTAKING THE MEDICINE,
14 UNDERTAKING THE MEDICINE, THE NATURE OF THE
15 CONFUSION OR THE BASIS OF THE CONFUSION PRIOR TO THE
16 HOSPITALIZATION IN 2002, IS SOMEWHAT CONFUSING, BUT
17 I HAVE NO DOUBTS THAT SEROQUEL XR HAD SOMETHING TO
18 DO WITH THE ORGANIC ASPECTS OF THE CONFUSIONAL
19 STATE.

20 Q. OKAY. AND I'M NOT PLAYING GOTCHA, BUT I'M JUST
21 GOING TO READ THIS FROM THAT SAME LETTER.

22 A. SURE.

23 Q. IT IS CLEAR TO ME THAT THIS EARLIER TWO MONTH
24 DETERIORATION PRIOR TO HIS HOSPITALIZATION WAS
25 CAUSED BY HIS OWN CONFUSION DUE TO PROBLEMS WITH

1 COMPLIANCE AND PROBABLY OVERMEDICATION.

2 A. YEAH.

3 Q. SO WAS HE HAVING CONFUSION WITH TAKING HIS
4 MEDICATION ACCURATELY PRIOR TO?

5 A. YES. THAT WAS ONE OF THE FACTORS.

6 Q. OKAY. WERE YOU AWARE OF ANY SHORT-TERM MEMORY
7 DIFFICULTIES THAT HE HAD PRIOR TO 2002?

8 A. YES. HE HAD A LOT OF SHORT-TERM MEMORIES PRIOR TO
9 2002 ALONG FUNCTIONAL, MOOD LABILITY,
10 HALLUCINATIONS, WHATEVER.

11 Q. DID HE KEEP LISTS, TO YOUR KNOWLEDGE, TO KEEP UP
12 WITH THINGS THAT WERE IMPORTANT PRIOR TO 2002?

13 A. I DON'T RECALL THAT.

14 Q. OKAY. DOCTOR, HOW DO YOU -- HOW DO YOU SEPARATE OUT
15 THOSE QUESTIONS OF CONFUSION OR SHORT-TERM MEMORY
16 LOSS THAT HE WOULD HAVE BEFOREHAND WITH WHAT HE HAD
17 AFTERWARDS?

18 A. WELL, AGAIN, THOSE ARE THE CLINICAL FINDINGS.
19 CLINICALLY BEFORE 2002 HOSPITALIZATION HIS ONLY
20 DIAGNOSIS WAS SCHIZOAFFECTIVE DISORDER. THAT WAS
21 HIS ONLY DIAGNOSIS, AND SO ALL THE CONFUSION WAS
22 RELATED TO THAT ONLY, YOU SEE.

23 Q. WOULD ---

24 A. SO ---

25 Q. GO AHEAD. I'M SORRY.

1 A. SO THAT WHEN WE GET INTO THE TWO MONTHS BEFORE THE
2 HOSPITALIZATION IN 2002, WHAT WAS THE INCREASING
3 CONFUSION ALL ABOUT, YOU SEE. THERE WAS A
4 QUALITATIVE WORSENING IN THE CONFUSIONAL STATE DUE
5 TO DOCUMENTED OVERUSING, UNDERUSING, MISUSING
6 MEDICATIONS. THE USE OF SEROQUEL XR AS THE VARIABLE
7 IN THE TREATMENT REGIMEN DURING THAT PERIOD OF TIME,
8 SEROQUEL XR BEING THE NEW TREATMENT VARIABLE AND DID
9 THAT HAVE SOMETHING TO DO -- A LOT TO DO WITH THE
10 CONFUSIONAL STATE PRECEDING THE HOSPITALIZATION AND
11 DELIRIUM.

12 Q. OKAY. BUT WHAT I'M ASKING YOU, DOCTOR -- I'M GOING
13 ---

14 BY MR. LEVENTIS:

15 THIS IS APA PAGE 28, YOUR HONOR.

16 BY THE COMMISSIONER:

17 OKAY.

18 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

19 Q. THIS IS FROM THE AVIE RAINWATER 2001, SO PRIOR TO
20 THE HOSPITALIZATION. HE NOTES UNDER MEMORY,
21 "IMPAIRED. HE USES LISTS TO KEEP TRACK OF THINGS
22 THAT ARE IMPORTANT TO HIM." THIS IS PRIOR TO THE
23 SEROQUEL.

24 A. RIGHT, YES.

25 Q. SO MY QUESTION IS NOT AS FAR AS CAUSATION UNDER

1 SEROQUEL GOES, BUT HOW DO YOU FERRET OUT WHETHER OR
2 NOT THE CONFUSION AND MEMORY ISSUES THAT HE HAD
3 BEFOREHAND WERE NOT THE SAME ONES THAT HE HAD
4 AFTERWARDS OR TO THE DEGREE OR EXTENT IF THEY WERE
5 CAUSED BY HIS PSYCHOLOGICAL CONDITION?

6 A. BECAUSE THERE ARE NEW CLINICAL FINDINGS AFTER HIS
7 HOSPITALIZATION, HIS TENTATIVE IMPROVEMENT -- AS
8 EVIDENCED IN THE LETTER, HIS TENTATIVE IMPROVEMENT
9 WAS NOT SUSTAINED, AND IT WAS COMPROMISED BY HIS
10 BIPOLAR, IF YOU WILL, SCHIZOAFFECTIVE ISSUES AND HIS
11 INCREASING ORGANIC ISSUES WITH APHASIA,
12 COMPREHENSION, ALL OF WHICH WE'VE ALREADY DISCUSSED.

13 Q. OKAY. DOCTOR, I'M LOOKING ---

14 BY MR. LEVENTIS:

15 THIS IS PAGE 86, YOUR HONOR.

16 BY THE COMMISSIONER:

17 OKAY.

18 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

19 Q. DOCTOR, I'M LOOKING AT A LETTER FROM YOU TO ATTORNEY
20 McDANIEL ON MARCH 24TH OF 2012. IT'S JUST ONE
21 SENTENCE. I'LL READ IT TO YOU.

22 A. SURE.

23 Q. IT'S TO WHOM IT MAY CONCERN, BUT IT SAYS, "IT IS MY
24 MEDICAL OPINION THAT MR. POLANSKY CANNOT DO HOURS OF
25 PSYCHOLOGICAL TESTING DUE TO HIS COGNITIVE

1 IMPAIRMENT." DOES THAT REMAIN YOUR POSITION TODAY?

2 A. YES.

3 Q. OKAY. WHEN YOU SAY HOURS OF PSYCHOLOGICAL TESTING,
4 ARE YOU SPEAKING SPECIFICALLY ABOUT A
5 NEUROPSYCHOLOGICAL EXAMINATION?

6 A. YES.

7 Q. OKAY. ARE YOU AWARE THAT THAT'S THE TYPE OF TESTING
8 THAT DR. LIND DID WITH MR. POLANSKY?

9 A. YES.

10 Q. BASED ON THAT LETTER, WHAT IS YOUR POSITION AS TO
11 THE VALIDITY OF ANY NEUROPSYCHOLOGICAL
12 QUESTIONNAIRES AND TESTING THAT HAVE HAPPENED SINCE
13 2002?

14 A. WELL ---

15 BY MR. McDANIEL:

16 OBJECTION. THAT LETTER IS DATED MAY 24TH --
17 OBJECTION AS TO TIME.

18 BY THE COMMISSIONER:

19 OKAY. I SEE THIS ONE IS DATED MAY 24TH, 2012,
20 BUT I DON'T KNOW WHAT THE DATE OF THE LIND TESTING
21 -- IS THAT WHAT YOUR POINT IS? HE'S EXPRESSED AN
22 OPINION THAT HE SHOULD NOT BE SUBJECT TO THAT TYPE
23 OF TESTING, AND THEN HE HAS UNDERGONE THIS TESTING
24 WITH DR. LIND, SO WHAT -- WHAT DOES THAT MEAN AS FAR
25 AS THE VALIDITY OF THE LIND TESTING? CAN YOU ---

1 BY MR. LEVENTIS:

2 I'LL LAY A BETTER FOUNDATION, YOUR HONOR.

3 BY THE COMMISSIONER:

4 THANK YOU. ALL RIGHT.

5 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

6 Q. DOCTOR, WHEN YOU SAY HE CANNOT DO IT, WHAT DO YOU
7 MEAN BY THAT, THAT HE CANNOT DO IT?

8 A. WELL, I THINK A COUPLE OF POINTS. ONE IS WHAT KIND
9 OF STRESS DO I PUT HIM UNDER TO BE TESTED. I MEAN,
10 I AM HIS ADVOCATE IN TERMS OF GETTING HIM BETTER AND
11 KEEPING HIM BETTER AND -- SO THAT I THOUGHT IT WAS
12 OBVIOUSLY TOO STRESSFUL. AND I WOULD PROBABLY DO
13 THE SAME THING TODAY. I DON'T THINK HE'S CAPABLE.
14 HE MIGHT BE, BUT I DON'T KNOW CERTAIN THINGS. HE'S
15 A VERY MOTIVATED PERSON. HE GIVES HIS BEST, YOU
16 KNOW, BUT I'M NOT GONNA PUT HIM THROUGH THE STRESS
17 AND STRAIN OF UNDUE TESTING. SO HE UNDERTOOK THAT
18 AND SO WAS ABLE TO DO IT, APPARENTLY.

19 Q. OKAY. AND THEN THE TESTING OR QUESTIONS THAT HE
20 RECEIVED WITH DR. RAINWATER THE PRIOR YEAR, PRIOR TO
21 THE 2012, DO YOU BELIEVE THAT THOSE TESTS ARE VALID
22 THAT WERE GIVEN TO HIM?

23 A. I THINK DR. RAINWATER'S TESTING IS CERTAINLY VERY
24 VALID IN TERMS OF THE ISSUE OF MOOD CONGRUENCY, MOOD
25 CONGRUENCY AND LATER MOOD INCONGRUENCY AND THE

1 ORGANIC ASPECTS OF HIS PRESENTATION. NO, I THINK
2 THAT'S ALL VERY VALID.

3 Q. OKAY. YOU TESTIFIED A MOMENT AGO THAT THE ONLY
4 THING THAT HE HAD -- THE ONLY DIAGNOSIS HE HAD PRIOR
5 TO THE 2002 HOSPITALIZATION WAS SCHIZOAFF ---

6 A. YES.

7 Q. IF YOU CAN SAY IT FOR ME ONE MORE TIME, DOCTOR.

8 A. YEAH, SCHIZOAFFECTIVE DISORDER.

9 Q. OKAY. WAS THAT -- IS O.C.D., AS WE REFER TO IT AS
10 LAYPERSONS, OBSESSIVE COMPULSIVE DISORDER, IS THAT
11 PART OF THAT?

12 A. THAT WOULD BE -- THERE'S -- AGAIN, IN PSYCHIATRY WE
13 HAVE FIVE CATEGORIES OF DIAGNOSES. THE SECOND
14 DIAGNOSTIC CATEGORY IS A PERSONALITY DISORDER, AND
15 HE WOULD QUALIFY FOR HAVING O.C.D., PREMORBID, YOU
16 KNOW, ALL HIS LIFE, SUCCESSFULLY O.C.D., A
17 SUCCESSFUL OBSESSIVE COMPULSIVE PERSON, YES.

18 Q. OKAY. DID HE ALSO -- WAS DEPRESSION ALSO A
19 DIAGNOSIS HE HAD PRIOR TO THE 2002 ---

20 A. IT WOULD BE PART OF HIS ---

21 Q. --- HOSPITALIZATION?

22 A. IT WOULD PART OF HIS BIPOLAR MOOD, PART OF THE
23 SCHIZOAFFECTIVE DISORDER, PART OF THAT, YES.

24 Q. OKAY. WELL, WHAT ABOUT -- AND I DON'T KNOW -- I
25 KNOW WHAT IT MEANS, BUT I DON'T KNOW IF IT'S A

1 MEDICAL TERM. AGORAPHOBIA WAS ALSO SOMETHING?

2 A. THAT WAS STRICTLY MINOR. THAT WAS -- THAT WAS JUST
3 A MINOR ISSUE.

4 Q. OKAY. DOCTOR, WHAT DID YOU DO AS FAR AS CHANGING
5 HIS MEDICATIONS -- WELL, LET ME ASK YOU, IN 2002
6 WERE YOU THE ONE PRESCRIBING HIS MEDICATIONS TO HIM?

7 A. YES.

8 Q. OKAY. OTHER THAN CHANGING HIS MEDICATION FROM
9 SEROQUEL, WHAT OTHER MEDICATIONS DID YOU CHANGE HIM
10 TO, OR DO YOU RECALL SPECIFICALLY?

11 A. WELL, I FORGET THE SEQUENCE. THERE WERE MULTIPLE
12 THERAPEUTIC TRIALS, AND -- BUT HE'S BEEN ON HIS
13 CURRENT MEDICATIONS FOR SOME TIME, UNCHANGED, WITH
14 PERHAPS SOME TWEAKING OF SOME OF THE MEDICATIONS,
15 WHICH I'VE DONE -- WE'VE DONE. PLUS THE ADDITION OF
16 ARICEPT. HE'S ALREADY ON A MEMORY PILL, RAZADYNE,
17 FROM DR. RIBER FOR HIS MEMORY PROBLEMS. AND SO I
18 ADDED SOMETHING A COUPLE OF YEARS AGO, A FEW YEARS
19 AGO FOR THE MEMORY ISSUES.

20 Q. WERE THE -- WAS HE ON ANYTHING FOR HIS MEMORY PRIOR
21 TO 2002, OR WOULD SOMEBODY WHO NEEDS TO KEEP LISTS
22 TO KEEP UP WITH IMPORTANT THINGS IN THEIR LIFE
23 SOMEBODY YOU WOULD USE A MEMORY PILL FOR?

24 A. I DON'T RECALL WHEN DR. RIBER PUT HIM ON RAZADYNE.
25 YOU SAID MEMORY PILL. I DON'T KNOW THE DATE OF THAT

1 AT ALL.

2 Q. WHAT WAS THE SEROQUEL FOR ORIGINALLY?

3 A. SEROQUEL XR IS A MEDICATION THAT IS FDA APPROVED FOR
4 BIPOLAR II DEPRESSION.

5 Q. IT'S A SEROTONIN INHIBITOR?

6 A. YES.

7 Q. OKAY.

8 A. AND SO -- AND WE STILL USE IT FOR THAT. SO I WAS
9 USING IT ON SOME LEVEL TO MANAGE HIS MOOD PROBLEM
10 AND EVEN THINKING PROBLEMS, AND THAT WAS MY
11 RATIONALE AT THE TIME.

12 Q. THINKING PROBLEMS WAS ONE OF THE THINGS YOU PUT HIM
13 ON SEROQUEL FOR?

14 A. WELL, THE HALLUCINATIONS, THE HALLUCINATIONS AND THE
15 -- HE WOULD WANDER IN HIS CONVERSATION AND AT TIMES
16 NOT BE ALL THAT COHERENT, AND HIS MOOD PROBLEM AS
17 WELL. SO THE MEDICINE IS -- THE MEDICINE IS GIVEN
18 FOR MULTIPLE SYMPTOMS, MOOD AND THINKING.

19 Q. OKAY. AS FAR AS -- WERE YOU STILL TREATING HIM
20 MEDICATION-WISE, EVEN THOUGH YOU CHANGED THE
21 SEROQUEL, FOR THE SAME SYMPTOMS AFTER 2002 THAT YOU
22 WERE TREATING HIM FOR BEFORE 2002?

23 A. YES.

24 Q. OKAY. FOR ME AS A LAYPERSON, WOULD THERE BE ANY WAY
25 TO KNOW IF YOU'RE TREATING HIM SPECIFICALLY FOR A

1 PHYSICAL BRAIN INJURY VERSUS THE MOOD DISORDERS YOU
2 WERE ALREADY PRESCRIBING SIMILAR OR THE SAME
3 MEDICATIONS FOR?

4 A. REALLY I WASN'T REALLY -- I REALLY WASN'T AWARE
5 BECAUSE OF THE -- HOW CAN I PUT IT? BECAUSE OF THE
6 CONTINUING MOOD PROBLEMS, THINKING PROBLEMS, I
7 WASN'T REALLY AWARE THAT THERE WAS GOING TO BE AN
8 ORGANIC DECLINE. HE WAS TENTATIVELY BETTER AS --
9 ONCE HE CAME OUT OF HIS DELIRIUM, AND THAT'S AN
10 ACUTE THING, YOU KNOW. THERE'S A DIFFERENCE BETWEEN
11 ACUTE AND CHRONIC. ACUTELY, ACCORDING TO MY LETTER,
12 YOU KNOW, HE GOT ALL BETTER. THAT DOESN'T MEAN HE'S
13 GOING TO STAY ALL BETTER BECAUSE THERE ARE CHRONIC
14 -- CHRONIC CONDITIONS THAT COME FROM ACUTE
15 CONDITIONS, AND THIS IS WHAT'S HAPPENED IN HIS CASE.
16 WITH TIME HE BECAME CHRONICALLY APHASIC,
17 COMPREHENSION PROBLEMS, WHICH WE'VE ALL DOCUMENTED.
18 BUT GOING BACK TO YOUR QUESTION -- I THINK I'M
19 WANDERING MYSELF.

20 Q. WELL, DOCTOR, IF SOMEBODY WERE SUFFERING FROM
21 DEMENTIA REGARDLESS OF A PARTICULAR ACUTE MOMENT OR
22 IF SOMEBODY WERE AGING IN GENERAL OVER THE COURSE OF
23 TEN YEARS, IS IT POSSIBLE THEIR COGNITIVE FUNCTION
24 MAY GO DOWN?

25 A. REPHRASE IT AGAIN, PLEASE.

1 Q. CERTAINLY. YOU NOTED THAT ONE OF THE THINGS YOU SAW
2 WAS THAT OVER THAT, I GUESS, TEN-PLUS-YEAR PERIOD
3 THAT MR. POLANSKY'S COGNITIVE FUNCTION HAD GONE
4 DOWN?

5 A. TRUE.

6 Q. OKAY. IF SOMEBODY HAD DEMENTIA REGARDLESS, OR
7 ALZHEIMER'S OR SOME OTHER DEGENERATIVE AFFECTATION
8 OF THE BRAIN, WOULD THEIR COGNITIVE ABILITIES GO
9 DOWN REGARDLESS AS THEY AGED?

10 A. YES.

11 Q. OKAY. DO YOU HAVE ANY WAY TO KNOW, SINCE MR.
12 POLANSKY ACUTELY DID GET BETTER IN 2002, IF IT WAS
13 SPECIFICALLY RELATED TO THAT INCIDENT IN 2002 OR ANY
14 OF THE OTHER PREMORBID PROBLEMS THAT MR. POLANSKY
15 WAS SUFFERING FROM?

16 A. I SEE WHAT YOU'RE SAYING. NO. WELL, THE DELIRIUM,
17 YOU KNOW, WAS MEDICATION RELATED. ALZHEIMER'S AND
18 SENILE DEMENTIAS DO NOT PRESENT THEMSELVES IN A
19 DELIRIOUS STATE UNLESS THERE WERE COMPLICATING
20 ASPECTS, SUCH AS PNEUMONIA. URINARY TRACT INFECTION
21 IS A VERY GOOD ONE. URINARY TRACT INFECTIONS
22 PRECIPITATE DELIRIUM IN DEMENTED PEOPLE, AND THEY'VE
23 NOT BEEN DEMENTED, BUT THEN YOU HAVE A URINARY TRACT
24 INFECTION, AND SUDDENLY THE OLDER PERSON HAS A
25 DEMENTIA THAT DOES NOT GO AWAY, YOU SEE. SO -- BUT

1 ORDINARILY THE CLINICAL PRESENTATION OF, WE'LL SAY,
2 A DE NOVO ALZHEIMER, DE NOVO SENILE DEMENTIA, THE
3 ORDINARY CLINICAL PRESENTATION UNCOMPLICATED IS NOT
4 WITH DELIRIUM. HE HAD CLEAR DELIRIUM FOR REASONS
5 OUTLINED. SO HE COULD NOT HAVE HAD -- HE COULD NOT
6 HAVE HAD AN ALZHEIMER STATE OR A SENILE DEMENTIA
7 STATE WITH CONFUSION. IN NO WAY WOULD THAT BE
8 PRESENTED AS A DELIRIUM. THAT JUST WOULDN'T HAPPEN
9 UNLESS HE HAD SOME COMPLICATING MEDICAL CONDITION,
10 PNEUMONIA, U.T.I., WHATEVER, WHICH HE DID NOT HAVE.

11 Q. WELL, LET ME -- LET ME BACK UP A MOMENT, DOCTOR, AND
12 ASK, THOUGH, BUT IT WASN'T UNTIL YEARS LATER AFTER
13 THE 2002 INCIDENT THAT THESE THINGS PRESENTED,
14 THOUGH, THAT YOU'RE TALKING ABOUT; IS THAT CORRECT?

15 A. THAT'S TRUE.

16 Q. OKAY. SO, I GUESS MY QUESTION IS -- I UNDERSTOOD
17 YOUR ANSWER TO MY LAST QUESTION, BUT MY QUESTION IS,
18 HOW DO YOU SPECIFICALLY FERRET THAT OUT, WHETHER
19 IT'S FROM A -- IF I WOULD HAVE HAD IT TEN YEARS
20 LATER ANYWAY OR IF I WOULD -- OR IF IT'S TEN YEARS
21 AFTER A PARTICULAR ---

22 A. WELL, MY LETTER OF 2004, YOU KNOW, I'M ALREADY
23 SUSPECTING SOMETHING PHYSICAL WHEN I REFER TED TO
24 DR. KNOE (PHONETIC), BECAUSE I THINK SOMETHING ELSE
25 MAY BE GOING ON. SO MY INDEX OF SUSPICION IS

1 TENTATIVE IMPROVEMENT, IS NO LONGER TENTATIVE. HE'S
2 BECOME CHRONIC. HE'S GETTING WORSE. AND SO MY
3 INDEX OF SUSPICION WAS LET'S LOOK AT SOME PHYSICAL
4 FINDINGS AND HAVE IT DOCUMENTED IF POSSIBLE.

5 Q. ONE THING YOU TESTIFIED TO A MOMENT AGO, DOCTOR, WAS
6 THAT THE DEMENTIA, EARLY ONSET DEMENTIA, I GUESS,
7 WOULD NOT PRESENT WITH THE HALLUCINATIONS UNLESS
8 SOMEBODY ALSO HAD -- PNEUMONIA WAS ONE THING THAT
9 YOU MENTIONED. WOULD IT SURPRISE YOU TO KNOW THAT
10 MR. POLANSKY ---

11 BY MR. LEVENTIS:

12 I'M AT PAGE 669, YOUR HONOR.

13 BY THE COMMISSIONER:

14 ALL RIGHT.

15 BY MR. LEVENTIS:

16 IN THE MIDDLE OF THE LAST PARAGRAPH.

17 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

18 Q. --- WAS EXPERIENCING PNEUMONIA AND TEMPERATURES
19 ABOVE 102 WHEN HE WAS IN THE HOSPITAL IN 2002?

20 A. THAT WAS SECONDARY. THAT WAS SECONDARY. YEAH, HE
21 WAS FEBRILE, YOU KNOW, EATING AND DRINKING,
22 DEHYDRATION. THERE WERE SOME MEDICAL COMPLICATIONS
23 TO THE DELIRIUM, AND, YES, HE DID HAVE AN INFECTION.
24 BUT HE DID NOT HAVE AN INFECTION TO BEGIN WITH.

25 Q. OKAY. DOCTOR, WERE YOU AWARE OF HALLUCINATIONS OR

1 SENSORY PERCEPTION ISSUES THAT MR. POLANSKY HAD
2 PRIOR TO THE 2002 ---

3 A. OH, YEAH. I WAS VERY AWARE OF HALLUCINATIONS, YOU
4 KNOW, PRIOR TO THE 2002 HOSPITALIZATION.

5 Q. WERE YOU AWARE OR DID YOU BECOME AWARE AFTER ANY
6 DIAGNOSTIC TESTING OF THE BRAIN THAT MR. POLANSKY
7 HAD ANY FOREIGN BODIES IN HIS HEAD, LIKE METAL
8 BODIES?

9 A. I WAS AWARE.

10 Q. OKAY. DO YOU KNOW WHAT THAT WAS FROM? DO YOU
11 RECALL?

12 A. I DID KNOW. MY RECALL IS NOT GOOD FOR THAT.

13 Q. IF HE HAD A FOREIGN BODY, METAL BODY IN HIS BRAIN,
14 WOULD THAT BE FROM SOME REMOTE TRAUMA?

15 A. YES.

16 Q. OKAY. IS THAT SOMETHING THAT ALSO COULD AFFECT HIS
17 BRAIN DEGENERATIVELY OVER TIME IF HE HAD A REMOTE
18 TRAUMA TO HIS BRAIN?

19 A. DUBIOUS AT BEST.

20 Q. OKAY. LET ME ASK YOU ---

21 BY MR. McDANIEL:

22 YOUR HONOR, I BELIEVE THIS LINE OF QUESTIONING
23 IS CONTRARY TO THE MEDICAL EVIDENCE. MR. POLANSKY
24 HAS METAL SHAVINGS IN HIS EYE. THERE'S NO
25 INDICATION OF METAL IN HIS BRAIN.

1 BY THE COMMISSIONER:

2 OKAY. AND, OBVIOUSLY, AS YOU KNOW, I HAVEN'T
3 READ THEM YET, SO I CAN'T DISAGREE OR AGREE WITH
4 EITHER ONE OF YOU.

5 BY MR. McDANIEL:

6 I'D ASK HIM TO CONCUR. I BELIEVE THAT'S
7 CORRECT.

8 BY MR. LEVENTIS:

9 OKAY..

10 BY MR. McDANIEL:

11 THE REASON HE CAN'T -- THE REASON TED CAN'T
12 TAKE MRIs, IN OTHER WORDS, LIKE THEY ASK YOU IF
13 YOU'VE GOT ANY -- AND TED USED TO DO A LOT OF
14 MECHANIC WORK.

15 BY THE COMMISSIONER:

16 OKAY.

17 BY MR. LEVENTIS:

18 YOUR HONOR, I WAS JUST GOING OFF OF THE C.T. I
19 WASN'T SPECIFICALLY CERTAIN WHERE IT WAS IN HIS
20 HEAD.

21 BY THE COMMISSIONER:

22 OKAY; ALL RIGHT. PROCEED.

23 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

24 Q. DOCTOR, YOU MENTIONED SOME OF THE OTHER DOCTORS THAT
25 YOU CONCURRED WITH FROM THEIR REPORTS. ONE OF THEM

1 WAS DR. JULIAN ADAMS; IS THAT CORRECT?

2 A. TRUE.

3 Q. HAVE YOU READ THE REPORTS OF DR. JULIAN ADAMS?

4 A. YES.

5 Q. THEY DON'T ALL MATCH UP WITH YOURS EXACTLY. WERE

6 YOU AWARE OF THAT?

7 A. YES.

8 Q. OKAY. DO YOU KNOW HIM AS A COLLEAGUE; DR. ADAMS?

9 A. YES, I DO.

10 Q. OKAY. DO YOU HAVE AN OPINION ONE WAY OR THE OTHER

11 AS TO HIS ABILITY TO EVALUATE A PATIENT?

12 A. ARE YOU TALKING ABOUT DR. ADAMS?

13 Q. THAT'S CORRECT.

14 A. ALL I KNOW IS THAT HE WAS ON CALL TO TAKE THE

15 CONSULTATION. HIS COMPETENCY, I AM NOT IN A

16 POSITION TO HAVE AN OPINION ABOUT THAT.

17 Q. OKAY. I CAN APPRECIATE THAT. LASTLY, DOCTOR, I WAS

18 ASKING YOU ABOUT THE MEDICATIONS THAT YOU PRESCRIBED

19 BEFORE AND AFTER.

20 A. RIGHT.

21 Q. THAT THEY WERE SIMILAR OR THE SAME. I KNOW WE

22 CHANGED THE SEROQUEL, OBVIOUSLY.

23 A. RIGHT.

24 Q. ALSO, YOU HAD REFERRED HIM FOR NEUROPSYCHOLOGICAL

25 TESTING. WERE YOU AWARE THAT OTHER DOCTORS HAD OR

1 HAD YOU RECOMMENDED HIM FOR NEUROPSYCHOLOGICAL
2 TESTING PRIOR TO THE 2002 INCIDENT?

3 A. I WAS AWARE OF DR. RAINWATER'S EVALUATION, YES.

4 Q. OKAY. WERE YOU AWARE OF ANY OTHER DOCTORS
5 RECOMMENDING HIM FOR NEUROPSYCHOLOGICAL TESTING
6 PRIOR TO 2002?

7 A. NO, I'M NOT AWARE OF ANYBODY ELSE PRIOR TO 2002.

8 Q. OKAY.

9 BY MR. LEVENTIS:

10 YOUR HONOR, THE REFERENCE TO THAT IS AT PAGE
11 674, DR. FELDMAN.

12 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

13 Q. LET ME ASK YOU ONE LAST QUESTION.

14 BY MR. McDANIEL:

15 WHO? I'M SORRY.

16 BY MR. LEVENTIS:

17 DR. FELDMAN.

18 CROSS EXAMINATION RESUMED BY MR. LEVENTIS:

19 Q. LET ME ASK YOU ONE LAST QUESTION, DOCTOR. IS A
20 REFERENCE FOR SOMEBODY TO HAVE NEUROPSYCHOLOGICAL
21 TESTING INDICATIVE OF THE FACT THAT IT'S FOR OR
22 BELIEVED THAT THEY HAVE A PHYSICAL BRAIN INJURY?
23 CAN THERE BE OTHER REASONS TO REFER SOMEBODY FOR
24 NEUROPSYCHOLOGICAL TESTING?

25 BY MR. McDANIEL:

1 WE'LL STIPULATE TO THAT.

2 BY THE COMMISSIONER:

3 OKAY.

4 BY MR. LEVENTIS:

5 OKAY. NO FURTHER QUESTIONS FOR THIS WITNESS,
6 YOUR HONOR.

7 BY THE COMMISSIONER:

8 ALL RIGHT. ANY OTHER QUESTIONS, MR. McDANIEL?

9 BY MR. McDANIEL:

10 COMMISSIONER, JUST ONE SECOND.

11 REDIRECT EXAMINATION BY MR. McDANIEL:

12 Q. YOU OBVIOUSLY TREATED MR. POLANSKY BEFORE THE 2002
13 INCIDENT INVOLVING THE ENCEPHALOPATHY, AND YOU'VE
14 TESTIFIED THAT YOU THINK HE HAS ORGANIC BRAIN DAMAGE
15 AND HE'S TOTALLY INCOMPETENT FROM WORK AT THIS TIME?
16 YOU ---

17 BY THE COMMISSIONER:

18 WELL, LET HIM ANSWER THE QUESTION. YOU'RE ---

19 REDIRECT EXAMINATION RESUMED BY MR. McDANIEL:

20 Q. IS THAT CORRECT?

21 A. YES; THAT'S TRUE.

22 Q. AND YOU WERE TREATING HIM FOR PSYCHOLOGICAL PROBLEMS
23 PRIOR TO 2002 HOSPITALIZATION?

24 A. THAT'S TRUE.

25 Q. ALL RIGHT. AND I BELIEVE YOU TESTIFIED TO THE

1 PSYCHOLOGICAL CONDITIONS -- LET'S TAKE -- SO -- THAT
2 YOU WERE TREATING HIM FOR PRIOR TO THAT,
3 SCHIZOAFFECTIVE DISORDER, PART OF THAT BEING
4 DEPRESSION AND ANXIETY, ALL THAT. THE FIRST RECORD
5 I HAVE IS THAT YOU WERE SEEING HIM AS EARLY AS
6 FEBRUARY 15TH OF 2001, AND ACCORDING TO THE RECORDS
7 OF THE STATE ACCIDENT FUND HE DIDN'T QUIT WORK UNTIL
8 AUGUST 8TH OF 2001, CORRECT?

9 A. RIGHT.

10 Q. SO HE -- DO YOU REMEMBER THAT HE WAS, IN FACT, STILL
11 WORKING AT THE TIME THAT YOU WERE TREATING HIM?

12 A. I THINK HE WAS ON LEAVE FROM WORK. I KNOW THIS TO
13 BE A FACT. HE WAS -- BECAUSE OF HIS PAIN SYNDROME
14 AND SCHIZOAFFECTIVE ISSUES, HE WAS ON LEAVE, SICK
15 LEAVE. HE WAS NOT YET RELEASED FROM HIS WORK.

16 Q. NOW, SO MY QUESTION IS, IS THAT KNOWING THE TYPE OF
17 PSYCHOLOGICAL PROBLEMS THAT HE WAS HAVING, BUT FOR
18 ALL THIS OTHER IN YOUR OPINION IS HE EMPLOYABLE AND
19 COULD HE WORK IF HE HAD JUST HAD THOSE PRE-
20 PSYCHOLOGICAL PROBLEMS THAT EXISTED PRIOR TO THE ---

21 A. NO, NOT AT THAT TIME HE COULD NOT WORK.

22 BY MR. LEVENTIS:

23 OBJECTION. WHAT WAS THE END OF THE QUESTION?

24 PRIOR TO ---

25 BY THE COMMISSIONER:

1 WHY DON'T WE CLARIFY A LITTLE BIT SO WE'RE ALL
2 CLEAR.

3 REDIRECT EXAMINATION RESUMED BY MR. McDANIEL:

4 Q. IN OTHER WORDS, IF HE HAD THOSE -- IF HE HAD JUST
5 THOSE NOW, COULD HE WORK ---

6 A. JUST THOSE NOW MEANING?

7 Q. IN OTHER WORDS, LIKE ---

8 BY THE COMMISSIONER:

9 YES. JUST WHAT?

10 REDIRECT EXAMINATION RESUMED BY MR. McDANIEL:

11 Q. WELL, IN OTHER WORDS, HE WAS HAVING PSYCHOLOGICAL
12 PROBLEMS WHILE HE WAS WORKING, AND DR. RIBER
13 REFERRED HIM FOR DEPRESSION AND ANXIETY AND PROBLEMS
14 STEMMING FROM THAT. BUT HE WAS WORKING WITH THOSE
15 PSYCHOLOGICAL PROBLEMS.

16 BY MR. McDANIEL:

17 I'LL WITHDRAW THE QUESTION.

18 BY THE COMMISSIONER:

19 OKAY.

20 BY MR. McDANIEL:

21 I'LL WITHDRAW THE QUESTION.

22 BY THE COMMISSIONER:

23 ANY OTHER QUESTIONS?

24 REDIRECT EXAMINATION RESUMED BY MR. McDANIEL:

25 Q. NOW, THE OTHER THING IS WE'VE -- IN YOUR OPINION,

1 THE DEMENTIA STEMS FROM THE ENCEPHALOPATHY AND DRUG-
2 DRUG INTERACTION. THERE'S ACTUALLY VARIOUS
3 SUBTOPICS TO DEMENTIA. ONE OF THOSE IS POST-
4 TRAUMATIC?

5 A. RIGHT.

6 Q. FOR EXAMPLE, GLOBAL ENCEPHALOPATHY TYPE DEMENTIA?

7 A. RIGHT.

8 Q. AND DEMENTIA IS A DEGENERATIVE CONDITION? IN OTHER
9 WORDS, IT'S ATROPHY OF THE BRAIN, CORRECT?

10 A. THAT'S TRUE.

11 Q. AND SO MORE AND MORE HE -- IT IS A PROGRESSIVE
12 MENTAL CONDITION -- I MEAN, ORGANIC BRAIN CONDITION?

13 A. YEAH, IT IS A PROGRESSIVE CONDITION.

14 BY MR. McDANIEL:

15 I HAVE NOTHING FURTHER.

16 BY THE COMMISSIONER:

17 ANYTHING ELSE, MR. LEVENTIS?

18 BY MR. LEVENTIS:

19 A FEW BRIEF FOLLOW-UPS, YOUR HONOR.

20 BY THE COMMISSIONER:

21 ALL RIGHT.

22 RECROSS EXAMINATION BY MR. LEVENTIS:

23 Q. YOU WERE ASKED JUST A MOMENT AGO IF MR. POLANSKY WAS
24 WORKING WHEN YOU FIRST STARTED TREATING HIM. IT
25 SOUNDED LIKE YOU WERE SAYING HE WAS NOT?

1 A. THAT'S TRUE. BEST OF MY RECALL HE DEFINITELY WAS
2 NOT WORKING.

3 Q. OKAY. BUT FOR GETTING THESE CONDITIONS, THE O.C.D.,
4 THE DEPRESSION, SCHIZOAFFECTIVE DISORDER, WOULD HE
5 HAVE -- GETTING THESE LEVELED OUT, WOULD HE HAVE
6 BEEN ABLE TO WORK WITH THOSE CONDITIONS?

7 A. VERY QUESTIONABLE BECAUSE -- THE REASON I SAY THAT
8 WAS BECAUSE HE WAS REALLY NOT SIGNIFICANTLY BETTER
9 AT THE TIME OF HIS DISCHARGE IN -- HE WAS NOT
10 SIGNIFICANTLY BETTER AND COMPROMISED STILL BY HIS
11 MOOD LABILITY, HALLUCINATIONS, ETCETERA, AND EVEN
12 MORE COMPROMISED WHEN HE LEARNS ABOUT HIS JOB LOSS
13 IN THE OUTPATIENT SETTING, YOU KNOW, AND THAT WAS --
14 THAT WAS THE ICING ON THE CAKE IN TERMS OF ANY KIND
15 OF RECOVERY POSSIBILITY. HE WAS -- IN TERMS OF
16 WORK. IT WAS JUST IMPOSSIBLE WHEN HE LEARNED ABOUT
17 HIS JOB LOSS AT THE ELEVENTH HOUR NO LESS, I MEAN,
18 THAT WAS -- THAT WAS EVEN MORE DISABLING, ETCETERA.

19 Q. YOU HAD JUST TESTIFIED IN RESPONSE TO OPPOSING
20 COUNSEL'S QUESTIONS THAT THE DEMENTIA IS A PHYSICAL
21 ---

22 A. YES.

23 Q. --- DAMAGE TO THE BRAIN? AND THAT IT WOULD
24 DETERIORATE OVER TIME; IS THAT CORRECT?

25 A. TO MY BEST KNOWLEDGE, YOU KNOW, DEMENTIAS, WHETHER

1 IT'S SENILE OR ALZHEIMER, THEY'RE PROGRESSIVE. NOW,
2 THERE MAY BE SOME DEMENTIAS THAT ARE NOT SO
3 PROGRESSIVE. I'M NOT A -- I'M NOT A SPECIALIST IN
4 THAT AREA. BUT IN TED'S CASE, LIKE OTHER -- LIKE
5 THE OTHER KIND OF DEMENTIAS, HIS DEMENTIA HAS BECOME
6 PROGRESSIVE.

7 Q. WOULD THAT SHOW -- IS THAT SOMETHING THAT WOULD --
8 SINCE IT IS PHYSICAL, WOULD IT SHOW UP ON A C.T.
9 SCAN OR ---

10 A. NOT NECESSARILY.

11 Q. OKAY. IT WOULD NOT NECESSARILY SHOW UP ON A ---

12 A. ACCORDING TO DR. CARNES A NORMAL BRAIN SCAN -- AND
13 THAT'S WHAT TED DID HAVE -- A NORMAL BRAIN SCAN,
14 ACCORDING TO DR. CARNES, MEANS NOTHING IN TERMS OF
15 THE CLINICAL PICTURE.

16 Q. OKAY. EVEN WITH THE DETERIORATION OVER TEN YEARS,
17 THERE'S NO WAY TO KNOW IF IT WOULD SHOW UP?

18 A. ACCORDING TO DR. CARNES IT CAN EITHER SAY SOMETHING
19 ABOUT IT OR IT MAY SAY NOTHING ABOUT IT.

20 Q. OKAY. AND MY LAST QUESTION FOR YOU, BECAUSE
21 OPPOSING COUNSEL WAS ASKING YOU ABOUT THE DIFFERENT
22 CONDITIONS THAT HE HAD, ON THE MOOD SCORE THAT YOU
23 GAVE US, BETWEEN THE -- MR. POLANSKY WAS BETWEEN A
24 30 AND 40 -- IS THAT SOMETHING THAT SOMEONE COULD
25 REACH A 30 OR 40 REGARDLESS OF HAVING A BRAIN --

1 PHYSICAL BRAIN INJURY, JUST BASED ON MOOD DISORDERS
2 ALONE?

3 A. OH, DEFINITELY.

4 BY MR. LEVENTIS:

5 OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

6 BY THE COMMISSIONER:

7 ALL RIGHT. AND WE CAN EXCUSE THIS WITNESS?

8 BY MR. McDANIEL:

9 YES, MA'AM.

10 BY THE COMMISSIONER:

11 ALL RIGHT. THANK YOU, DR. FORSTHOEFEL.

12 BY THE WITNESS:

13 YOU'RE WELCOME.

14 BY THE COMMISSIONER:

15 WE APPRECIATE YOUR TIME TODAY. AND I WANT TO
16 JUST HAVE A SIDEBAR WITH THE LAWYERS, PLEASE, AS FAR
17 AS ANY OTHER TESTIMONY.

18 (OFF THE RECORD)

19 BY MR. McDANIEL:

20 COMMISSIONER, CLAIMANT'S CASE.

21 BY THE COMMISSIONER:

22 THANK YOU SO MUCH. THAT CONCLUDES THIS
23 PROCEEDING.

24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
25 CONCLUDED AT THE HOUR OF 3:49 P.M.)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NOS. 9922954 & 0024408

EMPLOYEE/CLAIMANT: THEODORE P. POLANSKY

EMPLOYER: SC OFFICE OF ATTORNEY GENERAL

CARRIER: STATE ACCIDENT FUND

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 91 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF THEODORE P. POLANSKY, TAKEN ON THE 6TH DAY OF MARCH, 2015.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 10TH DAY OF APRIL, 2015.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

September 15, 2014

VIA EMAIL - bcheeseboro@wcc.sc.gov
AND US MAIL
Ms. Barbara Cheeseboro
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

URGENT, IMMEDIATE
ATTENTION REQUIRED

RE: Ted Polansky vs. SC Attorney General's Office
WCC File Nos.: 9922954 & 0024408

Dear Barbara:

After reading this email/letter, I would request a conference with the Commissioner Thursday or Friday morning if it is not specifically agreed, the case is going to be reset October 30 or we have agreed to mediate.

First, this case is not subject to mediation for multiple reasons and I would object to mediation on the following bases and that this matter be scheduled for the 30th per your original email. However, as noted below on certain conditions, I would voluntarily agree to mediation of the case for which we have been waiting for a hearing almost two (2) years now. First, as to the reason this case is not subject to mediation:

1. This case was filed for hearing in 2012 and the mediation rules were not adopted until June of 2013 and thus this claim is not subject to nor is the hearing request subject to the mediation rules.

2. This matter was set for hearing by operation of Rule 67-601 pursuant to Order of Commissioner Wilkerson. Again, this case was filed for hearing in 2012 and no time since the adoption of the mediation rules in June of 2013 have the Defendants ever requested that mediation be conducted and in fact, in response to my Motion asking that the case be set for hearing on an immediate basis back in the first part of this year, the Defendants did not note or request that the matter be set for mediation at that time at all. Therefore even if it was subject to mediation, the Defendants have waived that right especially having failed to raise it in response to the Motion requesting that the matter be set by Commissioner Wilkerson pursuant to Rule 67-601 for hearing.

3. Again, since 2012, the Defendants have never requested that this matter be set for mediation and this is nothing but a dilatory tactic to delay this case from further hearing and therefore on the basis of estoppel they should be estopped from making this request at this time.

Barbara, with that said, while we want this case heard and

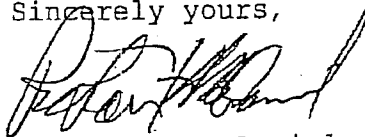
Ms. Barbara Cheeseboro
September 15, 2014
Page 2

while I am specifically requesting that it be reset for October 30 and I do not want to lose that date for my client, I would be agreeable to mediate the case if:

1. It is agreed that evidence be frozen as to include all evidence currently in existence at the time of the agreement to mediate.
2. It is agreed that going into the mediation that all currently authorized medical care through currently authorized medical providers will continue to be provided for the Claimant's life but it is agreed that the parties may negotiate any or all of those issues as part of the mediation.
3. That the parties agree to Earl Ellis as a mediator. If Earl Ellis is not agreeable to the State Accident Fund, a specific reason stated by letter from the Director of the State Accident Fund as to why Mr. Ellis is not acceptable as a mediator.
4. That it is agreed that the mediator will make a determination as to whether or not the State Accident Fund acted in good faith as part of the conclusion of the mediation. If a mediated settlement is not reached the State Accident Fund agrees to pay the entire cost of the mediation without having to resort to having a decision made by the Commissioner if the mediator determines that the State Accident Fund did not act in good faith in the mediation process.

Barbara, with those parameters, I would be agreeable to mediation. By copy of this letter and email, I am notifying Mr. Leventis of this communication and my position. Because of the necessity to move forward on many items, I would request that he respond by 9:00 o'clock tomorrow morning so that you know whether or not we will need a conference on Thursday or Friday morning. I would prefer to come over before the Commissioner personally to discuss this situation.

Sincerely yours,



Preston F. McDaniel

PFM/abh

cc: Peter P. Leventis, Esquire
(Via email and US Mail - pleventis@mckayfirm.com)
Ellen Goodwin, Attorney (Via email and US Mail - egoodwin@saf.sc.gov)

Kim Hinkle

Subject: FW: Ted Polansky v. SC Attorney General's Office; WCC File Nos. 9922954 & 0024408

From: Peter Leventis [<mailto:pleventis@mckayfirm.com>]

Sent: Monday, September 15, 2014 8:22 AM

To: Cheeseboro, Barbara; Kim Hinkle

Cc: Debra White

Subject: RE: Ted Polansky v. SC Attorney General's Office; WCC File Nos. 9922954 & 0024408

Barbara,

I have indicated to attorney McDaniel's office that I am fine with either the October 29 or 30th date for the re-set of the hearing. So his office (cc'd) should be getting back to you shortly with a date if they have a preference.

Also, this case does alleged PTD, and does arise under S.C. Code Ann. 42-9-10. I had noted in my pre-hearing brief that I believe this would make is mandatory that the claim be mediate prior to the contested hearing on these matters pursuant to S.C. Code Ann. 67-1801 et seq.

I know Preston McDaniel has requested that the motion to quash be determined prior to the hearing at the end of October, but I would similarly that a determination of the mediation of this claim be made prior to the hearing as well so that each party does not prepare for the hearing if it is ultimately going to be ordered for mediation.

I hope you had an excellent weekend.

Sincerely,

Peter P. Leventis, IV
McKay, Cauthen, Settana & Stublely, P.A.
P.O. Box 7217
Columbia, SC 29202
Phone: (803) 256-4645
Fax: (803) 753-5705

Julius W. McKay, II
Mark D. Cauthen
Daniel R. Settana, Jr.
M. Stephen Stubley
Janet Brooks Holmes
Peter P. Leventis, IV
Kelli L. Sullivan *

David M. Bommernann
Temus C. Miles, Jr.
Brandon P. Jones
James E. L. Fickling +
Richard E. Marsh, III
Meghan H. Hall

Law Offices
McKAY, CAUTHEN, SETTANA & STUBLEY, P.A.

P.O. Box 7217
Columbia, South Carolina 29202-7217

1303 Blanding Street
Columbia, South Carolina 29201

Douglas McKay, Jr.
(1917-2008)

Telephone
(803) 256-4645

Fax
(803) 753-5705

E-Mail
pleventis@mckayfirm.com
Web

www.mckayfirm.com

*S.C. Certified Mediator
+ Also licensed in N.C.

August 20, 2014

Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

RE: Theodore Polansky v. SC Attorney General
WCC No.: 9922954 & 0024408
Claim No.: 1999-003671 & 2000-3303
DOA: 10/19/1999 & 5/30/2000
Our File No.: 1200-0073 & 1200-0074

Dear Ms. Bracy:

Please mark the Commission's file to show that I am one of the attorney's retained to represent State Accident Fund in connection with the above-referenced workers' compensation matters. Please forward all correspondence regarding this matter to my attention as well as to the State Accident Fund.

By copy of this letter to claimant's counsel, Preston F. McDaniel, Esquire, I am notifying him of my representation.

Sincerely,



Peter P. Leventis, IV

PPL/dlw

cc: Preston F. McDaniel, Esquire
Caroline Jurga

Kim Hinkle

From: Kim Hinkle <kim@pfmcdlaw.com>
Sent: Wednesday, November 06, 2013 10:00 AM
To: 'Bracy, Amy'
Cc: 'egoodwin@saf.sc.gov'
Subject: RE: Ted Polansky v. SC Attorney General's Office; WCC File Nos. 9922954 & 0024408

Amy:

Has the Commissioner had a chance to sign this Order yet?

Thank you, Kim

From: Bracy, Amy [<mailto:abracy@wcc.sc.gov>]
Sent: Thursday, October 24, 2013 9:42 AM
To: Kim Hinkle
Cc: egoodwin@saf.sc.gov
Subject: RE: Ted Polansky v. SC Attorney General's Office; WCC File Nos. 9922954 & 0024408

This order fell through the cracks. This is not a file that is being handled by Commissioner Beck and should have gone to Judicial to route to the proper Commissioner to sign. My apologies. I will get it to a Commissioner to sign ASAP.

From: Kim Hinkle [<mailto:kim@pfmcdlaw.com>]
Sent: Friday, October 04, 2013 2:42 PM
To: Bracy, Amy
Cc: egoodwin@saf.sc.gov
Subject: RE: Ted Polansky v. SC Attorney General's Office; WCC File Nos. 9922954 & 0024408

Amy: Would you please advise as to the status of the Consent Order being signed by Commissioner Beck? Thank you in advance! Kim

Kimberley T. Hinkle, Paralegal
to Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
T: 803-771-7211
F: 803-252-0709



Please consider the environment before printing

NOTICE: This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender either by telephone (803-771-7211) or reply to this e-mail and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

September 5, 2013

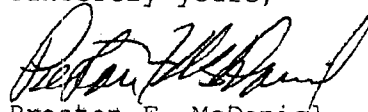
VIA EMAIL ONLY - abracy@wcc.sc.gov
Commissioner T. Scott Beck
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Ted Polansky vs. SC Attorney General's Office
WCC File No: 9922954 & 0024408

Dear Commissioner Beck:

Please find attached the Consent Order that we have entered into in the above-referenced matter. Once the Order is executed, I look forward to receiving a signed copy so we can move forward either resolving or trying this case. I have already notified Virginia Crocker that this Order resolves the Motion that I had filed to compel and as always, I appreciate all the courtesies and kindnesses shown to me by you and the Commission. By copy of this email, I am notifying Ms. Goodwin of the submission of this Order.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Ellen Goodwin, Attorney

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 9922954 & 0024408

THEODORE POLANKSY,)
Employee-Claimant,)
v.)
SC ATTORNEY GENERAL'S OFFICE,)
as Employer, and)
STATE ACCIDENT FUND,)
as Carrier,)
Respondent-Defendants.)

CONSENT AGREEMENT TO
EVALUATION PERFORMED IN
COLUMBIA, SC BY
DR. RICHARD FRIERSON, MD
PURSUANT TO SC CODE §42-15-80

By and through the respective attorneys of the parties, the parties in the above-referenced matter have entered into an agreement resolving the issues that gave rise to the original Motion to Compel the Claimant to submit to an examination pursuant to the right of the Defendants under SC Code §42-15-80 to have an independent medical evaluation performed on the Claimant as to the issues that are pending before the Commission.

The parties have entered into the following agreement concerning those issues:

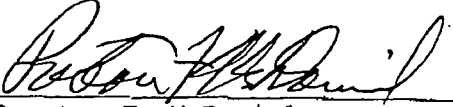
1. That the parties agree and the Claimant will submit to an examination by Dr. Richard Frierson with the USC School of Medicine Neurology Clinic in Columbia who is licensed physician or surgeon in the State of South Carolina for the purpose of an

examination performed pursuant to SC Code §42-15-80. Such examination shall include any and all testing and examination felt to be necessary by Dr. Frierson to complete the examination.

2. That since this examination is being performed pursuant to the right of the Defendants to have an independent medical examination performed by a duly qualified physician or surgeon under SC Code §42-15-80, there will be no interference with the independent examination to be performed by either party as to what Dr. Frierson feels is necessary to properly and completely evaluate and examine the Claimant as to the issues presented to him for examination which are pending before the Commission. Dr. Frierson shall state in writing before any type of tests are to be performed, if any, as part of his examination as to whether in his opinion the Claimant is capable in his current condition both physically and mentally to undergo such tests. Dr. Frierson may consult with the authorized treating psychologists and medical doctors treating Mr. Polansky as to his current condition.

3. That it is agreed that Dr. Frierson will be forwarded a copy of this Order and that Claimant's Counsel will be privy to all communication with Dr. Frierson's office from this date forward necessary for the scheduling of and conducting the independent medical examination performed by Dr. Frierson.

WE SO MOVE AND CONSENT:


Preston F. McDaniel, Esquire
Attorney for Claimant


Ellen Goodwin, Attorney
Attorney for Defendants

ORDER OF CONFIRMATION

After due and proper consideration of the above-referenced agreement entered into by and between the parties, it is hereby ordered that the Agreement be and hereby is confirmed as the Order of this Commission.

AND IT IS SO ORDERED.

SC WORKERS' COMPENSATION COMMISSION

Commissioner

~~April~~ _____, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 9922954 & 0024408

THEODORE POLANKSY,)
Employee-Claimant,)
v.)
SC ATTORNEY GENERAL'S OFFICE,)
as Employer, and)
STATE ACCIDENT FUND,)
as Carrier,)
Respondent-Defendants.)

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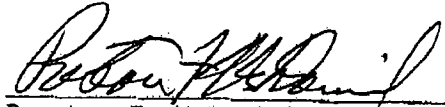
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WE SO MOVE AND CONSENT:


Preston F. McDaniel, Esquire
Attorney for Claimant

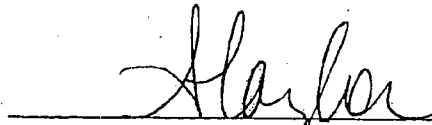

Ellen Goodwin, Attorney
Attorney for Defendants

ORDER OF CONFIRMATION

After due and proper consideration of the above-referenced agreement entered into by and between the parties, it is hereby ordered that the Agreement be and hereby is confirmed as the Order of this Commission.

AND IT IS SO ORDERED.

SC WORKERS' COMPENSATION COMMISSION


Commissioner Aisha Taylor

April 11, 2013

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Renee Smith on November 7, 2013

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

June 15, 2015

VIA EMAIL - abracy@wcc.sc.gov
AND US MAIL
Ms. Amy Bracy, Judicial Director
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Ted Polansky vs. SC Attorney General's Office
WCC File Nos.: 9922954 & 0024408
Cross, Application Review To Any Review Filed
By The Defendants

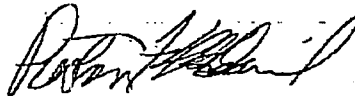
Dear Amy:

In the event that the Defendants file a Request for Review, please find enclosed our Cross Appeal, i.e. our Request for Review as to the issues that we want reviewed by the Commission. Please note, this is being filed as a Cross-Appeal and in the event the Defendants do not file an Appeal, we are satisfied with the Commissioner's Decision and would request that we be allowed to withdraw this appeal and it be returned to us, along with the required filing fee which is also enclosed.

I had previously advised defense counsel that this appeal would be filed if a decision was made to appeal. This being the last date to timely file and having heard nothing, I am filing this with the Commission at this time. A self-addressed stamped envelope is enclosed for returning this to us in the event the Defendants do not appeal. Of course if this cannot be accomplished in this manner and if no appeal is received by the Defendants, please so notify me and we will request that the appeal be dismissed.

By copy of this letter, I am notifying and serving counsel for the Defendants with a copy of this Cross-Appeal.

Sincerely yours,



Preston F. McDaniel

PFM/abh/kth
Enclosures

cc: Ellen Goodwin, Attorney
Peter P. Leventis, Esquire

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 9922954 & 0024408
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Theodore Polansky SSN: _____ Employer's Name: SC Office of Attorney General
Address: _____ Address: Post Office Box 11549
City: _____ State: SC Zip: _____ City: Columbia State: SC Zip: 29211
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: State Accident Fund
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 10/19/1999 & 05/30/2000
(m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

SEE ATTACHMENT.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Peter P. Leventis, IV, Esquire

Name

McKay Law Firm, 1303 Blanding Street, Columbia, South Carolina 29201

Address

on the 15th day of June, 2015 by ☒ first class mail ☐ personal service ☐ certified mail.

Preparer's Signature

Attorney for Claimant/Appellant
Title

June 15, 2015
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

ATTACHMENT TO FORM 30

Theodore Polansky v. SC Office of Attorney General

WCC File Nos. 9922954 & 0024408

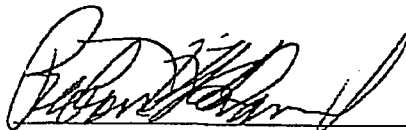
1. Hearing Commissioner erred as a matter of law by failing to increase the compensation rate to fairly compensate this high wage earner, under the second paragraph of SC Code Section 42-1-40 and SC Code Section 42-9-10 and the decisions of the Supreme Court and Court of Appeals under those sections.

2. Hearing Commissioner erred as a matter of law by failing to increase the compensation rate based on the decisions of the SC Supreme Court and the Court of Appeals under the exceptional circumstances paragraph of Section 42-1-40.

3. Hearing Commissioner erred as a matter of law by failing to increase the compensation rate of this high wage earner based on the language of 42-9-10, which is meant to allow the Commission ability to compensate high wage earners by allowing the Commission to increase their compensation rate each year up to the maximum compensation rate for that year to partially compensate their loss of income under the decisions of the Supreme Court which hold that the purpose in determining the compensation rate is to compensate the injured worker for his loss of earning capacity into the future.

4. The Hearing Commissioner erred as a matter of law by determining that a decision of the Circuit Court has no precedential value and is not binding on the Commission. A Circuit Court is a higher court whose opinions must be followed until overturned and has value to that extent. The only opinions that do not have precedential value are Unpublished Opinions by the Court of Appeals which is specifically mandated by statute and Court Rules:

Respectfully submitted by:



Preston F. McDaniel

Attorney for the Appellant

CERTIFICATE OF SERVICE BY MAIL

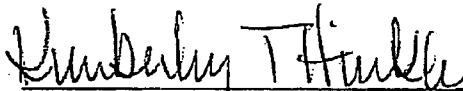
WCC File No. 9922954 & 0024408

I hereby certify that I have on this day served the following in the matter of Ted Polansky v. SC Office of Attorney General with a copy of the FORM 30 - REQUEST FOR COMMISSION REVIEW by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Ms. Amy Bracy
Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

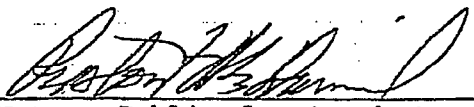
Peter P. Leventis, IV, Esquire
McKay Law firm
1303 Blanding Street
Columbia, South Carolina 29201

I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle

SWORN TO BEFORE ME this
15TH day of June, 2015.



(L.S.)
Notary Public for South Carolina,
My Commission Expires: 10/28/18

ORDER AND AWARD

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NOS. 9922954 & 0024408

Ted Polansky,
By and through his Guardian ad Litem,
Gale DuBose,

Employee/Claimant,

v.

SC Office of Attorney General,

Employer,

and

State Accident Fund,

Carrier,

Defendant(s).

HEARING:

Date: March 6, 2015

Location: Columbia, South Carolina

APPEARANCES:

Claimant represented by
Preston F. McDaniel, Esquire

Defendants represented by
Peter P. Leventis, IV, Esquire

Gale Dubose, Guardian ad Litem

PURPOSE OF HEARING:

This matter came before the Commissioner on a Form 50 and 51, and by operation of Mediation Regs. 67-1803(a), 67-1809 and WCC Form 70 directing a hearing be set to determine the remaining issues.

COMMISSIONER:

Susan S. Barden

FILED:

June 1, 2015

STIPULATIONS

The parties stipulated to jurisdiction and venue and that the Commission File with the exception of self-serving declarations and unstipulated medicals be made a part of the Record.

The Claimant has asked for a review of the average weekly wage and compensation rate as one of the issues before the Commission for decision, but it is agreed that due to Mr. Polansky's income at the time of the 2000 accident wherein his average weekly wage was \$877.01 with a resulting compensation rate of \$589.70, that the maximum compensation rate for the year 2000 of \$507.34 would apply and that 500 weeks of compensation were paid.

This case was mediated pursuant to the Commission's Mediation Rules, which Mediation Agreement is part of the Commission file and it is stipulated to as being the agreements made by and between the parties based on that mediation. Those include that the Claimant is totally and permanently disabled and that he is entitled to lifetime medical care and that the, "carrier will provide lifetime medical care for all causally accepted medical conditions for which the State Accident Fund is currently paying under the care of the following authorized treating physicians and such other medical providers as those physicians deem necessary to treat the authorized conditions; those physicians include: Dr. Frank Forsthoefer, M.D., Dr. C.

Jean Jonet, Ph.D., Dr. Ezra B. Riber, M.D. and Dr. John Beasley, M.D." Mediation was conducted on November 14, 2014 and concluded with the agreements as reflected in the Mediation Agreement on file with the Commission and as referred to hereinabove, but without reaching the issue of lifetime compensation for physical brain damage. At the conclusion of mediation as reflected in the Mediation Agreement, that issue, "as to the compensability of the alleged brain injury remains in dispute."

The parties agree and stipulate that the only issues before this Commissioner therefore are the applicable average weekly wage and compensation rate and whether or not the Claimant is entitled to an award for lifetime compensation benefits for having sustained permanent physical brain damage based on the Forms 50/51 as detailed as the position of the parties at hearing.

APA SUBMISSIONS AND OBJECTIONS

At the time for the Hearing, pursuant to the Administrative Procedures Act and the Rules of this Commission, records and reports from the following were made a part of the Record subject to the objections as set forth hereinafter:

Dr. Frank Forsthoefer, M.D.; Dr. Ezra B. Riber, M.D.; Dr. C. Jean Jonet, Ph.D.; Dr. Avie Rainwater, Ph.D.; Dr. Nicholas Lind, Ph.D.; Dr. Jo A. Marturano, M.D.; Dr. Krebs, M.D.; Palmetto

Baptist Hospital; Bowman-Grey Medical Center, Wake Forrest University, Dr. Gary G. Poehling, M.D.- RSD Specialist, Prof. & Chair Dept. of Orthopaedics, and Dr. Jeffrey Feldman, Ph.D.; 2001 Social Security and State Retirement Awards; SCWCC Form 20s 1999 and 2000; Mediation Agreement, 11/12/14; Correspondence regarding brain injury-evaluation/treatment (sealed records submitted for rebuttal); Lexington Open MRI; Dr. Julian Adams, M.D.; Columbia Counseling Center; Radiology Exam Report; Post-Trauma Resources (Dr. Nicholas Lind, Ph.D.); Form 40 filed by Claimant's Attorney; Correspondence - Ms. Mee Ling Khor-Gould; Form 50 filed by the Claimant; WCC Form 18; SCWCC Hearing Transcript, 05/16/12; Decision and Order of Commissioner Melody James, 06/27/12; SC Traffic Collision Report; Letter from Claimant's Attorney to Commissioner Beck; Decision and Order of SCWCC Appellate Panel, 02/17/13; Letter from Claimant's Attorney to Attorney Ellen Goodwin, 04/16/13; Letter from Claimant's Attorney to SCWCC, 05/01/13; Letter from Claimant's Attorney to Attorney Ellen Goodwin, 06/13/13; Motion to Set Hearing pursuant To Commission Regulations, 04/16/14; Administrative Order of Commissioner Wilkerson, 05/08/14; Letter from Claimant's Attorney to Ms. Mee Ling Khor-Gould, 06/06/14; Letter from Claimant's Attorney to Attorney Ellen Goodwin, 06/20/14; A.J. Harrison Investigations Report, 06/23/14; Letter from Claimant's Attorney to Ms. Mee Ling Khor-Gould, 06/26/14; Official 10 Year Driving Record of Claimant; and pleadings of proceedings between Dr. Avie

Rainwater, Ph.D. and SC State Accident Fund.

A pre-hearing conference was held and various objections were discussed. The following specific objections were made and were made a part of the Record and the following rulings were made thereon:

Claimant filed one (1) formal objection that being to Defendants' APA Tab 41, A.J. Harrison investigative report. That objection was sustained and the report and all documents were removed from the Record and not considered by this Commissioner.

The Defendants objected to the updated report and evaluation of Dr. Avie Rainwater conducted on March 22, 2011. For the reasons set forth in the Record, that objection was overruled but I would specifically note that the Defendants alleged as the basis for the objection that there was some type of conflict as to his latest report because there existed a dispute between the Defendant State Accident Fund and Dr. Rainwater over the payment for his services in other cases unrelated to this one. I specifically note from the Record that not only was Dr. Rainwater involved in this case beginning in 2001 but also his evaluation and testing of which the Defendants complain was in fact conducted on March 22, 2011; whereas the earliest pleading that was filed in that matter concerning the dispute between the Fund and Dr. Rainwater was filed on October 10, 2011. I believe that in weighing the arguments and respective equities of the parties that it would be grossly unfair to the Claimant to disregard this

authorized medical provider's opinion particularly where there is no evidence of any bias or prejudice or that any payments due to Dr. Rainwater in this case were at issue. The Defendants objected to a Circuit Court Order which was submitted to the Commissioner as part of the Claimant's argument concerning the average weekly wage and compensate rate. That objection was overruled and as I advised the parties, an opinion of Circuit Court in my opinion has no precedential value, but this Commission may certainly take judicial notice and should take judicial notice of any Order of any higher Court on the issues before it. Further the Order is in fact not evidence but is in fact an opinion of a higher Court being submitted in support of the argument of the Claimant. The Defendants also objected to the submission of the Decision of the Social Security Administration. That objection is sustained for the reason as set forth in the Record. While not noted in the Record, the objection was also as to the Decision of the SC Retirement System finding that the Claimant was totally and permanently disabled and entitled to benefits under the Retirement Act, and that Decision was also removed as well. As discussed, the criteria and basis under Social Security and the Retirement Act for total and permanent are different; since the parties both agree and it is stipulated that the Claimant is totally and permanently disabled, that is not an issue for decision and the only issue before the Commission in reference to total and permanent

disability is whether or not he is entitled to an Award for lifetime compensation benefits under SC Code § 42-9-10(C) due to having sustained physical brain damage. However again, both Decisions were removed from the Record and not considered by this Commissioner. .

Next the Defendants object to a page in Dr. Marturano's file, p. 663 of the Claimant's APA Submissions. That objection is overruled for the reasons as set forth in the Record but basically is part of the doctor's medical records. The Defendants also objected to p. 664 which appears to be nothing but a list of prescribed medications. That objection was held in abeyance but it does not appear to be anything relevant to the issue before me for Decision and has no value on that issue before me, one way or the other. The Defendants also objected to p. 20 of the Claimant's APA Submissions which is a Memo from Dr. Rainwater, not really in reference to the issues before this Commissioner for a decision but dealing with his opinion on the Claimant being required to use a mail order pharmacy versus being allowed to continue to receive his medications locally. I held that objection in abeyance but again this does not deal with the central issue which is before this Commissioner for decision.

Finally the Defendants objected to p. 657 of the Claimant's APA Submissions which was sustained but that document had been removed by agreement in the pre-hearing conference.

STATEMENT OF THE CASE

There are two issues before this Commissioner for decision which will be addressed separately hereinafter in this Statement of the Case which lead to this Commissioner's Findings of Fact and Conclusions of Law and decision in this matter.

The first issue is the average weekly wage and compensation rate that should be applied in this matter. Since both of Mr. Polansky's injuries have always been accepted, there has never been a previous decision made as to the applicable average weekly wage and compensation rate by this Commission. The Claimant takes the position that because he was a high wage earner at the time of his injury wherein even his compensation rate based on his income far exceeded the maximum compensation rate for 1999 and 2000, that this Commission on the basis of exceptional circumstances, the decisions of the SC Supreme Court and on the basis of the Claimant's reading of SC Code §42-9-10, should increase the applicable compensation rate to fairly compensate him for his past and future loss of earnings and earning capacity. It is his position that his weekly benefits should be increased to the maximum compensation rate at this time and going forward or at least until the maximum compensation rate meets or exceeds his average weekly wage at the time of the accident. At the time of the 1999 accident, Mr. Polansky's salary was \$45,096.42, resulting in an average weekly wage of \$867.24 with

an applicable compensation rate of \$578.19. At the time of the 2000 injury, his income had increased to \$45,604.77, resulting in an average weekly wage of \$877.01 and a resulting compensation rate of \$589.70. Both of those far exceeded the maximum compensation rate for the years of injury in 1999 and 2000 with the maximum compensation rate in 1999 being \$483.47 and in 2000 being \$507.34. Therefore, there is no question that Mr. Polansky was a high wage earner and would have been entitled to a much greater compensation rate but for the maximum compensation rate applicable at that time.

He also argues that when one looks at the average weekly wage in the State of South Carolina and how it has increased, that comparison between the maximum compensation rate payable in 2000 with the maximum compensation rate payable in 2014, establishes that there has been a 150.99% total increase or approximately a 3-4% increase per year in the average weekly wage in the State of South Carolina at this time. If one applies that to the Claimant's average weekly wage in 2000 as compared to now, this would result in an average weekly wage at this time for Mr. Polansky of \$1,344.47 with a resulting compensation rate of \$896.36. This far exceeds the applicable maximum compensation rate at this time. Based on this, he argues that based on exceptional circumstances and the decisions of our Appellate Courts on the average weekly wage that this Commission should increase the average weekly wage applicable under an Award

because the average weekly wage and compensation rate is to compensate the injured worker for his, "loss of probable future earning capacity" and that our Courts have held that the average weekly wage must be thought of in these terms of its impact on his probable future earning capacity. In addition, Mr. Polansky argues that under a reading of SC Code §42-9-10 that the Legislature made allowances for compensating high wage earners just like it did for low wage earners. Under §42-9-10 where a worker's salary is very low to compensate that low wage worker, the General Assembly provided in the statutory language if his average weekly wage is less than \$75.00, that one does not apply 2/3rds of the average weekly wage but in fact applies the entire salary of the Claimant as being his applicable compensation rate. In addition, the minimum that can be paid is \$75.00 if the Claimant makes more than \$75.00 at the time of the injury. Just like low wage earners, to compensate workers on the high end, the Legislature in the language §42-9-10 did not tie the maximum compensation rate to the, "year" in which the accident occurred but to the "preceding fiscal year" and that under statutory construction principles this language is to be strictly construed. The claimant contends that the language of §42-9-10 only applies to paying a Claimant the maximum compensation rate for the preceding fiscal year, and there is no mention of nor tying that to the year in which the accident occurred; thus allowing for high wage earners to be compensated as the maximum

compensation rate increases each year.

The Defendants argue that the Claimant is limited to the maximum compensation rate payable at the time of the accident. After review of the arguments and the position of the parties while I fully understand the Claimant's argument, it is my decision that the compensation rate of \$507.34 which is the maximum compensation rate for 2000 applies. I base this decision in part on the basis that there would be no certainty as to the applicable average weekly wage in any case if I sustained the position of the Claimant.

Since it is agreed that the Claimant is totally and permanently disabled as a result of his injuries, the next issue and the primary issue before this Commissioner is whether or not he is entitled to lifetime compensation benefits for having sustained physical brain damage. As to the position of the parties, the Claimant takes the position that not only is he permanently and totally disabled but that he has suffered not only physical brain injury but physical brain damage that is most serious, severe, and permanent and entitles him to an award for lifetime benefits due to that serious, severe, and permanent physical brain damage. The Claimant takes the position that while the Defendants paid the full complement of 500 weeks of temporary total disability benefits, that prior to the mediation the Defendants never agreed or admitted that the Claimant was entitled to an award or was in fact totally and permanently

disabled due to the injuries and conditions resulting from his work-related injuries. Pursuant to the evidence, the claimant submits that the Defendants have paid for every bit of medical care that the Claimant has received as a result of his initial physical brain injury (encephalopathy) and has been aware since the hospitalization in 2002 that the Claimant suffered physical brain injury. They have paid for all medical care including medications, treatment, and evaluations in reference to that physical brain injury and that all of his treating physicians and psychologists have opined that that physical brain injury (encephalopathy) resulted in permanent, physical brain damage that is serious, severe, and permanent in nature. Because the Defendants were made aware and paid for the initial hospitalization in 2002 wherein the Claimant had a drug-drug interaction resulting in the encephalopathy, physical injury to his brain; and because after that they were made aware by his treating physicians not only that he was suffering from psychological consequences from the original injuries but that he was suffering cognitive dysfunction; and because the Defendants made and paid for numerous referrals to neurologists in reference to the physical brain problems that the Claimant was having and sent the Claimant for neuropsychological testing in 2007-2008 at the request of his authorized treating physicians and evaluating doctors between 2004 and 2008 (which without any prior medical reports) found him to have severe cognitive deficits with a

recommendation of a CT Scan to check for brain atrophy (i.e., physical brain damage); and because after that they were aware that the Claimant as early as 2009 was taking the position that he had sustained physical brain damage; and because the Defendants have authorized and provided the medical care and medications (ex., Aricept) for physical brain damage as recommended by the treating psychiatrist since 2001, Dr. Forsthoefel; the treating psychologist since 2004, Dr. C. Jean Jonet, and his treating chronic pain medicine specialist since 2001, Dr. Ezra B. Riber, that the Defendants are estopped from alleging that he is not entitled to an Award for lifetime benefits for permanent severe brain damage especially considering the undisputed opinions of all of his authorized treating physicians and psychologists that have seen him starting as early as 2000, including Dr. Ezra Riber, Dr. Frank Forsthoefel and Dr. C. Jean Jonet and the further supporting opinions of Dr. Nicholas Lind, Ph.D. and Dr. Avie Rainwater, Ph.D. The Defendants absolutely knew and provided treatment for the problems and the reactions that the Claimant had from the drug-drug interaction between 2002 and the present time.

The Defendants while they concede that he is entitled to lifetime medical causally related treatment and while they concede that they have paid for all of his treatment in reference to his conditions, the Defendants believe that there is no physical brain damage or that it is mild at best and that it does

not meet the threshold requirements of most serious and severe, and that the Claimant can therefore not meet his burden that it is a brain injury that merits and warrants an entitlement to lifetime compensation benefits. The Defendants also take the position that the Claimant is estopped from raising this issue because he has known about the physical brain injury as early as 2002 when he was hospitalized and diagnosed with a physical brain encephalopathy. The Claimant has waived and/or is estopped and/or based on the concept of Laches from now bringing up this request for an award. The Defendants take the position also that while they have paid for all of this medical care that the problems stem from the psychological consequences and psychological problems that the Claimant has instead of from physical brain damage. The Claimant in support of his position on the issue of estoppel as to the Defendants cites to the case of Jervey v. Martint Environmental, Inc., (Defendant accepted and paid for care for 455 days) whereas the Defendants point to the cases of Richey v. Dickinson and Muir v. C.R. Bard, Inc.

By way of brief history, as noted previously both of these injuries, that being in the injury that occurred on October 19, 1999 and the injury that occurred on May 30, 2000, have always been accepted cases for which compensation benefits and all causally related medical care has been authorized and paid for by the Defendants. It is not denied that this medical care has included treatment for organic injury to the brain

(encephalopathy) and medications to treat organic dysfunction such as severe headaches and memory loss. In the 1999 injury, Mr. Polansky while a Chief Investigator for the Attorney General's office fell while carrying boxes down steps and sustained severe injury to his left leg. While under continuing treatment for that problem, he sustained the injury in May of 2000 wherein he sustained injury to his back as a result of lifting boxes.

By the fall of 2000, on November 13, 2000, he was referred to Dr. Gary G. Poehling, M.D., by his treating orthopaedist, Dr. Robert Peele, wherein Dr. Poehling confirmed the diagnosis of Regional Pain Syndrome/RSD (Regional Sympathetic Dystrophy). By that time Mr. Polansky had already undergone multiple steroid injections due to the pain in his back, he was suffering from loss of bladder control, urinary urgency with difficulty with control and was on multiple medications to control severe pain in his back and legs and had been diagnosed and was being treated for psychological problems stemming from the injuries. However, Mr. Polansky continued to work and both Dr. Poehling and Dr. Feldman noted that despite all his problems that Mr. Polansky was working and was to be commended for continuing to work with all of those severe problems.

After completing a chronic pain management program at Baptist Medical Center at the recommendation of Dr. Poehling in May of 2001 Mr. Polansky was placed under the care of Dr. Ezra B.

Riber for chronic pain management; under whose care he has been since that time and continuing. In 2001 due to his psychological problems stemming from the accident he was referred to the Baptist Counseling Program where he came under the care of Dr. Frank Forsthoefel. He was on medications throughout 2001 for treatment of his chronic pain problems stemming from The Reflex Sympathetic Dystrophy, his back and his legs and due to his psychological problems stemming from these injuries. All of his medical care was paid for and was accepted by the State Accident Fund. As part of his care, Mr. Polansky was referred in 2001 by Dr. Riber for a psychological evaluation for a spinal cord stimulator trial which included a battery of neuropsychological testing which was performed by Dr. Avie Rainwater with the tests being performed on October 10th and 15th of 2001. He was diagnosed with agitated depression secondary to pain, bi-polar disorder, psychological factors affecting a physical condition and a fear of pain among others. He was psychologically cleared at that time for the spinal cord stimulator trial which subsequently resulted in the implantation of a spinal cord stimulator.

While under treatment for these psychological and physical problems on February 21, 2002, Mr. Polansky was hospitalized at Baptist Medical Center due to a severe deterioration in his, "cognitive functions":

"in the form of forgetfulness; inability to read, comprehend and retain information. His cognitive

decline has become more progressive and includes both visual and auditory hallucinations and paranoia upon admission." (APA, p. 669.)

This was determined during that hospitalization to be due to:

"confusion as to his medications and the timing of his medications"

and to a drug reaction to Seroquel prescribed to treat his medical condition stemming from the accident and which reaction resulted in a chemical encephalopathy of the brain with

"edema in all four extremities with swallowing difficulties and an edematous tongue. . . . In the hospital setting as part of the Seroquel reaction he had episodes of weakness as well as difficulty swallowing and enuresis. . . ."

* * *

"The patient was withdrawn from the Seroquel due to the medication encephalopathy. During the most severe aspects of the encephalopathy, due to the medication, he did not know the President before President George Bush, Jr. He could not do several subtractions and he could not quickly identify the particular day of the week." (APA, p. 669.)

Subsequent to hospitalization, he continued under the treatment of his treating psychiatrist for psychological and cognitive disorder and his other treating doctors for his physical problems.

Throughout his treatment notes in 2002 after the hospitalization for the chemical encephalopathy caused by the drug-drug interaction, Dr. Forsthoefel recorded repeatedly problems with cognitive function, particularly as to memory loss and problems with comprehension. He also began to record and

question whether or not these cognitive dysfunctions were coming from his psychological problems versus a physical brain problem. Then on July 29, 2004 Dr. Forsthoefel made a referral, which was authorized by the State Accident Fund, to a neurologist due to the cognitive problems. On July 29th Dr. Forsthoefel referred the Claimant to Dr. Ngo for problems with concentration and memory and noted that, "for no apparent reason, he has suffered a cognitive decline in which he cannot perform even simple calculation and in which confusion is such that he cannot drive." He then stated to the neurologist that, "I would appreciate your consideration of any organic mental condition." This evaluation was authorized as noted but instead of being referred to Dr. Ngo, State Accident Fund referred him to Dr. Julian Adams. While the change in the evaluation to Dr. Adams was objected to, Dr. Adams had been the neurologist that had seen the Claimant when he was admitted for the drug interaction at which time from a neurological standpoint he had diagnosed Mr. Polansky with a chemical encephalopathy with severe cognitive dysfunction. In his evaluation in 2004 among other things, Dr. Adams stated that if memory issues were the problem that was being investigated that he would recommend, "psychological testing."

Throughout 2005, the Claimant continued to request both a referral to another neurologist and to a psychologist for neuropsychological testing concerning the cognitive dysfunctions, in other words physical brain problems, that the Claimant was

having at that time. Also in 2005 due to the anticipated retirement by Dr. Forsthoefel, Mr. Polansky's psychological treatment from a psychiatrist standpoint was transferred to Dr. Krebbs briefly and then Dr. Jo A. Marturano, M.D. whose records just like Dr. Forsthoefel's are replete with cognitive dysfunction problems from 2005 through 2009. On September 19, 2005, Dr. Marturano issued a specific report stating that,

"based on my evaluation and treatment of Mr. Polansky, it is my opinion that he is in need to a complete neurological work-up, by a neurologist, for many of the problems he is having. The neurological evaluation should include EEG testing. I would also recommend neuropsychological testing of Mr. Polansky."

Repeated requests were then made for the neurological evaluation and neuropsychological testing by the Claimant through his attorney.

Between 2005 and 2009, the Claimant continued under the care of Dr. Marturano and Dr. Ezra Riber. Beginning on September 2, 2004 he came under the care for psychological counseling and treatment by Dr. C. Jean Jonet, Ph.D., who since then has seen Mr. Polansky multiple times per week and/or on a weekly basis from 2004 through the present time and continuing under the authorization by the State Accident Fund. In addition to the recommendations of Dr. Forsthoefel, Dr. Marturano, Dr. Adams, and Dr. Ezra Riber, the Claimant's treating chronic pain medicine specialist, on September 20, 2005 stated the opinion and issued a specific report that due to the chronic and current problems he

was experiencing from a neurological standpoint, that it was his recommendation and opinion that Mr. Polansky should have, "a comprehensive neurological evaluation." During this period of time he was receiving numerous authorized medications including Topamax that were being prescribed for the severe headaches that he was having. Finally after the referrals and recommendations of Dr. Forsthoefel, Dr. Marturano, Dr. Riber and even Dr. Adams, Mr. Polansky was finally referred for neuropsychological testing to Dr. Nicholas Lind in the Fall of 2007. He performed neuropsychological testing at that time but did not complete and submit the report of his results until February of 2008. In a later report of May 21, 2012 he specifically noted that the delay in issuing his findings in 2008 was due to the fact that when Mr. Polansky was referred to him by the State Accident Fund for neuropsychological testing and evaluation that he was not provided with any medical records and referred to his efforts in obtaining as much information as he could from Dr. Jonet and from Dr. Marturano. Based on his testing in 2007 and 2008, Dr. Lind found Mr. Polansky to be severely impaired with overall memory being severely impaired and delayed and retention memory being severely impaired in reference to his comprehensive testing. In reference to his memory scales: his auditory, visual immediate, immediate memory, auditory delayed memory, visual delayed memory, auditory recorded delayed memory, general memory and working memory were either extremely low or borderline. His adult

intelligence scale in reference to verbal intelligence was extremely low; his performance intelligence was extremely low and his full scale adult intelligence was extremely low. After testing on November 20, 2007 in his progress note of February 7, 2008, he confirmed that he had, "left messages for Dr. Jonet and Dr. Marturano (Mr. Polansky's psychologist and psychiatrist) in order to consult and share records. In his later report in 2012 when he was provided all of the records in reference to the 2002 hospitalization, encephalopathy, the pre-encephalopathy testing by Dr. Rainwater and the records from Dr. Forsthoefel, in his conclusions Dr. Lind stated that his initial impression back in 2007 without the records was that of a progressive dementia (physical condition of the physical brain) and that that was the reason for his suggestion of a brain scan to determine whether or not there was in fact any physical atrophy of the brain. However, after review of all those records, again which he did not have the benefit of in 2008, it was his opinion that Mr. Polansky had demonstrated physical brain dysfunction that was more than likely not at least aggravated by the drug-drug interaction triggered encephalopathy.

Throughout 2008, 2009 and 2010, Mr. Polansky continued under the care of Dr. Ezra Riber and Dr. Jonet and resumed treatment with Dr. Forsthoefel when he resumed his private practice in 2009. In 2009 and 2010, Mr. Polansky continued to receive treatment for his psychological and cognitive dysfunction

problems and severe headaches and for his severe physical problems which included his RSD condition and problems with his shoulders, his left and right legs, low back pain, sexual, bowel and bladder dysfunction.

He also developed and had recurrent problems with his spinal cord stimulator which had provided tremendous pain relief in reference to his back and his legs for a significant amount of time.

However, in 2010 because of problems with the stimulator, Dr. Riber made a referral to Dr. Giancarlo Barolat in Colorado for re-implantation of a spinal cord stimulator. This referral was necessitated due to the fact that local orthopaedists due to the severe condition of the Claimant's back, the multiple implantations of the spinal cord stimulator and the previous failure of the spinal cord stimulator in reference to the pulse generator would not reimplant the stimulator. Dr. Barolat based on the Commission records, the medical records, and the requests for approval from Dr. Riber, is one of the foremost authorities on spinal cord stimulators. The referral was not authorized for approximately a year and ultimately resulted in an Order of the Commission ordering the referral of Mr. Polansky to Dr. Barolat for re-implantation of the spinal cord stimulator which was accomplished not in 2010, but in the fall of 2011. The Record of the Commission is clear that the focus of the Claimant and treatment throughout 2010 and through the time that the spinal cord stimulator re-implantation was ordered by the Commission was

on the physical problems that the Claimant was having.

However, it is also very apparent from the Record that during this time Counsel for the Claimant was working with the attorney who had been hired by the State Accident Fund to obtain Second Injury Fund benefits and was taking the position on behalf of the Claimant that due to the chemical encephalopathy that Mr. Polansky had sustained physical injury and damage to the brain and was trying to resolve this issue with the Fund without litigation expense and on May 11, 2009 stated and wrote specifically that,

"after the brain injury, he has had severe problems, not only of a psychological nature but of a physical nature stemming from this. . . . I hope that the State Accident Fund will also be cooperative in trying to see that Ted is fairly compensated for the remainder of his life." (APA, p. 699.)

Subsequent to that on May 14, 2009, Ms. Mary League, the contract attorney, responded that she was unable to give an answer as to position of the State Accident Fund on the brain injury but that she had, "forwarded a copy of your letter to the State Accident Fund adjuster requesting that she be contacted in regards thereto." According to the records of the Commission, the State Accident Fund did receive approval for Second Injury Fund protection for this claim.

As noted in 2010 and 2011, the Claimant was trying to obtain authorization for the re-implantation by Dr. Barolat of the spinal cord stimulator which resulted in a Motion being filed

ordering that that be provided. It is also very clear from the Record wherein there is specific continual recordation by Dr. Riber of all the medications that the Claimant was taking which included multiple medications specifically for problems associated with cognitive dysfunction and physical injury to the brain including Topamax for migraine headaches; Galantamine ER, a medication prescribed for dementia and Alzheimer's (physical injury conditions of the brain); Donepezil which is prescribed for dementia and for Alzheimer's, again physical injury and conditions of the brain; and Imitrex (generic - Sumatriptan) which is prescribed for migraine headaches. In addition, the Claimant has been prescribed on a continual basis throughout this period of time Geodon, which is an anti-psychotic medication; and Provigil along with Ambien which are specific sleep disorder medications.

In a series of reports starting on March 3, 2011, Dr. Forsthoefel, the authorized treating psychiatrist, stated the opinion that the Claimant's cognitive decline since the drug-drug interaction in 2002 was related, "in a residual way to the encephalopathy triggered by the drug-drug interaction. Based on this report, the Claimant was sent to Dr. Avie Rainwater, Ph.D. for additional neuropsychological testing due to the fact that Dr. Rainwater had performed testing prior to the drug-drug interaction triggered encephalopathy. Based on his retesting performed on March 22, 2011, and comparison to his previous 2001

testing, Dr. Rainwater stated that, "it is my opinion, stated to a reasonable degree of psychological certainty that the absence of significant psychometric changes in the patient's tests-retest data logically supports the conclusion that the patient's current neurocognitive changes do represent a decline in brain functioning secondary to the drug-drug interaction encephalopathy." The Claimant's treating psychiatrist since 2001 in a report dated May 6, 2011 then stated the opinion to a reasonable degree of medical certainty that it was his opinion that "Mr. Polansky, did sustain a physical brain injury as a result of the encephalopathy" as explained in another report of June 28, 2011 this was a chemical encephalopathy that he had sustained due to the drug-drug interaction with residual features up to and including the date of his 6/28/11 report including continued neurocognitive deficits in the form of expressive and secondary aphasia, deficits in comprehension, attention span and recent memory.

Based on the opinions of Dr. Forsthoefel and Dr. Avie Rainwater, Ph.D., the Claimant on May 12, 2011 filed for a hearing for lifetime benefits due to physical brain damage suffered as a result of the 2002 drug-drug interaction which resulted in a chemical encephalopathy (physical damage to the brain) and that lifetime compensation benefits be resumed under that Award as of the date of the last payment of weekly compensation on March 8, 2011. Thus within two (2) months of the

report of Dr. Rainwater and one week after the opinion of the treating psychiatrist that the Claimant had sustained physical brain damage as a result of the drug-drug interaction resulting in the encephalopathy in 2002 which resulted in the Claimant's cognitive dysfunction, the Claimant filed for a hearing for an Award.

Since that time, and which I have taken into consideration in my Decision, the Claimant's authorized chronic pain medicine specialist (since 2001) expressed the opinion to a reasonable degree of medical certainty that Mr. Polansky based on his knowledge of Mr. Polansky as a result of the chemical encephalopathy had sustained organic brain damage and that that brain damage was severe enough to constitute a hindrance and obstacle to employment. (Dr. Riber previously issued a report on 09/20/05 requesting neurological examination and testing). He further stated the opinion in reference to his area of specialty that physicians in the area of physical rehabilitation, pain management, neurology and psychiatry use the terms "physical brain damage" and "injury" interchangeable in referring to organic damage to the brain and that in his opinion the residual neurocognitive deficits that persisted at the time of the opinion on June 30, 2014 were likely permanent and would not change. The Claimant's treating clinical psychologist, Dr. C. Jean Jonet, Ph.D., expressed the opinion that in her clinical opinion as a clinical psychologist and the treating clinical psychologist for

Mr. Polansky since 2004 that he had sustained physical brain damage as a result of the drug-drug interaction and encephalopathy in 2002 and that he is totally and permanently disabled as a result of his condition. She also stated in her report that he was suffering from severe neurocognitive deficits including expressive aphasia as well as documented decreased attention, concentration and short term memory skills. She stated that through her treatment of Mr. Polansky that she knows him to be a college educated individual but yet he cannot even write a check, cannot count change, cannot use tools or perform household chores or repairs, and cannot now change a lock even though he had previously done that type of work prior to attending college. He frequently becomes derailed while talking, requires redirection and prompts and sometimes he stares off into space. He is tremendously or enormously forgetful, takes notes but loses them. In addition, Dr. Frank Forsthoefel and Dr. Avie Rainwater issued written reports stating not only that Mr. Polansky had suffered physical brain damage but that it is severe and is severe enough to constitute a hindrance or obstacle to employment in and of itself and that he is totally and permanently disabled due to his condition stemming from the accident.

While I have taken into consideration all this testimony and all the evidence presented in this matter, I have given great weight to and have given substantial consideration to the

testimony of the treating psychiatrist who appeared on behalf of the Claimant at the hearing and is the only testimony that was taken in this matter.

After the parties stipulated to Dr. Forsthoefel's credentials as a Board Certified psychiatrist, Dr. Forsthoefel in his testimony in summary testified that after the 2002 hospitalization for the encephalopathy, which is a physical injury to the brain involving swelling of the brain, he began to notice greater and greater problems in reference to cognitive deficits unrelated to his moods. He explained how severe the encephalopathy was in 2002 of which he has, "a vivid memory of it even to this day" which is also reflected in the Discharge Summary that Mr. Polansky was agitated, writhing, had an altered mental status, was confused, his face and ankles were swollen, he was delirious and incoherent and during the hospitalization that remitted. He explained that encephalopathy is a global syndrome of the brain involving a physical alteration of the brain structure and that it is an organic injury to the brain. He explained that after the 2002 drug-drug interaction and encephalopathy that Mr. Polansky who was already having significant psychological problems stemming from the work-related injury, for which he was treating Mr. Polansky in 2001 prior to the 2002 hospitalization, that it became clear to him that Mr. Polansky's problems with memory, confusion and other cognitive dysfunctions were not related to his psychological condition but

that there was something else going on in Mr. Polansky's mind that was not of a psychiatric nature. He explained the difference between cognitive dysfunctions stemming from a psychological condition and cognitive dysfunctions that are stemming from an organic brain injury, or in other words, physical damage to the brain. In reference to cognitive dysfunctions that stem from a psychological condition, they are what he referred to as "mood congruent". Mood congruent means that as the person's mood improves there is a decrease in the cognitive dysfunction as well. For example, if a person is suffering from depression as their depressed mood changes or improves, you will see an improvement in their cognitive dysfunction. The same is true for all other mood or psychological/functional conditions.

Throughout 2002 and 2003 and the early part of 2004 as the medications stabilized his depression and schizoaffective disorder as Dr. Forsthoefel put it, "very nicely" during this time there continued to be not only continuing cognitive deficits but those cognitive deficits continued to get worse. In Mr. Polansky's case, even as his mood would improve in reference to his psychological problems, his cognitive dysfunctions continued to decrease or in other words were not mood congruent or related to his mood. This led Dr. Forsthoefel in 2004 to recommend neurological examination and neuropsychological testing.

He testified that Mr. Polansky's moods are now stabilized on medication and have been so for quite some time but yet at the

same time he is having increased disability and inability to remember what he has read and even to express what he has read. This is not just related to the reading of the newspaper, but is related to his ability to keep his finances, use the telephone, etc.

Mr. Polansky is suffering from sensory aphasia and expressive aphasia. These refer to the ability of an individual to read something and then relate what they have read. They have problems both on the one side in actually reading something to you and then on the other side they can read something but have absolutely no idea what they just read and/or are able to relate immediately what they just read to an individual. Dr. Forsthoefel related that while Mr. Polansky may read the newspaper, which it will probably take him an entire day to do, he does not read the newspaper in the sense that we understand it. Dr. Forsthoefel testified that Mr. Polansky may be able to read words and/or sentences, but then he cannot comprehend those. Dr. Forsthoefel has confirmed through his treatment that Mr. Polansky both does not understand what he is reading and then cannot relate back what he is reading to you. He also has severe problems in reference to his memory. In reference to his memory, Dr. Forsthoefel testified that where there is a regular pattern, to what he is going, for example driving to a location or patterns of behavior such as feeding the dog, or there are circumstances or circumscribed areas that he has patterned

himself to do, he does fairly well, but if you change those patterns or ask him to do something out of that area such as give him directions to go somewhere he is not used to going or if you have asked him about something such as going on a trip and what his memory of that is, he does terrible. For example, where he regularly goes to Dr. Riber's office, Dr. Jonet's office and Dr. Forsthoefel's office, he can handle that but if you were to give him an address in Columbia or Camden, South Carolina and tell him to go there, he would not be able to do it. Most importantly he testified that aphasia is a specific condition that results directly from organic physical brain damage, not from a psychological consequence.

This Commissioner specifically asked Dr. Forsthoefel to tell this Commissioner exactly how bad Mr. Polansky's physical brain damage is to which he responded by explaining his answer in reference to the American Psychiatric Association's diagnostic criteria under DSM IV which sets out a criteria and scale for global assessment of functioning, known as the GAF. Under the GAF scale, the range for all individuals in reference to global functioning is from 0 to 100. He said almost no one gets 100 but no one receives a score of 0. He read into the Record the scale of 0 to 10 and the scale at 40 wherein there is some impairment of testing, speech is at times illogical, obscure or irrelevant, major impairment in several areas such as work, school, family, relationship, judgment thinking or mood and other criteria. He

placed Mr. Polansky between 30 and 40 on the GAF, and based on his assessment under the GAF, Dr. Forsthoefel stated the opinion that Mr. Polansky was, "very, very seriously impaired".

As this point based on the testimony of Dr. Forsthoefel up to that point and based on my observations of Mr. Polansky throughout the hearing, which in my opinion was confirmed by the testimony of Dr. Forsthoefel as to how seriously impaired Mr. Polansky was in reference to his ability to know and appreciate what was being said and/or written and specifically in reference to his testimony about how severe Mr. Polansky was impaired especially in the area of aphasia, this Commissioner went off the Record and discussed with the attorneys my opinion that Mr. Polansky appeared so impaired that he needed to have a Guardian ad Litem appointed. The Attorneys agreed and off the Record, Ms. Gale DuBose confirmed that she would agree to serve as Mr. Polansky's Guardian ad Litem at which time I went back on the Record, explained that this was simply the appointment of a Guardian not of a general nature, but simply for purposes of a workers' compensation hearing and inquired of Ms. DuBose as to whether or not she would agree to serve as Mr. Polansky's Guardian ad Litem for purposes of the workers' compensation action to which she responded she would. I appointed her at that point Mr. Polansky's Guardian ad Litem for the remainder of the pendency of the litigation.

Dr. Forsthoefel resumed and he was asked whether or not in

his medical opinion Mr. Polansky was competent or incompetent to handle his financial affairs to which he responded that in his opinion to a reasonable degree of medical certainty Mr. Polansky was incompetent to handle his financial affairs. Dr. Forsthoefel then in reference to a list of cognitive functions explained as to Mr. Polansky's impairments in those areas. In reference to the cognitive function of decision making, Dr. Forsthoefel testified that because of his inability to comprehend the written word and at times the spoken word, he is severely impaired in reference to that cognitive function. In reference to the ability to learn, he is very limited in any ability to learn any type of new things. In reference to such cognitive functions as sensory input, his ability to understand the written word, understand the spoken word, his learning problems with comprehension and expressing himself, all of those are tied together and in Dr. Forsthoefel's opinion Mr. Polansky is, "very, very impaired" in all of those areas and cognitive functions.

Dr. Forsthoefel also agreed in reference to the neuropsychological testing results that Mr. Polansky is very limited and severely impaired in reference to memory and particularly certain types of memory such as delayed memory, retention memory in his intelligence scale, and that he agreed with the assessment by Dr. Jonet, Ph.D., the clinical psychologist that has been treating Mr. Polansky since 2004. Most importantly to this Commissioner, Dr. Forsthoefel was then

asked the question that if you assume or if Mr. Polansky did not in fact have any of the physical problems including the RSD, the spinal cord stimulator, the severe problems that he has with his back, or any of the other problems that he has, in his opinion based purely on the organic brain injury and cognitive deficits that he has, is he employable or unemployable. Dr. Forsthoefel expressed the opinion that he is unemployable. He was then asked the further question that, "simply based on his organic brain damage" to a reasonable degree of medical certainty is Mr. Polansky incapable of employment, to which Dr. Forsthoefel expressed and gave the opinion unequivocally that Mr. Polansky is, "totally incapable" of employment due purely, simply and strictly based on his organic brain damage.

Subsequent to the direct testimony of Dr. Forsthoefel, Counsel for the Defendants conducted a thorough cross-examination of the Claimant's authorized treating psychiatrist and asked for an explanation of every area of the doctor's opinions in reference to Mr. Polansky and in reference to his opinion that Mr. Polansky had sustained severe disabling physical brain damage as a result of the encephalopathy stemming from the drug/drug interaction, and in the opinion of this Commissioner, left no stone unturned in reference to an explanation and clarification as to all of the opinions and evidence given by the Dr. Forsthoefel during his direct testimony. However based upon the review of that cross-examination, Dr. Forsthoefel explained to

the satisfaction of this Commissioner and gave a thorough and complete explanation in reference to the cross-examination questions of defense counsel and his opinions but maintained his position as to his opinions concerning Mr. Polansky. He was thoroughly cross-examined about Mr. Polansky's mental condition both before and after the encephalopathy and as to how those psychological conditions had been stabilized. He explained objective test results such as MRI's in the area of physical brain damage and the lack of value of those tests sometimes even in cases of documented physical damage to the brain from such global conditions as dementia.

At the conclusion of Dr. Forsthoefel's testimony, this Commissioner held a side-bar with the lawyers as far as any other testimony and subsequent to that off the Record side-bar discussion and with my appointment of a Guardian ad Litem, the Claimant advised that that constituted the Claimant's case. The Defendants presented no additional evidence or witnesses and the hearing was concluded.

Therefore based upon my review of all of the testimony and evidence presented, the medical opinion evidence from all of the Claimant's longtime and current authorized treating doctors and providers, and based particularly upon my review of the testimony of Dr. Forsthoefel to which I give great weight, it is my finding that the Claimant has proven by a preponderance of the evidence that he is entitled to the benefits sought and is entitled to an

Award for lifetime weekly compensation benefits to be resumed pursuant to the Form 50 request and that he is entitled to this Award due to having sustained serious, severe and permanent brain damage as established by the evidence and uncontested medical and professional opinions of all the Claimant's longtime authorized treating physicians and psychological professionals in this case stemming from his original injuries from the accidents and the treatment necessary to treat those injuries. I further find that the Claimant's severe injuries to his back and leg which resulted in his other severe conditions such as his psychological condition, chronic pain and RSD, combined with his pre-existing conditions to result in a much greater disability than would have been caused by the injuries alone. I further find that Mr. Polansky's physical brain damage readily meets the requirements of SC Code §42-9-400(d). I further find that the Claimant's compensation rate for the payment of benefits shall continue at the rate as previously paid by the Defendants, that being the maximum compensation rate for 2000 in the amount of \$507.34 per week. In reference to the compensation rate, it is my opinion that the maximum compensation rate for the year of the accident under S.C. Code §42-9-10 applies. Wherefore I have made the following findings of salient fact:

FINDINGS OF FACT

1. A Guardian Ad Litem was appointed by the undersigned at the hearing, based upon (a) my observations of Claimant, and (b) the testimony of Dr. Forsthoefel. The person appointed has been in a 20+ year relationship with Claimant, and in at least one record is referred to as Claimant's common law wife (e.g., Defendants APA #20, page 715; Defendants' APA #21, page 718).

2. Claimant sustained admitted accidents on October 19, 1999, and May 30, 2000, and Defendants paid Claimant 500 weeks of temporary compensation for these claims. The 500-week period ended in March 2011 (Commission's file; Defendants' APA #26, page 738; Defendants' APA #28, page 743).

3. The admitted body parts/conditions are (a) the back (for which Claimant underwent spinal cord stimulator implantation, and re-implantation in Colorado), and psychological overlay (2000); and (b) the left knee (1999). See e.g., Claimant's APA #7, page 250.

4. The parties mediated the claims in November 2014, and agreed that Claimant was permanently and totally disabled, and is entitled to receive lifetime causally-related treatment per the agreement. The parties did not reach the issue of whether Claimant had sustained an alleged brain injury or physical brain damage after a drug-drug interaction (Claimant's APA #15).

5. Prior to the mediation, there was no (a) Order from the Commission setting forth the compensable body parts/conditions; or (b) agreement by the parties setting forth the compensable

body parts/conditions.

6. Claimant contends that he sustained physical brain damage pursuant to Section 42-9-10(C), after a drug-drug interaction in 2002 caused encephalopathy, and therefore is entitled to receive lifetime compensation. Procedurally, Claimant contends that Defendants are estopped from denying physical brain damage as Defendants (a) have paid for all of Claimant's treatment, (b) had knowledge of Claimant's cognitive condition and decline, and (C) impliedly accepted physical brain damage (or at least a brain injury) through the provision of treatment. Claimant filed a Form 50 (including the brain) in May 2011, and re-filed a Form 50 in March 2012 (Commission's file; Defendants' APA #27, page 740).

7. Defendants contend that Laches, waiver, and estoppel, whether separately or collectively, apply and bar any claim of physical brain damage. Regardless, Defendants contend that, at most, Claimant sustained a brain injury pursuant to Regulation 67-1101. Defendants maintain that Claimant's cognitive problems are more the result of Claimant's psychological/psychiatric issues than organic damage.

8. Claimant was hospitalized in February 2002 after a drug reaction to Seroquel which had been prescribed to treat his admitted injuries (Claimant's APA #11).

9. Claimant has a preponderance standard to meet, and I find that he meets it: Claimant has been diagnosed with physical

brain damage resulting from Claimant's drug-drug chemical encephalopathy by more than one authorized physician and all of his current treating physicians, Dr. Frank Forsthoefel, M.D. (authorized treating psychiatrist since 2001) and Dr. Ezra Riber (chronic pain specialist since 2000). (Claimant's APA #1, pages 2, 6-8, and 10; Claimant's #2, page 12).

10. Claimant's condition since the 2002 hospitalization has deteriorated. Medical evidence from 2007 notes that Claimant reported concerns with increasing cognitive difficulties. After administering a battery of tests, Dr. Lind found that "the feigning of memory difficulties is not likely," and is "suggestive of dementia." I give great weight to this evidence, and find that it dovetails with Dr. Forsthoefel's testimony that Claimant has experienced a severe cognitive decline independent of Claimant's psychiatric condition/mood. (Defendants' APA #23, pages 723 and 725-727; testimony of Dr. Forsthoefel; Claimant's APA #1, pages 5 and 9; Claimant's APA #8, pages 341-343).

11. Dr. Jonet, Ph.D., the authorized treating clinical psychologist since 2004, also opines that Claimant has brain damage. Dr. Jonet's treatment records from 2004 - 2015 speak to Claimant's cognitive impairment and decline, memory problems, and forgetfulness. In 2005, because of Claimant's cognitive decline, Dr. Jonet stated that Claimant "needs neuro referral." (Claimant's APA #3, pages 15-19; Claimant's APA #8, e.g., pages 341-362, 368-369, 371, 374-376, 378-379, 382, 384-389, 393, 406,

415, 417, 420, 432-433, 437-439, 453, 463-464, 471-472, 482, 484, 501, 505, 507, 516-517, 520, 553, 561, 564-565, 563, 577, 582, 600, and 603-606).

12. Dr. Jonet met with Carrier's case manager regarding Claimant's cognitive impairment (Claimant's APA #8, page 589, dated 2005).

13. Dr. Marturano (treating psychiatrist) also documented Claimant's poor memory, at one point believed to be attributable to chronic narcotic use. In 2009, Dr. Marturano noted that he needed to discuss Claimant's memory issues with Dr. Jonet. Dr. Marturano also documented Claimant's (a) inability to comprehend the newspaper or to figure out "brain teasers" anymore; (b) inability to remember his zip code and his PIN for ATM machines, (c) forgetfulness while driving (missing turns, etc.), and (d) going to the "wrong appointment location" to see Dr. Marturano, among other difficulties. Because of Claimant's presentation, Dr. Marturano also recommended and requested neuro-psych testing (for Claimant's memory issues) throughout his records from 2005 to 2009. (Claimant's APA #9, pages 608-616, 619-624, 626, 628-629, 632, 634, 642, 653-654, 656, and 661).

14. Dr. Krebs also documented Claimant's forgetfulness (Claimant's APA #10, page 667).

15. Rehabilitation Consultant Fi-Fi Jubran found Claimant "to be sincere and to want to help himself get better." (Claimant's APA #17, page 704).

Claimant's brain injuries is one of those "most serious" and "severe" cases contemplated by Crisp and Sparks; therefore, Claimant meets his burden of establishing by the preponderance of the evidence that he has sustained physical brain damage. Claimant is not required to prove physical brain damage by objective diagnostic tests or by clear and convincing evidence.

19. At the hearing, Defendants' counsel highlighted and emphasized records which by all appearances would be favorable to the Defendants. However, Dr. Forsthoefel explained to my satisfaction that Claimant has physical brain damage. Given Dr. Forsthoefel's continuum of treatment from 2001 to the present—except for the break in the treating relationship from 2004–2008—I find that Dr. Forsthoefel is in the best position to render this opinion as Dr. Forsthoefel has observed the cognitive changes himself.

20. I considered Dr. Adams' opinion from his report of August 23, 2004 (in which he recommended that if "memory" was the issue that Claimant undergo psychological testing (Defendants' APA #20, pages 715–716), but Dr. Forsthoefel's opinion is the more persuasive of the two.

21. I considered the fact that Claimant can drive some, but Dr. Forsthoefel testified that it is limited to familiar places. Further, various treatment notes chronicle Claimant's difficulty driving. Finally, Claimant's license was last renewed in 2006 and does not expire until 2016. (testimony of Dr. Forsthoefel;

Defendants' APA #43, page 849; See also Defendants' APA #31, page 808).

22. Defendants' defense of Laches is not persuasive. If Defendants had never paid for any of Claimant's treatment, had no knowledge of the encephalopathy or Claimant's cognitive decline, and were just now or recently being asked to assume the treatment for the organic brain injury/damage, the result in this case might be vastly different. However, Defendants had access to Claimant's medical records and provided benefits for his treatment. Further, the extent of Claimant's condition was not wholly apparent or fully appreciated after the diagnosis of encephalopathy, but rather has continued to decline since 2002.

23. As to Defendants' objections concerning Dr. Rainwater's records, the conclusion (regarding mail order prescriptions) in Claimant's APA #4, page 20, is the same conclusion as reached by Dr. Jonet in Claimant's APA #3, page 15. I can therefore discount or even disregard that e-mail objected to by Defendants in Claimant's APA #4. Notwithstanding any dispute between Dr. Rainwater and the carrier, I find the opinions of Dr. Forsthoefel to be the most compelling of all the evidence. (See Defendants' APA #44; Claimant's APA #1, page 7).

24. Dr. Rainwater's opinion is not pivotal or necessary in this case, and I can completely disregard it and reach the same conclusion as far as physical brain damage is concerned.

25. Although Claimant's APA #9, page 664 is part of the

treatment records, I find them wholly unnecessary to my conclusions herein. I can also similarly disregard pages 633, 637, and 662, although these submissions were not objected to.

26. I can (and do) completely disregard Claimant's APA #9, page 663, and reach the same conclusions I reach herein. This document is wholly unnecessary to my decision.

27. Claimant's average weekly wage is \$877.01, yielding a compensation rate of \$507.34, the maximum for 2000. I do not find persuasive Claimant's argument that exceptional circumstances exist to change the compensation rate (paid over the 500-week period), and that Claimant's compensation rate should be based upon that of 2015 or any date other than that of the later accident date. Although I considered it, the Circuit Court Order submitted by Claimant is not binding or of precedential value.

28. Claimant is entitled to lifetime benefits.

29. The Commission Record reflects that the State Accident Fund filed for benefits and was awarded coverage under the Second Injury Fund based on pre-existing psychological problems and pre-existing conditions in the Claimant's back which combined with the effects of the injury to the Claimant's psychological condition and back injury stemming from the accident to result in a greater disability and greater degree of medical care than would have resulted from the injuries from the accident alone. The combination of the Claimant's pre-existing conditions and the

injuries from the accidents and the treatment necessary to treat those problems caused and resulted in the Claimant's serious, severe and permanent physical brain damage. In 2009 the State Accident Fund as is reflected in the Record sought assistance of the Claimant in obtaining Second Injury Fund coverage for these problems. It is also clear that in 2009 the Claimant placed the State Accident Fund on notice of this claim for lifetime benefits due to physical brain damage and the desire to resolve that issue by agreement without the need for further litigation expense.

30. Based on the Record, the Claimant's pre-existing psychological and back problems combined with the effects on the injuries including chronic pain, RSD, and depression to cause greater psychological problems, diagnosed as schizoaffective disorder and bi-polar disorder which necessitated the administration of such drugs as Seroquel. The administration of Seroquel resulted in a drug-drug reaction that caused the encephalopathy. Therefore the reaction to the medications needed to treat the conditions stemming from the combination of the pre-existing conditions and the injuries stemming from the accidents resulted in the Claimant's physical brain damage and the tremendous increase in benefits, lifetime compensation, stemming from the accidents.

CONCLUSIONS OF LAW

Under S.C. Code §42-17-40 the following Conclusions of Law apply in this case to the issues presented for decision:

1. Under S.C. Code §42-1-40 and S.C. Code §42-9-10, the Decision is made as to the applicable compensation rate in this matter. All cases, decisions and legal memorandum as to exceptional circumstances and the wording and meaning of S.C. Code §42-9-10 have been taken into consideration as the issue of the applicable average weekly wage and compensation rate that applies. The provisions and requirements of S.C. Code §42-17-10 were taken into consideration in making this decision since no prior decision has been made by the Commission on that issue and it is appropriate that a decision be made at this time.

2. Under S.C. Code §42-9-10(C), the determination is made as to the Claimant's entitlement to lifetime weekly compensation benefits due to having sustained physical brain damage resulting from the encephalopathy which resulted from a drug-drug interaction from drugs necessary to treat the Claimant's disabling symptoms and conditions stemming from the work-related injuries. The South Carolina Supreme Court Decision in the cases of Sparks v. Palmetto Hardwood, Inc., 406 SC 124, 750 Southeastern 2d 61 (2013) and Crisp v. Southco, Inc., 401 SC 627, 738 Southeastern 2d 835 (2013) were taken into consideration in determining whether or not the Claimant has met his burden of proof in establishing that he has sustained physical brain damage severe enough to establish his entitlement to an Award for

lifetime compensation benefits under S.C. Code § 42-9-10(C). The evidence establishes in accordance with those decisions that the Claimant has sustained severe permanent impairment of the normal functioning of the brain and has sustained physical brain damage that is both serious and severe. In fact, based on the undisputed testimony of the Claimant's treating psychiatrist, Mr. Polansky's physical brain damage is so severe that he is unemployable due to his physical brain damage alone regardless of any other physical or psychological impairments.

3. Under the Mediated Settlement Agreement, the Claimant is entitled to lifetime medical care under SC Code §42-15-60(C) as set out in that Agreement which Agreement is incorporated herein as part of this Order and that his physical brain damage is causally related to the injuries sustained in the accident for which he is entitled to lifetime medical care.

4. Under the stipulations of the parties, the parties stipulated to jurisdiction and venue and to the other issues as reflected in the stipulations.

5. Under the Defendants' defense listed in their Pre-Hearing Brief of Laches, waiver, and estoppel, based on a review of the evidence, their argument and cases cited, I do not find their argument persuasive or in fact supported by fact or law. The Claimant in reply to this defense cited the case of Jervey v. Martint Environmental, Inc., 396 S.C. 442, 721 S.E.2d 469 (SC App. 2011) and asserted the concept of Laches waiver and estoppel

should be applied to the Defendants.

The State Accident Fund paid for the hospitalization for the encephalopathy (brain injury) in 2002. From 2002 to 2004 they paid for medical care which included constant reference to increasing problems with cognitive dysfunction. In 2004 at the request of the authorized treating psychiatrist for neurologic examination by Dr. Ngo for cognitive dysfunction believed to be in part due to the encephalopathy, the assigned rehab nurse scheduled and a neurological evaluation was performed by Dr. Julian Adams who noted that, "if memory loss" is the important factor in your investigation that Mr. Polansky should have "psychological testing". At the recommendation of treating doctors, Dr. Forsthoefel, Dr. Marturano, Dr. Jonet, Ph.D. and Dr. Riber and at the continual request of the Claimant between 2004 - 2007, in late 2007 and 2008, the State Accident Fund had neuropsychological testing performed by Dr. Nicholas Lind, Ph.D. (but did not provide him with treatment records) who found severe cognitive impairment and recommended further testing concerning, "possible dementia", a physical brain damage condition. In 2009, the Claimant placed the State Accident Fund on notice that he believed he had suffered physical brain damage and requested discussion to resolve that by agreement without litigation. Between 2009 and 2011 the State Accident Fund paid for treatment which noted continual decline in cognitive function and paid for medications specifically for the treatment of physical brain

conditions. Then in 2011 within three months of the opinions of Dr. Rainwater, Ph.D. and Dr. Forsthoefel and within one week of Dr. Forsthoefel's opinion that Mr. Polansky was suffering from physical brain damage, the Claimant filed for a hearing.

Based on this evidence I do not find the Defendants' position to be persuasive but I do find the argument persuasive that laches should apply as to the Defendants. In this case the Defendants paid for all treatment and evaluations requested for brain injury between 2002 and 2011. In Jervey the Court of Appeals applied laches to hold that the Defendants acceptance of the claim including the payment of medicals and compensation for a period of 455 days barred the Defendants from raising a denial to the claim. In this case the Defendants paid medical care for brain injury for nine years at the time of the first definitive medical opinion that the Claimant had sustained permanent brain damage.

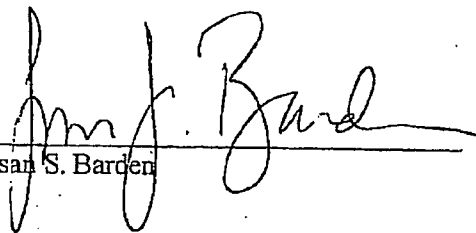
Even applying Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (SC App. 1999), upon which the defense relies on the elements required to establish laches and estoppel is that only where there is the relinquishment of a, "known right" for an unreasonable length of time so these concepts apply. There is no evidence that before the opinion of Dr. Forsthoefel in 2011 that there was medical opinion evidence stating to a reasonable degree of medical certainty that Mr. Polansky had sustained permanent physical brain damage that was causing his severe cognitive

15-60(C) .

IT IS FURTHER ORDERED that the previous decision by this Commission on Second Injury Fund coverage is incorporated hereby by reference as to the Findings of Fact and Conclusions of Law made on the Award for physical brain damage.

No hearing costs are assessed in this matter.

AND IT IS SO AWARDED AND ORDERED.


Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

June 1, 2015

By: Kristi Love, Administrative
Assistant to Commissioner Barden

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OCT 23 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Casey Manning

Appellate Case No. 2016-001494

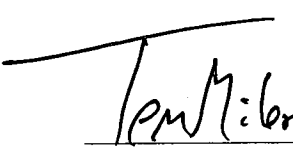
Theodore Polansky, ...Respondent.

v.

SC Office of the Attorney General, Employer,
and State Accident Fund,
Carrier.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record On Appeal contains all material proposed to be included by any of the parties and not any other material as required by Rule 210(g) SCACR.


Temus C. Miles, Esq.
The McKay Firm, P.A.
Post Office Box 7217
Columbia, South Carolina 29202
(803) 256-4645
Attorney for Appellants

October 23, 2017