

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002522
Case No. 2010-CP-5743

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SC Court of Appeals

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, and
Upstate Lung & Critical Care Specialists, PC,

Appellants,

v.

Ray E. "Chuck" Thompson, and Charles M. Fogarty, MD,

Respondents.

**RECORD ON APPEAL
VOLUME I**

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Gregory J. Feldman, MD, Joseph A.)
Boscia, III, MD, Upstate Lung & Critical)
Care Specialists, PC, and Devendra)
Shantha, MD,)
)
Plaintiffs,)
)
vs.)
)
William Mark Casey, Ray E. "Chuck")
Thompson, and Charles M. Fogarty, MD,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-5743

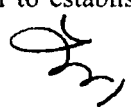
**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS
SECOND AMENDED COMPLAINT**

This action came for hearing before me on January 18, 2012, on the Motions to Dismiss Plaintiffs' Second Amended Complaint filed by Defendants William Mark Casey ("Casey"), Ray E. "Chuck" Thompson ("Thompson"), and Charles M. Fogarty, MD ("Fogarty") (collectively referred to herein as "Defendants"). Plaintiffs were represented by Milton Mann. Casey was represented by Joe Mooneyham; Thompson was represented by Matt Henrikson; and Fogarty was represented by Ellen Cheek. Defendants submitted or rested on previously submitted briefs, which the Court has considered in addition to the parties' oral argument. For the reasons stated below, Defendants' respective Motions to Dismiss Plaintiffs' Second Amended Complaint are granted, Plaintiffs' abuse of process claim is dismissed with prejudice, and Plaintiffs are barred from reasserting at any time in the future their civil conspiracy claim.

Motion to Dismiss Standard

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a plaintiff's pleading based on a failure to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCP. The circuit court properly dismisses a claim when the defendant demonstrates that the facts stated in plaintiff's pleading fail to establish an actionable claim. *Hambrick v. GMAC Mortg.*

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Corp., 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). In considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

Plaintiffs' Claims

Plaintiffs' Second Amended Complaint asserts causes of action against all Defendants for abuse of process and civil conspiracy arising from an underlying medical malpractice suit, *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, Case No. 2006-CP-42-1728 (the "Medical Malpractice Action"). See Second Amended Complaint at ¶ 4. According to the Second Amended Complaint:

Plaintiffs provided medical services and treatment to Casey between May 28, 2004, and June 3, 2004, with respect to chest pain Casey experienced at work on May 28, 2004. See Second Amended Complaint at ¶¶ 6-13. After Casey was admitted to the hospital, a chest x-ray was taken that showed a small metallic foreign body in the x-ray field. See Second Amended Complaint at ¶ 8. To "clinical[ly] correlate" (or investigate) the foreign body shown on the x-ray, Plaintiffs performed on Casey a flexible bronchoscopy followed by a rigid bronchoscopy. See Second Amended Complaint at ¶¶ 8-12. During the rigid bronchoscopy, Casey suffered a pneumothorax. See Second Amended Complaint at ¶¶ 9-13.

After Casey was discharged from the hospital, he complained to Plaintiffs that he suffered from forgetfulness, short-term memory loss, personality changes and permanent disability caused by the rigid bronchoscopy and resulting pneumothorax. See Second Amended Complaint at ¶¶ 14-17. Plaintiffs rejected Casey's complaints and refused to support his resulting attempt to obtain disability benefits, and declined to continue treating Casey. See

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Second Amended Complaint at ¶ 18, 56.

In 2004, after Plaintiffs refused to continue treating Casey, Casey began treating with a psychologist and therapist in Spartanburg. *See* Second Amended Complaint at ¶¶ 58-59. Also in 2004, Casey became a patient of Fogarty, who previously had been medical partners with Plaintiff Gregory Feldman. *See* Second Amended Complaint at ¶¶ 18, 20, 28, 48, 58. In the course of assuming Casey's treatment, Fogarty reviewed Casey's medical records, including those relating to Casey's bronchoscopies and pneumothorax, and saw Casey at Fogarty's medical office and Fogarty's medical research facility. *See* Second Amended Complaint at ¶ 18, 34, 40, 48. Based thereon, Fogarty developed the medical opinion that Casey had suffered a cerebral air embolism and resulting permanent brain injury during the rigid bronchoscopy Plaintiffs performed on Casey, and that Plaintiffs had deviated from the applicable standard of medical care in treating Casey. *See* Second Amended Complaint at ¶¶ 28, 31, 33-36, 39-40. Fogarty did not order a MRI of Casey's brain. *See* Second Amended Complaint at ¶ 34. On July 21, 2005, in Fogarty's medical chart for Casey, Fogarty noted his opinion that Casey had suffered a "permanent brain injury." *See* Second Amended Complaint at ¶¶ 28, 36. As Casey's treating's physician, Fogarty's opinion regarding Casey's medical condition and his office notes regarding same also were provided in relation to Casey's application for private disability insurance benefits, as well as Social Security disability benefits. *See* Second Amended Complaint at ¶¶ 37, 74-76.

In 2005 and 2006, Thompson, a Spartanburg lawyer who went to high school with Casey, provided Casey legal assistance in relation to Casey's applications for disability benefits. *See* Second Amended Complaint at ¶¶ 49, 75, 77. Thompson also consulted with Fogarty regarding Fogarty's opinion that Casey had suffered a permanent brain injury as a result of Plaintiffs' having violated their standard of care with respect to Casey's medical treatment. *See* Amended

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Complaint at ¶¶ 28, 44, 51.

Also in 2006, Thompson filed the Medical Malpractice Action on behalf of Casey.¹ See Second Amended Complaint at ¶ 5. In that suit, Casey alleged that Plaintiffs in the present case breached the standard of care with respect to Casey's medical treatment between May 28, 2004, and June 3, 2004, causing him damages, including neurological injury and permanent disability. See Second Amended Complaint at ¶ 6. Fogarty was identified and deposed in the Medical Malpractice Action as an expert witness, and was consulted by Thompson on occasions with respect to medical matters relating to the Medical Malpractice Action, and with respect to Casey's independent applications for disability coverage. See Second Amended Complaint at ¶¶ 41-42, 48, 76.

During the course of discovery in the Medical Malpractice Action, Thompson arranged for Casey to obtain an MRI under a fictitious name and date of birth from Thompson's brother-in-law. See Second Amended Complaint at ¶¶ 86-90. Thompson and Casey did not reveal the MRI, which was negative, to Plaintiffs during discovery in the Medical Malpractice Action. See Second Amended Complaint at ¶¶ 90-91. Fogarty was not involved in Casey's having the MRI, or Thompson's and Casey's discovery-related efforts with respect to the MRI. See Second Amended Complaint. Plaintiffs learned of the MRI after one of Plaintiffs' lawyers in the Medical Malpractice Action received an anonymous letter regarding it. See Second Amended Complaint at ¶ 92.

The Medical Malpractice Action was tried before a Spartanburg County jury beginning on May 11, 2010. See Second Amended Complaint at ¶ 99. On May 28, 2010, after a 14-day trial, the jury returned a defense verdict in favor of Plaintiffs in this case. See Second Amended Complaint at ¶ 100.

¹ Plaintiffs' Second Amended Complaint does not specify the date that the Medical Malpractice Case was filed; but the case number Plaintiffs cite (2006-CP-42-1728) indicates that the suit was filed in 2006. See Second Amended Complaint at ¶ 4.

Complaint at ¶ 100.

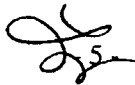
Plaintiffs filed their original Complaint in this case on October 27, 2010, claiming that Defendants engaged in abuse of process and civil conspiracy in relation to the Medical Malpractice Action. *See* Complaint; *see also* Second Amended Complaint. After Defendants moved to dismiss Plaintiffs' original Complaint in lieu of answering same, Plaintiffs filed an Amended Complaint as of right, reasserting against Defendants their claims for abuse of process and civil conspiracy. *See* Amended Complaint. When Defendants moved to dismiss the Amended Complaint, Plaintiffs moved for and received leave of court to file their Second Amended Complaint, again asserting against Defendants claims for abuse of process and civil conspiracy. *See* Second Amended Complaint.

On January 18, 2012, at the hearing on Defendants' Motions to Dismiss Plaintiffs' Second Amended Complaint, Plaintiffs withdrew their civil conspiracy claim, expressly reserving the right to re-file such claim if additional facts were discovered during discovery in this case that Plaintiffs believed supported that claim.

Because this Court finds that Plaintiffs' claims for abuse of process and civil conspiracy are time-barred, which fact necessitates the dismissal of the Second Amended Complaint and prevents Plaintiffs from re-filing their civil conspiracy claim at any time in the future, this Order addresses both of these causes of action.

Analysis

The facts alleged in Plaintiffs' Second Amended Complaint show that Plaintiffs had notice of a potential claim for abuse of process more than three years before this action was filed on October 27, 2010. Therefore, Plaintiffs' abuse of process claim is time-barred by the statute of limitations, and Plaintiffs' Second Amended Complaint is dismissed with prejudice pursuant to Rule 12(b)(6), SCRCp. Further, because Plaintiffs' pleading also demonstrates that Plaintiffs



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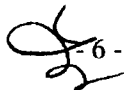
had notice of a potential claim for civil conspiracy more than three years before this action was filed, Plaintiffs are time-barred from re-asserting such claim at any time in the future.

I. Plaintiffs' Claims Are Time-Barred.

This action is governed by a three-year statute of limitations period. S.C.Code Ann. § 15-3-530 (2005); see *Whitfield Const. Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 525 S.E.2d 888 (Ct. App. 1999) (applying three-year statute of limitations in abuse of process action); *Burgess v. American Cancer Soc., South Carolina Div., Inc.*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989) (recognizing that Section 15-3-530's limitations period (which previously was six years) applies to conspiracy claims).

"A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action." *Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). Significantly, South Carolina courts recognize that "[s]tatutes of limitations are not simply technicalities." *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Id.* Statutes of limitations relieve courts of the burden of trying stale claims of those who have slept on their rights, and are intended to "ensure litigation is brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation." *Transportation Ins. Co. and Flagstar Corp. v. South Carolina Second Injury Fund*, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (citations and internal punctuation omitted).

In determining when a cause of action arose under an applicable statute of limitations, South Carolina courts apply the "discovery rule." *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004). Under the discovery rule, the statute of

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limitations begins to run from the date the party either knew, or by the exercise of reasonable diligence should have known, that some legal right had been invaded. *City of Newberry v. Newberry Elec. Co-op., Inc.*, 387 S.C. 254, 260, 692 S.E.2d 510, 513 (2010). The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981).

The discovery rule thus focuses upon whether the complaining party acquired knowledge of any existing facts sufficient to put the party on inquiry which, if developed, would disclose alleged wrongdoing. *Burgess*, 300 S.C. at 186-87, 386 S.E.2d at 800. "Moreover, although a party claims ignorance of existing facts and circumstances, the same result [*i.e.*, the statute of limitation's running] follows if such facts and circumstances could have been known to the party through the exercise of ordinary care and reasonable diligence." *Id.* Thus, the statute of limitations begins to run from the date a plaintiff knew or should have known that he had a claim, and not when the plaintiff sought advice of counsel, or developed a full-blown theory of recovery, or discovered a witness to support or prove his case, or "obtain[ed] actual knowledge of either the potential claim or the facts giving rise thereto." *Gibson v. Bank of America, N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009) (citations omitted). "Moreover, the focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer:

The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury.

Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) (quoting *Tollison v. &*

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Machinery Co., Inc., 812 F.Supp. 618, 620 (D.S.C.1993).

The date on which discovery of the cause of action should have been made is an objective question. *Joubert v. S.C. Dep't of Soc. Servs.*, 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000).

In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

Young v. South Carolina Department of Corrections, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

In this case, Plaintiffs' abuse of process and conspiracy claims are time-barred because the facts alleged in Plaintiffs' Second Amended Complaint, when taken in the light most favorable to Plaintiffs, clearly demonstrate that Plaintiffs knew or should have known that their claims for abuse of process and civil conspiracy existed in 2006, when the Medical Malpractice Action was filed against them. *See* Second Amended Complaint at ¶ 4. These facts mandate the dismissal of Plaintiffs' abuse of process claim in the current action, which Plaintiffs filed more than three years after 2006, on October 27, 2010, and prevent Plaintiffs from re-asserting their voluntarily-dismissed civil conspiracy claim at any time in the future.

A. The Statute Of Limitations Expired On Plaintiffs' Abuse of Process Claim.

1. Plaintiffs' Abuse of Process Claim Arose at Least When the Medical Malpractice Action was filed in 2006.

Plaintiffs' abuse of process claim is time barred, because that claim arose at least when the Medical Malpractice Action was filed in 2006 – more than three years before Plaintiffs filed their current suit. According to the Second Amended Complaint, and construing the allegations in the light most favorable to Plaintiffs:

- In 2004, before the Medical Malpractice Action was filed, Plaintiffs knew that

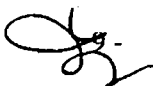
Casey claimed that he had suffered brain injury and permanent disability as a result of the pneumothorax Casey experienced during the rigid bronchoscopy. Plaintiffs did not believe Casey's injury or permanent disability claims were true or legitimate, and they did not support Casey's theory or Casey's attempt to obtain resulting disability benefits. *See* Second Amended Complaint at ¶¶ 13-18.

- In 2006, when the Medical Malpractice Action was filed, Plaintiffs knew that Casey and Thompson had filed a medical malpractice lawsuit against them, which suit Plaintiffs believed was for a purpose other than to redress legitimate medical injuries sustained by Casey. Plaintiffs knew Casey and Thompson were claiming that Plaintiffs had committed medical malpractice in the course of Casey's treatment. *See* Second Amended Complaint at ¶¶ 4-5.

- Plaintiffs contend that Casey's motivation for filing the Medical Malpractice Action was to obtain prescription pain medication and disability benefits. *See* Second Amended Complaint at ¶¶ 106-107.

Thus, when Casey sued Plaintiffs for malpractice in 2006, Plaintiffs believed that the suit was an abuse of process, because Plaintiffs already had determined that Casey had sustained no permanent injury, and because Plaintiffs believed that Casey was simply seeking to obtain prescription narcotics and disability benefits. The statute of limitations on Plaintiffs' abuse of process claim thus began to run at least from the date the Medical Malpractice Action was filed in 2006, and prevents Plaintiffs from maintaining such claims in the present case, which Plaintiffs filed in 2010. *See Gibson*, 383 S.C. at 406, 680 S.E.2d at 782.

Significantly, the discovery rule bars Plaintiffs' claims regardless of the fact that Plaintiffs' Second Amended Complaint appears to allege that Plaintiffs were not aware of Fogarty's involvement in the Medical Malpractice Action until sometime during the pendency of



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that case.² As explained above, the discovery rule focuses on the date a plaintiff discovers an injury – in this case, the fact that the Medical Malpractice Action was filed against them – “not the date of the discovery of the wrongdoer.” *Wiggins*, 314 S.C. at 128, 442 S.E.2d at 170. Although Plaintiffs’ pleading alleges that Fogarty’s “involvement” in the Medical Malpractice Action was concealed from Plaintiffs until the “11th hour” of that case, *see* Second Amended Complaint at ¶ 42, the claimed fact that Plaintiffs did not know the identity of all alleged wrongdoers in that suit did not prevent the statute of limitations from running. *See id.* This is because the filing of the Medical Malpractice Action reasonably put Plaintiffs – who believed the suit to be meritless and only interposed to harm them, *see* Second Amended Complaint at ¶¶ 18, 30, 56 – on notice that some right of theirs may have been invaded, regardless of whether Plaintiffs knew the identity of the alleged wrongdoer(s) other than Casey and Thompson, whose names appeared on the pleading. *See Young*, 333 S.C. at 719, 511 S.E.2d at 416. “[T]he requirement of presenting expert testimony to meet the burden of proof on subjects beyond the knowledge and understanding of lay jurors is by no means new,” especially in medical malpractice cases. *5 Star, Inc. v. Ford Motor Co.*, 395 S.C. 392, 399, 718 S.E.2d 220, 224 n.3 (Ct. App. 2011). A reasonable person in Plaintiffs’ position would have known that Casey and Thompson had consulted with and/or were working with a medical expert in relation to the Medical Malpractice Action prior to and upon its filing; and because Plaintiffs believed the suit to be baseless, Plaintiffs knew or should have known that some alleged claim against that medical expert might exist. Because Fogarty’s identity and alleged “role” in the Medical Malpractice Action were facts and circumstances that could have been known to Plaintiffs

² The Second Amended Complaint does not specify when Plaintiffs became aware that Fogarty was Casey’s treating physician, or when Fogarty was identified as an expert witness. *See* Second Amended Complaint. Plaintiffs allege simply that Fogarty’s “role as an ‘expert’ witness was concealed until the 11th hour” from Plaintiffs and their counsel. *See* Second Amended Complaint at ¶ 42.

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through the exercise of ordinary care and reasonable diligence when the Medical Malpractice Action was filed in 2006 – more than three years before Plaintiffs instituted this suit – Plaintiffs' Second Amended Complaint is time-barred.

2. When The Medical Malpractice Action Terminated Is Irrelevant To The Application Of The Discovery Rule And The Time-Barring Of Plaintiffs' Abuse of Process Claim.

Perhaps notably, facts pled in Plaintiffs' Second Amended Complaint indicate that Plaintiffs intentionally waited to file their abuse of process claim until after the disposition of the Medical Malpractice Action. See Second Amended Complaint at ¶ 98 (alleging that Thompson sought to protract the Medical Malpractice Action in order to “forestall a counter lawsuit” from Plaintiffs). Significantly, when the Medical Malpractice Action ultimately was resolved is of no relevance to the application of the discovery rule bar to Plaintiffs' abuse of process claim. Unlike a claim for malicious prosecution, an abuse of process claim does not require the termination of the underlying proceedings in the plaintiffs' favor, see *McBride v. School Dist. of Greenville County*, 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2010),³ and instead begins to run when the plaintiffs knew or should have known that the alleged abuse had occurred, see *Wiggins*, 314 S.C. at 128, 442 S.E.2d at 170.

B. Plaintiffs' Civil Conspiracy Claim Is Time-Barred.

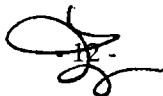
The three-year statute of limitations also time-bars Plaintiffs civil conspiracy claim, which Plaintiffs voluntarily dismissed at the hearing on Defendants' Motions to Dismiss with the expressly reserved right to reassert such claim should discovery in this case produce facts which Plaintiffs believe support such claim.

A civil conspiracy becomes actionable only “once overt acts occur which proximately

³ The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *McBride*, 389 S.C. at 565, 698 S.E.2d at 855.

cause damage to the plaintiff.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). As discussed above, in South Carolina, the statute of limitations for conspiracy claims is governed by the “discovery rule,” and therefore begins to run upon discovery of the conspiracy itself or of “such facts as would have led to the knowledge thereof, if pursued with reasonable diligence.” See *Burgess*, 300 S.C. at 187, 386 S.E.2d at 800-01. A party cannot escape the application of this rule by claiming ignorance of existing facts and circumstances, or ignorance of the identity of an alleged tortfeasor. *Wiggins*, 314 S.C. at 128, 442 S.E.2d at 170.

Any claim by Plaintiffs for civil conspiracy is time-barred because more than three years have elapsed since the filing of the Medical Malpractice Action – which is the date when Plaintiffs knew that an alleged conspiracy existed, or when Plaintiffs knew or could have known pertinent facts sufficient to apprise themselves of their claim’s alleged existence. Specifically, according to the Second Amended Complaint, Fogarty was the author of the “permanent brain injury scheme” and indispensable for Thompson in “their common scheme to manufacture a pretext for the lawsuit and disability claim.” See Second Amended Complaint at ¶¶ 199-211. Thus, the alleged conspiracy was to manufacture a pretext to sue Plaintiffs for malpractice; and the overt “act” in furtherance of the conspiracy was the filing of that suit. Accordingly, once Plaintiffs were sued for malpractice – i.e., once the Medical Malpractice Action was filed in 2006 – they were damaged by the alleged conspiracy, and the statute of limitations on that claim began to run, regardless of whether Plaintiffs claim that they only later learned Fogarty’s “involvement” in the alleged scheme. See *Hackworth*, 385 S.C. at 115, 682 S.E.2d at 874. When the Medical Malpractice Action was filed against Plaintiffs in 2006, Plaintiffs knew the identity of two of the alleged conspirators, Casey and Thompson; and because medical malpractice claims require expert medical testimony, the filing of the suit put Plaintiffs on notice



that some other physician was involved in the alleged case-filing conspiracy, thus tolling the statute of limitations. Because the three-year statute of limitations on Plaintiffs' civil conspiracy claim expired in 2009, such claim is and will remain time-barred.

II. The Court Does Not Reach Defendants' Arguments That Plaintiffs' Second Amended Complaint Fails To State A Claim Upon Which Relief Can Be Granted.

Because this Court finds that Plaintiffs' claims against Defendants for abuse of process and civil conspiracy are time-barred by the statute of limitations, the Court has not reached or ruled upon Defendants' additional arguments that Plaintiffs have failed to plead actionable claims for abuse of process or civil conspiracy.

Conclusion

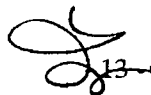
Because Plaintiffs had notice of a potential claim abuse of process and civil conspiracy when the underlying Medical Malpractice Action was filed in 2006, and because more than three years have expired since that date, Plaintiffs' claims for abuse of process and civil conspiracy are time-barred by the statute of limitations. Therefore, this Court grants in full Defendants' Motions to Dismiss Plaintiffs' Second Amended Complaint, and dismisses with prejudice the abuse of process claim asserted therein; and Plaintiffs are barred from re-asserting at any time in the future their claim for civil conspiracy.

IT IS SO ORDERED.

3/21, 2012


Letitia H. Verdin
Presiding Judge

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Gregory J. Feldman, MD, Joseph A. Boscia, III, Upstate
Lung & Critical Care Specialists, PC, and Devendra
Shantha, MD, Appellants,

v.

William Mark Casey, Ray E. "Chuck" Thompson, and
Charles M. Fogarty, MD, Respondents.

Appellate Case No. 2012-212867

Appeal From Spartanburg County
Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2014-UP-273
Heard June 4, 2014 – Filed June 30, 2014

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Franklin Milton Mann, Jr., of Spartanburg, for
Appellants.

Matthew Holmes Henrikson, of Henrikson Law Firm,
LLC, of Greenville, for Respondent Ray E. Thompson;
Joseph A. Mooneyham, of Mooneyham Berry, LLC, of
Greenville, for Respondent William Mark Casey; and
Michael B.T. Wilkes and Ellen S. Cheek, both of Wilkes

Law Firm, PA, of Spartanburg, for Respondent Charles M. Fogarty.

PER CURIAM: Appellants Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung & Critical Care Specialists, PC, (Upstate Lung) and Devendra Shantha, MD, brought this action against Respondents William Mark Casey, Ray E. ("Chuck") Thompson, and Charles M. Fogarty for abuse of process and civil conspiracy. Upon Respondents' motions to dismiss, the circuit court dismissed these claims with prejudice. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL HISTORY¹

Feldman and Boscia are physicians and partners in Upstate Lung, and Shantha is an anesthesiologist. In 2006, Thompson, an attorney, filed an action on Casey's behalf against Appellants, alleging that Feldman, Boscia, and Shantha breached the applicable standard of care regarding medical treatment they provided to Casey and that Casey suffered permanent brain damage and became permanently disabled as a result of the alleged breach. While the case was pending, Shantha was granted summary judgment and dismissed as a defendant. The case was tried in May 2010, and on May 28, 2010, the jury returned a verdict for Feldman, Boscia, and Upstate Lung.

On October 27, 2010, Appellants filed this action against Respondents for abuse of process and civil conspiracy arising from the prior lawsuit. According to the complaint, Fogarty was another pulmonologist who had ended a business relationship with Feldman on hostile terms and surreptitiously treated Casey while the malpractice action was pending. The treatment allegedly included arranging for Casey to obtain an MRI under a fictitious name and date of birth.

¹ Because this case was decided on a motion to dismiss, the facts as stated here are restricted to the allegations of the complaint and are assumed to be true for the purpose of our review of the grant of the motion to dismiss. *See Overcash v. S.C. Electric & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) ("A motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCp, must be based solely on the allegations set forth on the face of the complaint.").

Instead of filing responsive pleadings, Respondents each moved to dismiss the complaint pursuant to Rule 12(b)(6), SCRCP. Appellants subsequently amended their pleadings twice. After Appellants filed their second amended complaint, Respondents filed separate motions to dismiss. The circuit court held a hearing on the motions. When the hearing commenced, the parties agreed to a dismissal without prejudice of Appellants' civil conspiracy claim, and oral argument proceeded on only the abuse of process claim. The circuit court later issued an order granting Respondents' motions to dismiss Appellants' second amended complaint, holding the three-year statute of limitations had expired before Appellants filed their lawsuit. In addition to dismissing with prejudice Appellants' claim for abuse of process, the circuit court also barred Appellants from re-asserting their claim for civil conspiracy at any time in the future. Appellants moved to alter or amend the circuit court's order and for leave to amend their complaint once again. The circuit court denied these motions, and Appellants filed this appeal.

1. Appellants first argue the circuit court misapplied the discovery rule in dismissing their complaint for abuse of process. We agree.

"In deciding a motion to dismiss pursuant to [Rule] 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). In reviewing a decision on whether to dismiss an action pursuant to Rule 12(b)(6), SCRCP, "the appellate tribunal applies the same standard of review that was implemented by the trial court." *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001).

"The essential elements of abuse of process are (1) an ulterior purpose, and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *Pallares v. Seinar*, 407 S.C. 359, 370, 756 S.E.2d 128, 133 (2014). Abuse of process claims are subject to a three-year statute of limitations. *Whitfield Constr. Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 222 n.18, 525 S.E.2d 888, 896 n.18 (Ct. App. 1999). This period begins to run when the plaintiff "knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535 (2005).

In dismissing Appellants' claim for abuse of process, the circuit court found Appellants' abuse of process claim arose in 2006, when the medical malpractice action against them was filed. According to the appealed order, Appellants not only knew Casey and Thompson had filed the lawsuit against them, they believed

the lawsuit was for a purpose other than to redress legitimate medical injuries, namely, to obtain prescription pain medication and disability benefits. The paragraphs of the complaint cited by the circuit court to support this finding, however, do not give any indication as to when Appellants knew or should have known either that Casey was obtaining narcotic drugs and disability benefits as a result of the pending medical malpractice action or that Casey filed the lawsuit with this objective. Furthermore, even if the complaint indicates Appellants had reason to believe the medical malpractice action was filed with Respondents' knowledge that it was based on spurious allegations, Appellants' complaint does not allege any specific point in time at which Respondents committed a willful and improper act in their use of the legal process. Without any information in Appellants' complaint as to when any such acts allegedly occurred, we hold the allegations in the complaint do not support a finding that Appellants could be charged with knowledge that they had a potential abuse of process claim at the time the malpractice action against them was filed. *See Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997) ("There is no liability [in an abuse of process action] where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions."); *id.* at 136-37, 492 S.E.2d at 107 ("Abuse of process requires both an ulterior purpose and a willful act not proper in the regular course of the proceeding."). We therefore hold the allegations of Appellants' complaint do not support a finding that their action for abuse of process was barred by the statute of limitations and remand for further proceedings on this cause of action.²

2. Appellants argued in their brief that because Respondents had agreed to a dismissal of the conspiracy claim without prejudice, the circuit court erred in dismissing this cause of action with prejudice. Appellants, however, failed to raise this issue in their motion to alter or amend; therefore, the issue is not preserved for appeal. *See In re Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) ("When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal."). Furthermore, at oral argument, Appellants'

² Our reversal of the dismissal of Appellants' abuse of process claim is without prejudice to Respondents to move again for dismissal of this cause of action once the case is remanded to the circuit court.

counsel indicated that he no longer intended to pursue a claim for conspiracy against Respondents.

3. Appellants also challenge the circuit court's finding that equitable tolling did not apply to their claims and the circuit court's refusal to grant them leave to amend their complaint to advance additional factual allegations that would clarify the relevant timeline as it related to the discovery rule and the statute of limitations. In view of our decision to reverse the dismissal of Appellants' abuse of process claim and remand this matter to the circuit court for further proceedings, we decline to address these arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

HUFF, THOMAS, and PIEPER, JJ., concur.



The South Carolina Court of Appeals

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May 19, 2015

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: Gregory Feldman v. William Casey
Lower Court Case No. 2010CP4205743
Appellate Case No. 2012-212867

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours, <

A handwritten signature in dark ink, appearing to read "J. A. Mooneyham", is written over the typed name "CLERK".

CLERK

Enclosure

cc: Franklin Milton Mann, Jr., Esquire
Joseph A. Mooneyham, Esquire
Matthew Holmes Henrikson, Esquire

Ellen S. Cheek, Esquire
Michael B.T. Wilkes, Esquire

COUNTY OF SPARTANBURG

Gregory J. Feldman, M.D., Joseph A.
Boscia, III, M.D., Upstate Lung and
Critical Care Specialists, P.C., and
Devendra T. Shantha, M.D.,

Plaintiffs,

v.

William Mark Casey, Ray E. "Chuck"
Thompson, and Charles M. Fogarty, M.D.,

Defendants.

) SEVENTH JUDICIAL CIRCUIT

) C.A. NO.: 2010-CP-42-05743

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**ORDER GRANTING PARTIES' JOINT MOTION
FOR COMPLEX CASE DESIGNATION**

The Parties having jointly moved this Court for an Order designating this case as complex and for a date certain trial, and the Court having considered the matters stated below, the Parties' motion is granted.

This action for Abuse of Process, which arises out of an underlying medical malpractice case which tried to a defense verdict following a three week trial in 2010, was once dismissed at the 12(b)(6) stage and was reversed on appeal and remanded. The case has complex issues including multiple out of state experts, numerous evidentiary issues, difficulty in scheduling a trial date and other factors rendering complex designation appropriate. The parties presently anticipate calling approximately 20 to 25 witnesses at trial, and for trial to last at least two weeks. As an initial discovery matter, the parties are in the process of exchanging approximately 20,000 pages of documents relating to the underlying medical malpractice action, and anticipate additional written discovery and document production during this case's discovery period. The





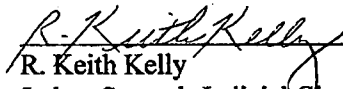
parties intend to name and depose various fact and expert witnesses, many of whom reside out of state.

This Court finds that designation of this case as complex and the assignment of a Judge will be beneficial and judicially economical during the discovery and trial stage, as motions may be heard without the necessity of reciting lengthy procedural and background facts and details each time for a new Judge, and the Court at pre-trial and trial will be fully educated on the trial issues. Moreover, it would be beneficial to have the case assigned to Judge Kelly, as Judge Cole would not be eligible to hear case related matters due to a family conflict with Dr. Fogarty's firm (Wilkes Law Firm, P.A.), Judge Hayes served as a mediator in the underlying case, and Judge Couch, who presided over the underlying trial, essentially recused himself early on in the current case during the Motion to Dismiss stage. This Court also finds that setting this case for a date-certain trial following the completion of the discovery and motions practice would benefit the Court, the Parties, and the multiple witnesses, including out of state experts, expected to testify at trial.

IT IS THEREFORE ORDERED that this case is designated complex; that this case shall be assigned to Judge Kelly; and that this case shall be set for a date-certain trial following the completion of its discovery and motions phases.

IT IS SO ORDERED.

December 11, 2015


R. Keith Kelly
Judge, Seventh Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C.A. NO.: 2010-CP-42-05743
Gregory J. Feldman, M.D., Joseph A.	)	
Boscia, III, M.D., and Upstate Lung and	)	
Critical Care Specialists, P.C.,	)	
	)	
	)	DISCOVERY ORDER
Plaintiffs,	)	
	)	
v.	)	
	)	
Ray E. "Chuck" Thompson and	)	
Charles M. Fogarty, M.D.,	)	
	)	
Defendants.	)	
	)	

This matter came before this Court for a Status Conference on April 13, 2017. Having considered the status of this case and the positions of the parties, the Court holds as follows:

1. Defendants' Motion for Summary Judgment, which was first filed on December 7, 2016, and was amended on March 30, 2017, is scheduled for hearing on June 20, 2017, at 9:00 a.m. The issue presented by Defendants' Amended Motion for Summary Judgment is whether Plaintiffs' claim for abuse of process is barred by the statute of limitations.
2. Plaintiffs wish to depose ~~two~~ ^{three} additional witnesses prior to the hearing on Defendants' Amended Motion for Summary Judgment. Plaintiffs shall complete this discovery no later than May 31, 2017.
3. Defendants' depositions will not be scheduled unless the Court denies Defendants' Amended Motion for Summary Judgment. If the Court denies Defendants' Amended Motion for Summary Judgment, Defendants' depositions will be scheduled no sooner than 30 days after the date of the Court's order, and no later than 60 days after the date of the Court's order.

IT IS SO ORDERED.



13 April, 2017
Spartanburg, SC


R. Keith Kelly
Presiding Judge



Spartanburg Common Pleas

Case Caption: Gregory J Feldman Md , plaintiff, et al VS William Mark Casey ,
defendant, et al
Case Number: 2010CP4205743
Type: Order/Scheduling Order

It is so Ordered.

s/ R. Keith Kelly - 2165

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	C.A. No.: 2010-CP-42-05743
Gregory J. Feldman, MD, Joseph A.	)	
Boscia, III, MD, and Upstate Lung &	)	
Critical Care Specialists, PC,	)	
	)	ORDER GRANTING DEFENDANTS'
Plaintiffs,	)	MOTION FOR SUMMARY JUDGMENT
	)	
vs.	)	
	)	
William Mark Casey, Ray E. "Chuck"	)	
Thompson, and Charles M. Fogarty, MD,	)	
	)	
Defendants.	)	
	)	

This action came for hearing before me on June 20, 2017, on the Motion for Summary Judgment filed by Defendants Ray E. "Chuck" Thompson ("Thompson") and Charles M. Fogarty, MD ("Fogarty") (collectively, "Defendants"). Prior to the hearing, Plaintiffs and Defendants submitted briefs and multiple exhibits, and Plaintiffs submitted affidavits, which the Court has carefully considered in addition to the parties' oral arguments and the materials the parties submitted during the hearing. For the reasons discussed below, this Court finds that Plaintiffs' abuse of process claim against Defendants is barred by the statute of limitations, and therefore grants Defendants' Motion for Summary Judgment.

Summary Judgment Standard

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Glover v. County of Charleston*, 361 S.C. 634, 606 S.E.2d 773 (2004). Since it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant

is not improperly deprived of a trial on disputed factual issues. *Helena Chemical v. Allianz Underwriters*, 357 S.C. 631, 594 S.E.2d 455 (2004). Summary judgment is improper if the parties dispute the inferences to be drawn from the facts, even if the facts themselves are not in dispute. *CEL Prods., LLC v. Rozelle*, 357 S.C. 125, 591 S.E.2d 643 (Ct. App. 2004). In determining whether summary judgment is proper, this court must view all evidence in the light most favorable to the non-moving party. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001). Importantly, in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Findings of Relevant Fact

1. Plaintiffs filed the instant action on October 27, 2010, asserting claims against Defendants for abuse of process and civil conspiracy arising from an underlying medical malpractice lawsuit in which Plaintiffs were named defendants, *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC*, Spartanburg County Court of Common Pleas, Case No. 2006-CP-42-1728 (the "MMA"). On January 18, 2012, Plaintiffs voluntarily dismissed their civil conspiracy claim. At the hearing on this motion, Plaintiffs' counsel advised that Plaintiffs have dismissed with prejudice their abuse of process claim as to Casey, and will be filing a stipulation to that effect.
2. The MMA was filed by Thompson on May 24, 2006. The Complaint in the MMA alleged that Plaintiffs Feldman and Boscia, who are pulmonologists and owners of Upstate Lung and Critical Care Specialists, committed malpractice in the course of treating Casey in 2004, and that Casey suffered permanent brain injury and other damages as a result of Plaintiffs' actions.
3. On August 11, 2007, Feldman wrote Boscia an email stating his belief that Plaintiffs had causes of action against Defendants for civil conspiracy and abuse of process relating to the MMA,

stating as follows:

1. We have at least Casey plus his Lawyer and Possibly Fogarty plus Chuck Thompson's Wife.
2. As for Abuse of Process that is already fact (He had no right to speak to Press about trial matter..[sic] Violation of Civil Procedure)[.]

(Mann 1168.)

4. On August 17, 2007, Feldman emailed himself regarding the definition and proof of civil conspiracy, and sent himself another email regarding "Physician Countersuits." (Mann 1167; Mann 22484.)

5. On August 17, 2007, Feldman sent himself an emailed titled, "Statue [sic] of Limitations," excerpting legal research he had performed on the three-year limitations period applicable to one physician's suit against another doctor for defamation. (Mann 22478.)

6. On September 29, 2007, Feldman emailed himself additional research he performed on "Abuse of Process." (Mann 1183.)

Conclusions of Law

I. Plaintiffs' Claim Is Time-Barred.

Plaintiffs' abuse of process claim against Defendants is time-barred, because the indisputable evidence in this case proves that more than three years before Plaintiffs filed this lawsuit, they believed they had suffered an invasion of their legal rights and consequent damages which they might recover by asserting an abuse of process claim, and therefore had actual knowledge that they possessed a claim for abuse of process against Defendants for Defendants' alleged wrongdoing. Because Plaintiffs failed to file suit within three years of obtaining that actual knowledge, summary judgment is appropriate.

This action is governed by a three-year statute of limitations period. S.C. Code Ann. § 15-3-530 (2005); *see Whitfield Const. Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 525 S.E.2d 888 (Ct. App. 1999) (applying three-year statute of limitations in abuse of process action). "A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an

existing cause of action.” *Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). “Statutes of limitations are not simply technicalities;” instead, they “embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). Statutes of limitations relieve courts of the burden of trying stale claims of those who have slept on their rights, and “ensure litigation is brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.” *Transp. Ins. Co. and Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (citations and internal punctuation omitted).

The limitations period established by S.C. Code Ann. § 15–3–530 begins to run when the plaintiff “knew or by the exercise of reasonable diligence should have known that he had a cause of action.” S.C. Code Ann. § 15–3–535. Therefore, in determining when a cause of action arose under an applicable statute of limitations, South Carolina courts apply the “discovery rule.” *Rumpf v. Mass. Mut. Life Ins. Co.*, 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004). Under the discovery rule, the statute of limitations begins to run on the date the party had actual knowledge, or by the exercise of reasonable diligence should have known, that some legal right had been invaded. *City of Newberry v. Newberry Elec. Co-op., Inc.*, 387 S.C. 254, 260, 692 S.E.2d 510, 513 (2010). The exercise of reasonable diligence means that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981).

The discovery rule thus focuses on when the complaining party acquired knowledge of any existing facts sufficient to put the party on inquiry which, if developed, would disclose alleged wrongdoing. *Burgess v. Am. Cancer Soc., S.C. Div., Inc.*, 300 S.C. 182, 186-87, 386 S.E.2d 798, 800 (Ct. App. 1989). “Moreover, although a party claims ignorance of existing facts and circumstances,

the same result [*i.e.*, the statute of limitation's running] follows if such facts and circumstances could have been known to the party through the exercise of ordinary care and reasonable diligence." *Id.* Likewise, "the fact that the injured party may not comprehend the full extent of the damage is immaterial. *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996). The statute of limitations therefore begins to run on the date a plaintiff knew or should have known that he had a claim, and not when the plaintiff sought advice of counsel, or developed a full-blown theory of recovery, or discovered a witness to support or prove his case, or "obtain[ed] actual knowledge of either the potential claim or the facts giving rise thereto." *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009).

This Court finds that Plaintiffs' emails in this case, which the parties agree are authentic, show without question that Plaintiffs had actual knowledge that they possessed an abuse of process claim against Defendants more than three years before Plaintiffs filed this action.

II. Equitable Estoppel Does Not Apply In This Case.

The Court also finds that equitable tolling does not apply to prevent the running of the statute of limitations on Plaintiffs' abuse of process claim.

"Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations." *Pelzer v. State*, 378 S.C. 516, 520–21, 662 S.E.2d 618, 620 (Ct. App. 2008). "Equitable tolling is reserved for extraordinary circumstances." *Hooper v. Ebenezer Senior Svcs. and Rehabilitation Ctr.*, 377 S.C. 217, 230, 659 S.E.2d 213, 219 (Ct. App. 2008). This doctrine, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, "is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine." *Pelzer*, 378 S.C. at 521, 662 S.E.2d at 620. As to the sparing application of equitable tolling, South Carolina's Court of Appeals has found "particularly illuminating" the Fourth Circuit's reasoning in *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir.

2000):

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where due to circumstances external to the party's own conduct-it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Pelzer, 378 S.C. at 522-23, 662 S.E.2d at 621.

"It is well known that equity follows the law." *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007), citing *C & S Nat'l Bank v. Modern Homes Constr. Co.*, 248 S.C. 130, 133, 149 S.E.2d 326, 327 (1966). This established rule means that "wherever the rights or the situation of parties are clearly defined and established by law, equity has no power to change or unsettle those rights or that situation[.]" *Hedges v. Dixon Cty.*, 150 U.S. 182, 192, 14 S. Ct. 71, 74, 37 L. Ed. 1044 (1893). "Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law." *Id.* "The function of equity is to supplement the law, not to displace it." *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 117, 580 S.E.2d 100, 108 (2003). Equity "does not attempt to reach all cases where a right cannot be vindicated at law, nor does it reach cases where a right has been lost by complainant's own act." *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011), citing *McKittrick v. Bates*, 47 R.I. 240, 132 A. 610, 612 (1926). "When one who has a clear method of fully determining his rights at law voluntarily adopts improper procedure, or pursues proper procedure negligently or mistakenly, without any inducement from one having adversary interests, it is no function of equity to relieve him from the result of his erroneously conducted lawsuit." *Id.*, quoting *McKittrick*, 47 R.I. at 240, 132 A. at 612.

In this case, Plaintiffs contend that the statute of limitations applicable to their abuse of process claim should be equitably tolled, because Defendants allegedly concealed from Plaintiffs facts material to that claim. This argument is not supported by the record evidence, which proves that the

information Plaintiffs did have more than three years before filing this suit caused Plaintiffs to form the actual belief that they possessed an abuse of process claim against Defendants. Thus, no facts that allegedly were concealed from Plaintiffs during the MMA prevented or delayed Plaintiffs' forming the belief that they possessed an actionable claim against Defendants.

Plaintiffs had a legal remedy available for the abuse of process claim that they believed that they possessed against Defendants in relation to the MMA. Plaintiffs failed to file suit on that claim within three years of gaining actual knowledge of that claim, as mandated by the applicable statute of limitations. The Court finds that no sufficient reason exists for this failure, and that Plaintiffs' right to vindicate the wrong they believed they suffered in relation to the MMA was lost by Plaintiffs' own acts. Accordingly, the Court declines to equitably estop the application of the statute of limitations to Plaintiffs' claim.

Conclusion

Plaintiffs failed to file their claim against Defendants for abuse of process within three years of having actual knowledge of the existence of that claim. Plaintiffs' claim is therefore barred by the applicable statute of limitations. Further, equity does not support the application of equitable tolling in this case. For these reasons, Defendants' Motion for Summary Judgment is hereby granted.

IT IS SO ORDERED.

_____, 2017

R. Keith Kelly
Presiding Judge



Spartanburg Common Pleas

Case Caption: Gregory J Feldman Md , plaintiff, et al VS William Mark Casey ,
defendant, et al
Case Number: 2010CP4205743
Type: Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-07-20 10:14:56 page 8 of 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	C.A. No.: 2010-CP-5743
Gregory J. Feldman, MD, Joseph A.	)	
Boscia, III, MD, and Upstate Lung &	)	
Critical Care Specialists, PC,	)	
	)	ORDER DENYING PLAINTIFFS' MOTION
Plaintiffs,	)	FOR RECONSIDERATION
	)	
vs.	)	
	)	
Ray E. "Chuck" Thompson, and Charles	)	
M. Fogarty, MD,	)	
	)	
Defendants.	)	
	)	

This action came before me for hearing on October 19, 2017, on the Motion for Reconsideration filed by Plaintiffs Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, and Upstate Lung & Critical Care Specialists, PC ("Plaintiffs"). Plaintiffs' motion (the "Motion"), which Plaintiffs submitted under Rule 52 and Rule 59, SCRPC, seeks the alteration or amendment of this Court's July 20, 2017, Order Granting Defendants' Motion for Summary Judgment (the "Order"). For the following reasons, the Court denies Plaintiffs' Motion.

The Order

The Order fully and properly decided the issue presented by Defendants' Motion for Summary Judgment, based on the record evidence and applicable law. The Order holds that Plaintiffs' cause of action for abuse of process against Defendants is time-barred, because the indisputable evidence in this case shows that the statute of limitations on that claim expired more than three years before Plaintiffs filed this action on October 27, 2010. *See* Order 3.

Specifically, based on the record, the Order finds that after Plaintiffs were named as defendants in the medical malpractice lawsuit styled *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care*

Specialists, PC, Spartanburg County Court of Common Pleas, Case No. 2006-CP-42-1728 (the “MMA”), Plaintiffs formed the belief that the MMA was an invasion of their legal rights that had damaged them, and that supported Plaintiffs’ bringing claims against Defendants in relation to the MMA. *See* Order 2-3. Plaintiffs’ own documents and testimony show clearly that Plaintiffs formed this actual belief more than three years before Plaintiffs asserted two of those causes of action against Defendants in this suit. *See* Order 2-3. This is because between August 11, 2007, and September 29, 2007, Feldman – whose acts and assertions Boscia has expressly adopted as his own in this case – wrote a series of emails declaring and discussing the legal claims Plaintiffs believed they held against Defendants in relation to the MMA, including the abuse of process and civil conspiracy claims Plaintiffs eventually asserted in this action. *See* Order 2-3. These emails prove that by the dates those emails were written, Plaintiffs had formed and held the actual belief that triggered the running of the limitations period as to their claims arising from the MMA. *See* Order 3-5. Because Plaintiffs failed to file this action within three years of forming this actual belief, their abuse of process claim against Defendants is time-barred. *See* Order 5.

The Order also holds that equitable tolling does not apply to prevent the running of the statute of limitations on Plaintiffs’ abuse of process claim. *See* Order 5-7.

Discussion

Plaintiffs’ Motion, and the Reply Brief Plaintiffs filed in support of it, advance no legitimate grounds for the Order to be amended under Rule 52 or 59 of the South Carolina Rules of Civil Procedure.

I. Rule 52 Does Not Require The Order To Include Any Specific Findings Of Fact Or Conclusions Of Law.

Rule 52 defeats Plaintiffs’ claim that the Court’s Order is “factually and legally deficient,” because it does not identify a particular “willful act” that Defendants allegedly committed in relation to the MMA, or state when that act occurred. (*See* Pls.’ Br. 1, 2.) Rule 52(a) specifically

provides that “[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56[.]” Rule 52(a), SCRCPP. “[S]uch findings and conclusions are not required for appellate review.” *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 526–27, 753 S.E.2d 428, 433 (2014).

In this case, the Court chose to include in its Order certain Findings of Fact and Conclusions of Law supporting its conclusion that Plaintiffs’ abuse of process claim against Defendants is time-barred. *See* Order 2-7. However, Rule 52(a) clearly provides that the Order granting summary judgment in Defendants’ favor did not need to include any findings of facts or conclusions of law. Plaintiffs’ argument that the Order is “deficient” because it does not include a particular finding of fact that Plaintiffs believe it should include is hereby rejected.

II. Plaintiffs’ Motion Does Not Advance Any Argument Supporting Amendment Or Alteration Of The Order Under 59(e).

Plaintiffs’ Motion also fails to advance any grounds appropriate for seeking an amendment or alteration of the Order under Rule 59(e).

Rule 59(e), SCRCPP, provides:

A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.

“The purpose of Rule 59(e), SCRCPP, to alter or amend the judgment, is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Coward Hund Const. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct. App. 1999) (internal quotations and citations omitted). A Rule 59(e) motion is also the proper vehicle for correcting factual errors in an order. *Doe v. Doe*, 324 S.C. 492, 502, 478 S.E.2d 854, 859 (Ct. App. 1996).

No reported South Carolina case decision specifically addresses when a Rule 59 motion to alter a judgment may be granted, but the Fourth Circuit Court of Appeals has done so with respect to Rule 59’s federal counterpart, FRCP 59(e). Federal court decisions instruct that a court may alter or amend its prior judgment under FRCP 59(e): (1) to accommodate an intervening change in

controlling law; (2) to account for new evidence not available previously; or (3) to correct a clear error of law or prevent manifest injustice. *Zinkland v. Brown*, 478 F.3d 634, 637 (4th Cir. 2007); *Bogart v. Chapell*, 396 F.3d 548, 555 (4th Cir. 2005). A party cannot use Rule 59(e) to “rehash” the same arguments and facts previously presented” or to raise new arguments. *Rouse v. Nielsen*, 851 F. Supp. 717, 734 (D.S.C. 1994). Likewise, a Rule 59(e) motion may not be used to raise arguments which could have been raised before the judgment was issued, or “to enable a party to complete presenting his case after the court has ruled against him.” *Pacific Insurance Co. v. American National Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

Plaintiffs have not met the standard under Rule 59 for having this Court alter or amend its Order. Each of the positions Plaintiffs’ Motion and Reply Brief have advanced are arguments that Plaintiffs raised in opposition to Defendants’ summary judgment motion. Plaintiffs also have not argued and cannot prove that any changes in the applicable law have occurred, nor have the facts of this case changed. Further, as discussed below, this Court did not misapprehend those facts in holding that Plaintiffs’ claim is time-barred.

A. The August 11, 2007, Email Fully Supports The Order’s Finding That Plaintiffs’ Abuse of Process Claim Is Time-Barred.

Plaintiffs’ primary argument that the Motion re-asserts is that Feldman’s August 11, 2007, email (the “August 11 Email”) cannot support a decision that Plaintiffs’ abuse of process claim is time-barred. This argument asserts no legitimate grounds for altering this Court’s Order under Rule 59, because it previously was presented by Plaintiffs during the summary judgment hearing, was considered fully by this Court, and was rejected. In addition, as discussed below, the Court made no factual error in finding that the August 11 Email supports its holding that the statute of limitations started running on Plaintiffs’ abuse of process claim more than three years before Plaintiffs filed this suit.

South Carolina law is clear: the focus of a Court deciding when the statute of limitations

begins running on a plaintiff's claim is the date the plaintiff discovers an injury. *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994). It is not the date the plaintiff discovers the identity of the wrongdoer. *Id.* It is not the date that the plaintiff hires or consults a lawyer. *Gibson v. Bank of America, N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009). It is not the date that the plaintiff knew he had a particular claim. *Young v. S.C. Dep't of Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999). It also is not the date that the plaintiff develops a full-blown theory of recovery, or obtains actual knowledge of either the potential claim or the facts giving rise thereto. *Gibson*, 383 S.C. at 406, 680 S.E.2d at 782. Instead, "[t]he important date under the discovery rule is the date that a plaintiff discovers the injury If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury." *Wiggins*, 314 S.C. at 128, 442 S.E.2d at 170.

Plaintiffs' abuse of process claim against Defendants is time-barred, because the August 11 Email and Feldman's other August and September 2007 messages show that when those emails were written, Plaintiffs held the actual belief that their legal rights had been infringed by the MMA, and that they possessed claims against Defendants for their resulting damages. The August 11 Email plainly states:

1. We have at least Casey plus his Lawyer [Thompson] and Possibly Fogarty plus Chuck Thompson's Wife
2. As for Abuse of Process that is already fact (He had no right to speak to Press about trial matter..Violation of Civil Procedure.

(Mann 1168.) Feldman followed this August 11 Email with other messages exploring the claim elements of the abuse of process cause of action he believed Plaintiffs could assert against Defendants, and even the statute of limitations applicable to the claims he believed Plaintiffs held against Defendants. (Mann 1167, 1183, 22478, 22484.) These documents plainly show that when Feldman authored these emails, Plaintiffs actually held the beliefs that are operative to this Court's

finding that the statute of limitations on Plaintiffs' abuse of process claim had started running at least by the date of those messages: Plaintiffs believed that the MMA was an unfounded lawsuit interposed against them by Defendants with the intent to injure them; Plaintiffs believed they had been injured by the filing of the MMA; and Plaintiffs believed they had legal claims against Defendants as a result thereof.

Significantly, these actual beliefs of Plaintiffs that are stated and reflected in Feldman's August and September 2007 emails are entirely consistent with Plaintiffs' deposition testimony and other evidence in the case record, including, *inter alia*:

- When Plaintiffs were served with the MMA in May 2006, they did not believe even for "a second" that the lawsuit was a legitimate malpractice action, or that Casey was actually seeking legal redress for an injury that had been caused by Plaintiffs. (Feld. Dep. 296.)
- In May or early June 2006, when Plaintiffs first met with their counsel in the MMA after that lawsuit was filed, Feldman expressed his belief that the MMA was unfounded and meritless. (See King Dep. 70.)
- By July 2006, Plaintiffs had received a copy of the written note Fogarty made of his July 21, 2005, office visit with Casey (the "July 21, 2005 Note") in the documents Thompson produced in the MMA, and saw that the air embolism and brain damage theory stated in that record was the basis of the claims that were asserted against them in the MMA. (Feld. Dep. 8-9, 104, 191-192, 201-202, 296; Boscia Dep. 90, 98-99; King Dep. 74.) This solidified Plaintiffs' existing belief that the MMA lacked any merit, and caused them to believe that Fogarty had prepared the July 21, 2005 Note in order to have the MMA filed against Plaintiffs, with the goal of damaging their reputations. (Feld. Dep. 199-203; Boscia Dep. 99, 124.)
- Beginning early in the MMA and persisting throughout that case, Feldman advised Plaintiffs' MMA counsel that he believed Plaintiffs held counterclaims against Defendants for filing the MMA against them, and that he wanted to sue Defendants. (King Dep. 80-82.)
- As early as June 2007, Feldman had started performing research on tort claims he believed Plaintiffs might be able to assert against Defendants in relation to the MMA, including invasion of privacy. (Mann 84.)
- On August 11, 2007, Feldman sent Boscia the August 11 Email, which contained legal research Feldman had performed on the causes of action he believed Plaintiffs possessed against Defendants, and stated that Plaintiffs actually had causes of action against Defendants for abuse of process and conspiracy. (Mann 1168.)

- Feldman followed up his August 11 Email with additional emails on August 17 and September 27, 2007, containing additional legal research Feldman had performed regarding the abuse of process claim he believed Plaintiffs possessed against Defendants in relation to the MMA, and the statute of limitations applicable to Plaintiffs' claims. (Mann 1167, 1183, 22478, 22484.)
- On September 4, 2007, Plaintiffs' insurance counsel for the MMA, Spencer King, reported to Plaintiffs' insurer that, *inter alia*, Feldman and Fogarty were "bitter rivals" and that "Dr. Feldman, in this case, believes Dr. Fogarty is supporting Casey in this litigation." (JUA Docs. 389-391.)
- Similarly, on October 10, 2007, King reported:

Just for your information, I am copying you on some, but not all of the e-mails that Dr. Feldman has sent to me attempting to direct this litigation, most of which deal with ancillary issues, minutia such as the article in the Herald-Journal, all suits against competitors, etc., etc. I have directed him to seek legal advice of others (he has his own attorney) if he feels he has redress. My sole job is to defend this lawsuit. That does not include filing suit against anyone.

(King Docs. 1571.)

These documents and related case evidence are consistent with this Court's finding that the August 11 Email states Feldman's actual belief that Plaintiffs held claims against Defendants relating to the MMA, and contradict Plaintiffs' current argument to the contrary. Further, because the case record shows conclusively that when Feldman wrote the August 11 Email and his other August and September 2007 emails, Plaintiffs *actually had determined and believed* that their legal rights had been infringed by the MMA and that they held resultant claims against Defendants, this Court did not need to determine whether or when Plaintiffs *should have* discovered that the MMA allegedly infringed on their legal rights and damaged them. Likewise, because Plaintiffs held these actual beliefs in August and September 2007, the statute of limitations had started running on the claims Plaintiffs later asserted against Defendants in this lawsuit – regardless of whether Feldman had yet to determine conclusively what facts or damages Plaintiffs could allege in support of those claims.

For these reasons, the Court's Order properly granted summary judgment in Defendants'

favor, and Plaintiffs' argument regarding the August 11 Email does not warrant any alteration or amendment of that Order.

B. Plaintiffs' Abuse Of Process Claim Is Based On Events Occurring Prior To 2008.

Also deficient under Rule 59 is Plaintiffs' argument that the statute of limitations on their abuse of process claim could not have started running until 2008, because the acts that form the basis of their claim did not occur until 2008. In addition to re-arguing a position Plaintiffs previously presented in opposition to Defendants' summary judgment motion, Plaintiffs have not proved that the law applicable to this matter has changed, or that this Court made any factual errors in the Order. Instead, as shown below, the Court properly construed the case evidence in issuing its Order, because the record shows conclusively that Plaintiffs' abuse of process claim is based on alleged acts that Plaintiffs contend Defendants committed prior to and at the time the MMA was filed in May 2006, and that rendered the entire MMA an abuse of process. Plaintiffs' current argument stands directly contrary to the fact that Plaintiffs' abuse of process claim is based primarily on Fogarty's July 21, 2005 Note, and on Plaintiffs' belief that Fogarty fraudulently created that record for the purpose of causing the MMA to be filed against Plaintiffs, and damaging them. It is clear that Plaintiffs' abuse of process claim had accrued and that the statute of limitations for that claim had started to run no later August and September 2007, when Feldman wrote his emails stating Plaintiffs' actual belief that they held such a claim against Defendants.

In their attempt to avoid dismissal of their claim, Plaintiffs argue that this Court must find that Plaintiffs' cause of action arose in 2008 – a date less than three years before Plaintiffs filed this action in October 2010. Plaintiffs argue that 2008 is the earliest year in which their claim could have accrued and the statute of limitations on that claim could have started running, because Plaintiffs' Second Amended Complaint (SAC) alleges that it was during 2008 that:

- Plaintiffs discovered that Dr. Grace's notes stated that Fogarty had seen Casey at his research facility before the date of the July 21, 2005 Note;

- Fogarty testified during his deposition that his first office visit with Casey did not occur until July 21, 2005, when Fogarty wrote his July 21, 2005 Note;
- The records Fogarty produced at his deposition did not contain all of the records Plaintiffs believe Fogarty generated as to Casey; and
- Casey had an MRI under an assumed name that was arranged by Thompson.

(Pls.' Br. 4-6.) Plaintiffs also point to the Feldman Affidavit that Plaintiffs submitted on the eve of the Court's June 16, 2017, hearing on Defendants' summary judgment motion, in which Feldman declared, *inter alia*:

Plaintiffs' lawsuit is based upon the information received during the depositions of of [sic] Dr. Grace, Dr. Waid, Dr. Fogarty, and the fraudulent MRI, which all occurred in year [sic] 2008.

Feldman Aff. ¶ 22.

As discussed below, Plaintiffs' argument fails on procedural, legal, and factual grounds to assert any legitimate basis for the alteration or amendment of this Court's Order.

1. Plaintiffs' argument fails procedurally.

Plaintiffs' argument that this Court must base its summary judgment decision on the allegations of the SAC is incorrect procedurally, because in deciding Defendants' Rule 56 motion, the Court is not confined to Plaintiffs' pleadings, and instead must consider the record evidence – which in this case includes Plaintiffs' depositions and the parties' and third parties' document productions. *See* Rule 56, SCRCP. In addition, Plaintiffs' argument regarding the SAC ignores other paragraphs of that pleading which clearly state that Plaintiffs' claims are based on alleged acts Plaintiffs believe Defendants committed prior to the MMA's filing, including Fogarty's alleged act of fraudulently creating his July 21, 2005 Note for the purpose of instituting the MMA against Plaintiffs in 2006, in an effort to damage Plaintiffs. *See* SAC ¶¶ 26-28, 35-38, 76, 108.

2. Plaintiffs' argument fails legally.

Plaintiffs' argument that their abuse of process claim did not accrue for statute of limitations purposes until 2008 also fails legally. This is because in making that argument, Plaintiffs incorrectly state that the improper act element of an abuse of process claim cannot pre-date the issuance of the process that was allegedly abused. As discussed below, this position directly contravenes South Carolina law.

In support of their Motion, Plaintiffs assert that the filing of a lawsuit "legally fail[s]" to satisfy the willful act element of an abuse of process claim. (Pls.' Br. 2, 3.) Plaintiffs cite *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002), claiming that it holds that "the mere filing of a lawsuit does not give rise to a cause of action for an abuse of process claim," and that willful acts may occur only in the conduct of the proceeding at issue. (Pls.' Br. 2.) With this mis-statement of law, Plaintiffs seek to turn this Court's attention away – at least for statute of limitations purposes – from the alleged wrongful acts Plaintiffs have consistently contended that Defendants committed when Fogarty wrote his July 21, 2005 Note and the MMA was filed. Plaintiffs seek instead to focus the Court solely on alleged acts Plaintiffs claim occurred or were discovered in 2008, a date that falls within the limitations period.

South Carolina law refutes Plaintiffs' argument. "The tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *McBride v. School Dist. of Greenville County*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). Contrary to Plaintiffs' position, allegedly wrongful acts occurring before a lawsuit is filed can meet the willful act requirement of an abuse of process claim. In *Food Lion*, the Court of Appeals explained that "the willful act requirement is not limited to those abusive acts occurring after process has issued, but includes coercive or extortionate acts that cause process to issue in the first instance." *Id.* at 71, 567 S.E.2d at 254, n. 3 (emphasis added). The *Food Lion* Court then expressly held that "an abuse of process action may lie if a party prosecutes an 'entire

lawsuit' for collateral purposes." *Id.* 351 S.C. at 73, 567 S.E.2d at 255.

Likewise, in *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 212, 153 S.E.2d 693, 696 (1967), the South Carolina Supreme Court recognized that an entire lawsuit can constitute an abuse of process, when that lawsuit results from and is "tainted throughout" by improper acts that cause the process to issue in the first place. The court rejected the defendant's argument that its store manager's actions in detaining a shopper and demanding that the shopper pay for items the manager thought he had stolen on a prior occasion could not support an abuse of process claim, because those acts occurred before the manager called the police and had the shopper arrested. *Id.* The *Huggins* Court explained:

Appellant contends that since respondent's arrest in the store and his subsequent arrest on the warrant for shoplifting took place after the actions of its store manager, those actions did not constitute abuse of process because 'process' was not then in existence. The argument is unsound in our opinion. *Appellant cannot divorce itself from responsibility for the proceedings that resulted from the store manager's actions . . . all of which [proceedings]. . . were tainted throughout with the ulterior and improper purpose of coercing the respondent to pay for merchandise that the store manager 'felt' or suspected he had previously taken.*

Id.

The holdings of *Food Lion* and *Huggins* are clear. Alleged improper acts preceding the issuance of process can form the basis of an abuse of process claim, and can render the entirety of the lawsuit an abuse of process. In addition, the filing of a lawsuit itself can support an abuse of process claim, if a party prosecutes the entire action for collateral purposes. The record evidence in this case, as discussed herein, shows clearly that Plaintiffs' abuse of process claim against Defendants was based on alleged acts Plaintiffs claim occurred prior to and at the time of the MMA's filing in May 2006, and not just on acts allegedly occurring during or after 2008. This evidence also shows Plaintiffs' belief that the entirety of the MMA was improper, such that the filing of the MMA itself constituted an abuse of process. The Court properly considered that evidence in deciding that Plaintiffs' abuse of process claim accrued, and that the statute of

limitations on that claim expired, more than three years before Plaintiffs filed this action.

3. Plaintiffs' argument fails factually.

Plaintiffs' argument that their abuse of process claim cannot be time-barred because it is based on alleged acts that occurred in 2008 also fails factually. This is because the case record clearly establishes that Plaintiffs' abuse of process claim is based primarily on Fogarty's July 21, 2005 Note, and on Plaintiffs' belief that Fogarty fraudulently created that record for the purpose of instituting the MMA against Plaintiffs and damaging them. In fact, Plaintiffs believe the legal process was abused by the filing of the MMA, which they insist was instituted for the exclusive and improper purpose of embroiling them in litigation. Notably, neither Plaintiffs' Motion nor the Feldman Affidavit disclaims Plaintiffs' longstanding and articulated belief that Defendants abused the process of the MMA by filing that action on the July 21, 2005 Note as part of an alleged scheme to injure them. Likewise, Plaintiffs have not disavowed Feldman's deposition testimony in this case, which repeatedly and consistently identified Fogarty's July 21, 2005 Note and Defendants' filing of the MMA as the reason Plaintiffs have sued Defendants for abuse of process. Those facts thus remain part of the case record that this Court properly and fully considered in granting Defendants' Motion for Summary Judgment.

Nevertheless, Plaintiffs' Motion and the Feldman Affidavit attempt to direct this Court's attention away from the alleged acts Plaintiffs believe Defendants committed in 2005 and 2006 that form the primary basis of Plaintiffs' cause of action, and toward alleged misconduct Plaintiffs claim Defendants committed during the MMA in 2008. Plaintiffs, however, cannot selectively limit the facts this Court must consider in deciding Defendants' summary judgment motion, or in determining whether the Order contains some alleged factual error. This Court properly considered the entire case record in issuing its Order, and relied on the overwhelming evidence contained therein in concluding that the statute of limitations on Plaintiffs' abuse of process action claim expired more than three years before Plaintiffs filed this suit.

The Court's Order is entirely consistent with the evidence in this case, including the deposition testimony of Feldman, which shows conclusively that Plaintiffs' claim is based on alleged acts of Defendants that Plaintiffs believe occurred prior to and/or at the time the MMA was filed – and that it is not, as Plaintiffs currently argue, based exclusively on alleged misconduct Plaintiffs claim Defendants committed in 2008, during the pendency of the MMA. Multiple times during his deposition, Feldman testified that the reason Plaintiffs have sued Defendants is that Fogarty wrote the July 21, 2005 Note, and that Defendants then used that record to file the MMA against Plaintiffs in order to damage them. For one of many examples, Feldman testified:

A. We are suing Dr. Fogarty not for seeing Mr. Casey. We are suing Dr. Fogarty for fabricating the scheme. That's why we're suing him. Somehow you tried to say it's about medicine. It isn't. It has nothing to do with medicine.

Q. It's about what Dr. Fogarty wrote down. You're suing him because he wrote down something that was false, in your opinion, and used it as the basis of a lawsuit.

A. I don't know why, Ellen, you decided to put words in my mouth. For the past two hours I'm trying to explain to you that he did not write the note for the patient. He wrote the note for the lawyer. It is not a medical record. It's a legal record to file the lawsuit. That's what he's getting sued for. He got caught. Okay? He got caught in writing record, not for the medical purpose, but for legal purpose. A legal purpose was to hang his colleagues, to embroil them in multi-year litigation and to destroy their careers. That's what he's getting sued for.

Q. And you had told me earlier that in order to do that, in order to have a record to be used for a lawsuit, he had to put the word undoubtedly in there?

A. Yes.

Q. So, at its core, what Dr. Fogarty did wrong was he wrote that Mr. Casey undoubtedly had air embolism?

A. What do you mean wrong? He changed his note to become a linchpin of his lawsuit, Fogarty lawsuit. That lawsuit was Fogarty lawsuit. He needed a linchpin. He changed it. He changed it way after it was written.

Feldman Dep. p. 76, line 21 – p. 77, line 24. Feldman testified consistently with these statements on multiple occasions throughout his deposition. *See, e.g.*, Feldman Dep. p. 48, line 9 – p. 49, line

12; Feldman Dep. 71, line 17 - p. 72, line 13; Feldman Dep. p. 85, lines 13-20; Feldman Dep. p. 153, lines 3-21. Boscia has adopted Feldman's positions as his own in this case, and Plaintiffs have not asserted that Feldman's testimony was in any way false or inaccurate; so Plaintiffs lack factual support for their present claim that Plaintiffs have sued Defendants only for acts they allegedly committed during 2008.

In addition to Feldman's own deposition testimony, the record evidence supporting this Court's Order includes correspondence from Plaintiffs' MMA counsel, which further confirms that more than three years before Plaintiffs filed this lawsuit, they believed their legal rights had been infringed by Defendants as to the MMA, and they wanted to sue Defendants. King's September 4, 2007, report to Plaintiffs' insurer in the MMA clearly stated Feldman's belief that Fogarty was "supporting" Casey in the MMA, and King's October 10, 2007, report directly advised that Feldman desired to sue his "competitors" to seek redress he believed Plaintiffs were owed as a result of the MMA. (JUA Docs. 389-391.)

This evidence, and the case record as a whole, soundly refutes Plaintiffs' argument that their abuse of process claim is based only on acts that occurred in or after 2008, and that the Court therefore made a factual error in finding that Plaintiffs did not assert that cause of action within the three-year limitations period. The Court therefore rejects Plaintiffs' argument under Rule 59.

C. The Evidence Shows That Plaintiffs Were Aware Of The Alleged Acts Forming The Basis Of Their Abuse of Process Claim Prior To 2008.

This same record evidence defeats Plaintiffs' next argument in support of their Motion, which is that even if the alleged acts that form the basis of Plaintiffs' abuse of process claim did occur before 2008, Plaintiffs did not learn about those acts prior to that date, so the statute of limitations could not have started running before 2008. As stated in Plaintiffs' Reply Brief, "Plaintiffs did not know they had a cause of action for abuse of process until 2008." (Reply Br. 5.) This argument appears to be the same equitable tolling argument that Plaintiffs presented to the

Court during the summary judgment hearing, and that this Court rejected. Plaintiffs' disagreement with how this Court applied the law to their case does not support Plaintiffs' request for altering or amending the Order under Rule 59.

Further, Plaintiffs have not demonstrated and cannot show that this Court somehow misapprehended the law or facts relevant to this issue in rendering its Order. This is because the record evidence, and Plaintiffs' stipulations regarding it, show conclusively that Plaintiffs were aware no later than July 2006 of the operative, alleged facts that Plaintiffs themselves have testified form the basis of their abuse of process claim against Defendants, and on which they sued Defendants. This is because by July 2006, Plaintiffs had assessed the MMA as being meritless and interposed to harm them; they had received a copy of Fogarty's July 21, 2005 Note and recognized it as the basis of the MMA; and they believed they had been damaged by the MMA. (*See* Feld. Dep. 8-9, 104, 191-192, 201-202, 296; Boscia Dep. 90, 98-99; King Dep. 70, 74.) All of these facts were known to Plaintiffs when Feldman prepared his emails of August and September 2007, which documents state and reflect Plaintiffs' actual belief that they possessed causes of action against Defendants arising from the MMA. As the Supreme Court instructed in *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994), because Plaintiffs knew that they "had some claim against someone else, the statute of limitations [began] to run for all claims based on that injury."

For these reasons, the Court rejects Plaintiffs' argument and declines to alter or amend its Order.

D. The Order Need Not Identify A Particular Willful Act That Constitutes One Of The Elements Of Plaintiffs' Abuse of Process Claim.

Plaintiffs also are incorrect in arguing that the Court's Order should be altered or amended because the Court of Appeals instructed it to identify a particular bad or willful act that makes up one of the two required claim elements of Plaintiffs' abuse of process claim.

As an initial matter, and discussed above, Rule 52 does not require this Court to make any

specific findings in issuing a ruling on a Rule 56 motion. The fact that this Court chose to include in its Order some of the facts supporting its finding that the statute of limitations on Plaintiffs' claims started running no later than the dates Feldman wrote his August and September 2007 emails – approximately three years and one month before Plaintiffs filed this lawsuit – does not mean that this Court also must answer in its Order any particular fact or claim questions that Plaintiffs may request.

In addition, the Court of Appeals did not, as Plaintiffs argue, direct this Court to identify in any order the particular conduct that satisfied the willful act claim element of Plaintiffs' cause of action for abuse of process. When the Court of Appeals reversed the trial court's ruling on Defendants' motion to dismiss under Rule 12(b)(6), it found that the SAC did "not allege any specific point in time at which [Defendants] committed a willful and improper act in their use of the legal process." *See Feldman v. Casey*, 2014 WL 2969001 at *2 (S.C. Ct. App., June 30, 2014). The Court of Appeals expressly stated that its ruling on Defendants' motion to dismiss – which was based on the face of the SAC – did not prevent Defendants from "mov[ing] again for dismissal of this cause of action once the case [was] remanded to the circuit court." *Id.* n.2. The Court of Appeals did not instruct this Court that a summary judgment order based on the statute of limitations – or any other grounds – would have to specifically identify what "improper act" formed the basis of Plaintiffs' claims. This Court declines to do so, based on the terms of Rule 52.

Further, even if Rule 52 did not specifically exempt the Court from publishing findings of fact or conclusions of law in support of its ruling, no legitimate reason exists in fact or law for this Court to amend its Order to decide whether any particular act that Plaintiffs claim Defendants committed as to the MMA constitutes the "willful act" element of Plaintiffs' abuse of process claim. This is because such a ruling is wholly unnecessary to this Court's determination that, more than three years before Plaintiffs filed this suit, Plaintiffs formed, held, and stated in writing their actual belief that they had actionable claims against Defendants arising from the MMA.

In this case, the only facts determinative of that question are those reflecting when Plaintiffs formed the actual belief that they had legal claims against Defendants arising from the injuries Plaintiffs believed they had suffered in relation to the MMA. And, as discussed fully above, the record shows conclusively that Plaintiffs held and stated in writing those beliefs more than three years before they filed this lawsuit. Plaintiffs have consistently identified the allegedly improper and willful acts that they claim form the basis of their abuse of process claim. As detailed above, Feldman testified repeatedly his deposition that Plaintiffs' abuse of process claim is based on Fogarty's authoring the July 21, 2005 Note, and Defendants' using that note to cause Plaintiffs to be sued. Plaintiffs cannot legitimately argue that some other alleged acts occurring on some other dates form the exclusive basis for Plaintiffs' abuse of process claim against Defendants.

IV. Plaintiffs' Protest Regarding Feldman's Affidavit Does Not State Grounds For Altering Or Amending This Court's Ruling.

Plaintiffs' Motion, in addition to advancing the arguments discussed above, states that "Feldman takes exception to misrepresentations that his affidavit is a sham and inconsistent with his depositions testimony," and demands that "Feldman's assertions in his affidavit should be believed." (Pls. Br. 7.) This statement and demand do not advance any argument or grounds on which Plaintiffs' Motion could properly be based or granted under Rule 52 or Rule 59. Plaintiffs have not identified any factual error contained in the Order, much less argued that a change in controlling law has occurred, or that new evidence must be considered, or that a clear error of law has been committed. For this additional reason, the Court denies Plaintiffs' Motion.

Conclusion

The Order fully ruled on the statute of limitations issue raised by Defendants' Motion for Summary Judgment, and properly dismissed Plaintiffs' abuse of process claim on statute of limitations grounds. Plaintiffs' Motion has not advanced any arguments or positions justifying this Court's alteration or amendment of its Order under Rule 52 or 59. Plaintiffs' Motion for

Reconsideration is therefore denied.

END OF ORDER

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

ELECTRONICALLY FILED - 2017 Nov 14 10:10 AM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743



Spartanburg Common Pleas

Case Caption: Gregory J Feldman Md , plaintiff, et al VS William Mark Casey ,
defendant, et al
Case Number: 2010CP4205743
Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-11-13 15:39:51 page 19 of 19

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Gregory J. Feldman, MD, Joseph
A. Boscia III, MD, Upstate Lung and
Critical Care Specialists PC, and
Devendra T. Shantha, MD,

Plaintiffs,

vs.

William Mark Casey,
Ray E. "Chuck" Thompson, and
Charles M. Fogarty, MD.

Defendants.

2010-CP-42-5743

Complaint
(Jury Trial Demanded)

C. A. No. 2010-CP-42-_____

Now comes the Plaintiffs complaining of the Defendants and allege:

Venue and Jurisdictional Allegations

1. That Plaintiffs are citizens of the County of Spartanburg, State of South Carolina.
2. Defendants are, upon information and belief, citizens of the County of Spartanburg, State of South Carolina.
3. Venue and jurisdiction are vested in the Circuit Court of the Seventh Judicial Circuit in and for Spartanburg County, South Carolina.

CLERK OF COURT
SPARTANBURG COUNTY
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Factual Allegations

4. The medical malpractice action from which this complaint arises was captioned *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2006-CP-42-1728.

5. In the medical malpractice action, William Mark Casey through his attorney, Mr. Ray E. "Chuck" Thompson, alleged Doctors Feldman, Boscia and Shantha breached the standard of care respecting his medical treatment and as a result, Mr. Casey suffered various injuries including traumatic brain damage.

6. Mr. Casey sought actual and punitive damages arising out of certain treatment and care, which took place by the Doctors from May 28, 2004 through June 3, 2004.

7. Essentially, Mr. Casey was admitted to Spartanburg Regional Medical Center suffering from chest pain occurring while at his workplace at Michelin on May 28, 2004.

8. As part of the medical work-up at the emergency room, a chest x-ray was done on that date which revealed a small metallic density foreign body, appearing to be within Mr. Casey's airway.

9. Accordingly, Dr. Boscia performed a flexible bronchoscopy, which revealed abnormal tissue within Mr. Casey's airway, but did not result in retrieval of a foreign object.

10. Thereafter, Dr. Boscia referred Mr. Casey to his partner, Dr. Feldman, for a rigid bronchoscopy.

11. Mr. Casey was sent home until June 3, 2004 when he was admitted for the rigid bronchoscopy.

12. Dr. Feldman performed the rigid bronchoscopy with Dr. Shantha, who was the attending anesthesiologist.

13. At the close of the rigid bronchoscopy, Mr. Casey suffered a pneumothorax, a known risk, requiring his stay in the hospital through June 6, 2004.

14. Following his release from the hospital, Mr. Casey began to complain of pacing the floor, forgetfulness, short-term memory loss, personality changes and total disability.

15. After Doctors Feldman and Boscia would not support Mr. Casey's disability claims, Mr. Casey then came to be under the care of Charles Fogarty, M.D., another Spartanburg Pulmonologist.

16. Mr. Casey, Mr. Thompson and Dr. Fogarty asserted that as a result of the rigid bronchoscopy, Mr. Casey suffered a permanent brain injury due to bubbles or air emboli migrating to Mr. Casey's brain.

17. The office notes of Joseph Grace, Ph.D., a psychologist and therapist in Spartanburg who has seen Mr. Casey on a semi-weekly basis since his alleged injuries were allowed into evidence in the medical malpractice action by agreement of the parties.

18. Contrary to the claims of Mr. Casey, the notes of Dr. Grace show that Mr. Casey was interacting with females and carrying on an active social life within the first year to year and a half after his alleged injuries.

19. Mr. Casey and his attorney, Mr. Thompson, knew of this information contained within paragraph number 18.

20. Additionally, Dr. Grace's notes show that Mr. Casey complained bitterly about the diminishment of his skills with his short game in playing golf and that he simply did not enjoy golf as much as he did before.

21. However, Mr. Casey's golf handicap printout from the South Carolina Golf Association showed that his golf handicap was lower after the supposed injury than it was prior thereto.

22. It was clear Mr. Casey continued to play golf with a reasonable degree of frequency after the treatment and care by Doctors Feldman, Boscia and Shantha.

23. Mr. Casey and his attorney, Mr. Thompson, knew of this information contained within paragraph numbers 20, 21 and 22.

24. The notes of Dr. Grace also indicated that Mr. Casey had additional stressors at work in his life which pre-existed any treatment and care by Doctors Feldman, Boscia and Shantha and which experts acknowledged would be the type forces which induce depression.

25. Some examples where that Mr. Casey had undergone a separation from his wife of many years, his teenage children were engaging in troublesome behavior, he had financial stresses which had caused the sale of his home on the golf course and he for many years had continued to work on an extremely demanding job which required large amounts of narcotic and non-narcotic pain medication to get through the day.

26. Mr. Casey and his attorney, Mr. Thompson, knew of this information contained within paragraph number 24 and 25.

27. Jeffrey Smith, M.D., a psychiatrist who treated Mr. Casey subsequent to the alleged negligence, testified he saw no permanent psychiatric or behavioral injury, but only anxiety and depression and that Mr. Casey had not been honest with him about his pre-existing depression.

28. After a period of depression, Dr. Smith indicated Mr. Casey was able to return to the workforce in early 2006.

29. Mr. Casey and his attorney, Mr. Thompson, knew of this information contained within paragraph numbers 27 and 28.

30. Before seeing Mr. Casey as a patient within his medical practice, Dr. Fogarty incredibly hatched a theory that Mr. Casey had suffered a brain injury, despite being a Pulmonologist and not a Neurologist or any other specialist relating to such brain injuries.

31. That theory was cultivated by Dr. Fogarty along with a number of allegations of deviations from the standard of care by Doctors Feldman, Boscia and Shantha and suit was filed in 2006.

32. It is important to note that an admitted fact of the medical malpractice action was that Dr. Fogarty's theories of Mr. Casey's alleged injuries were unsupported by any medical literature.

33. Dr. Fogarty's role on behalf of Mr. Casey far exceeded the reasonable role of a treating physician or expert witness and he became an active co-conspirator and catalyst of the litigation team, thereby seeking to ensure success for the nefarious venture.

34. Dr. Fogarty attempted to hide his role and level of involvement in the medical malpractice action by making material misrepresentations during his deposition.

35. Dr Fogarty was well known by Doctors Feldman and Boscia, prior to the medical malpractice action.

36. Before Doctors Feldman and Boscia became partners within Upstate Lung and Critical Care Specialists, Doctors Feldman and Fogarty had been partners for a number of years.

37. The Feldman/Fogarty separation from joint medical practice had been acrimonious.

38. In addition, Doctors Feldman and Boscia had formed a pharmaceutical research company, which Dr. Fogarty viewed as competition to his own medical practice and research company.

39. Prior to the medical malpractice action, Dr. Fogarty actively sought to interfere with Doctors Feldman's and Boscia's research company and their patient care.

40. During the medical malpractice action, Mr. Thompson, Mr. Casey's attorney, arranged for a diagnostic medical test (MRI) to be performed on Mr. Casey's brain under a fictitious name and birth date.

41. Mr. Thompson arranged for the test through his brother-in-law, a North Carolina general surgeon having no connection to Mr. Casey or the case, to be performed at an out of state hospital.

42. The Radiologist's report of the MRI test results stated that the MRI was negative.

43. Mr. Thompson received this report, and then continued to litigate the matter for eighteen months thereafter without revealing the MRI test or the radiology report.

44. To maintain the secrecy of the MRI test and findings, Mr. Thompson instructed Mr. Casey to deny having any diagnostic medical tests, including specifically, the MRI, in his sworn deposition testimony less than seven months after the MRI was performed and Mr. Casey did so.

45. Ultimately, the Doctors' counsel fortuitously learned of the test by virtue of an anonymous letter sent to attorney Spencer King.

46. The MRI test results were very important, inasmuch as it would tend to negate the theory that Mr. Casey suffered irreversible brain damage on June 3, 2004.

47. It was a material, important piece of evidence to the Doctors, which was withheld, concealed, and secreted from them by Mr. Casey and his counsel, with a very high degree of impropriety.

48. By the time the Doctors' counsel received the Casey affidavit confirming the MRI and the results of the MRI, in excess of thirty depositions had been taken.

49. These depositions included all of the Doctors, eight treating physicians and five medical experts.

50. The medical malpractice action was tried before the Court and a jury in the Spartanburg County Court of Common Pleas, commencing May 11, 2010.

51. After 14 trial days before the Court and spanning three weeks, the jury returned a verdict in favor of the Doctors on May 28, 2010 after deliberating between two and two and one-half hours.

52. Prior to the trial, Dr. Shantha had been dismissed from proceedings by a motion for summary judgment.

FIRST CAUSE OF ACTION
(Abuse of Process)

53. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith as if each is set forth *in toto* hereunder.

54. Defendants have misused the legal process of the medical malpractice action in an attempt to accomplish a purpose for which said proceedings were not allowed by law, specifically, the assassination of Plaintiffs' reputations by publicizing serious and unfounded allegations against them, and the attempted misuse of the legal process for personal, professional, and economic gain.

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55. Defendants have acted with malice and conscious disregard for the rights of the Plaintiffs by committing willful acts of submission of false statements and attempted suppression of evidence, which was required to be produced by the process of litigation, in an effort to injure the Plaintiffs.

56. Plaintiffs have suffered damages, loss and harm, including but not limited to their reputations, money, emotional tranquility, and privacy.

57. That said damages, loss and harm was the proximate and legal result of the misuse of such legal process aforementioned.

SECOND CAUSE OF ACTION
(Civil Conspiracy)

58. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

59. Defendants joined together to injure and damage the Plaintiffs. The common and shared purpose of the enterprise, or conspirators, was to economically reward themselves at the expense of the Plaintiffs through the misuse of the medical malpractice action.

60. Defendants sought monetary gain by way of settlement or judgment. Further, Defendant Fogarty also sought to professionally damage the Plaintiffs, thereby increasing his own business value and productivity at the expense of the Plaintiffs' businesses and their productivity.

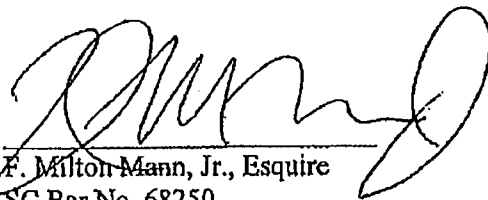
61. The Defendants' actions resulted in damages, including, but not limited to, loss of productivity, attorneys' fees and costs, emotional distress, damage to professional Plaintiffs' reputations, accounting expenses and further damages to be ascertained through this lawsuit.

WHEREFORE, plaintiff prays that this court enter judgment:

- a. For a jury trial to be conducted in this matter;
- a. For actual and compensatory damages in an amount to be determined by the jury;
- b. For punitive damages in an amount to be determined by the jury; and
- c. For the cost of this action, including reasonable attorney's fees and for other such relief as appears just and equitable in the premises.

F. MILTON MANN, JR
ATTORNEY FOR PLAINTIFF

BY:


F. Milton Mann, Jr., Esquire
SC Bar No. 68250
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
(864) 208-0359

October 27, 2010

Spartanburg, South Carolina

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SPARTANBURG COUNTY
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M. HOPE BLACKWELL

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Gregory J. Feldman, MD, Joseph
A. Boscia III, MD, Upstate Lung and
Critical Care Specialists PC, and
Devendra Shantha, MD,

Plaintiffs,

vs.

William Mark Casey,
Ray E. "Chuck" Thompson, and
Charles M. Fogarty, MD,

Defendants.

Amended Complaint
(Jury Trial Demanded)

C. A. No. 2010-CP-42-5743

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CLERK OF COURT
CLERK OF COURT

Now comes the Plaintiffs complaining of the Defendants and allege:

Venue and Jurisdictional Allegations

1. That Plaintiffs are citizens of the County of Spartanburg, State of South Carolina.
2. Defendants are, upon information and belief, citizens of the County of Spartanburg, State of South Carolina.
3. Venue and jurisdiction are vested in the Circuit Court of the Seventh Judicial Circuit in and for Spartanburg County, South Carolina.

Factual Allegations

4. The medical malpractice action out of which this complaint arose was captioned *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2006-CP-42-1728.

5. In the medical malpractice action, Mr. William Mark Casey through his attorney, Mr. Ray E. "Chuck" Thompson, alleged Drs. Feldman, Boscia and Shantha breached the standard of care respecting his medical treatment and as a result of which Mr. Casey suffered permanent brain damage that rendered him totally disabled.

6. Mr. Casey sought actual and punitive damages arising out of certain treatment and care, which took place at the hands of the doctors from the period May 28, 2004 through June 3, 2004, that allegedly caused a profound neurological injury and permanent disability.

7. Essentially, Mr. Casey was admitted to Spartanburg Regional Medical Center with chest pain from his workplace at Michelin on May 28, 2004.

8. As part of the work-up, a chest x-ray was done on that date which revealed a small metallic density foreign body and clinical correlation was suggested.

9. Accordingly, Dr. Boscia performed a flexible bronchoscopy, which did not result in retrieval of a foreign object, but did reveal abnormal tissue.

10. Thereafter, Dr. Boscia referred Mr. Casey to his partner, Dr. Feldman, for a rigid bronchoscopy.

11. Mr. Casey was sent home until several days later on June 3, 2004 when he was admitted for the rigid bronchoscopy.

12. Dr. Feldman performed that procedure with Dr. Shantha, who was the attending anesthesiologist.

13. At the close of the rigid bronchoscopy, Mr. Casey suffered a pneumothorax, a known risk, and was required to stay in the hospital through June 6, 2004.

14. Mr. Casey contended that as a result of the rigid bronchoscopy, he suffered irreversible and "permanent brain injury" as a result of the pneumothorax.

15. He claims, *inter alia*, that bubbles or air emboli migrated to his brain and caused his injury.

16. Following his release from the hospital, Mr. Casey began to complain of pacing the floor, forgetfulness, short-term memory loss and personality changes.

17. Based upon the assertions within Paragraph 16, Mr. Casey sought permanent disability from the Social Security Administration and Aetna Disability Insurance.

18. Mr. Casey came under the care of Charles Fogarty, M.D., another Spartanburg Pulmonologist, after Drs. Feldman and Boscia would not support Mr. Casey's disability claims.

19. To their misfortunes, Dr. Fogarty was well known by Drs. Feldman and Boscia prior to the medical malpractice action in a very negative way.

20. Before Drs. Feldman and Boscia became partners within Upstate Lung and Critical Care Specialists, PC, Drs. Feldman and Fogarty had been partners for a number of years.

21. The Feldman/Fogarty separation from joint medical practice was so acrimonious, in 2000, the event was very well known within the medical community of Spartanburg.

22. In September of 2004, Drs. Feldman and Boscia formed a pharmaceutical research company, which Dr. Fogarty viewed as a threat to his own medical practice and research company.

23. Prior to the medical malpractice action, Dr. Fogarty actively sought to interfere with Drs. Feldman's and Boscia's research company and their patient care.

24. As a result of Dr. Fogarty's efforts to hamper the business efforts of Drs. Feldman and Boscia, in 2005 they were forced to sue Dr. Fogarty to clear their names and in an effort to prevent further damage to their reputations and business.

25. The Complaint was captioned *S. Carolina Pharmaceutical Research v. Charles M. Fogarty, M.D.*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2005-CP-42-1085.

26. During the *S. Carolina* lawsuit, Dr. Fogarty, in a couple of ways, saw his involvement with Mr. Casey as a golden opportunity to retaliate against Drs. Feldman and Boscia for his perceived wrongs of them starting a research company and filing suit against him.

27. First, Dr. Fogarty continued masterminding the generation of the unfounded "permanent brain injury" claims to injure his business competitors by damage to their reputation and through bogging them down for years in the protracted litigation defending against his scheme.

(28.) The "permanent brain injury" theory, along with a number of associated allegations of causation due to alleged deviations from the standard of care by Drs. Feldman, Boscia and Shantha ("the scheme"), was developed by Dr. Fogarty from sometime in 2004 until he finally published it in the medical records on July 21, 2005.

29. Second, Dr. Fogarty directly benefited himself by derailing his business competitors' efforts in the *S. Carolina* litigation due to the tremendous pressure created in their lives by the publicizing of the baseless allegations of a "permanent brain injury" within the destructive scheme.

30. Dr. Shantha and ULCCS were merely collateral damage and included in the medical malpractice case as parties in an effort to damage Drs. Feldman and Bosola.

31. Despite a total lack of objective medical investigation into Mr. Casey's alleged neurological condition and having no qualifications within any neurological specialty, Dr. Fogarty hatched a theory that Mr. Casey had suffered a cerebral air embolism ("permanent brain injury"), thereby causing the personality changes and cognitive deficits of which Mr. Casey complained.

32. It is important to note that an admitted fact of the medical malpractice action was that Dr. Fogarty's theories of Mr. Casey's "permanent brain injury" were unsupported by any medical literature. In addition, it was uncontroverted that Mr. Casey suffered no permanent lung damage as a result of the procedures.

33. Dr. Fogarty performed no basic neurological examination of Mr. Casey.

34. Under Dr. Fogarty's "care," Mr. Casey was not referred to any neurological expert nor did Dr. Fogarty order an MRI study of the brain.

35. Although taking the lead in Mr. Casey's medical treatment and being the architect of the "permanent brain injury" scheme, Dr. Fogarty did not review any objective neurological test results for Mr. Casey.

36. Despite the complete absence of any objective support of the "permanent brain injury" scheme, Dr. Fogarty ensured that Mr. Casey's medical records prominently and categorically reflected his baseless injury assertions by inserting this in his office notes dated July 21, 2005.

37. At all times material, Dr. Fogarty intended for his baseless injury assertions within Mr. Casey's medical records to be the basis for Mr. Casey to claim and receive disability benefits.

38. Furthermore, leading up to and during the litigation, Dr. Fogarty intended for his baseless permanent injury fabrications within Mr. Casey's medical records to be the cornerstone of orchestrated "expert" testimony that was designed to be used in ensuring the survivability of the medical malpractice case for as long as possible.

39. Dr. Fogarty actively sought to mislead the doctors and their attorneys of his level and the purpose of involvement in the litigation by seeing Mr. Casey within his research facility as opposed to his medical practice, which would have created medical records that could have been discovered.

40. In addition, Dr. Fogarty conducted complex medical testing on Mr. Casey at his research facility, yet he did not maintain the medical records in an effort to conceal the purpose of his involvement and in order to harm the doctors' discovery efforts thereby prolonging the medical malpractice case.

41. Until his deposition on December 22, 2008, Dr. Fogarty was very successful in shielding his role in the "permanent brain injury" scheme by his active efforts to obstruct and evade his deposition.

42. Dr. Fogarty and Mr. Thompson went to great lengths to ensure that Dr. Fogarty's role as an "expert" witness was concealed until the 11th hour from the doctors and their attorneys to further frustrate discovery efforts and to hide his level of involvement in the execution of the "permanent brain injury" scheme.

43. Despite the best efforts of Dr. Fogarty and Mr. Thompson in implementing the scheme, Mr. Casey testified during his deposition that no one told him he had a brain injury.

44. Even throughout his deposition, Dr. Fogarty continued his attempts to hide his role as a mastermind of the lawsuit and his level of involvement in the medical malpractice action by making material misrepresentations.

45. A more perfect cast of individuals could not have been available for Dr. Fogarty's use in his efforts of destruction aimed primarily at Drs. Feldman and Bosola.

46. Mr. Thompson's fiancée and agent worked within Dr. Fogarty's clinical practice, assisting in giving Dr. Fogarty and Mr. Thompson unfettered access to each other, off the record and behind the scene, which they used to full advantage in their formation and pursuit of the scheme.

47. Mr. Casey's sister worked at the hospital for more than a decade and knew very well the animosity between Drs. Fogarty and Feldman.

48. It was a simple matter in 2004, when Dr. Fogarty got wind of Mr. Casey's procedure, for him to convince Mr. Casey's sister to allow him to review some of the medical records and offer his practice group's help, ensuring Dr. Fogarty the leadership role in the "permanent brain injury" scheme.

49. Yet, that is not all of the connections between the Defendants. Mr. Thompson and Mr. Casey's sister dated in high school. Further, Mr. Thompson and Mr. Casey played team sports together in high school.

50. In summary, the Defendants were well acquainted with each other for years prior to their schemes against Drs. Feldman and Bosola.

51. Dr. Fogarty and Mr. Thompson willingly implemented Dr. Fogarty's "permanent brain injury" baseless claim with ruthless disregard for the rights of the Plaintiffs.

52. Prior to being brought to SRHS on May 28, 2004, Mr. Casey worked a very physically demanding job on the tire production line of Michelin.

53. At middle age, Mr. Casey was facing burn out from the punishing work and the natural aging process of his body.

54. In addition, Mr. Casey was struggling in several other areas of his life: financially due to excessive debt; going through a divorce; and having trouble with his children. Each of which were significant stressors in his life.

55. Before May 28, 2004, Mr. Casey suffered from depression; was taking pain medications; and had abused prescription drugs. Each fact is clearly documented within Mr. Casey's medical records.

56. Immediately following his hospitalization in June of 2004, Mr. Casey actively sought increases in his pain medications and support for his disability claims from Drs. Feldman and Boscia. These requests of Mr. Casey were not medically supported and therefore were denied.

57. Months after the hospitalization, Mr. Casey started to claim that he could no longer play golf or have relationships with women.

58. In 2004 and in addition to requesting "help" from Dr. Fogarty, arrangements were made for Mr. Casey to start seeking treatment from Joseph Grace, Ph.D., a psychologist and therapist in Spartanburg.

59. Dr. Grace saw Mr. Casey, on a semi-weekly basis following his alleged "permanent brain injury," and his medical records were in evidence in the medical malpractice action by agreement of the parties.

60. Contrary to the claims of Mr. Casey, the notes of Dr. Grace show that he was interacting with females and carrying on an active social life within the first year or year and a half after his supposed injury.

61. Additionally, Dr. Grace's notes show that Mr. Casey complained bitterly about the diminishment of his skills with his short game in playing golf and that he simply did not enjoy golf as much as he did before.

62. However, Mr. Casey's golf handicap printout from the South Carolina Golf Association showed that his golf handicap was lower after the supposed injury than it was prior thereto.

63. Clearly, Mr. Casey continued to play golf with a reasonable degree of frequency after the treatment and care by Drs. Feldman, Bosola and Shantha.

64. The notes of Dr. Grace also indicated that Mr. Casey had additional stressors at work in his life which pre-existed any treatment and care by Drs. Feldman, Bosola and Shantha and which experts acknowledged to be the type of forces that induce depression.

65. For example and from the notes of Dr. Grace, Mr. Casey had undergone a separation from his wife of many years, his teenage children were engaging in troublesome behavior, he had financial stresses which had caused the sale of his home on the golf course and he for many years had continued to work on an extremely demanding job which required large amounts of narcotic and non-narcotic pain medication to get through the day.

66. Jeffrey Smith, M.D., a psychiatrist who treated Mr. Casey subsequent to the alleged negligence, testified he saw no permanent psychiatric or behavioral injury, but only anxiety and depression and that Mr. Casey had not been honest with him about his pre-existing depression.

67. After a period of depression, Dr. Smith indicated Mr. Casey was able to return to the workforce in early 2006.

68. It is a well-accepted fact by the medical and scientific communities that a known side effect of narcotic pain medication misuse is depression or the worsening of preexisting depression.

69. For an unexplained reason within Mr. Casey's medical records, Dr. Fogarty abruptly doubled Mr. Casey's Hydrocodone prescription in February of 2006.

70. Hydrocodone is a narcotic pain medication and is one of the most widely abused prescription drugs in the United States.

71. Despite mandated state and federal regulations, Dr. Fogarty prescribed narcotics to Mr. Casey without the required medical documentation within Mr. Casey's medical records.

72. Mr. Casey was willing to do whatever it took to ensure his narcotic source and obtain disability benefits to keep him from returning to the backbreaking work at Michelin.

73. With a sure supply of narcotic, Mr. Casey was free to seek help obtaining disability monies.

74. Prior to the medical malpractice litigation, Mr. Casey's disability benefits were denied from the Social Security Administration on July 14, 2005 and Aetna Insurance Company for long-term benefits on May 28, 2006.

75. Following the denials, Mr. Casey turned to Dr. Fogarty and Mr. Thompson for help with his money issues and disability claim problems.

76. To "help" Mr. Casey and Mr. Thompson, as previously stated in the complaint, Dr. Fogarty ensured the development of the "permanent brain injury" scheme, which he infused into Mr. Casey's medical records for their use in the disability appeal and medical malpractice case.

77. In an effort to meet Mr. Casey's needs, thereby ensuring his continuation in the scheme, Mr. Thompson became active in seeking a reversal of his Aetna disability denials, despite not being his attorney in such matters because the denials did not suit his personal needs or agenda.

78. Mr. Thompson's initial efforts centered around the purposeful redaction of Mr. Casey's medical records that were provided to both treating physicians and retained expert witness with willful intent to make it appear that Mr. Casey suffered from a "permanent brain injury."

79. Despite the team's best efforts, Aetna fully rejected Mr. Casey's disability claim on October 13, 2006 in a letter addressed to Mr. Thompson.

80. In the rejection package, Aetna gave the team an analysis of the viability of the "permanent brain injury" claim, which included detailed reports from a Consulting Neuropsychologist and a Board Certified Neurologist.

81. In summary of the rejection, Aetna said that the speculations of Dr. Fogarty were not supported by objective neurological evidence or abnormal neurological examination findings.

82. Instead of heeding Aetna's review and addressing the stated concerns about the lack of any support for the existence of a legitimate "permanent brain injury" claim, the team continues to move forward with the medical malpractice scheme and fails to produce the Aetna report during discovery.

83. The Doctors' attorneys had to seek assistance from the Court to obtain a release from Mr. Casey to request the records directly from Aetna as opposed to Mr. Thompson merely turning over the report.

84. Mr. Thompson did place importance on one piece of information within the Aetna report, the need for an MRI study of the brain.

85. However, Mr. Thompson knew full well, based on the Aetna report, that a negative MRI study would be a death nail for the scheme.

86. Therefore in the cover of secrecy, Mr. Thompson, set the stage for an MRI to be performed on Mr. Casey's brain under a fictitious name and date of birth.

87. Mr. Thompson arranged for the test through his brother-in-law, a North Carolina general surgeon having no connection to Mr. Casey or the case, to be performed at an out of state hospital.

88. The Radiologist's report of the MRI test results stated that the MRI was negative.

89. Mr. Thompson received this report, and then continued to litigate the matter for eighteen months thereafter without revealing the MRI test or the radiology report.

90. To maintain the secrecy of the MRI test and findings, Mr. Thompson instructed his client to deny having any diagnostic medical tests, including specifically, the MRI, in his sworn deposition testimony less than seven months after the MRI was performed.

91. At all times material, Mr. Thompson despite being well aware of his duties to the Court pursuant to Rule 3.3, Candor Toward The Tribunal, willfully sought to injure the Plaintiffs by instructing Mr. Casey to lie under oath and by Mr. Thompson's failure to protect the candor of the proceedings within the medical malpractice case.

92. Ultimately, the Doctors' counsel only learned of the test fortuitously by virtue of an anonymous letter sent to attorney Spencer King.

93. The MRI test results were very important, inasmuch as it exposed the truth and totally confirmed the fact that Mr. Casey's "permanent brain injury" claim was nothing more than a scheme.

94. It was a materially important piece of evidence to the Doctors, which was withheld, concealed, and secreted from them by Mr. Casey and Mr. Thompson, with a very high degree of impropriety.

95. By the time the Doctors' counsel received the Casey affidavit confirming the MRI and the results of the MRI, in excess of thirty depositions had been taken.

96. This included all of the Doctors, eight treating physicians and five medical experts.

97. Once the MRI test and findings were brought into the light of day, Mr. Thompson continued the litigation in an effort to forestall an ethics complaint by Drs. Feldman and Bosola.

98. In addition, once the MRI test and findings were brought into the light of day, Mr. Thompson and Mr. Casey continued the litigation in an effort to forestall a counter lawsuit from Drs. Feldman and Bosola, thereby serving the agenda of Dr. Fogarty as well.

99. The medical malpractice action was tried before the Court and a jury in the Spartanburg County Court of Common Pleas, commencing May 11, 2010.

100. After 14 trial days, the jury returned a verdict in favor of the Doctors on May 28, 2010 after deliberating between two and two and one-half hours.

101. Mr. Thompson knew the lack of validity of Dr. Fogarty's theories respecting any deviation of the standard of care by Dr. Shantha, yet still sought to gain by the publishing and disseminating of the fraudulent theories of injuries by willfully prolonging the medical malpractice litigation.

102. Prior to the trial, Dr. Shantha had been dismissed from proceedings by a motion for summary judgment.

FIRST CAUSE OF ACTION
(Abuse of Process)

103. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

104. Defendants have misused the legal process of the medical malpractice action in an attempt to accomplish purposes for which said proceedings were not allowed by law, specifically, as set out below:

105. Mr. Casey, at all times material, knew he did not have a "permanent brain injury" and that the scheme was simply developed for the purposes of the lawsuit and not for any treatment or medical purpose.

106. Mr. Casey willfully used the legal proceeding of the medical malpractice claim in an effort to continue to obtain narcotic drugs by the submission of false information about his physical condition and lying under oath.

107. Mr. Casey willfully used the legal proceeding of the medical malpractice claim in an effort to continue receiving disability benefits by the submission of false information about his physical condition within his lawsuit/scheme.

108. Dr. Fogarty willfully used the legal proceedings of the medical malpractice claim, which he initiated, in an effort to damage the reputations of Drs. Feldman and Boscia by publishing and disseminating fraudulent theories of injuries of Mr. Casey and thereby materially prolonging the litigation for his direct benefit.

109. Dr. Fogarty willfully used the legal proceedings of the medical malpractice claim in an effort to economically damage the business interests of Drs. Feldman and Boscia in S. Carolina Pharmaceutical Research by publishing and disseminating fraudulent theories of injuries of Mr. Casey and by materially misrepresenting his involvement on behalf of the litigation team.

110. Mr. Thompson willfully used the legal proceedings to develop bogus "expert" witness testimony by the misleading redaction of medical records, which Mr. Thompson then used to seek Mr. Casey's disability benefits and to unnecessarily prolong the litigation.

111. Mr. Thompson willfully abused the legal process by using his court appointed powers to subvert the disability claims process for the purposes of manufacturing damages for use in the medical malpractice litigation scheme.

112. In addition, Mr. Thompson knew the lack of validity of Dr. Fogarty's theories respecting the "permanent brain injury" scheme, yet still sought to gain by the publishing and disseminating of the fraudulent theories of injuries by willfully prolonging the medical malpractice litigation.

113. Defendant Thompson willfully used the legal proceedings of the medical malpractice case in an effort to escape or forestall a report of his ethical breach to the South Carolina Bar respecting the suborning of perjury by his client.

114. Defendant Thompson willfully used the legal proceedings of the medical malpractice case in an effort to escape or forestall a counter lawsuit being filed against himself, Mr. Casey and Dr. Fogarty by continuing the litigation with full knowledge as to the lack of truthfulness in the "permanent brain injury" scheme and assertions of disability.

115. Plaintiffs have suffered damages, loss and harm, including but not limited to their reputations, money, emotional tranquility, and privacy.

116. Such damages, loss and harm were the proximate and legal result of the misuse of such legal process aforementioned.

SECOND CAUSE OF ACTION
(Civil Conspiracy)

117. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

118. Dr. Fogarty's role on behalf of Mr. Casey far exceeded the reasonable role of a treating physician or expert witness and at all times material, Mr. Thompson was well aware of this fact, even seeking to help him with his efforts.

119. Dr. Fogarty was the author of the "permanent brain injury" scheme, thereby seeking to ensure success for the venture in damaging Drs. Feldman and Boscia by unfairly trapping them in senseless litigation for years and at all times material, Mr. Thompson was well aware of this fact, even seeking to help him with his efforts.

120. Defendant Fogarty sought to professionally damage Drs. Feldman and Boscia, thereby increasing his own business value and productivity at the expense of the Plaintiffs' businesses and their loss of productivity and at all times material, Mr. Thompson was well aware of this fact, even seeking to help him with his efforts.

121. Dr. Fogarty was well aware that he was indispensable for Mr. Thompson in their common scheme to manufacture a pretext for the lawsuit and disability claim.

122. Further, Dr. Fogarty knew that Mr. Thompson would willingly turn a blind eye to any scheme to forward their abusing agenda regardless of how improbable the allegation of permanent injury may be.

123. Mr. Thompson was well aware that he was indispensable for Dr. Fogarty's destructive agenda in their common scheme to manufacture a pretext for claiming "damages" in the lawsuit and disability claim.

124. Mr. Thompson was very well aware that Dr. Fogarty would go to any length to advance his improbable and malicious scheme in an effort to hurt and to retaliate against Drs. Feldman and Boscia.

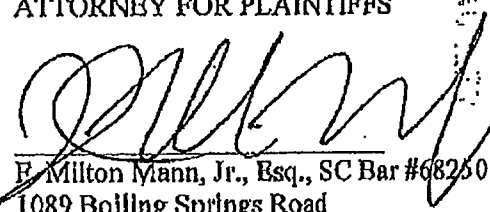
125. The Defendants' concerted efforts directly and proximately resulted in damages, including, but not limited to, loss of productivity, attorneys' fees and costs, emotional distress, damage to professional Plaintiffs' reputations, accounting expenses and further damages to be ascertained through this lawsuit.

WHEREFORE, plaintiff prays that this court enter judgment:

- a. For a jury trial to be conducted in this matter;
- b. For actual and compensatory damages in an amount to be determined by the jury;
- c. For punitive damages in an amount to be determined by the jury; and
- d. For the cost of this action, including reasonable attorney's fees and for other such relief as appears just and equitable in the premises.

F. MILTON MANN, JR.
ATTORNEY FOR PLAINTIFFS

BY:


F. Milton Mann, Jr., Esq., SC Bar #68250
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
(864) 208-0359

June 16th, 2011
Spartanburg, South Carolina

CERTIFICATE OF SERVICE

I, P. Milton Mann, Jr., Esq., attorney for the Plaintiff, Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Upstate Lung and Critical Care Specialists, PC and Devendar T. Shantha, M.D., do hereby certify that I have served a copy of the pleading(s) hereinbelow specified by placing copies in the U.S. Mail, first class postage prepaid, to the following address(es):

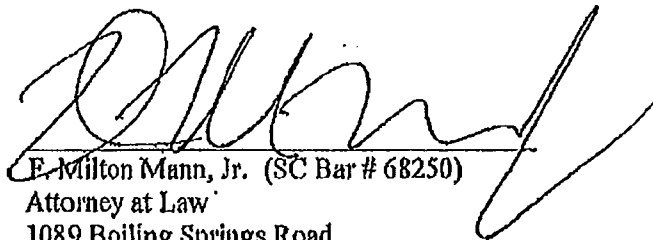
Pleadings: **AMENDED COMPLAINT**

Party(ies) Served: Joe Mooneyham, Esquire
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 Attorney for Defendant Mr. Casey

Matthew H. Henrikson, Esquire
Clarkson, Walsh, Terrell, Coulter, P.A.
Post Office Box 6728
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Attorney for Defendant Mr. Thompson

Charles M. Fogarty, MD
450 Mydd Creek Road
Inman, SC 29349
Pro Se Defendant

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June 16, 2011
Spartanburg, South Carolina

DM

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Gregory J. Feldman, MD, Joseph
A. Boscia III, MD, Upstate Lung and
Critical Care Specialists PC, and
Devendra Shantha, MD,

Plaintiffs,

vs.

William Mark Casey,
Ray E. "Chuck" Thompson, and
Charles M. Fogarty, MD.

Defendants.

Second Amended Complaint
(Jury Trial Demanded)

C. A. No. 2010-CP-42-5743

Now comes the Plaintiffs complaining of the Defendants and allege:

Venue and Jurisdictional Allegations

1. That Plaintiffs are citizens of the County of Spartanburg, State of South Carolina.

2. Defendants are, upon information and belief, citizens of the County of Spartanburg, State of South Carolina.

3. Venue and jurisdiction are vested in the Circuit Court of the Seventh Judicial Circuit in and for Spartanburg County, South Carolina.

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Factual Allegations

4. The medical malpractice action out of which this complaint arose was captioned *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2006-CP-42-1728.

5. In the medical malpractice action, Mr. William Mark Casey through his attorney, Mr. Ray E. "Chuck" Thompson, alleged Drs. Feldman, Boscia and Shantha breached the standard of care respecting his medical treatment and as a result of which Mr. Casey suffered permanent brain damage that rendered him totally disabled.

6. Mr. Casey sought actual and punitive damages arising out of certain treatment and care, which took place at the hands of the doctors from the period May 28, 2004 through June 3, 2004, that allegedly caused a profound neurological injury and permanent disability.

7. Essentially, Mr. Casey was admitted to Spartanburg Regional Medical Center with chest pain from his workplace at Michelin on May 28, 2004.

8. As part of the work-up, a chest x-ray was done on that date which revealed a small metallic density foreign body and clinical correlation was suggested.

9. Accordingly, Dr. Boscia performed a flexible bronchoscopy, which did not result in retrieval of a foreign object, but did reveal abnormal tissue.

10. Thereafter, Dr. Boscia referred Mr. Casey to his partner, Dr. Feldman for a rigid bronchoscopy.

11. Mr. Casey was sent home until several days later on June 3, 2004 when he was admitted for the rigid bronchoscopy.

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12. Dr. Feldman performed that procedure with Dr. Shantha, who was the attending anesthesiologist.

13. At the close of the rigid bronchoscopy, Mr. Casey suffered a pneumothorax, a known risk, and was required to stay in the hospital through June 6, 2004.

14. Mr. Casey contended that as a result of the rigid bronchoscopy, he suffered irreversible and "permanent brain injury" as a result of the pneumothorax.

15. He claims, *inter alia*, that bubbles or air emboli migrated to his brain and caused his injury.

16. Following his release from the hospital, Mr. Casey began to complain of pacing the floor, forgetfulness, short-term memory loss and personality changes.

17. Based upon the assertions within Paragraph 16, Mr. Casey sought permanent disability from the Social Security Administration and Aetna Disability Insurance.

18. Mr. Casey came under the care of Charles Fogarty, M.D., another Spartanburg Pulmonologist, after Drs. Feldman and Boscia would not support Mr. Casey's disability claims.

19. To their misfortunes, Dr. Fogarty was well known by Drs. Feldman and Boscia, prior to the medical malpractice action in a very negative way.

20. Before Drs. Feldman and Boscia became partners within Upstate Lung and Critical Care Specialists, PC, Drs. Feldman and Fogarty had been partners for a number of years.

21. The Feldman/Fogarty separation from joint medical practice was so acrimonious, in 2000, the event was very well known within the medical community of Spartanburg.

22. In September of 2004, Drs. Feldman and Boscia formed a pharmaceutical research company, which Dr. Fogarty viewed as a threat to his own medical practice and research company.

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23. Prior to the medical malpractice action, Dr. Fogarty actively sought to interfere with Drs. Feldman's and Boscia's research company and their patient care.

24. As a result of Dr. Fogarty's efforts to hamper the business efforts of Drs. Feldman and Boscia, in 2005 they were forced to sue Dr. Fogarty to clear their names and in an effort to prevent further damage to their reputations and business.

25. The Complaint was captioned *S. Carolina Pharmaceutical Research v. Charles M. Fogarty, M.D.*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2005-CP-42-1085.

26. During the *S. Carolina* lawsuit, Dr. Fogarty, in a couple of ways, saw his involvement with Mr. Casey as a golden opportunity to retaliate against Drs. Feldman and Boscia for his perceived wrongs of them starting a research company and filing suit against him.

27. First, Dr. Fogarty continued masterminding the generation of the unfounded "permanent brain injury" claims to injure his business competitors by damage to their reputation and through bogging them down for years in the protracted litigation defending against his scheme.

28. The "permanent brain injury" theory, along with a number of associated allegations of causation due to alleged deviations from the standard of care by Drs. Feldman, Boscia and Shantha ("the scheme"), was developed by Dr. Fogarty from sometime in 2004 until he finally published it in the medical records on July 21, 2005.

29. Second, Dr. Fogarty directly benefited himself by derailing his business competitors' efforts in the *S. Carolina* litigation due to the tremendous pressure created in their lives by the publicizing of the baseless allegations of a "permanent brain injury" within the destructive scheme.

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30. Dr. Shantha and ULCCS were merely collateral damage and included in the medical malpractice case as parties in an effort to damage Drs. Feldman and Boscia.

31. Despite a total lack of objective medical investigation into Mr. Casey's alleged neurological condition and having no qualifications within any neurological specialty, Dr. Fogarty hatched a theory that Mr. Casey had suffered a cerebral air embolism ("permanent brain injury"), thereby causing the personality changes and cognitive deficits of which Mr. Casey complained.

32. It is important to note that an admitted fact of the medical malpractice action was that Dr. Fogarty's theories of Mr. Casey's "permanent brain injury" were unsupported by any medical literature. In addition, it was uncontroverted that Mr. Casey suffered no permanent lung damage as a result of the procedures.

33. Dr. Fogarty performed no basic neurological examination of Mr. Casey.

34. Under Dr. Fogarty's "care," Mr. Casey was not referred to any neurological expert nor did Dr. Fogarty order an MRI study of the brain.

35. Although taking the lead in Mr. Casey's medical treatment and being the architect of the "permanent brain injury" scheme, Dr. Fogarty did not review any objective neurological test results for Mr. Casey.

36. Despite the complete absence of any objective support of the "permanent brain injury" scheme, Dr. Fogarty ensured that Mr. Casey's medical records prominently and categorically reflected his baseless injury assertions by inserting this in his office notes dated July 21, 2005.

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37. At all times material, Dr. Fogarty intended for his baseless injury assertions within Mr. Casey's medical records to be the basis for Mr. Casey to claim and receive disability benefits.

38. Furthermore, leading up to and during the litigation, Dr. Fogarty intended for his baseless permanent injury fabrications within Mr. Casey's medical records to be the cornerstone of orchestrated "expert" testimony that was designed to be used in ensuring the survivability of the medical malpractice case for as long as possible.

39. Dr. Fogarty actively sought to mislead the doctors and their attorneys of his level and the purpose of involvement in the litigation by seeing Mr. Casey within his research facility as opposed to his medical practice, which would have created medical records that could have been discovered.

40. In addition, Dr. Fogarty conducted complex medical testing on Mr. Casey at his research facility, yet he did not maintain the medical records in an effort to conceal the purpose of his involvement and in order to harm the doctors' discovery efforts thereby prolonging the medical malpractice case.

41. Until his deposition on December 22, 2008, Dr. Fogarty was very successful in shielding his role in the "permanent brain injury" scheme by his active efforts to obstruct and evade his deposition.

42. Dr. Fogarty and Mr. Thompson went to great lengths to ensure that Dr. Fogarty's role as an "expert" witness was concealed until the 11th hour from the doctors and their attorneys to further frustrate discovery efforts and to hide his level of involvement in the execution of the "permanent brain injury" scheme.

EXHIBIT
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43. Despite the best efforts of Dr. Fogarty and Mr. Thompson in implementing the scheme, Mr. Casey testified during his deposition that no one told him he had a brain injury.

44. Even throughout his deposition, Dr. Fogarty continued his attempts to hide his role as a mastermind of the lawsuit and his level of involvement in the medical malpractice action by making material misrepresentations.

45. A more perfect cast of individuals could not have been available for Dr. Fogarty's use in his efforts of destruction aimed primarily at Drs. Feldman and Boscia.

46. Mr. Thompson's fiancée and agent worked within Dr. Fogarty's clinical practice, assisting in giving Dr. Fogarty and Mr. Thompson unfettered access to each other, off the record and behind the scene, which they used to full advantage in their formation and pursuit of the scheme.

47. Mr. Casey's sister worked at the hospital for more than a decade and knew very well the animosity between Drs. Fogarty and Feldman.

48. It was a simple matter in 2004, when Dr. Fogarty got wind of Mr. Casey's procedure, for him to convince Mr. Casey's sister to allow him to review some of the medical records and offer his practice group's help, ensuring Dr. Fogarty the leadership role in the "permanent brain injury" scheme.

49. Yet, that is not all of the connections between the Defendants. Mr. Thompson and Mr. Casey's sister dated in high school. Further, Mr. Thompson and Mr. Casey played team sports together in high school.

50. In summary, the Defendants were well acquainted with each other for years prior to their schemes against Drs. Feldman and Boscia.

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51. Dr. Fogarty and Mr. Thompson willingly implemented Dr. Fogarty's "permanent brain injury" baseless claim with ruthless disregard for the rights of the Plaintiffs.

52. Prior to being brought to SRHS on May 28, 2004, Mr. Casey worked a very physically demanding job on the tire production line of Michelin.

53. At middle age, Mr. Casey was facing burn out from the punishing work and the natural aging process of his body.

54. In addition, Mr. Casey was struggling in several other areas of his life: financially due to excessive debt; going through a divorce; and having trouble with his children. Each of which were significant stressors in his life.

55. Before May 28, 2004, Mr. Casey suffered from depression; was taking pain medications; and had abused prescription drugs. Each fact is clearly documented within Mr. Casey's medical records.

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60. Contrary to the claims of Mr. Casey, the notes of Dr. Grace show that he was interacting with females and carrying on an active social life within the first year or year and a half after his supposed injury.

61. Additionally, Dr. Grace's notes show that Mr. Casey complained bitterly about the diminishment of his skills with his short game in playing golf and that he simply did not enjoy golf as much as he did before.

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65. For example and from the notes of Dr. Grace, Mr. Casey had undergone a separation from his wife of many years, his teenage children were engaging in troublesome behavior, he had financial stresses which had caused the sale of his home on the golf course and he for many years had continued to work on an extremely demanding job which required large amounts of narcotic and non-narcotic pain medication to get through the day.

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68. It is a well-accepted fact by the medical and scientific communities that a known side effect of narcotic pain medication misuse is depression or the worsening of preexisting depression.

69. For an unexplained reason within Mr. Casey's medical records, Dr. Fogarty abruptly doubled Mr. Casey's Hydrocodone prescription in February of 2006.

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77. In an effort to meet Mr. Casey's needs, thereby ensuring his continuation in the scheme, Mr. Thompson became active in seeking a reversal of his Aetna disability denials, despite not being his attorney in such matters because the denials did not suit his personal needs or agenda.

78. Mr. Thompson's initial efforts centered around the purposeful redaction of Mr. Casey's medical records that were provided to both treating physicians and retained expert witness with willful intent to make it appear that Mr. Casey suffered from a "permanent brain injury."

79. Despite the team's best efforts, Aetna fully rejected Mr. Casey's disability claim on October 13, 2006 in a letter addressed to Mr. Thompson.

80. In the rejection package, Aetna gave the team an analysis of the viability of the "permanent brain injury" claim, which included detailed reports from a Consulting Neuropsychologist and a Board Certified Neurologist.

81. In summary of the rejection, Aetna said that the speculations of Dr. Fogarty were not supported by objective neurological evidence or abnormal neurological examination findings.

82. Instead of heeding Aetna's review and addressing the stated concerns about the lack of any support for the existence of a legitimate "permanent brain injury" claim, the team continues to move forward with the medical malpractice scheme and fails to produce the Aetna report during discovery.

83. The Doctors' attorneys had to seek assistance from the Court to obtain a release from Mr. Casey to request the records directly from Aetna as opposed to Mr. Thompson merely turning over the report.

84. Mr. Thompson did place importance on one piece of information within the Aetna report, the need for an MRI study of the brain.

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85. However, Mr. Thompson knew full well, based on the Aetna report, that a negative MRI study would be a death nail for the scheme.

86. Therefore in the cover of secrecy, Mr. Thompson, set the stage for an MRI to be performed on Mr. Casey's brain under a fictitious name and date of birth.

87. Mr. Thompson arranged for the test through his brother-in-law, a North Carolina general surgeon having no connection to Mr. Casey or the case, to be performed at an out of state hospital.

88. The Radiologist's report of the MRI test results stated that the MRI was negative.

89. Mr. Thompson received this report, and then continued to litigate the matter for eighteen months thereafter without revealing the MRI test or the radiology report.

90. To maintain the secrecy of the MRI test and findings, Mr. Thompson instructed his client to deny having any diagnostic medical tests, including specifically, the MRI, in his sworn deposition testimony less than seven months after the MRI was performed.

91. At all times material, Mr. Thompson despite being well aware of his duties to the Court pursuant to Rule 3.3, Candor Toward The Tribunal, willfully sought to injure the Plaintiffs by instructing Mr. Casey to lie under oath and by Mr. Thompson's failure to protect the candor of the proceedings within the medical malpractice case.

92. Ultimately, the Doctors' counsel only learned of the test fortuitously by virtue of an anonymous letter sent to attorney Spencer King.

93. The MRI test results were very important, inasmuch as it exposed the truth and totally confirmed the fact that Mr. Casey's "permanent brain injury" claim was nothing more than a scheme.

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94. It was a materially important piece of evidence to the Doctors, which was withheld, concealed, and secreted from them by Mr. Casey and Mr. Thompson, with a very high degree of impropriety.

95. By the time the Doctors' counsel received the Casey affidavit confirming the MRI and the results of the MRI, in excess of thirty depositions had been taken.

96. This included all of the Doctors, eight treating physicians and five medical experts.

97. Once the MRI test and findings were brought into the light of day, Mr. Thompson continued the litigation in an effort to forestall an ethics complaint by Drs. Feldman and Boscia.

98. In addition, once the MRI test and findings were brought into the light of day, Mr. Thompson and Mr. Casey continued the litigation in an effort to forestall a counter lawsuit from Drs. Feldman and Boscia, thereby serving the agenda of Dr. Fogarty as well.

99. The medical malpractice action was tried before the Court and a jury in the Spartanburg County Court of Common Pleas, commencing May 11, 2010.

100. After 14 trial days, the jury returned a verdict in favor of the Doctors on May 28, 2010 after deliberating between two and two and one-half hours.

101. Mr. Thompson knew the lack of validity of Dr. Fogarty's theories respecting any deviation of the standard of care by Dr. Shantha, yet still sought to gain by the publishing and disseminating of the fraudulent theories of injuries by willfully prolonging the medical malpractice litigation.

102. Prior to the trial, Dr. Shantha had been dismissed from proceedings by a motion for summary judgment.

FIRST CAUSE OF ACTION
(Abuse of Process)

103. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

104. Defendants have misused the legal process of the medical malpractice action in an attempt to accomplish purposes for which said proceedings were not allowed by law, specifically, as set out below:

105. Mr. Casey, at all times material, knew he did not have a "permanent brain injury" and that the scheme was simply developed for the purposes of the lawsuit and not for any treatment or medical purpose.

106. Mr. Casey willfully used the legal proceeding of the medical malpractice claim in an effort to continue to obtain narcotic drugs by the submission of false information about his physical condition and lying under oath.

107. Mr. Casey willfully used the legal proceeding of the medical malpractice claim in an effort to continue receiving disability benefits by the submission of false information about his physical condition within his lawsuit/scheme.

108. Dr. Fogarty willfully used the legal proceedings of the medical malpractice claim, which he initiated, in an effort to damage the reputations of Drs. Feldman and Boscia by publishing and disseminating fraudulent theories of injuries of Mr. Casey and thereby materially prolonging the litigation for his direct benefit.

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109. Dr. Fogarty willfully used the legal proceedings of the medical malpractice claim in an effort to economically damage the business interests of Drs. Feldman and Boscia in S. Carolina Pharmaceutical Research by publishing and disseminating fraudulent theories of injuries of Mr. Casey and by materially misrepresenting his involvement on behalf of the litigation team.

110. Mr. Thompson willfully used the legal proceedings to develop bogus "expert" witness testimony by the misleading redaction of medical records, which Mr. Thompson then used to seek Mr. Casey's disability benefits and to unnecessarily prolong the litigation.

111. Mr. Thompson willfully abused the legal process by using his court appointed powers to subvert the disability claims process for the purposes of manufacturing damages for use in the medical malpractice litigation scheme.

112. In addition, Mr. Thompson knew the lack of validity of Dr. Fogarty's theories respecting the "permanent brain injury" scheme, yet still sought to gain by the publishing and disseminating of the fraudulent theories of injuries by willfully prolonging the medical malpractice litigation.

113. Defendant Thompson willfully used the legal proceedings of the medical malpractice case in an effort to escape or forestall a report of his ethical breach to the South Carolina Bar respecting the suborning of perjury by his client.

114. Defendant Thompson willfully used the legal proceedings of the medical malpractice case in an effort to escape or forestall a counter lawsuit being filed against himself, Mr. Casey and Dr. Fogarty by continuing the litigation with full knowledge as to the lack of truthfulness in the "permanent brain injury" scheme and assertions of disability.

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123. Mr. Thompson was well aware that he was indispensable for Dr. Fogarty's destructive agenda in their common scheme to manufacture a pretext for claiming "damages" in the lawsuit and disability claim.

124. Mr. Thompson was very well aware that Dr. Fogarty would go to any length to advance his improbable and malicious scheme in an effort to hurt and to retaliate against Drs. Feldman and Boscia.

125. Between February 4, 2007 and 2009, Mr. Casey, in furtherance of Dr. Fogarty and Mr. Thompson's permanent brain damage conspiracy, willingly took part with Mr. Thompson, and other unnamed third party(ies) in the scheme to circumvent the Rules of Civil Procedure.

126. Mr. Casey, in furtherance of Dr. Fogarty and Mr. Thompson's scheme to establish civil liability against Drs. Feldman and Boscia for causing Mr. Casey fictitious permanent brain damage, agreed to conceal the fact that on February 4, 2007 he had an MRI study of his brain.

127. Mr. Casey, in furtherance of Dr. Fogarty and Mr. Thompson's permanent brain damage conspiracy, agreed and proceeded to lie under oath in his deposition of August 30, 2007, in a willful and knowing effort to conceal the existence of the MRI report and image disc dated February 4, 2007.

128. Mr. Casey willingly participated in the concealment of the MRI report and image disc dated February 4, 2007, of the MRI study of his brain, which he received at the conclusion of the MRI study performed in the out-of-state hospital on February 4, 2007.

129. Mr. Casey was fully aware that the February 4, 2007, MRI study had been arranged by Mr. Thompson.

130. Mr. Casey utilized an assumed name and fictitious date of birth, given to him by Mr. Thompson, when submitting to the February 4, 2007, MRI study.

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131. Mr. Thompson solicited unnamed third-party(ies) to conceal Mr. Casey's MRI report and image disc that were dated February 4, 2007.

132. Mr. Casey solicited unnamed third-party(ies) to conceal his MRI report and image disc that were dated February 4, 2007.

133. Mr. Casey accepted funds from Mr. Thompson and/or unnamed third-party(ies) to pay for his February 4, 2007, MRI study, knowing that such payment was never to be reported or claimed within his lawsuit.

134. In 2008, Mr. Thompson and Dr. Fogarty, in furtherance of their permanent brain damage scheme, agreed for Dr. Fogarty to make material misrepresentations, under oath, during his deposition pursuant to Discovery in the original lawsuit.

135. As a direct and proximal result of the conspiracy between Dr. Fogarty, Mr. Thompson, and Mr. Casey, to concoct and disseminate permanent brain damage allegations, the Spartanburg Herald Journal unwittingly published fabricated allegations of the permanent brain damage and disability.

136. As a direct and proximal result of the conspiracy between Dr. Fogarty, Mr. Thompson, and Mr. Casey, to concoct and disseminate permanent brain damage allegations, the lives of Drs. Feldman and Boscia were instantly turned upside down, causing them additional and undue: emotional distress, damage to their professional reputations, standing in the community, and loss of business, in combination resulting in an inability enjoy life, to create new businesses, and the continued harassment through litigation for an additional and unnecessary length of time.

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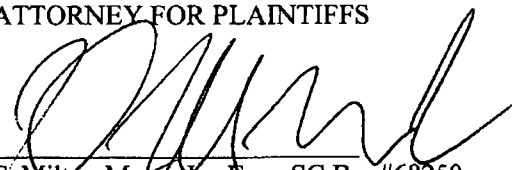
137. Special Damages incurred as a direct result of the allegations within the Second Cause of Action, include, but are not limited to, additional and unnecessary attorneys' fees pursuant to the recovery of the MRI disk from the out-of-state hospital; additional and undue emotional distress of being the victims of Defendants' fraudulent and senseless conspiracy scheme; additional and undue damage to Plaintiffs' professional reputations because of the newspaper article; and additional and undue accounting expenses and further damages to be ascertained through this lawsuit.

WHEREFORE, plaintiff prays that this court enter judgment:

- a. For a jury trial to be conducted in this matter;
- b. For actual and compensatory damages in an amount to be determined by the jury;
- c. For punitive damages in an amount to be determined by the jury; and
- d. For the cost of this action, including reasonable attorney's fees and for other such relief as appears just and equitable in the premises.

F. MILTON MANN, JR
ATTORNEY FOR PLAINTIFFS

BY:


F. Milton Mann, Jr., Esq., SC Bar #68250
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
(864) 208-0359

October 11, 2011
Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-42-5743

Gregory J. Feldman, MD and)
Joseph A. Boscia, III, MD, and)
Upstate Lung and Critical Care)
Specialists, PC, and)
Devendar T. Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey,)
Ray E. "Chuck" Thompson, and)
Charles M. Fogarty, MD,)

Defendants.)

DEFENDANT WILLIAM MARK CASEY'S
MOTION TO DISMISS

TO: The plaintiffs, and F. Milton Mann, Jr., Esquire, their counsel:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for Defendant William Mark Casey, will move this Honorable Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, and at such time and place as the Court shall direct, for an Order, dismissing the plaintiffs' complaint against him.

The grounds for the motion are that the plaintiffs' complaint fails to facts sufficient to constitute a cause of action against this defendant. The motion is made pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*.

In the alternative, and as further grounds for the dismissal of the complaint, Defendant Casey will move for dismissal on the grounds that the plaintiffs have failed to join a party under Rule 19(a), *South Carolina Rules of Civil Procedure*. The motion is made pursuant to Rule 12(b)(7), *South Carolina Rules of Civil Procedure*.

The motion will be supported by any memoranda to be filed by the defendant, by the applicable precedents, and by such argument of counsel as the Court may allow.

Counsel hereby affirms that as this motion is a motion to dismiss, no consultation with opposing counsel is required, pursuant to Rule 11(a), *South Carolina Rules of Civil Procedure*.

Respectfully submitted,
Mooneyham, Berry & Karow, LLC



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Attorneys for Defendant William Mark Casey
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Greenville, South Carolina 29604
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Greenville, South Carolina

December 15, 2010

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
7th JUDICIAL CIRCUIT

CASE NO.: 2010-CP-42-5743

Gregory Feldman, MD, Joseph Boscia, III, et
al.

MOTION AND ORDER INFORMATION

Plaintiff,

FORM AND COVERSHEET

vs.

William Mark Casey, Ray E. "Chuck"
Thompson, and Charles M. Fogarty, MD

Defendant.

Plaintiff's Attorney: F. Milton Mann, Bar No. 68250 Address: 1089 Bolling Springs Rd. Spartanburg, SC 29303 Phone: 864-208-0359 Fax 864-208-0233 E-mail: milton.mann@gmail.com Other: _____		Defendant's Attorney: Charles M. Fogarty, MD, Bar No. Pro Se Address: 450 Mudd Creek Rd Inman, SC 29349 Phone: 864-431-694 Fax 864-583-1518 E-mail: cfogarty@medresearch.com 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: 12(b)(6) Motion to Dismiss Complaint Estimated Time Needed: 30 minutes 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		December 20, 2010 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ 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: _____			
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: \$ _____			

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Gregory J. Feldman, MD,)
Joseph A. Boscia III, MD,)
Upstate Lung and Critical Care Specialists,)
Devendra T. Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey,)
Ray H. "Chuck" Thompson,)
Charles M. Fogarty, MD.)

IN THE COURT OF COMMON PLEAS

2010-CP-42-5743

Defendant Fogarty's Motion
To Dismiss Plaintiffs' Complaint

Defendant, Charles M. Fogarty, MD Motion to Dismiss Complaint of Gregory J. Feldman, MD, Joseph A. Boscia III, MD, Upstate Lung and Critical Care Specialists PC, and Devendra T. Shantha, MD Pursuant to SCRPC 12(b)(6) With Memorandum in Support.

Defendant Charles M. Fogarty, MD, acting *pro se*, hereby gives notice of his intent to move and does so move this Court to dismiss the Complaint of Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung and Critical Care Specialists PC, and Devendra T. Shantha, MD (collectively referred to as "Plaintiffs" or "Doctors Feldman, Boscia, and Shantha") pursuant to Rule 12 (b) (6) of the SCRPC. The Plaintiffs have alleged two causes of action: abuse of process and civil conspiracy. The Plaintiffs' Complaint should be dismissed for the following reasons:

- 1) Plaintiffs' civil conspiracy claim is time barred by the applicable statute of limitations.

- 2) Plaintiffs' civil conspiracy claim does not meet the pleading requirements under South Carolina Law and should be dismissed since the civil conspiracy claim does not state any additional acts in furtherance of the conspiracy, but merely incorporates the same allegations contained in the abuse of process claim.
- 3) Plaintiffs' abuse of process claim is time barred by the applicable statute of limitations.
- 4) Plaintiffs' abuse of process claim does not state facts sufficient to support the tort of abuse of process against the Defendants because the Complaint does not allege any facts or reasonable inferences that could be drawn to support the allegation that the primary objective of the medical malpractice action against Doctors Feldman, Boscia, and Shantha was outside the scope of a medical malpractice action.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS'
COMPLAINT**

Issue 1 – Civil Conspiracy Claim is Time Barred by Applicable Statute of Limitations.

In South Carolina, civil conspiracy has a three (3) year statute of limitations. According to Paragraph 59 and Paragraph 60 of the Complaint, Charles M. Fogarty along with the other Defendants (Mark Casey, the patient in the underlying medical malpractice action, and Chuck Thompson the attorney who filed the malpractice action) conspired together to damage the Plaintiffs by suing the Plaintiffs for medical malpractice. The Complaint alleges that the civil

conspiracy was that the "Defendants [Fogarty, Thompson, Casey] sought monetary gain by way of settlement or judgment" (Complaint Paragraph 60). Furthermore, according to the Complaint, the malpractice lawsuit filed against Doctors Feldman, Boscia, and Shantha commenced in 2006. The medical malpractice suit made demands for judgment against Doctors Feldman, Boscia, and Shantha (Complaint Paragraphs 4, 5, 6 and 31). The Plaintiffs' Complaint states that Doctors Feldman, Boscia, and Shantha were damaged by the filing of the medical malpractice action against them. The Complaint avers that in seeking monetary redress from Doctors Feldman, Boscia, and Shantha for their alleged substandard care of Casey, Defendants Fogarty, Casey, and Thompson were engaging in a civil conspiracy. Therefore, even when reading the Complaint in the light most favorable to the Plaintiffs, the statute of limitations on the civil conspiracy claim began to accrue in 2006 when the medical malpractice lawsuit was filed because the medical malpractice lawsuit sought "damages" which according to the Plaintiffs' Complaint was the overt conspiracy "act" which damaged them. The Complaint asserts that Doctors Feldman, Boscia, and Shantha were aware of the lawsuit against them in 2006. According to the Complaint, Doctors Feldman, Boscia, and Shantha were aware of two of the alleged conspirators (Casey and Thompson) in 2006 and Doctors Feldman, Boscia, and Shantha discovered in 2006 that they were the alleged victims of a conspiracy. Therefore, the applicable statute of limitations for the alleged civil conspiracy that Doctors Feldman, Boscia, and Shantha now assert began to accrue in 2006. The statute of limitations begins to run when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right has been invaded or that some claim against another party might exist. (Wiggins v Edwards, 442 S.E 2d 169, 170). The statute of limitations is triggered when the plaintiff discovers the injury, not when he discovers the identity of another alleged tortfeasor. (See

Wiggins, 442 S.E. 2d at 170). According to the Complaint, Doctors Feldman, Boscia, and Shantha were damaged by the commencing of the lawsuit by two of the alleged conspirators (Casey and Thompson) in 2006. There is absolutely no uncertainty according to the Complaint that Doctors Feldman, Boscia, and Shantha knew of Thompson and Casey's identities in 2006. Furthermore, Doctors Feldman, Boscia, and Shantha have alleged in their Complaint that they suffered damages in 2006 as a result of the malpractice lawsuit being filed against them. Even reading the Complaint in the light most favorable to Doctors Feldman, Boscia, and Shantha, the Complaint fails to allege facts sufficient to support a claim for civil conspiracy because the applicable statute of limitations expired in 2009; yet the Plaintiffs did not file this action until October 2010.

Issue 2 – Civil Conspiracy Claim Fails to State Additional Acts in Furtherance of the Conspiracy.

Even if this Court were to reject the argument that the civil conspiracy claim is due to be dismissed due to the applicable statute of limitations, the civil conspiracy claim should still be dismissed because the conspiracy claim fails to state additional and independent acts in furtherance of the conspiracy that have not already been incorporated in the abuse of process cause of action.

The South Carolina Court of Appeals in Hackworth v Greywood at Hammett, LLC 2009 S.C. App. LEXIS 381,*,385 S.C. 110; 682 S.E.2d 871 in its opinion reaffirming a lower court's decision to dismiss a civil conspiracy claim for failing to meet the requirements under South Carolina law, stressed that a claim for civil conspiracy must plead additional and independent acts which are not covered by other causes of action. The Appeals Court averred as follows:

An unexecuted civil conspiracy is not actionable. Charles v. Tex. Co., 199 S.C. 156, 163, 18 S.E.2d 719, 727 (1942). The conspiracy becomes actionable, however, once overt acts occur which proximately cause damage to the plaintiff. Todd, 276 S.C. at 292, 278 S.E.2d at 611. In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim. See id. at 293, 278 S.E.2d at 611 (dismissing plaintiff's civil conspiracy claim because "the [civil conspiracy] action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy [were] plead"); [*7] Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) ("Because [the third party plaintiff] . . . merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."); Doe v. Erskine Coll., No. 8:04-23001RBH, 2006 U.S. Dist. LEXIS 35780, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (granting defendant's motion for summary judgment on plaintiff's civil conspiracy action because "the Complaint does not plead specific facts in furtherance of the conspiracy; instead the Complaint simply restates alleged wrongful acts pled in relation to the plaintiff's other claims for damages."); James v. Pratt & Whitney, 126 Fed. Appx. 607, 613 (D.S.C. 2005) ("If appellant failed to allege facts for his civil conspiracy claim separate and distinct from his other two claims, then his civil conspiracy claim would fail under Todd.").

The conspiracy claim of the Plaintiffs' Complaint incorporates all of the preceding paragraphs of the complaint and then sets forth four (4) additional paragraphs numbered 58, 59, 60, and 61. Paragraph 58 of the Complaint states the following:

58. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

Paragraphs 59, 60, and 61 of the Complaint do not allege any additional acts in furtherance of the conspiracy by the Defendants that had not already been pled under the abuse of process claim.

Paragraphs 59, 60, and 61 state the following:

59. Defendants joined together to injure and damage the Plaintiffs. The common and shared purpose of the enterprise, or conspirators, was to economically reward themselves at the expense of the Plaintiffs through the misuse of the medical malpractice action.

60. Defendants sought monetary gain by way of settlement or judgment. Further, Defendant Fogarty also sought to professionally damage the Plaintiffs, thereby increasing his own business value and productivity at the expense of the Plaintiffs' business and their loss of productivity.

61. The Defendants' actions resulted in damages, including, but not limited to, loss of productivity, attorneys' fees and costs, emotional distress, damage to professional Plaintiffs' reputations, accounting expenses and further damages to be ascertained through this lawsuit.

However, Plaintiffs alleged the same substantive matter in paragraph 6 of their Complaint and paragraph 54 of their Complaint under the abuse of process claim:

6. Mr. Casey sought actual and punitive damages arising out of certain treatment and care, which took place by the Doctors from May 28, 2004 through June 3, 2004.

54. Defendants have misused the legal process of the medical malpractice action in an attempt to accomplish a purpose for which said proceedings were not allowed by law, specifically, the assassination of Plaintiffs' reputations by publicizing serious and unfounded allegations against them, and the attempted misuse of the legal process for personal, professional, and economic gain.

The Plaintiffs have failed to articulate in their Complaint any independent and additional act that the conspirators took in furtherance of the conspiracy. The conspiracy claim is simply a rehash

of prior allegations made in the abuse of process claim with the added assertion that the Defendants were conspiring together for a common shared purpose. The Plaintiffs' Complaint fails to meet the pleading requirements for civil conspiracy and thus is due to be dismissed consistent with prior South Carolina Case Law.

Issue 3 – The Abuse of Process Claim is Time Barred by the Applicable Statute of Limitations.

In South Carolina, abuse of process has a three (3) year statute of limitations. Doctors Feldman, Boscia, and Shantha maintain in their Complaint that the Defendants were misusing the legal process of medical malpractice to damage their reputations. In Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 75, 567 S.E.2d 251, 256 (Ct. App. 2002) the Court of Appeals held that an "entire lawsuit" can be viewed as an abuse of process if the suit is brought not to recover on the stated cause of action, but to accomplish a purpose for which it was not designed. Id

Food Lion correctly observes that an abuse of process action may lie if a party prosecutes an "entire lawsuit" for collateral purposes. n5 See 1 Am. Jur. 2d Abuse of Process § 11 at 420 (1994) ("If the suit is brought not to recover on the cause of action stated in the complaint, but to accomplish a purpose for which the process was not designed, there is an abuse of process."). Id

In the current Complaint against Fogarty, Thompson, and Casey, Doctors Feldman, Boscia, and Shantha have alleged that the entire lawsuit against them was pursued for the purpose of assassinating their reputations and publicizing unfounded allegations against them. (Complaint Paragraph 54). Looking solely at the Plaintiffs' Complaint and viewing the facts most favorable to the Plaintiffs, it is evident that the Plaintiffs believe that the entire lawsuit was

an abuse of process. However, as articulated in the previous arguments to dismiss the civil conspiracy claim, there is no way around the simple fact that the Plaintiffs were put "on notice" that they had a viable claim for abuse of process in 2006 when they suffered damages as a result of the filing and publication of the lawsuit. Therefore, as was the case in the civil conspiracy claim, the abuse of process claim is no longer viable since the statute of limitations expired in 2009.

In the event that this Court finds that the abuse of process claim is not time barred because the Plaintiffs do not allege that the entire lawsuit was an abuse of process, but rather that the abuse commenced within 3 years of the filing of this Complaint, the Court should still dismiss the abuse of process claim for the reasons set forth below:

Issue 4 – The Complaint Fails to State Facts Sufficient to Support a Cause of Action for Abuse of Process against Dr. Fogarty and the other Defendants.

The elements of an abuse of process claim are: (1) an ulterior purpose and (2) a "willful" or overt act "in the use of the process" that is improper because it is either unauthorized or aimed at an illegitimate collateral objective. Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 71, 567 S.E.2d 251, 253-54 (Cl. App. 2002). Importantly, an ulterior purpose or bad intention is insufficient to state a claim. *There must be proof that a collateral objective was the sole or paramount reason for acting.* "[A] party who simply pursues a lawsuit with a collateral purpose in mind has done nothing improper." Id. at 76, 567 S.E.2d at 256.

The existence of an ulterior motive, malice or bad intent in bringing the suit does not alone give rise to an action for abuse of process. There must also be a willful act by the defendant whereby the defendant attempts to use that process to harass or pressure the plaintiff with respect to a matter outside the scope of the original writ. Indeed, the essence of the tort of abuse of process centers on events occurring outside of the process, namely:

The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort. Swicegood v. Lott Opinion No. 4405, COURT OF APPEALS OF SOUTH CAROLINA, April 9, 2008, Heard, June 6, 2008, Filed.

The Plaintiffs have failed to offer any matter outside the scope of the medical malpractice action that Casey and Thompson were harassing or pressuring Drs. Feldman, Boscla, and Shantha on. The Plaintiffs have not alleged that Casey and Thompson were using the medical malpractice action to gain a comparative advantage in another dispute. In an abuse of process action the key ingredient is that one party is improperly using the legal process for leverage / extortion in some completely unrelated dispute or matter.

In Swicegood v. Lott, it was alleged that Sheriff Lott was using the threat of a criminal investigation against Swicegood for allegedly double dipping on his timesheets to coerce Swicegood into changing his testimony to support Lott's contention that Swicegood's partner had acted improperly in another matter. Swicegood alleged that Lott stated that he (Lott) would make the Federal and State Criminal charges for double dipping "go away" if Swicegood

provided testimony implicating his partner. The vital element was the Lott offered to make the other pending criminal charges "go away" if Swicegood changed his sworn testimony to placate Lott's wishes. The Court correctly surmised that the criminal charges brought against Swicegood for "double dipping" were pursued primarily as a means to pressure Swicegood to testify according to Lott's desires because Lott was offering to make the criminal charges "go away" once he achieved his real primary objective, namely for Swicegood to change his testimony about his partner's activities.

The factual allegations of the Complaint support only one reasonable conclusion and inference: Casey and Thompson were primarily acting to win the medical malpractice case. The allegations in the Complaint that Casey and Thompson may have acted improperly in failing to turn over evidence in a timely manner or that Fogarty may have made false statements in his deposition do not support any theory that any of the Defendants had some other primary objective in mind other than trying to win the malpractice suit.

The Plaintiffs assert that the medical malpractice action was brought in "an attempt to accomplish a purpose for which said proceedings were not allowed by law, specifically, the assassination of the Plaintiffs' reputations by publicizing serious and unfounded allegations against them, and the attempted misuse of the legal process of the legal process for personal, professional, and economic gain." (Complaint Paragraph 54). However, the South Carolina Court of Appeals has already ruled that statements such as these are insufficient to support a claim for abuse of process. In their discussion of Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 75, 567 S.E.2d 251, 256 (Ct. App. 2002) the Court of Appeals referenced a case where abuse of process could not be predicated on general allegations that a

lawsuit was allegedly motivated to generate negative publicity against a competitor or cause a competitor to lose sales. Where abuse of process claims are supported only by general assertions that there was some ulterior motive, the courts have held that such pleadings are insufficient to support a cause of action for the tort of abuse of process. The courts have consistently upheld that in order to bring action for abuse of process the Complaint must set forth specific facts which support the requirement that the primary objective of the legal action was not to seek a redress for the alleged wrong doing, but rather some other objective not normally purported with the underlying case. In Food Lion, the Appeals Court of South Carolina states:

Moreover, nowhere in the complaint did Food Lion claim the Union did not use the Bryant lawsuit for its stated purpose, i.e., to redress the termination and health care grievances of several former Food Lion employees. As a result, the amended complaint failed to assert any facts sufficient to show the acts undertaken by the Union in the Bryant proceeding were aimed not at its purported, and therefore proper, purpose of remedying alleged wrongs, but towards a primary purpose of achieving a collateral objective. n7 We therefore find Food Lion did not adequately allege the second element of the tort. n8 See Mozzochi v. Beck, 204 Conn. 490, 529 A.2d 171, 174 (Conn. 1987) ("Existing case law demonstrates that there is no bright line that clearly distinguishes between the ends ordinarily associated with litigation and the ulterior purpose that the tort of abuse of process is intended to sanction. Much [*19] turns on the specificity of the pleadings . . . [Courts have held [general] complaints to be legally insufficient because they do not allege conduct showing the use of process to accomplish a purpose for which it was not designed. . . . So general an allegation of abuse does not satisfy the requirement of showing the use of legal process 'primarily to accomplish a purpose for which it is not designed. . . .'"] (citations omitted); Hart, 647 A.2d at 552 ("The complaint fails to address an essential element of the tort of abuse of process, i.e., that the process was used primarily for a purpose for which the process was not designed. It is not enough that the process employed was used with a collateral purpose in mind. . . . Appellants'

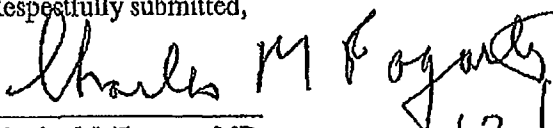
complaint [must] factually set forth that the continuance was not used for the purpose for which continuances are intended.") (internal citations omitted) (emphasis added); Baubles & Beads v. Louis Vuitton, S.A., 766 S.W.2d 377, 379 (Tex. App. 1989) (holding pleadings insufficient to state a cause of action for abuse of process where plaintiffs merely averred "Defendants improperly used the process [*20] to intimidate Plaintiffs, to obtain publicity and to increase Christmas sales of [Louis Vuitton] products, to decrease the sales of Defendants, to threaten Defendants with criminal prosecution, and to falsely accuse Defendants of a crime"). [Bold added for emphasis] Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 75, 567 S.E.2d 251, 256 (Ct. App. 2002)

Plaintiffs Feldman, Boscia, and Shantha have failed to articulate any willful actions, facts, or any other inferences that could be reasonably drawn by this Court in reading the Complaint in the light most favorable to the Plaintiffs, that a cause of action exists for abuse of process. The Plaintiffs have failed to assert that the primary object of the medical malpractice lawsuit was not to seek legal redress for the wrongdoing that Casey claimed in his medical malpractice action against Feldman, Boscia, and Shantha. To the contrary, the alleged willful acts of attempted suppression of evidence and submission of false statements by the Defendants, even if true, were allegedly done in attempt to help Mr. Casey prevail in his malpractice claim against Doctors Feldman, Boscia, and Shantha. The alleged bad "acts" by the Defendants do not support any theory that there was another primary objective other than seeking redress for the medical malpractice action that Casey would normally be entitled to under law. Seeking a judgment or settlement for medical malpractice by Casey and Thompson was not an objective outside the scope of a malpractice action. Plaintiffs, in order to state a cause of action for abuse of process, have to assert that the Defendants primary objective in pursuing the medical malpractice claim against Doctors Feldman, Boscia, and Shantha were not

seeking a proper legal remedy (i.e. a judgment against them or settlement), but rather the Plaintiffs have to assert that Casey, Thompson, and Fogarty were primarily trying to achieve some other objective which would not be consistent with a medical malpractice claim. However, the Complaint fails to set forth any facts and reasonable inferences whereby Defendants Casey and Thompson (the plaintiff in the original medical malpractice action and his attorney) were not acting in a manner consistent with seeking legal redress for the substandard medical care that they alleged occurred. The Complaint asserts that Fogarty, the medical expert, was motivated to help Casey and Thompson succeed in winning the medical malpractice case due to Fogarty's alleged acrimonious relationship with Feldman and Boscia, but even if true, that only supports the proposition that Fogarty was not engaged in an abuse of process since he wanted to "ensure the success" of the medical malpractice action by helping Casey prevail at trial. Thus as a matter of law, the Plaintiffs' Complaint fails to state a cause of action for the abuse of process and should be dismissed.

Wherefore, Defendant Charles M. Fogarty requests that this Court grants his Motion to Dismiss the Plaintiffs' Complaint with the added stipulation that should this Court agree that some, if not all, of the Plaintiffs' causes of action are time barred by the applicable statute of limitations that said claims be dismissed with prejudice.

Respectfully submitted,


Charles M. Fogarty, MD, *pro se*
450 Mudd Creek Road
Inman, South Carolina 29349
Telephone: 864-431-6964
Facsimile: 864-583-1518

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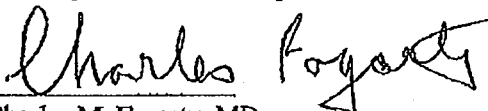
CERTIFICATE OF SERVICE

The undersigned, by affixing his signature hereto, certifies that he has, on December 20, 2010, served a copy of this pleading on counsel for the Plaintiffs by mailing a true and correct copy by United States Mail, first class postage prepaid and addressed as follows:

F. Milton Mann, Jr., Esquire
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
Attorney for Plaintiffs

Joe Mooneyham
Post Office Box 8359
Greenville, South Carolina 29604
Attorney for Mark Casey

Matthew Holmes Henrikson
Post Office Box 6728
Greenville, South Carolina 29606
Attorney for Chuck Thompson

 12 20 '10
Charles M. Fogarty, MD, *pro se*

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Gregory J. Feldman, M.D., Joseph A.
Boscia, III, M.D., Upstate Lung and
Critical Care Specialists, P.C., and
Devendra T. Shantha, M.D.,

Plaintiffs,

v.

William Mark Casey, Ray E. "Chuck"
Thompson, and Charles M. Fogarty, M.D.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

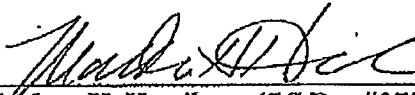
) C.A. NO.: 2010-CP-42-05743

) **MOTION TO DISMISS OF DEFENDANT**
) **RAY E. "CHUCK" THOMPSON**

To: Plaintiffs and their counsel;

Defendant, Ray E. "Chuck" Thompson, by and through his undersigned attorneys,
hereby moves this Honorable Court at such time and place as counsel may be heard for an Order
dismissing the Complaint filed against him herein. This motion is made pursuant to SCRCF
Rule 12(b)(6) and is based on the fact that each cause of action pled in the Plaintiffs' Complaint
fails to state facts sufficient to constitute a cause of action and should be dismissed. The motion
is further based on SCRCF Rule 12(b)(7).

This motion may be supported by any memoranda as may be filed with the Court.


Matthew H. Henrikson (SC Bar #07897)
CLARKSON WALSH TERRELL & COULTER, P.A.
Attorneys for Defendant Thompson
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
mhenrikson@clarksonwalsh.com

December 16, 2010
Greenville, South Carolina

FILED
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SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Gregory J. Feldman, M.D., Joseph A. Boscia, III,
M.D., Upstate Lung and Critical Care Specialists,
PC, and Devendar T. Shantha, M.D.,
☒ Plaintiff

v.

William Mark Casey, Ray E. "Chuck" Thompson,
and Charles M. Fogarty, M.D.,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-42-5743

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: F. Milton Mann, Bar No. 68250 Address: 1089 Boling Springs Road, Spartanburg, SC 29303 phone: (864) 208-0359 fax: (864) 208-0233 e-mail: other:		Defendant's Attorney: Joe Mooneyham, Bar No. 004041 Address: PO Box 8359, Greenville, SC 29605 phone: (864) 421-0036 fax: (864) 421-9060 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: Motion to Dismiss Estimated Time Needed: 15 minutes 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 July 5, 2011			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ 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, SCRPC) ☐ 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:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION			
Collected by: <u>Angel Padgett</u> ☒ MOTION FEE COLLECTED: <u>\$25.00</u> ☐ CONTESTED - AMOUNT DUE:		Date Filed:	

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-42-5743

Gregory J. Feldman, MD and)
Joseph A. Boscia, III, MD, and)
Upstate Lung and Critical Care)
Specialists, PC, and)
Devendar T. Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey,)
Ray E. "Chuck" Thompson, and)
Charles M. Fogarty, MD,)

Defendants.)

DEFENDANT WILLIAM MARK CASEY'S
MOTION TO DISMISS

TO: The plaintiffs, and F. Milton Mann, Jr., Esquire, their counsel:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for Defendant William Mark Casey, will move this Honorable Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, and at such time and place as the Court shall direct, for an Order, granting the following relief:

- 1) For an Order dismissing the plaintiffs' first cause of action against him;
- 2) For an Order dismissing the plaintiffs' second cause of action against him.

The grounds for the motion are that the plaintiffs' amended complaint fails to facts sufficient to constitute a cause of action against this defendant. The motion is made pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*.

In the alternative, and as further grounds for the dismissal of the complaint, Defendant Casey will move for dismissal on the grounds that the plaintiffs have failed to join parties who

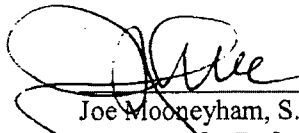
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would be indispensable under Rule 19(b), *South Carolina Rules of Civil Procedure*. The motion is made pursuant to Rule 12(b)(7), *South Carolina Rules of Civil Procedure*.

The motion will be supported by any memoranda to be filed by the defendant, by the applicable precedents, and by such argument of counsel as the Court may allow.

Counsel hereby affirms that as this motion is a motion to dismiss, no consultation with opposing counsel is required, pursuant to Rule 11(a), *South Carolina Rules of Civil Procedure*.

Respectfully submitted,
Mooneyham, Berry & Karow, LLC



Joe Mooneyham, S.C. Bar No. 004041
Attorneys for Defendant William Mark Casey
Post Office Box 8359
Greenville, South Carolina 29604
864.421.0036 Fax 864.421.9060
joe@upstatetriallawyers.com

Greenville, South Carolina

July 5, 2011

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Gregory J. Feldman, M.D., et al.,
Plaintiffs,

vs.

William Mark Casey, et al.,
Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-42-05743

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: F. Milton Mann, Jr. Bar No. Address: 1089 Boiling Springs Rd., Spartanburg, SC, 29303 Phone: 864-208-0359 Fax: E-mail: Other:		Defendant's Attorney: Matthew H. Henrikson, Bar #07897 Address: P.O. Box 6728, Greenville, SC, 29606 Phone: 864-232-4400 Fax: 864-235-4399 E-mail: mhenrikson@clarksonwalsh.com 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: <u>Defendant Thompson's Motion to Dismiss Amended Complaint</u> Estimated Time Needed: <u>30 minutes</u> 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 <u>7/5/11</u> Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ 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: _____			
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: \$ _____			

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SPARTANBURG COUNTY
M. HOPE BLACKLEY

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C.A. NO.: 2010-CP-42-05743
Gregory J. Feldman, M.D., Joseph A.	)	
Boscia, III, M.D., Upstate Lung and	)	
Critical Care Specialists, P.C., and	)	
Devendra T. Shantha, M.D.,	)	
	)	
Plaintiffs,	)	DEFENDANT THOMPSON'S MOTION
	)	TO DISMISS AMENDED COMPLAINT
v.	)	
	)	
William Mark Casey, Ray E. "Chuck"	)	
Thompson, and Charles M. Fogarty, M.D.,	)	
	)	
Defendants.	)	
	)	

Defendant, Ray E. "Chuck" Thompson, by and through his undersigned attorneys, hereby moves this Honorable Court at such time and place as counsel may be heard for an Order dismissing the Amended Complaint filed against him herein. This motion is made pursuant to SCRPC Rule 12(b)(6) and is based on the fact that each cause of action pled in the Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed. This motion is further based on SCRPC Rule 12(b)(7).

This motion may be supported by any memoranda as may be filed with the Court.

P. Christopher Smith, Jr. for

Matthew H. Henrikson (SC Bar #07897)

CLARKSON WALSH TERRELL & COULTER P.A.

Attorneys for Defendant Thompson

Post Office Box 6728

Greenville, South Carolina 29606

Phone: (864) 232-4400

mhenrikson@clarksonwalsh.com

M. HOPE BLACKLEY

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CLERK OF COURT
SPARTANBURG COUNTY

Dated: July 5, 2011
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-42-05743

Gregory J. Feldman, M.D., Joseph A.
Boscia, III, M.D., et al.

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

William Mark Casey, Ray E. "Chuck"
Thompson, and Charles M. Fogarty, M.D.,

Defendant.)

Plaintiff's Attorney: F. Milton Mann, Jr, Bar No. _____ Address: 1089 Boiling Springs Rd. Spartanburg, SC 29303 Phone: 864-209-0359 Fax 864-208-0233 E-mail: milton.mann@gmail.com Other: _____		Defendant's Attorney: Charles M. Fogarty, Bar No. Pro Se Address: 450 Mudd Creek Rd Inman, SC 29349 Phone: 864-431-6964 Fax 864-583-9360 E-mail: cfogarty@medresearch.com 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: Motion to dismiss Amended Complaint Estimated Time Needed: 15 minutes 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: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
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) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

C.A. NO.: 2010-CP-42-05743

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**DEFENDANT CHARLES M. FOGARTY'S
MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT**

1

To: Plaintiffs and their counsel:

Defendant Charles M. Fogarty, acting *pro se*, hereby moves this Honorable Court at such time and place as the parties may be heard to dismiss the Amended Complaint filed against him herein. This motion is made pursuant to SCRCF Rule 12(b)(6) and is based on the facts that each cause of action pled in the Plaintiffs' Amended Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

This motion may be supported by any memoranda as may be filed with the Court.

Charles M Fogarty

Charles M. Fogarty
450 Mudd Creek Rd
Inman, SC 29349
Phone: (864) 431-6964
Fax: (864) 583-9360
cfogarty@medresearch.com

July 5, 2011
Spartanburg, South Carolina

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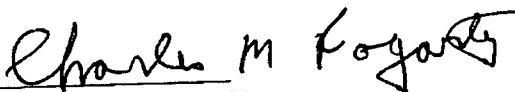
CERTIFICATE OF MAILING

The undersigned, by affixing his signature hereto, certifies that he has, on July 5, 2011, served a copy of this pleading by mailing a true and correct copy by United States Mail, first class postage prepaid and addressed as follows:

F. Milton Mann, Jr., Esquire
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
Attorney for Plaintiffs

Joe Mooneyham
Post Office Box 8359
Greenville, South Carolina 29604
Attorney for Mark Casey

Matthew Holmes Henrikson
Post Office Box 6728
Greenville, South Carolina 29606
Attorney for Chuck Thompson


Charles M. Fogarty, MD, *pro se*

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Gregory J. Feldman, M.D., Joseph A.
Boscia, III, M.D., et al.

Plaintiff,

vs.

William Mark Casey, Ray E. "Chuck"
Thompson, and Charles M. Fogarty, M.D.,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-42-05743

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:
F. Milton Mann, Jr, Bar No. _____
Address:
1089 Boiling Springs Rd.
Spartanburg, SC 29303
Phone: 864-209-0359 Fax 864-208-0233
E-mail: milton.mann@gmail.com Other: _____

Defendant's Attorney:
Charles M. Fogarty, Bar No. Pro Se
Address:
450 Mudd Creek Rd
Inman, SC 29349
Phone: 864-431-6964 Fax 864-583-9360
E-mail: cfogarty@medresearch.com 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: Motion to dismiss Second Amended Complaint

Estimated Time Needed: 15 minutes

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:** \$ 25.00

☐ **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, SC CP)

☐ 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: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: AT

Date Filed: 10/25/11

☐ **MOTION FEE COLLECTED:** \$ 25.00

☐ **CONTESTED - AMOUNT DUE:** \$ _____

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M. HOPE BLANKLEY

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-42-5743

Gregory J. Feldman, MD and)
Joseph A. Boscia, III, MD, and)
Upstate Lung and Critical Care)
Specialists, PC, and)
Devendar T. Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey,)
Ray E. "Chuck" Thompson, and)
Charles M. Fogarty, MD,)

Defendants.)

DEFENDANT CHARLES M. FOGARTY'S
MOTION TO DISMISS
SECOND AMENDED COMPLAINT

TO: The Plaintiffs, and F. Milton Mann, Jr., Esquire, their counsel:

YOU WILL PLEASE TAKE NOTICE that Charles M. Fogarty, acting pro se, will move this Honorable Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, and at such time and place as the Court shall direct, for an Order, dismissing the Plaintiffs' Second Amended Complaint against him.

The grounds for the motion are that the Plaintiffs' Second Amended Complaint fails to state facts sufficient to constitute a cause of action against Charles M. Fogarty. The motion is made pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*.

In the alternative, and as further grounds for the dismissal of the Second Amended Complaint, Charles M. Fogarty will move for dismissal on the grounds that the Plaintiffs have failed to join a party under Rule 19(a), *South Carolina Rules of Civil Procedure*. The motion is made pursuant to Rule 12(b)(7), *South Carolina Rules of Civil Procedure*.

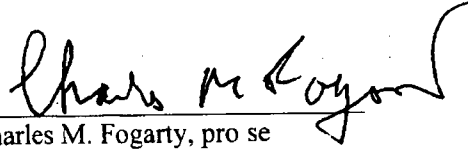
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M. HOPE BLANKLEY

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✓

The motion will be supported by any memoranda to be filed by Charles M. Fogarty and
by the applicable precedents.

Respectfully submitted,



Charles M. Fogarty, pro se
450 Mudd Creek Rd
Inman, SC 29349
(864) 494-6106
(864) 583-9360 (fax)
cfogarty@medresearch.com

Spartanburg, South Carolina

October 25, 2011

FILED
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SPARTANBURG COUNTY
2011 OCT 25 PM 3:25
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	C.A. No.: 2010-CP-5743
Gregory J. Feldman, MD, Joseph A.	)	
Boscia, III, MD, Upstate Lung & Critical	)	
Care Specialists, PC, and Devendra	)	
Shantha, MD,	)	DEFENDANTS' MOTION FOR
	)	SUMMARY JUDGMENT
Plaintiffs,	)	
	)	
vs.	)	
	)	
William Mark Casey, Ray E. "Chuck"	)	
Thompson, and Charles M. Fogarty, MD,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 56, SCRCPP, Defendants William Mark Casey ("Casey"), Ray E. "Chuck" Thompson ("Thompson"), and Charles M. Fogarty, MD ("Fogarty") (collectively, "Defendants") move for summary judgment with respect to Plaintiffs' abuse of process claim.

Defendants so move on grounds that Plaintiffs' claim is barred by the statute of limitations. This is because Plaintiffs' own email records and deposition testimony show conclusively that more than three years before Plaintiffs filed this suit for abuse of process, Plaintiffs themselves believed that they possessed an abuse of process claim against Defendants. This evidence includes, but is not limited to, the email attached hereto as Exhibit A, which Plaintiff Feldman sent Plaintiff Boscia on August 11, 2007 – more than three years before Plaintiffs filed this abuse of process action on October 27, 2010. In this email, Plaintiff Feldman advises Plaintiff Boscia:

1. We have at least Casey plus his Lawyer and Possibly Fogarty plus Chuck Thompson's wife
2. As for Abuse of Process that is already fact (He had no right to speak to Press about trial matter..Violation of Civil Procedure)

Defendants also move for summary judgment on grounds that Plaintiffs have admitted lacking proof of the second element of their abuse of process claim, which requires Plaintiffs to establish that Defendants used the underlying medical malpractice lawsuit that Casey and Thompson filed against Plaintiffs to coerce or extort Plaintiffs into taking some action outside that suit. Plaintiffs cannot prove this claim element because Plaintiffs themselves have testified that between the time Casey's sister told Plaintiffs that Casey was going to consult a lawyer, and the date the underlying lawsuit was filed, Plaintiffs had absolutely no contact with Defendants. Because Defendants did not have any contact with Plaintiffs during that time period, Plaintiffs cannot prove, as a matter of law, that Defendants attempted to use the underlying lawsuit to coerce or extort Plaintiffs to obtain some collateral advantage not involved in that lawsuit itself. For this additional reason, Defendants are entitled to summary judgment on Plaintiffs' abuse of process claim.

Defendants submit that no additional discovery in this case need be conducted before this motion is ripe for this Court's consideration and decision. This is because no witness can offer testimony rebutting Plaintiffs' own records and sworn testimony proving the facts determinative of this motion, i.e., the date Plaintiffs first believed they had an abuse of process claim against Defendants, and Plaintiffs' admission that Defendants did not threaten, coerce, or extort Plaintiffs in any manner between the time Defendant Casey's sister mentioned to Plaintiffs the possibility of legal action, and the date the underlying lawsuit was filed.

This motion will be supported by the pleadings and discovery in this case, and Defendants' Brief in Support of Defendants' Motion for Summary Judgment, to be filed subsequently hereto.

December 7, 2016

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From: gfeld3232@aol.com
Sent: Thursday, August 07, 2008 7:47 PM
To: milton.mann@gmail.com
Subject: Fwd: Check out South Carolina Judicial Department - Opinions

what would be the reason not to send complete record to MUSC? among many other things

-----Original Message-----

From: GFeld3232@aol.com
To: Bronchnu@aol.com
Sent: Sat, 11 Aug 2007 2:49 pm
Subject: Check out South Carolina Judicial Department - Opinions

B. Civil Conspiracy

The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988); Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005); Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); see also Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp., 358 S.C. 460, 470, 596 S.E.2d 51, 56-57 (2004) ("A civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing special damage.") (citation omitted). It is essential that the plaintiff prove all of these elements in order to recover. Lyon v. Sinclair Refining Co., 189 S.C. 136, 200 S.E. 78 (1938). The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff." Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986).

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1. We have at least Casey plus his Lawyer and Possibly Fogarty plus Chuck Thompson's Wife
2. As for Abuse of Process that is already fact (He had no right to speak to Press about trial matter..Violation of Civil Procedure)

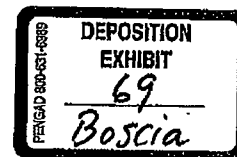
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EXHIBIT

A



MANN 001168

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Gregory J. Feldman, MD, Joseph A.	)	C.A. No.: 2010-CP-5743
Boscia, III, MD, and Upstate Lung &	)	
Critical Care Specialists, PC,	)	
	)	
Plaintiffs,	)	DEFENDANTS' AMENDED
	)	MOTION FOR
vs.	)	SUMMARY JUDGMENT
	)	
William Mark Casey, Ray E. "Chuck"	)	
Thompson, and Charles M. Fogarty, MD,	)	
	)	
Defendants.	)	
	)	

Defendants William Mark Casey ("Casey"), Ray E. "Chuck" Thompson ("Thompson"), and Charles M. Fogarty, MD ("Fogarty") (collectively, "Defendants") hereby amend the Motion for Summary Judgment they filed with this Court pursuant to Rule 56, SCRPC, on December 7, 2016, as follows:

Defendants continue to move for summary judgment on grounds that Plaintiffs' abuse of process claim is barred by the statute of limitations, because Plaintiffs' own documents and deposition testimony show conclusively that more than three years before Plaintiffs filed this suit for abuse of process, Plaintiffs were put on notice that they possessed a cause of action against Defendants, and formed and stated in writing their actual belief that they possessed an abuse of process claim against Defendants. This evidence includes, but is not limited to, the email attached hereto as Exhibit A, which Plaintiff Feldman sent Plaintiff Boscia on August 11, 2007 – more than three years before Plaintiffs filed this abuse of process action on October 27, 2010. In this email, Plaintiff Feldman advises Plaintiff Boscia:

1. We have at least Casey plus his Lawyer and Possibly Fogarty plus Chuck Thompson's wife
2. As for Abuse of Process that is already fact (He had no right to speak to Press about trial matter..Violation of Civil Procedure)

Defendants hereby withdraw, without prejudice, the additional basis for summary judgment asserted in Defendants' Motion for Summary Judgment. Defendants expressly reserve their right to move for summary judgment at some later time, if necessary and appropriate, on grounds that Plaintiffs lack proof of at least one element of their abuse of process claim.

This motion will be supported by the pleadings and discovery in this case, and Defendants' Brief in Support of Amended Motion for Summary Judgment, to be filed subsequently hereto.

March 30, 2017

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/s/ Joe Mooneyham
Joe Mooneyham
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Attorney for William Mark Casey

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EXHIBIT

A



MANN 001168

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	C.A. No.: 2010-CP-5743
Gregory J. Feldman, MD, Joseph A.	)	
Boscia, III, MD, and Upstate Lung &	)	
Critical Care Specialists, PC,	)	
	)	DEFENDANTS' BRIEF IN SUPPORT OF
Plaintiffs,	)	MOTION FOR SUMMARY JUDGMENT
	)	
vs.	)	
	)	
William Mark Casey, Ray E. "Chuck"	)	
Thompson, and Charles M. Fogarty, MD,	)	
	)	
Defendants.	)	
	)	

Defendants Ray E. "Chuck" Thompson ("Thompson"), and Charles M. Fogarty, MD ("Fogarty") (collectively, "Defendants") respectfully request dismissal of Plaintiffs' abuse of process claim against them, based on the application of the three-year statute of limitations. Plaintiffs' claim is time-barred, because it was filed more than four years after Plaintiffs were put on notice that they might have grounds for suing Defendants, and more than three years after they formed the actual belief that they had an abuse of process claim against Defendants.

Summary of the Argument

When Plaintiffs filed this suit on October 27, 2010, the three-year limitations period on their abuse of process claim had expired. This fact is made clear by Plaintiffs' own testimony and documents, which include an August 11, 2007, email from Feldman to Boscia showing that by that date, Plaintiffs held the actual belief that they had an abuse of process claim against Defendants:

1. We have at least Casey plus his Lawyer [Thompson] and Possibly Fogarty plus Chuck Thompson's Wife
2. As for Abuse of Process that is already fact (He had no right to speak to Press about trial matter..Violation of Civil Procedure.

(Ex. 1/Mann 1168.)^{1,2}

¹ Ex. 1 is attached behind Tab 1.

² The parties have stipulated to the authenticity of the documents produced during discovery in this case. (See Order Granting Def. Fogarty's Mot. Compel, entered Apr. 12, 2016, ¶ V.)

Plaintiffs did not file this action within three years of forming and stating in writing their belief that they possessed an abuse of process claim against Defendants. Instead, based on their counsel's advice and at the insistence of their malpractice insurer, Plaintiffs waited to file this suit until after the conclusion of the underlying medical malpractice action that Plaintiffs claim was an abuse of process when it was filed, *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC*, Spartanburg County Court of Common Pleas, Case No. 2006-CP-42-1728 (the "MMA").

Plaintiffs waited to file suit until October 2010, despite the fact that within months of the MMA's filing in May 2006, Plaintiffs were put on notice that they might have a claim against Defendants, who they believed had used a false medical theory stated by Fogarty in order to file the MMA for purposes of injuring Plaintiffs, and who they believed had leaked damaging information regarding that lawsuit to the press. Plaintiffs waited to sue until October 2010, even though their belief that the MMA was false and was filed to injure them was underscored in February 2007, when Plaintiffs were forced to dismiss a lawsuit they had been maintaining against Fogarty, and again in August 2007, when Casey testified during his deposition that no one told him he had a brain injury. Plaintiffs chose to sue in October 2010, despite the fact that by June 2007, Feldman was actively researching the claims Plaintiffs could assert against Defendants as a result of the MMA and the press leak, and that by August 2007, Plaintiffs believed those claims included abuse of process. These facts prevent Plaintiffs from arguing legitimately that their delay in filing this suit was caused by some act or omission by Defendants, as opposed to Plaintiffs' own decision making.

Claim Overview

Abuse of process is "the employment of legal process for some purpose other than that for which it was intended by the law to effect – the improper use of a regularly issued process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 210, 153 S.E.2d 693, 695 (1967). "The tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the

process that is not proper in the regular conduct of the proceeding.” *McBride v. School Dist. of Greenville County*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). To sustain an abuse of process claim, a party must allege facts sufficient to show not only that the lawsuit was brought for an ulterior purpose, *i.e.*, for collateral reasons, but that willful acts were taken through which the process was abused. *Food Lion, Inc. v. United Food & Commercial Workers International Union*, 351 S.C. 65, 76, 567 S.E.2d 251, 256 (Ct. App. 2003).

Relevant Case Facts

Medical Malpractice Action

The MMA was filed by Thompson on May 24, 2006, on behalf of Mark Casey. (Ex. 2/MMA Compl.)³ Casey alleged that he suffered permanent brain injury and other damages from malpractice Plaintiffs committed in the course of treating him in 2004. (Ex. 2/MMA Compl., ¶ 7.) That treatment included a flexible bronchoscopy that Boscia performed on May 28, 2004, after Casey was admitted to the hospital with chest pain and a chest x-ray showed a small metallic object in the x-ray field. (Ex. 2/MMA Compl.; Ex. 3/Feld. Dep. 86; Ex. 4/Boscia Dep. 68-69.)^{4,5} Although the flexible bronchoscopy did not reveal a foreign body in Casey’s chest, and while a CT scan of Casey’s chest also did not show a foreign body, Boscia recommended that Casey undergo a rigid bronchoscopy performed by his partner, Feldman, to remove a purported foreign body. (Ex. 4/Boscia Dep. 55, 68-69.)⁶

On June 3, 2004, Casey returned to the hospital for the rigid bronchoscopy, which Feldman performed despite the fact that Casey’s CT showed no foreign body, and after having spent only five or ten minutes with Casey in the surgical holding room at the hospital. (Ex. 3/Feld. Dep. 86-87,

³ Ex. 2 is attached behind Tab 2.

⁴ A copy of the pages from Feldman’s deposition that are referenced herein are attached collectively as Ex. 3, behind Tab 3.

⁵ A copy of the pages from Boscia’s deposition that are referenced herein are attached collectively as Ex. 4, behind Tab 4.

⁶ A flexible bronchoscopy is a procedure which allows visualization of the airways by means of a flexible, lighted tube that is inserted into the patient’s lungs. (Ex. 4/Boscia Dep. 68-69.) A rigid bronchoscopy entails the insertion of a rigid, metal, lighted tube through a patient’s mouth into the patient’s lungs. Instruments such as forceps and lasers may then be passed through this tube to perform procedures on and/or remove lung tissue.

93; Ex. 4/Boscia Dep. 55; Ex. 5/King Docs. 52-55.)⁷ Although Feldman did not see any metallic object or foreign body in Casey's lungs during the procedure, he nevertheless used a laser to vaporize portions of Casey's lung tissue. (Ex. 5/King Docs. 52-55.) Casey then suffered a pneumothorax, which occurs when a patient's airway is perforated, and air leaks or is forced by a ventilator into other areas of the patient's body. (Ex. 4/Boscia Dep. 63-64.) Casey had a chest tube inserted to allow the air that had accumulated in his chest cavity to escape, was placed on life support, and remained in ICU until June 6, 2004. (Ex. 3/Feld. Dep. 110-111; Ex. 4/Boscia Dep. 54-55.)

In the MMA, Casey alleged that he suffered an air embolism as a result of the pneumothorax that occurred during the rigid bronchoscopy Feldman performed. (Ex. 2/MMA Compl. ¶¶ 7-8.) Specifically, the Complaint alleged that when Casey's bronchial wall was perforated, air bubbles diffused into his bloodstream, forming an air embolism that traveled to Casey's brain and caused permanent damage. (Ex. 2/MMA Compl. ¶¶ 7-8; Ex. 4/Boscia Dep. at 98-99.) Casey also alleged that Feldman breached the applicable standard of care by failing to obtain a complete history and physical of Casey before performing the rigid bronchoscopy, and failing to obtain Casey's informed consent to the procedure. (Ex. 2/MMA Compl. ¶ 8.)

Plaintiffs' Initial Assessment of the MMA

Plaintiffs were served with the Complaint in the MMA on or about May 25, 2006. (Ex. 3/Feld. Dep. 191-192.) When Plaintiffs read that pleading, they saw that Casey was accusing them of malpractice, and was alleging that an air embolism had caused him to suffer brain damage and other injuries. (Ex. 3/Feld. Dep. 192-193.) Plaintiffs immediately assessed Casey's claims as being false and baseless, and his air embolism theory of damage as being "[o]utlandish" and "crazy." (Ex. 3/Feld. Dep. 296; Ex. 4/Boscia Dep. 90, 99.) Plaintiffs both believed that it was anatomically impossible for Casey to have suffered an air embolism as a result of the pneumothorax that occurred

⁷ Per hospital policy, before performing the rigid bronchoscopy, Feldman was required to perform a complete history and physical of Casey, and to obtain Casey's informed consent for the procedure. (Ex. 3/Feld. Dep. 87.)

during the rigid bronchoscopy Feldman performed. (Ex. 3/Feld. Dep. 50; Ex. 4/Boscia Dep. 99.) Feldman also saw Casey twice after his discharge from the hospital, and noted nothing wrong with him; so he did not believe Casey had been brain damaged. (Ex. 3/Feld. Dep. 45, 193-194, 201-202.) As to Feldman's belief that the MMA was illegitimate, Feldman elaborated:

Q: You did not believe for a day that the medical malpractice action was a legitimate malpractice lawsuit where Casey was seeking legal redress from injury you had given him. Correct?

A: Let me correct you. Not for a day, but for a second.

(Ex. 3/Feld. Dep. 296.)

SHJ Article

On May 31, 2006, approximately a week after the MMA was filed, the *Spartanburg Herald Journal* published an article (the "*SHJ Article*") regarding the MMA and its allegations. (Ex. 3/Feld. Dep. 166-168; Ex. 6/*SHJ Article*.)⁸ This article identified Plaintiffs as the defendants in the MMA, and stated the case theory that Casey suffered brain injury when a perforated bronchial wall allowed air bubbles to escape from his lungs and travel to his brain. (Ex. 6/ *SHJ Article*.) The article also contained quotes from Thompson regarding the MMA. (See Tab 6/*SHJ Article*.)

According to Boscia, as soon as the MMA was filed and the *SHJ Article* was published, he suffered negative publicity that directly affected patients' willingness to see him as a physician. (Ex. 4/Boscia Dep. 70-74.) Feldman, too, testified that when the MMA was filed and the *SHJ Article* appeared, Plaintiffs' "lives were turned upside down." (Ex. 3/Feld. Dep. 165-166.) Feldman describes the *SHJ Article* as being "extraordinarily damaging to [him] and to others," and as having "committed upheaval" in Plaintiffs' lives. (Ex. 3/Feld. Dep. 167-168, 172-173.)

Plaintiffs' MMA defense and involvement

After being served with the Complaint in the MMA, Plaintiffs reported the lawsuit to their malpractice insurer, which was the JUA. (Ex. 3/Feld. Dep. 94, 194.) The JUA assigned attorney Spencer King to represent Plaintiffs, and assigned the defense of another case defendant to attorney

⁸ Ex. 6 is attached behind Tab 6 to this brief.

Billy Gunn, who later took over Boscia's representation in the MMA. (Ex. 3/Feld. Dep. 194; Ex. 4/Boscia Dep. 18.) Also representing Plaintiffs in the MMA was their personal counsel, Attorney Milton Mann. (Ex. 3/Feld. Dep. 415; Ex. 4/Boscia Dep. 18.)

In or around early June 2006, Plaintiffs met with King and discussed with him the allegations asserted in the MMA Complaint, Plaintiffs' opinion regarding those allegations, and pursuing discovery. (Ex. 3/Feld. Dep. 194; Ex. 7/King Dep. 63.)⁹ During that meeting, Feldman advised King that he believed the MMA lacked any merit. (Ex. 7/King Dep. 70.) Also, after meeting with King, Feldman became and remained highly and directly involved with and in Plaintiffs' defense of the MMA. (Ex. 6/Feld. Dep. 483.) Feldman emailed King, Gunn, and the JUA prolifically throughout that lawsuit, and reviewed all of the testimony and documents in the MMA "endlessly and with a fine tooth comb." (Ex. 8/Gunn Emails 2311; Ex. 4/Boscia Dep. 17; Ex. 7/King Dep. 70-71, 108-109.)¹⁰ King, in turn, attempted during the MMA to provide Feldman copies of all of the records King procured. (Ex. 7/King Dep. 108-109.)

Fogarty

One of the primary matters on which Feldman focused during the MMA, and as to which he corresponded on multiple occasions with Plaintiffs' counsel, concerned Feldman's former medical partner, Fogarty. (Ex. 7/King Dep. 74-75, 79-82; Ex. 8/Gunn Emails 2311.)

Feldman had practiced pulmonology with Fogarty from 1992 to 2000, years before Feldman treated Casey. (Ex. 3/Feld. Dep. 136-137.) Feldman left Fogarty's practice in 2000, due to what he perceived as Fogarty's personal animosity toward him, and the doctors have not spoken since that time. (Ex. 3/Feld. Dep. 141-142, 149-150.) After leaving Fogarty's practice, Feldman formed the belief that Fogarty developed an "unrelenting obsession" with Feldman, became determined to destroy Feldman and his associates, and started actively attempting to hamper Feldman and his

⁹ A copy of the pages from King's deposition that are referenced herein are attached collectively as Ex. 7, behind Tab 7.

¹⁰ A copy of the Gunn Emails that are referenced herein are attached collectively as Ex. 8, behind Tab 8.

associates' business efforts and damage their reputations. (Ex. 3/Feld. Dep. 143-145.) In September 2004, Feldman even sued Fogarty through a medical research business Feldman and Boscia had started, S. Carolina Pharmaceutical Research ("S. Carolina"), alleging that Fogarty was defaming S. Carolina and intentionally interfering with its business contracts. (Ex. 3/Feld. Dep. 146-148; Ex. 4/Boscia Dep. 58; Ex. 9/Summons and Complaint in S. Carolina case.)¹¹

In July 2004, after Casey had suffered his pneumothorax, and several months before Feldman's company filed the S. Carolina lawsuit against Fogarty, Casey sought treatment with Fogarty's pulmonology practice, Lung and Chest Medical Associates ("Lung and Chest"). (Ex. 10/Thom. Docs. 32157-32232, at 32201.)¹² Casey had been experiencing various problems since his release from the hospital, including trouble sleeping, an inability to stop pacing, and personality changes. (Ex. 4/Boscia Dep. 64-66; Ex. 10/Thom. Docs. 32209-32215.) Casey had raised these concerns to Plaintiffs in a series of office visits that occurred after his release from the hospital, but did not feel that Plaintiffs had answered his questions. (Ex. 3/Feld. Dep. 115-121; Ex. 9/Thom. Docs. 32205-32220.) In fact, during Casey's last post-surgical office visit with Boscia, Casey and his sister asked Boscia why Plaintiffs had proceeded so quickly with the rigid bronchoscopy when Casey's CT scan showed no foreign body, and ended up telling Boscia that he would be hearing from their lawyers. (Ex. 4/Boscia Dep. 64-65; Ex. 10/Thomp. Docs. 32209-32214 (notes from Casey's 6-25-04 office visit with Boscia).)

At Lung and Chest, Casey was seen on various occasion in 2004 and 2005 by several different physicians, including Dr. Wilson Smith and Fogarty. (*See* Ex. 10/Thom. Docs. 32157-32232.) During an office visit with Smith on July 14, 2004, Casey described his treatment history with Plaintiffs, and complained of experiencing anxiety and restlessness since being discharged from the ICU. (Ex. 10/Thom. Docs. 32118-32119.) Smith wrote in his office visit note that he

¹¹ A copy of the Summons and Complaint in the S. Carolina case is attached as Ex. 10, behind Tab 10.

¹² A copy of the Thompson Documents that are referenced herein are attached collectively as Ex. 10, behind Tab 10.

“wonder[ed] if [Casey] suffers from a posttraumatic stress disorder related to his injury and intensive care unit experience.” (Ex. 10/Thom. Docs. 32188-32189.) Casey saw Smith on several more occasions during 2004, and had follow up visits with other Lung and Chest physicians into 2005. (Ex. 10/Thom. Docs. 32173-32187.)

On July 21, 2005, Casey had an office visit with Fogarty, during which Casey continued to complain of difficulty concentrating and staying focused, as well as chronic chest pain. (Ex. 10/Thom. Docs. 32163-32165.) Fogarty examined Casey, reviewed his medical history, and prepared a written note detailing examination and assessment of Casey’s medical condition. (Ex. 10/Thom. Docs. at 32163-32165.) Fogarty began serving as Casey’s primary physician at Lung and Chest after that office visit. (See Ex. 10/ Thom. Docs. 32157-32232.)

July 21 Note

The written note Fogarty made of his July 21, 2005, office visit with Casey was an “Office Note” (the “July 21 Note”) that, among other things, stated Fogarty’s belief that Casey suffered an air embolism during the pneumothorax that occurred during his rigid bronchoscopy, and that this event injured Casey and accounted for his cognitive complaints. (See Ex. 10/Thom. Docs. at 32163-32165.) After Fogarty prepared the initial draft of his July 21 Note, the document was edited slightly two times, such that three versions of the document exist: an unsigned version (“Note A”); a signed version showing a cc: to Dr. Gonda (“Note B”), and a signed version showing a cc: to Dr. Gonda and to Dr. Grace (Note “C”).^{13,14,15}

Although minor differences exist among these three versions of the July 21 Note, each of the versions contains Fogarty’s same medical opinion, which is that during Casey’s pneumothorax, an air embolism diffused into Casey’s bloodstream and traveled to his brain, damaging it and causing Casey’s post-surgical difficulties. (Ex. 11/Note A; Ex. 12/Note B; Ex. 13/Note C; Ex. 4/Boscia

¹³ A copy of Note A is attached hereto as Ex. 11, behind Tab 11.

¹⁴ A copy of Note B is attached hereto as Ex. 12, behind Tab 12.

¹⁵ A copy of Note C is attached hereto as Ex. 13, behind Tab 13.

Dep. 84 (stating that no significant differences exist among the three July 21 Note versions; Ex. 14/Mann 5153 (Feldman email describing the differences between Note A and Note C as “minor”);¹⁶ Ex. 15/Smith Dep. 30 (all three July 21 Note versions state Fogarty’s same opinion that an air embolism caused Casey’s medical condition)).¹⁷ Among the minor differences in the three July 21 Note versions is the fact that Note A is unsigned, “page three” is misspelled “page tree,” and the “Comments” section on page three of that document states:

With reference to the patient’s difficulty concentrating, *he undoubtedly had air emboli* given his lengthy duration of anesthesia and laser perforation of the endotracheal tree with resultant leakage of air into extra pleural and vascular extra pleural mediastinal and vascular spaces.

(Ex. 11/Note A (emphasis added).) Note A also shows a cc: to Dr. Gonda. (Ex. 11/Note A.)

In slight contrast, Note B is signed by Fogarty, and does not contain the “undoubtedly had air emboli” language contained in Note A. (Ex. 12/Note B.). Note B still shows Dr. Gonda as a cc: recipient, and the “Comment” section reads, in pertinent part:

With reference to the patient’s difficulty concentrating, *air emboli have been reported as a common complication when there is laser perforation of the endotracheal tree* with resultant leakage of air into extra pleural, vascular and mediastinal spaces.

(Ex. 11/Note B (emphasis added).)

Again in slight contrast, Note C is signed by Fogarty, and shows a cc: to Dr. Gonda as well as Dr. Grace. (Ex. 12/Note C.) Note C’s Comment section reads:

With reference to the patient’s difficulty concentrating, *air emboli have been reported as a complication of laser bronchoscopy even without perforation of the endotracheal tree* with resultant leakage of air into extra pleural, vascular and mediastinal spaces.

(Ex. 12/Note C (emphasis added).)

Plaintiffs’ understanding of Fogarty’s involvement in MMA

The air embolism theory of injury that is stated in all three of the July 21 Note versions is

¹⁶ A copy of the Mann Documents that are referenced herein are attached collectively as Ex. 14, behind Tab 14.

¹⁷ A copy of the pages from Smith’s deposition that are referenced herein are attached collectively as Ex. 15, behind Tab 15.

the theory on which Casey's claims in the MMA were based. (Ex. 3/Feld. Dep. 191-192, 201-202; Ex. 7/King Dep. 74.) Although the Complaint in the MMA did not identify Fogarty as the doctor who formed or held the opinion that Casey suffered an air embolism, Plaintiffs learned that Fogarty was that physician within months of the MMA's being filed on May 24, 2006. (Ex. 7/King Dep. 91-94.) This is because in June 2006, King promptly began discovery efforts on Plaintiffs' behalf, issuing document subpoenas to Casey's known medical providers and collecting Casey's medical records, which contained all three of the slightly different versions of the July 21 Note.

On June 16, 2006, for example, King issued document subpoenas to various of Casey's medical providers known at that time to Plaintiffs, including Lung and Chest and Dr. Gonda. (Ex. 8/King Docs. 1664, 2169; Ex. 7/King Dep. 63-64.)¹⁸ No later than July 3, 2006, Plaintiffs received a copy of Gonda's subpoena response, which contained a copy of Note C. (Ex. 7/King Dep. 96-97.) No later than July 7, 2006, Plaintiffs received a copy of Note A, which was included among various of Casey's medical records that Thompson hand delivered to Gunn, and that Thompson bates stamped in reverse order as 440 – 438. (Ex. 7/King Dep. 94.) No later than August 14, 2006, Plaintiffs received a copy of Lung and Chest's subpoena response, which included Note B. (Ex. 7/King Dep. 95-96.) In sum, Plaintiffs had received a copy of Note A, Note B, and Note C no later than August 14, 2006, and had the opportunity from that date forward to compare and contrast the documents, and explore them during discovery. (Ex. 7/King Dep. 94-97 (including stipulations that Plaintiffs possessed all three July 21 Note versions no later than August 14, 2006), and 101-103.)

When Plaintiffs received the Lung and Chest file documents Thompson produced in the MMA in July 2006, Plaintiffs reviewed the copy of Note A that was contained in that production, and saw that the air embolism and brain damage theory on which the MMA was based had been formed by Fogarty. (Ex. 3/Feld. Dep. 8-9, 104, 191-192, 201-202, 296; Ex. 4/Boscia Dep. 90, 98-99; Ex. 7/King Dep. 74.) When Plaintiffs realized that Feldman's nemesis, Fogarty, had authored

¹⁸ Plaintiffs had learned in 2004 that Casey started treating at Lung and Chest after leaving Plaintiffs' pulmonary practice. (Ex. 4/Boscia Dep. 63.)

the medical theory on which the MMA was based, this underscored their existing belief that the MMA lacked any merit. (Ex. 3/Feld. Dep. 201-203; Ex. 4/Boscia Dep. 99, 124.) In fact, Feldman believed that Fogarty's statement in Note A that Casey "undoubtedly had air emboli" not only was "outlandish and crazy," but was a physical impossibility. (Ex. 3/Feld. Dep. 199-203).

The fact that Fogarty originated the medical theory on which the MMA was based, and the fact that Fogarty stated in Note A that Casey "undoubtedly" suffered an air embolism, caused Feldman to believe very early in the MMA – and no later than October 10, 2007 – that Fogarty fabricated that theory in order to enable Thompson to file a baseless lawsuit intended to "destroy" Plaintiffs. (Ex. 3/Feld. Dep. 11-13, 19-20, 48-49, 57-58, 76-78, 193-203, 216.) Feldman assessed that Fogarty purposefully inserted "undoubtedly" in Note A in order to state his air embolism theory with the degree of medical certainty Thompson required to be able to file and maintain the MMA. (Ex. 3/Feld. Dep. 48-49, 57-58, 76-78, 216.) Feldman also formed the belief that Fogarty, in a further attempt to injure Plaintiffs, had caused the *SHJ* Article to be published by leaking news of the MMA to the press. (Ex. 3/Feld. Dep. 292; Ex. 7/King Dep. 74-75.) And, as discussed further below, Feldman believed he had grounds to sue Defendants. (Ex. 7/King Dep. 79-86.)

Feldman related all of these beliefs to his counsel in the MMA, including King, who reported them to the JUA in September and October 2007. (Ex. 3/Feld. Dep. 290-295; Ex. 7/King Dep. 70-76, 79-82.) Specifically, King's September 4, 2007, report to the JUA stated, *inter alia*:

When [Casey] and his sister did not get satisfactory answers from the insureds, they visited the competitive pulmonary group Lung and Chest. Dr. Fogarty of Lung and Chest, and your insured, Dr. Feldman, are bitter rivals and have been involved in litigation. Apparently, both believe that every problem in their lives stem from some action of the other. Dr. Feldman, in this case, believes Dr. Fogarty is supporting Casey in this litigation.

(Ex. 16/JUA Docs. 389-391.)¹⁹ Similarly, on October 10, 2007, King reported:

Just for your information, I am copying you on some, but not all of the e-mails that Dr. Feldman has sent to me attempting to direct this litigation, most of which deal with ancillary issues, minutia such as the article in the Herald-Journal, all suits

¹⁹ A copy of the JUA Documents that are referenced herein are attached collectively as Ex. 16, behind Tab 16.

against competitors, etc., etc. I have directed him to seek legal advice of others (he has his own attorney) if he feels he has redress. My sole job is to defend this lawsuit. That does not include filing suit against anyone.

(Ex. 5/King Docs. 1571.)

Plaintiffs' dismissal of S. Carolina lawsuit

On February 15, 2007, approximately eight months after the MMA was filed and the *SHJ* Article was published, Plaintiffs dismissed their company's S. Carolina case against Fogarty with prejudice. (Ex. 3/Feld. Dep. 172-175; Ex. 4/Boscia Dep. 59; Ex. 17/Stip. Dismissal in S. Carolina.)²⁰ Among the reasons Plaintiffs decided to dismiss the *S. Carolina* lawsuit against Fogarty was the fact that Plaintiffs' "lives were turned upside down" when the MMA was filed and the *SHJ* Article was published. (Ex. 3/Feld. Dep. 165-168, 172-173.)

Plaintiffs' research and formation of belief as to claims held against Defendants

Because Plaintiffs believed that the filing of the MMA against them and the publicizing of the suit through the *SHJ* Article was wrongful and had damaged them, Feldman started researching possible claims Plaintiffs could assert against Thompson and Fogarty in relation to those acts very early in the MMA. (Ex. 3/Feld. Dep. 299, 516-526.) Feldman's goal in performing this research was to educate himself on causes of action available to physicians on the basis of being named in a frivolous lawsuit. (Ex. 3/Feld. Dep. 516.) As early as June 2007, Feldman had performed research on tort claims arising from an invasion of privacy. (Ex. 18/Mann 84 (6-14-07 email from Feldman regarding claim research).)^{21,22} Feldman's research also explored claims for slander, conspiracy, and abuse of process. (Ex. 3/Feld. Dep. 299.) After learning on the Internet that a claim for abuse of process requires a willful act, Feldman then researched willful acts. (Ex. 3/Feld. Dep. 516.)

²⁰ A copy of the Stipulation of Dismissal in the S. Carolina case is attached as Ex. 17, behind Tab 17.

²¹ A copy of Feldman's June 14, 2007, email regarding tort claim research is attached as Ex. 18, behind Tab 18.

²² Despite the fact that Feldman emailed his counsel regularly and prolifically from the start of the MMA in May 2006 (see Ex. 4/Boscia Dep. 17; Ex. 7/King Dep. 70-71; Ex. 8/Gunn Emails 2311), this is the only email produced by Plaintiffs and Mann in this case that originally was sent before the October 27, 2007, statute of limitations cutoff date.

Fortunately, several of the emails that Plaintiffs produced that were sent in 2008 contain embedded copies of earlier emails, which embedded emails were sent before October 27, 2007. For example, an email Feldman sent Mann on August 7, 2008, contains an embedded message Feldman sent himself on August 11, 2007. (See Ex. 1/Mann 1168.) Four other emails Mann produced in this case from 2008 also contain embedded emails that Feldman sent in August and September 2007. (See Ex. 19-Ex. 22.)

According to Feldman, Fogarty committed a wrongful act when he wrote in Note A that Casey “undoubtedly had air emboli,” with the intent that the record would be used for the purpose of filing and supporting a baseless lawsuit aimed at destroying Plaintiffs. (Ex. 3/Feld. Dep. 76-77.) Feldman believes that Thompson, in turn, abused the legal process when he filed the MMA based on Fogarty’s “undoubtedly” record and with the intent to get disability benefits for Casey. (Ex. 3/Feld. Dep. 83-85.) Feldman also believes that Fogarty caused the *SHJ* Article to be published on May 31, 2006, by leaking news of the MMA to the press, and that this was a wrongful act that damaged Plaintiffs. (Ex. 3/Feld. Dep. 292.)

Based on Feldman’s research and his beliefs regarding the wrongful nature of the MMA and Defendants’ acts related to it, Feldman formed the opinion that Plaintiffs had causes of action against Defendants for civil conspiracy and abuse of process. (Ex. 3/Feld. Dep. 518.) No later than August 11, 2007, Feldman stated that belief in writing to Boscia, as follows:

1. We have at least Casey plus his Lawyer and Possibly Fogarty plus Chuck Thompson’s Wife.
2. As for Abuse of Process that is already fact (He had no right to speak to Press about trial matter..Violation of Civil Procedure)[.]

(Ex. 1; *see also* Ex. 3/Feld. Dep. 518-522.)

Feldman followed this August 11, 2007, declaration that Plaintiffs had claims against Defendants for abuse of process and conspiracy with additional emails regarding the claims he believed Plaintiffs possessed against Defendants. For example, on August 17, 2007, Feldman emailed himself regarding the definition and proof of the conspiracy claim he believed Plaintiffs held against Defendants, and sent himself another email regarding “Physician Countersuits.” (Ex. 19/Mann 1167; Ex. 20/Mann 22484.)^{23,24} On September 29, 2007, Feldman emailed himself additional research he performed on the “Abuse of Process” claim he believed Plaintiffs held

²³ A copy of Feldman’s August 17, 2007, email regarding conspiracy claims is attached as Ex. 19, behind Tab 19.

²⁴ A copy of Feldman’s August 17, 2007, email regarding physician countersuits is attached as Ex. 20, behind Tab 20.

against Defendants. (Ex. 21/Mann 1183.)²⁵

Another topic Feldman researched as early as August 2007 was the statute of limitations applicable to the claims he believed Plaintiffs held against Defendants. (Ex. 22/Mann 22478.)²⁶ On August 17, 2007, Feldman sent himself an emailed titled, "Statue [sic] of Limitations," excerpting legal research he had performed on the three-year limitations period applicable to one physician's suit against another doctor for defamation. (Tab 5.)

Plaintiffs' desire to sue Defendants, and reason for waiting to do so

As mentioned above, beginning early in the MMA and persisting throughout that case, Feldman advised his MMA counsel that he believed Plaintiffs held counterclaims against Thompson and Fogarty, and that he wanted to file suit against Defendants. (Ex. 7/King Dep. 80-82.) King repeatedly advised Feldman that King's focus had to remain the defense of the MMA, and that if Feldman wished to sue anyone in relation to that lawsuit, he needed to wait until after the MMA was concluded before doing so. (Ex. 7/King 81-83.) King reported this fact to the JUA beginning early in the MMA, as reflected in his case reports dated September 4, 2007, and October 10, 2007. (Ex. 7/King Dep. 79-84; Ex. 5/King Docs. 1571; Ex. 16/JUA Docs. 389-391.)

Feldman also repeatedly relayed to Plaintiffs' personal counsel, Mann, his desire to sue Defendants. (See, e.g., Ex. 14/Mann 15851, 18091.) For example, on January 13, 2008, Feldman emailed Mann, "Milton, what prevents us from lawsuit of Abuse of Process?" (Ex. 14/Mann 23467-23468.) Feldman included in this message research outlining the elements of an abuse of process cause of action, and distinguishing it from a malicious process claim. (Ex. 14/Mann 23467-23468.) In response, Mann stated:

I think the same thing I've said from the start on this. There is nothing that can be done outside that lawsuit while it is still going. Once it is dismissed then you can do something."

²⁵ A copy of Feldman's September 29, 2007, email regarding abuse of process is attached as Ex. 21, behind Tab 21.

²⁶ A copy of Feldman's August 17, 2007, email regarding the statute of limitations is attached as Ex. 22, behind Tab 22.

(Ex. 14/Mann 23467.) When Feldman then sent Mann another email attaching a summary of and decision from a case Feldman believed supported the ability to sue a lawyer for reputational damage, Mann responded: "I hear you and agree in theory, but that doesn't change the way this has to be addressed. If Spence[r King] will not file something, then we're going to have to wait till this case is over." (Ex. 14/Mann 23463.)

Feldman persisted, forwarding Mann on March 19, 2008, a copy of the "Abuse of Process" email Feldman sent himself on September 29, 2007, containing a definition and description of that tort. (Ex. 21/Mann 1183.) On September 16, 2008, Feldman emailed Mann additional legal research Feldman had performed on "Wrongful Use of Civil Proceedings; Abuse of Process; False Arrest," and commenting that "we have great case of Abuse of Process in this case[.]" (Ex. 14/Mann 19042.) Feldman emailed Mann again on November 17, 2008, declaring his continuing desire to "know how we can countersue in the same lawsuit," as the MMA, and explaining that Mann "said this many times we must seek Judge permission to file it!" (Ex. 14/Mann 18091.)

Despite King's efforts to focus Feldman on the defense of the MMA, and despite Mann's repeatedly advising Feldman that Plaintiffs would have to wait until the MMA concluded before suing Defendants, Feldman and Mann continued to discuss with King throughout the MMA Feldman's desire to file suit against Defendants. (Ex. 7/King 85-86.) King's and the JUA's response remained consistent: Plaintiffs needed to wait until after the MMA was concluded before Plaintiffs filed any claims against Defendants. (Ex. 5/King Docs. 1571; Ex. 7/King Dep. 85-86.)

The JUA, in fact, insisted that Plaintiffs wait until after the MMA ended before Plaintiffs filed any counter-action in relation to the MMA. This fact was highlighted in October 2009, when Mann filed suit for Plaintiffs in Florida against one of Casey's expert witnesses in the MMA, one Dr. Jantz, for allegedly committing perjury during this deposition. (See Ex. 8/Gunn Emails 175-178.) The JUA advised Plaintiffs and Mann that it considered the Florida suit to be "unauthorized," and demanded that Plaintiffs "refrain from taking such unilateral action and from taking any action

that may prejudice the defense strategy implemented by Mr. King and Mr. Gunn.” (Ex. 14/Mann 1071-1072.) Plaintiffs and Mann agreed to drop the Florida lawsuit and “pledged cooperation” with the JUA, by confirming “that there would be no filings for sanctions, contempt etc in the [MMA] without our [JUA’s] agreement and acquiescence thereto.” (Ex. 8/Gunn Emails 1871-1872). Several weeks later, King reported to the JUA that Feldman continued to believe that the MMA “was orchestrated by third parties” and that “[i]f this case is successfully defended, it is Feldman’s intent to file action against third parties for slander, defamation and perhaps other causes of action.”). (Ex. 16/JUA 309-310.)

After Plaintiffs dismissed their Florida suit against Casey’s expert, Feldman continued relaying to King and Mann his desire to sue Defendants, and he continued to be advised that the MMA had to be concluded before Plaintiffs did so. (*See, e.g.*, Ex. 14/Mann 11692 (email from Feldman to Mann stating, “all we need is JUA (not Spencer!) jua agreement for countersuit”); Mann 11539 (email from Feldman to Mann advising, “I JUST THINK i [sic] HAVE GREAT GROUND FOR COUNTERSUIT AGAINST FOGARTY...nonwithstanding [sic] your opinion to the contrary...Overwhelming evidence!”); Mann 11190 (email from Feldman to Mann, asking whether he could discuss his thoughts regarding a “countersuit”). On January 22, 2010, in response to an email from Feldman asserting his belief that Defendants had worked together “in Summer-Fall of 2004 to plan the strategy” for the MMA and engaged in an “outright invention of the Medical record, ‘Medical’ Diagnosis, and ‘evidence,’” the JUA advised Feldman via email:

Once this underlying suit is won and the use of fabricated evidence is done in trial, or the case is dismissed; then one can explore whether they wish to pursue an abuse of process claim against a former adversarial attorney ~ those are simply the “rules of engagement.” In this underlying case, the rules protect attorneys from many types of inquiry via privilege or work product.

(Ex. 16/JUA 1000-1001; *see also* JUA 982-985 (email from JUA to Feldman stating that “as a general rule, absent malice, such things are not actionable by an adversary; and even if they are actionable, generally you must first ‘win’ the underlying suit before you can bring such an action. . .

. So . . . they will get their's [sic] in good time."").)

Plaintiffs' awareness of limitations period on intended claims

As shown above, Feldman understood as early as August 17, 2007, that a statute of limitations applied to the abuse of process and conspiracy claims he believed Plaintiffs had against Defendants. (See Ex. 22/Mann 22478.) That day, Feldman sent himself an emailed titled, "Statue [sic] of Limitations," excerpting legal research he had performed on the three-year limitations period applicable to a physician's suit against another doctor for slander. (Ex. 22/Mann 224778.) Feldman remained aware of the statute of limitations as the MMA progressed and as he was continually advised that Plaintiffs had to wait until after that suit resolved to file any counter-action against Defendants. On March 19, 2008, Feldman forwarded Mann his August 17, 2007, email regarding the statute of limitations on the claims Feldman believed Plaintiffs held against Defendants. (Ex. 14/Mann 22478.) Mann replied, "Sure. Two things statute of limitations and statute of repose. Not too worried about this." (Ex. 14/Mann 22479.) Later, on November 6, 2008, Feldman emailed Mann a message titled, "3 Years," in which Feldman again questioned Mann about the statute of limitations on the suit he wished to file against Defendants, asking, "Our Defamation issue has expiration date..3 years?" (Ex. 14/Mann 18627.)

Plaintiffs' filing this lawsuit after the MMA's final conclusion

The MMA was tried before a Spartanburg County jury beginning on May 11, 2010. On May 28, 2010, after a 14-day trial, the jury returned a defense verdict in favor of Plaintiffs in the MMA. Afterward, Casey moved the Court for a new trial. Although Plaintiffs in this case timely opposed that motion, the order denying the motion was not filed until on or after September 27, 2010. (See Ex. 8/Gunn Emails 1720.)

On October 27, 2010, within a month of the MMA jury verdict's becoming final, Plaintiffs filed their initial Complaint in this case, alleging that Defendants engaged in abuse of process and civil conspiracy in relation to the Medical Malpractice Action. (Complaint.)

Summary Judgment Standard

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” “Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations.” *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014). Summary judgment also “is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine.” *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). Evidence is insufficient to overcome summary judgment if it “patently is introduced solely in a vain attempt to create an issue of fact that is not genuine.” *Id.*

Rule 56(c) also mandates the entry of summary judgment against a party who fails to establish the existence of at least one element essential to the party’s case, and on which that party will bear the burden of proof at trial. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537, 545-46 (1991), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548 2552, 91 L.Ed.2d 265, 273 (1986). In such a case, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

The Statute of Limitations And Discovery Rule

Abuse of process claims are governed by a three-year statute of limitations period. S.C. Code Ann. § 15-3-530 (2005); *Whitfield Const. Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 525 S.E.2d 888 (Ct. App. 1999).

“A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action.” *Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). “Statutes of limitations are not simply

technicalities;” instead, they “embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). Statutes of limitations relieve courts of the burden of trying stale claims of those who have slept on their rights, and “ensure litigation is brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.” *Transp. Ins. Co. and Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (citations and internal punctuation omitted).

The limitations period established by S.C. Code Ann. § 15–3–530 begins to run when the plaintiff “knew or by the exercise of reasonable diligence should have known that he had a cause of action.” S.C. Code Ann. § 15–3–535. Therefore, in determining when a cause of action arose under an applicable statute of limitations, South Carolina courts apply the “discovery rule.” *Rumpf v. Mass. Mut. Life Ins. Co.*, 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004). Under the discovery rule, the statute of limitations begins to run on the date the party either knew, or by the exercise of reasonable diligence should have known, that some legal right had been invaded. *City of Newberry v. Newberry Elec. Co-op., Inc.*, 387 S.C. 254, 260, 692 S.E.2d 510, 513 (2010). The exercise of reasonable diligence means that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981).

The discovery rule thus focuses on when the complaining party acquired knowledge of any existing facts sufficient to put the party on inquiry which, if developed, would disclose alleged wrongdoing. *Burgess v. Am. Cancer Soc., S.C. Div., Inc.*, 300 S.C. 182, 186-87, 386 S.E.2d 798, 800 (Ct. App. 1989). “Moreover, although a party claims ignorance of existing facts and circumstances, the same result [*i.e.*, the statute of limitation’s running] follows if such facts and circumstances could have been known to the party through the exercise of ordinary care and

reasonable diligence.” *Id.* The statute of limitations therefore begins to run on the date a plaintiff knew or should have known that he had a claim, and not when the plaintiff sought advice of counsel, or developed a full-blown theory of recovery, or discovered a witness to support or prove his case, or “obtain[ed] actual knowledge of either the potential claim or the facts giving rise thereto.” *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009).

The date on which a party should have discovered a cause of action is an objective question. *Estate of Livingston v. Livingston*, 2013 WL 342675, *4 (Ct. App. 2013); *Joubert v. S.C. Dep’t of Soc. Servs.*, 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). “In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.” *Young v. S.C. Dep’t of Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

Argument and Citation of Authority

I. Plaintiffs’ Abuse Of Process Claim Is Barred By The Statute Of Limitations.

Plaintiffs’ abuse of process claim is barred by the three-year statute of limitations, because Plaintiffs should have known and did know more than three years before they filed this lawsuit that they might have a claim against Defendants arising from the MMA. Plaintiffs’ own emails and deposition testimony show that in 2006 and continuing into February and August 2007, they possessed information that would have put a person of common knowledge on inquiry that they might have a claim against Defendants with respect to the MMA and the *SHJ* Article that publicized it. Plaintiffs’ documents also show that Plaintiffs were, in fact, put on such notice by June 2007, because by that time, Feldman was actively researching claims Plaintiffs could file against Defendants for the damages they had suffered as a result of what Plaintiffs believed were Defendants’ wrongful acts in writing Note A, filing the MMA, and causing the *SHJ* Article to be published. And, Plaintiffs’ documents irrefutably show that by August 2007, Plaintiffs had actually

formed and stated in writing their belief that they had an abuse of process claim against Defendants.

Plaintiffs, however, waited until October 2010 to file this suit, over four years after Plaintiffs were first put on notice that might have a claim against Defendants, and over three years after Plaintiffs actually formed that belief and stated it in writing. Because the limitations period on Plaintiffs' abuse of process claim expired before Plaintiffs filed this suit, summary judgment should be entered in Defendants' favor.

A. The Limitations Period on Plaintiffs' Abuse of Process Claim Started Running in 2006, When Plaintiffs Were Put on Notice that They Might Hold Claims Against Defendants.

The limitations period on Plaintiffs' abuse of process claim begin running in 2006, after the MMA was filed on May 24, 2006, the *SHJ* Article publicizing it was published on May 31, 2006, and Plaintiffs learned in Summer 2006 that Fogarty's Note A formed the medical theory on which the MMA was based. This is because this information would have put a person of common knowledge and experience on notice that they might possess claims against Defendants relating to the MMA and the *SHJ* Article publicizing it; and because Plaintiffs were, in fact, so aware.

As soon as Plaintiffs were served with the Complaint in the MMA in May 2006, Plaintiffs believed the lawsuit was baseless and that Casey's claims were "crazy," because they did not believe Casey had been injured under their care, and because they believed that it was anatomically impossible for Casey to have suffered brain damage as a result of the pneumothorax, as the complaint alleged. (Ex. 3/Feld. Dep. 50, 165-166, 193-194, 201-202, 296; Ex. 4/Boscia Dep. 70-74, 99.) When the *SHJ* Article was published the following week, Plaintiffs also knew they had been damaged, because their lives were thrown into "turmoil" and their reputations were tarnished. (Tab 6/Feld. Dep. 165-166; Tab 7/Boscia Dep. 70-74.) The statute of limitations on Plaintiffs' claims started running at that time, because even though Plaintiffs had yet to discover Fogarty's alleged "role" as to the MMA, Plaintiffs had discovered that they had been injured. *See Wiggins*, 314 S.C. at 128, 442 S.E.2d at 170 (explaining that the limitations period begins running on the date the plaintiff discovers the injury, not the identity of a particular wrongdoer).

Even assuming, *arguendo*, that the limitations period on Plaintiffs' abuse of process claim did not start running as soon as the *SHJ* Article was published and Plaintiffs knew they had been damaged by it and the MMA's filing, the period certainly started running by August 2006, when Plaintiffs received each of the July 21 Note versions. This is because when Plaintiffs received Note A from Thompson by July 7, 2006, Plaintiffs saw that the medical opinion on which Casey's claims were based was generated by Fogarty – Feldman's nemesis whom Plaintiffs were at that time suing and who, Feldman believed, had for many years been intent on destroying Plaintiffs, and was actively attempting to damage their reputations and their businesses. (Ex. 3/Feld. Dep. 8-9, 104, 143-148, 296; Ex. 4/Boscia Dep. 90, 98-99.) Plaintiffs were able to see from Note A that Fogarty had committed the act Plaintiffs believe caused the MMA to be an abuse of process when it was filed: Fogarty stated in Note A the "legal diagnosis" that Casey "undoubtedly had air emboli," stated with the medical certainty Thompson needed to file the MMA against Plaintiffs. (Ex. 3/Feld. Dep. 49-50, 57-58, 71-77.) The fact that Plaintiffs also possessed Note B and Note C also allowed them to see that several slightly different versions of the operative July 21 Note existed, without the "undoubtedly" language to which Plaintiffs attach such great import. (Ex. 7/King Dep. 98-103.) Further, Fogarty had produced a copy of the *SHJ* Article to Plaintiffs during discovery in the S. Carolina case in June 2006. (Ex. 3/Feld. Dep. 170-172.) So, when Plaintiffs learned that Fogarty had generated the medical theory on which the MMA was based, they also were able to formulate their belief that Fogarty acted to their detriment by leaking information about the MMA to the press, and caused the *SHJ* Article to be published. (Ex. 3/Feld Dep. 165-170.)

Persons of common knowledge in possession of these facts would have been put on notice that some right of theirs had been invaded through the filing of the MMA and the publication of the *SHJ* Article, or that some claim against Defendants relating to those matters might exist. Plaintiffs certainly had sufficient facts in 2006 which, had they engaged in engaged in inquiry, would have disclosed – and, through Plaintiffs' discovery efforts in the MMA did disclose – the alleged

wrongdoing they believe Defendants committed against them. The limitations period on Plaintiffs' claim began running at this point in time – when Plaintiffs knew or should have known that they had a claim – and not when Plaintiffs “sought advice of counsel, or developed a full-blown theory of recovery, or discovered a witness to support or prove [their] case, or “obtain[ed] actual knowledge of either the potential claim or the facts giving rise thereto.” *See Gibson*, 383 S.C. at 406, 680 S.E.2d at 782.

The notice of injury Plaintiffs first received in 2006 that started the limitations period on their abuse of process claim running was reinforced in February 15, 2007, when Plaintiffs dismissed their company's S. Carolina case against Fogarty with prejudice, in part because of the MMA and the tremendous pressure the MMA's filing and the *SHJ* Article's publication created in their lives. (Ex. 3/Feld. Dep. 172-175). The fact that Plaintiffs were forced to dismiss an ongoing lawsuit against Fogarty because of injuries they were suffering as a result of a malpractice action that was based on Fogarty's “outlandish” and anatomically impossible theory stated in Note A, and as a result of the newspaper article they believed Fogarty had caused to be published, were additional facts sufficient to put a person of common knowledge and experience on notice that they might have a claim against Defendants.

That Plaintiffs were, in fact, put on notice in 2006 and early 2007 that they might have a claim against Defendants is further proved by the fact that Feldman was acting on that notice by June 2007, by actively exploring what claims Plaintiffs might hold against Defendants for injuries caused to them by the MMA and the *SHJ* Article. By June 14, 2007, for example, Feldman had started researching cause of actions Plaintiffs could assert against Defendants for having placed Plaintiffs in a false light in the public eye. (Ex. 18/Mann 84; Ex. 3/Feld. Dep. 516-526.) Whether Plaintiffs actually knew or had decided what particular cause of action they might possess against Defendants at that time is not the test. *See Young*, 333 S.C. at 719, 511 S.E.2d at 416. Rather, the limitations period on Plaintiffs' claim had started running by the time Feldman was conducting this

claim research, because Plaintiffs clearly had been put on notice that some right of theirs had been invaded, and that some claim against Defendants might exist. *See id.*

Further still, Plaintiffs received yet additional notice that they might have a claim against Defendants arising from the MMA in August 2007, when Casey was deposed in that case. This is because during his deposition, Casey testified that no one told him that he has brain damage. (Ex. 10/Thom. Docs. 10462, 10492-10493 (first page and excerpted pp. 124-125 from Casey dep. transcript).) Plaintiffs found this testimony notable, since the Complaint in the MMA alleged that Casey had been permanently brain injured as a result of an air embolism. (*See* Ex. 3/Feld. Dep. 104-106; Ex. 4/Boscia Dep. 124-125.) This is additional fact that would put a person of common knowledge and experience on notice that some right of his had been invaded by the MMA, and that some claim might exist against the lawyer who filed that action and the doctor on whose opinion it was based. *See Snell*, 276 S.C. at 303, 278 S.E.2d at 334.

Because the evidence in this case proves that the limitations period on Plaintiffs' abuse of process claim began running in 2006, more than three years before Plaintiffs filed this action in October 2010, Plaintiffs' claim is time-barred, and should be dismissed.

B. The Limitations Period on Plaintiffs' Abuse of Process Claim Began Running No Later than August 2007, When Plaintiffs Stated in Writing That They Had Such a Claim.

The limitations period on Plaintiffs' abuse of process claim started running in 2006 for the reasons discussed above, and by no means started running later than August 11, 2007. This is because on that date, Plaintiffs stated in writing their belief that they held an abuse of process claim against Defendants. (Ex. 1.) This writing removes any question of when Plaintiffs "*knew* or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535 (emphasis added). By that date, Plaintiffs not only knew they had been injured by the MMA and the *SHJ* Article, and had even discovered that the alleged "wrongdoers" responsible for the suit were Defendants; they also knew that they had an actual claim against Defendants. *See Gibson*, 383 S.C. at 406, 680 S.E.2d at 782.

That Plaintiffs actually believed in August 2007 that they had an abuse of process claim against Defendants is further evidenced by the fact that Feldman continued in August and September 2007 to perform research on that claim, as well as the conspiracy claim Plaintiffs also believed they possessed against Defendants. (Ex. 19-Ex. 21.) Feldman, in fact, even recognized that the statute of limitations needed to be considered in relation to the “countersuit” they held against Defendants. (Ex. 22.) Likewise, and again more than three years before Plaintiffs filed this action, Plaintiffs advised their counsel in the MMA that they believed they held claims against Defendants in relation to the MMA and the *SHJ* Article, and wished to file those claims against them. (Ex. 5/King Docs. 1571; Ex. 7/King Dep. 70-76, 79-82.)

Because the facts and documents in this case prove that Plaintiffs actually believed that they had an abuse of process claim against Defendants by August 11, 2007, Plaintiffs’ period to file that claim expired on August 11, 2010, over two months before they instituted this action on October 27, 2010. Plaintiffs’ claim is time-barred, and summary judgment therefore should be entered in Defendants’ favor in this case.

C. Plaintiffs’ Attempt to Establish 2008 as When They First Had Notice That a Claim Against Defendants Might Exist Does Not Create a Triable Issue of Fact.

Plaintiffs cannot overcome summary judgment in this case, because reasonable minds cannot differ on the facts and documents showing plainly that the limitations period on their abuse of process claim started running in 2006, and unequivocally had expired by August 2010, which is more than three years after Plaintiffs formed and stated in writing their actual belief that they possessed an abuse of process claim against Defendants. *See Main*, 281 S.C. at 527, 316 S.E.2d at 407 (a party cannot avoid summary judgment by creating “an inference which is not reasonable or an issue of fact that is not genuine”).

As discussed below, Plaintiffs have attempted to avoid the application of the statute of limitations to their abuse of process claim by asserting in their depositions that it was not until 2008 that they became aware of any facts whatsoever that put them notice that they might have any cause

of action against Defendants arising from the MMA. The inference Plaintiffs seek to create through this testimony is neither reasonable nor genuine, because the “plain, palpable and undisputable” evidence discussed above demonstrates that in 2006, Plaintiffs possessed facts sufficient to put a person of common knowledge on notice that such a claim might exist, and that by August 11, 2007, Plaintiffs had acted on that notice and formed a belief that they had an abuse of process claim against Defendants. *See id.* (summary judgment “is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ”). Plaintiffs’ deposition testimony to the contrary is “a vain attempt to create an issue of fact that is not genuine,” so it cannot defeat summary judgment on the matter of the statute of limitations. *See id.*

Feldman admitted during his deposition that he did not think for more than “one second” that the MMA was legitimate when it was filed in May 2006. (Ex. 3/Feld. Dep. 296.) He also testified that when he received a copy of Fogarty’s Note A during discovery in July 2006, he immediately assessed that Fogarty wrote his “undoubtedly had air emboli” comment to provide Thompson the medical opinion necessary to file a lawsuit intended to injure Plaintiffs and assist Casey in obtaining disability benefits. (Ex. 3/Feld. Dep. 199-203.) Patently contradicting this testimony, which is supported by Plaintiffs’ and King’s documents in this case, Feldman then claimed during his deposition that it was not until 2008 that his concern regarding the MMA “started crop up,” and that he “[t]otally did not” have any idea prior to 2008 that Plaintiffs might have a cause of action against Defendants. (Ex. 3/Feld. Dep. 104-106, 296-297.) According to Feldman, it was when Plaintiffs learned in 2008 that Thompson had asked Fogarty to x-ray Casey with an earring in his pocket, and that Thompson had arranged for Casey to undergo an MRI under an assumed name that ended up being negative, that Plaintiffs “started to worry” about the MMA and legal redress. (Ex. 3/Feld. Dep. 104-106, 160-161, 295, 515, 518.)²⁷

²⁷ In August 2008, King received an anonymous letter advising that Casey had undergone an MRI under an assumed name, and that the MRI did was clear. (Ex. 23/Gunn Docs. 2447-2449.) It is possible for a person to have a brain injury that does not manifest on an MRI. (Ex. 4/Boscia Dep. 52.) Casey, however, had not revealed this MRI during his deposition in the MMA or during written discovery, and instead stated in his deposition that he had never

Likewise, Feldman claimed during his deposition that 2008 was when he first received Note A and saw that Fogarty had written his “undoubtedly had air emboli” statement in it, and that 2008 was when he received a copy of the Waid Report (which block quotes from Note C) and determined that the language in that report differed from Note A. (Ex. 3/Feld. Dep. 20, 278.) In fact, Feldman insisted during his deposition that he never had a copy of or knew about Note B or Note C until the Thompson Documents were produced in 2016. (Ex. 3/Feld. Dep. 25-26, 239-240). Feldman denied ever seeing Note B during the MMA, claiming, “I’ve never seen it until you just showed it to me or until recently.” (Ex. 3/Feld. Dep. 31.) Likewise, regarding Note C, Feldman declared that until May 2016, he “never had that record, never saw that record, didn’t know about that record ever existed.” (Ex. 3/ Feld. Dep. 25-26.) According to Feldman, “Those [Note B and Note C] were pretty shocking when we discovered in Thompson production.” (Ex. 3/Feld. Dep. 241.)

Similarly, Feldman attempted to deny that his August 11, 2007, email to Boscia reflects that on that date, he held the belief that Plaintiffs had a cause of action against Defendants for abuse of process and conspiracy. (Ex. 1; Ex. 3/Feld. Dep. 519-521.) Feldman argued that the email reflected only “research” he had conducted and “mental impressions” he had at that time, not some conclusion he had reached – and that it was only in 2008 that he reached the conclusion that Plaintiffs had an abuse of process claim against Casey, after Plaintiffs learned about Casey’s MRI. (Ex. 3/Feld. Dep. 518-521.)²⁸ Feldman also initially attempted to deny that when he wrote his August 17, 2007 “Countersuit” email (Ex. 20), he was thinking about countersuits against Defendants, but ultimately admitted to doing so. (Ex. 3/Feld. Dep. 524-526.) Further,

received such a test. (Ex. 4/Boscia Dep. 49.) The MRI was eventually produced to Plaintiffs. (Ex. 4/Boscia Dep. 50.) According to Feldman, whether Casey’s MRI was positive or negative was irrelevant to Plaintiffs’ abuse of process claim, because Plaintiffs contend Fogarty’s air embolism theory on which the MMA was based was fraudulent. (Ex. 3/Feld. Dep. 210-216.)

²⁸ Of course, even if Feldman’s testimony in this regard were not a transparent attempt to avoid the application of the statute of limitations, it still would support a finding that the limitations period started running at or before the time Feldman conduct this research in August 2007, which was more than three years before Plaintiffs filed this lawsuit on October 27, 2010. This is because Feldman’s research reflects clearly that he believed Plaintiffs did or might possess a claim, and because under the discovery rule, the limitations period begins running when the plaintiff knew or should have known he had a claim, not when the plaintiff has developed a full-blown theory of recovery, or has obtained actual knowledge of the potential claim he possessed. See *Gibson*, 383 S.C. at 406, 680 S.E.2d at 782.

Boscia likewise attempted during his deposition to identify 2008 as the year in which he first had any indication that Plaintiffs might have a claim against Defendants. (Ex. 4/Boscia Dep. 124-126.) For example, Boscia testified that after Plaintiffs were served with the MMA, they had no idea that the MMA might be baseless – but that “in 2008, I mean, it was a different story.” (Ex. 4/Boscia Dep. 90-91.) Boscia also stated that it was only when Plaintiffs learned in 2008 that that Casey had a negative MRI that they first thought the MMA was “strange” or “convoluted.” (Ex. 4/Boscia Dep. 125-126, 129.) As emphasized by Boscia, “2008 really is when we started to kind of raise our hands in conscious objection to what was going on[.]” (Ex. 4/Boscia 125-126.)

The most blatant and troubling effort Plaintiffs made in their attempt to avoid having their claim barred by the statute of limitations occurred during Boscia’s deposition in this case, which was taken on Wednesday, October 19, 2016, while Feldman’s deposition was still continuing. Boscia testified that that while he was being deposed, Feldman had sent him three emails, and had called Boscia during Boscia’s lunch break to tell him to read those emails. (Ex. 4/Boscia Dep. 106-122; *see also* Ex. 24, Ex. 25, Ex. 26.)^{29,30,31} According to Boscia,

The other part of [the phone conversation] was, again, some of the questions and issues that arose in my deposition about the three letters [Note A, Note B, and Note C] . . . about, again, what we knew in 2004 during the – or 2006 when we did the first discovery, about what was produced, that we saw only the one letter in that discovery and that the other letters were not – were not shown to us.

(Ex. 4/Boscia Dep. 106-107.)³² Boscia also admitted that the night before his deposition, Feldman coached his testimony during a telephone call, which Boscia summarized as follows:

So it was, put it into perspective, Joe. 2004, we opened up our research business. 2005, we had the letters sent to the sponsors. Then we wrote the lawsuit cease and desist. Are you following me? Yes, I got it. 2008, we finally go to, you know, the Casey lawsuit. 2010, we go to court. In 2008, we start noticing that there’s some funniness going on in the discovery of information that Spencer King and – and Billy

²⁹ A copy of the email Feldman sent to Mann and Boscia on 10-19-06 at 9:30 a.m., titled, “CMF-Decem 22, 08-deposition records subpoena” is attached hereto as Ex. 24, behind Tab 24.

³⁰ A copy of the email Feldman sent to Boscia on 10-19-06 at 10:04 a.m., titled, “Knew no evidence for Brain Damage” is attached hereto as Ex. 25, behind Tab 25.

³¹ A copy of the email Feldman sent to Boscia on 10-19-06 at 10:26 a.m., titled, “Electronic Medical Records” is attached hereto as Ex. 26, behind Tab 26.

³² Feldman denied having spoken to Boscia on the telephone during Boscia’s deposition. (Ex. 3/Feld. Dep. 441.)

Gunn are going through.

(Ex. 4/Boscia Dep. 119-120.) Boscia also testified that he had yet another telephone conversation with Feldman on the evening of the first day of Feldman's deposition, during which Feldman discussed the questions he was asked that day during his deposition, and what date ranges those questions concerned. (Ex. 4/Boscia Dep. 120-121.) According to Boscia, Feldman and he discussed, "Are they going back to 2004? Are they going specifically 2008 forward?," and other questions to allow Boscia "to put [his] mind in a time frame." (Ex. 4/Boscia Dep. 121.)

A similar effort by Plaintiffs to manipulate the discovery process and the application of the discovery rule in this case is indicated by the fact that Plaintiffs failed to produce any emails that are dated on or before October 27, 2007 – which is the date three years before Plaintiffs filed this suit on October 27, 2010 – with the single exception of one hard copy email from June 2007 that was printed out and contained in Mann's file production. (Ex. 18.) This is despite the fact that Feldman is a prolific emailer who remained highly and heavily involved in Plaintiffs' defense of the MMA from the day it was filed in 2006, and despite the fact that Feldman engaged in almost constant communications with his counsel during the MMA on multiple subjects that included the misconduct he believed Defendants committed. (See Ex. 4/Boscia Dep. 17; Ex. 7/King Dep. 70-71; Ex. 8/Gunn Emails 2311.) The only reason Defendants obtained the copies of the emails in this case from August and September 2007 is that those messages were embedded in emails that Plaintiffs did produce from another year: 2008. (See Ex. 19-Ex. 22.)

Plaintiffs' attempt to establish 2008 as the year they first believed they might have some claim against Defendants not only is highly overt and patently contradicted by the evidence; it also fails to appreciate that the discovery rule is applied objectively. See *Estate of Livingston*, 2013 WL 342675, *4; *Joubert*, 341 S.C. at 191, 534 S.E.2d at 9. Because the facts available to Plaintiffs in 2006 and early 2007 would have put a person of common knowledge and experience on notice that he might have some claim against Defendants, it matters not what Plaintiffs themselves claim to

have believed or known up until 2008. Further, Plaintiffs' and their attorneys' own documents speak for themselves, and show plainly that by August 11, 2007, Plaintiffs had formed and held the actual belief that they had an abuse of process claim against Defendants. Because Plaintiffs waited to file this suit for abuse of process until October 27, 2010, their claim is time time-barred.

II. Equitable Tolling Does Not Apply In This Case.

Summary judgment should be entered in Defendants' favor, because as discussed above, Plaintiffs' abuse of process claim is barred by the statute of limitations. In addition to the fact that the evidence unequivocally demands this conclusion, Plaintiffs lack any legitimate argument that the limitations period as to their claim should be equitably tolled.

A. Equitable Tolling.

Equitable tolling is a judicially-created device that allows courts to suspend or extend the statutory limitations period to ensure fundamental practicality and fairness. *Hooper v. Ebenezer Sr. Servs. and Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). Courts in this state rarely apply this doctrine to stop the running of statutes of limitations. *Pelzer v. State*, 378 S.C. 516, 520–22, 662 S.E.2d 618, 620–21 (Ct. App. 2008). Generally, equitable tolling applies in cases in which a defendant engages in some conduct that prevents the plaintiff in some extraordinary way from filing suit or discovering the facts essential for filing suit. *See Hooper*, 386 S.C. at 116-18, 687 S.E.2d at 32-34 (applying equitable tolling because defendant hindered plaintiff's effort to serve a lawsuit by failing to list its registered agent for service with the Secretary of State); *Ross v. Ross*, 394 S.C. 261, 266, 715 S.E.2d 359, 361-62 (Ct. App. 2011) (extending limitations period because husband prevented wife from timely filing alimony action by threatening her with physical violence); *Skipper v. Marlowe Mfg. Co.*, 242 S.C. 486, 488, 131 S.E.2d 524, 525 (1963) (applying equitable tolling because defendant induced plaintiff's delay in filing worker's compensation claim by convincing plaintiff that claim would be resolved without litigation). Still, "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use," and the

relief should be granted only when, “in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” *Hooper*, 386 S.C. at 117, 687 S.E.2d at 33.

B. Plaintiffs’ Decision to Wait to Sue Defendants Was Voluntary, and Was Made Based on the Advice of Counsel their Counsel and the JUA.

Equitable tolling does not apply to spare Plaintiffs’ abuse of process claim from being time-barred, because the evidence shows that the reason Plaintiffs did not file this action within three years of the date their abuse of process claim arose was because Plaintiffs intentionally waited until after the MMA’s conclusion to do so, based on the advice and direction of their counsel and the JUA – not because of some act or omission by Defendants. Plaintiffs cannot legitimately claim that they failed to file this suit before the limitations period because Defendants took some action that prevented Plaintiffs in some extraordinary way from filing suit. *See Hooper*, 386 S.C. at 116-18, 687 S.E.2d at 32-34. Further, the United States Supreme Court has recognized that the fact that a plaintiff does not timely file suit based on advice of counsel does not toll the running of the limitations period. *U.S. v. Kubrick*, 444 U.S. 111, 124 (1979).

The case evidence makes clear that Plaintiffs were put on notice in 2006 that they might have a claim against Defendants arising from the MMA, and that Plaintiffs had formed the actual belief that they held an abuse of process claim against Defendants by August 11, 2007. Also clear is why Plaintiffs waited to file this suit until October 2010: Plaintiffs were repeatedly told by their counsel and the JUA during the MMA that they needed to wait until that action was concluded before they filed this lawsuit; and the MMA concluded with finality in September 2010, less than a month before Plaintiffs filed this action.

More specifically, beginning in at least September 2007 and continuing regularly throughout the MMA, Plaintiffs informed their counsel that they wanted to file suit against Defendants, and asked when they could do so. (*See, e.g.*, Ex. 7/King Dep. 79-83; Ex. 14/Mann 18091, 19896, 23467-23468, 29949.) Feldman even was cognizant that a statute of limitations applied to the claims he wanted to file against Defendants, and he wanted to avoid having those claims be time-

barred. (Ex. 22; Ex. 14/Mann 18627, 22478-22479.) Plaintiffs, however, were consistently told by their attorneys and the JUA that they had to wait until the MMA was concluded before filing any claim against Defendants. For example, Mann advised Feldman “from the start” of the MMA that Plaintiffs could not file an abuse of process claim against Defendants until after the MMA was dismissed or concluded. (Ex. 14/Mann 23463, 23467-23468.) King, too, told Feldman that Plaintiffs would need to wait until the MMA was completed before any claim was filed against Defendants. (Ex. 7/King Dep. 82-83.)

The JUA likewise advised Plaintiffs that the “rules of engagement” were that Defendants could pursue a claim against Defendants only after the MMA ended. (Ex. 16/JUA 982-985, 1000-1001.) The JUA, in fact, insisted that Plaintiffs refrain from filing any countersuit against Defendants while the MMA was pending, because it did not want its defense of the MMA to be jeopardized. (Ex. 8/Gunn Emails 1871-1872; Ex. 14/Mann 1071-1072.) Plaintiffs and Mann even “pledged cooperation” with the JUA in this regard, confirming that they would refrain from filing any suit or action during the MMA without the JUA’s agreement. (Ex. 8/Gunn Emails 1871-1872).

These facts explain why Plaintiffs – who first received notice that they might have an abuse of process claim against Defendants in 2006, and by August 2007 had stated in writing their belief that they actually had a “countersuit” for abuse of process against Defendants – waited to file that claim until October 27, 2010, less than 30 days after the MMA was finally concluded on September 27, 2010. (*See* Ex. 8/Gunn Emails 1720.) Unfortunately for Plaintiffs, by the time the MMA ended and they prepared and filed their complaint in this case, more than four years had passed since their abuse of process claim arose, and more than three years had passed since they stated in writing their belief that they had such a claim. Plaintiffs cannot reasonably attribute their choice of when to file this action, and their failure to do so within the limitations period, to some act or omission by Defendants. The statute of limitations therefore bars Plaintiffs’ claim, and it should be dismissed.

C. Plaintiffs Lack Proof That Defendants Prevented Plaintiffs From Discovering The Existence Of, Or Timely Filing, Their Claim.

Equitable tolling does not apply in this case for the additional reason that Plaintiffs cannot prove that Defendants engaged in any conduct that prevented Plaintiffs from discovering that they might have a claim against Defendants, or that prevented Plaintiffs from filing this action in a timely manner.

1. The fact that Plaintiffs learned about Casey's MRI in 2008 does not justify the application of equitable tolling.

Defendants expect Plaintiffs to argue that the statute of limitations should be equitably tolled because in 2008, less than three years before Plaintiffs filed this action, Plaintiffs learned that Casey had obtained under an assumed name an MRI that was negative, and that was not revealed during discovery. However, this fact does not support the application of equitable tolling to spare Plaintiffs' claim from being time-barred. This is because Plaintiffs' learning in 2008 that Casey had obtained a negative MRI under an assumed name did not change the facts that existed in 2006 that put Plaintiffs on notice that they might have a claim against Defendants and caused the limitations period on Plaintiffs' abuse of process claim to begin running. This information also did not change the fact that by August 11, 2007, Plaintiffs had acted on that notice and formed the actual belief that they possessed such a claim against Defendants – even without knowledge of Casey's MRI.

In other words, Plaintiffs knew or should have known by August 2006 that they might have a claim against Defendants, and Plaintiffs actually believed by August 2007 that Defendants had perpetrated an abuse of process against them. Therefore, no evidence that Plaintiffs later gained in 2008 about Casey's MRI could change the date the limitations period began running on Plaintiffs' claims. Plaintiffs' "discovery" of the MRI in 2008 also did not hinder their filing suit within three years of 2006 (or even from August 2007), because Plaintiffs could have initiated this action at any time – but for their agreement with the JUA not to do so. In fact, the negative MRI solidified for Plaintiffs their already-existing belief that Defendants had abused the process by creating the air

embolism theory stated in Note A, filing the MMA, and leaking news of the suit to the newspaper, when Casey had not suffered any brain injury. If anything, Plaintiffs' discovery of the MRI in 2008 gave Plaintiffs additional reason to file suit against Defendants in a timely manner (i.e., within three years of the date that claim arose in 2006), as opposed to preventing them from discovering facts that would put a common person on notice that their rights may have been violated.

Simply put, Plaintiffs missed their filing deadline because they chose or agreed to wait until after the MMA was concluded to file suit against Defendants, not because they lacked notice or the belief that they possessed a claim against Defendants in 2006 and 2007, and not because they learned in 2008 that Casey had obtained a negative MRI.

2. Plaintiffs possessed and knew about all three July 21 Note versions during the MMA.

Defendants also expect Plaintiffs to argue that the limitations period on their abuse of process claim should be equitably tolled, because Plaintiffs did not possess or know about Note B or Note C until the Thompson Documents were produced in 2016. Defendants expect Plaintiffs will argue that Defendants intentionally concealed the existence of Note B and Note C from Plaintiffs during the MMA, thereby hindering Plaintiffs' discovery of facts material to their abuse of process claim and delaying their filing of this action. Like Plaintiffs' expected argument about Casey's MRI, this argument does not justify the application of equitable tolling to Plaintiffs' abuse of process claim.

Discussed fully above is the fact that by Summer 2006, Plaintiffs possessed the facts that they needed to file suit against Defendants: Plaintiffs knew they had been injured by the filing of the MMA and the publication of the *SHJ* Article, and they even knew or believed that one or both Defendants had caused those injuries. By August 2007, Plaintiffs actually had formed and stated in writing the belief that they had an abuse of process claim against Defendants. Even if Plaintiffs could prove that they did not possess or know about all three of the July 21 Note versions until April 2016 – which Plaintiffs cannot prove – this fact could not negate the notice and knowledge

Plaintiffs already possessed, and that caused the limitations period on their claim to begin running.

Regardless, the evidence in this case shows that Plaintiffs possessed all three of the July 21 Note versions no later than August 14, 2006, approximately two months after the MMA was filed, and more than four years before Plaintiffs filed this action. (*See* Ex. 7/King Dep. 94-96; Ex. 27/July 21 Note Chart, at lines 3 and 4.) In fact, during the MMA, Plaintiffs papered their files with at least six copies of Note A, at least five copies of Note B, and at least three copies of Note C, and worked with the July 21 Note versions in various ways. (*See* Ex. 27, at line 3.) Among other things, King utilized Note A to depose Fogarty, included a block quote from Note B's "Comment" section in two of his working medical chronologies for the MMA, added a highlighted bracket around the "Comment" section of Note C in his file materials. (*See* Ex. 5/King Docs. 2091-2102 at 2097; Ex. 7/King Dep. 99-100; *see also* Ex. 27/July 21 Note Chart.) Further still, block quotes from the "Comments" section of Note A, Note B, and Note C are included in approximately two dozen other documents that Plaintiffs' counsel possessed during the MMA. (*See* Ex. 27, at lines 5 and 6.) Feldman himself wrote a note on one of the multiple copies of Note B contained in Mann's file, and when Plaintiffs deposed Smith of Lung and Chest during the MMA, the Lung and Chest file for Casey that was attached as an exhibit to Smith's deposition included a copy of Note A and Note C. (*See* Tab 15/Smith Dep. 22-27.)

In addition, the existence of the July 21 Note versions was a topic of regular conversation between Plaintiffs and their counsel during the MMA. While King was aware that different versions of the July 21 Note existed and could have explored that matter during discovery, he did not do so. (Ex. 7/King Dep. 87-88). This was despite the fact that Feldman directly asked King about the discrepancies he noted between versions of the document, and the fact that Feldman frequently addressed with King his belief that Thompson and Fogarty were "hiding records." (Ex. 7/King Dep. 87-88, 106-107; Ex. 14/Mann 98.) King's focus in the MMA remained defending the medical malpractice claim that was asserted against Plaintiffs. (Ex. 8/King Docs. 1571.)

Feldman and Mann, on the other hand, focused steadily on the July 21 Note-related information they obtained during discovery in the MMA. Feldman ultimately described the differences between Note A and Note C as being “probably minor, but curious” (Ex. 14/Mann 5153.) However, Feldman and Mann found of utmost interest and importance to Plaintiffs’ intended countersuit against Defendants the fact that all three of the July 21 Note versions were not included in the Lung and Chest medical records that Thompson bates stamped and hand delivered to Plaintiffs’ counsel in the MMA, under a cover letter stating, in relevant part: “Enclosed please find *a complete copy* of the following medical records for Mark Casey *as delivered from his medical providers*: . . . 6. Lung and Chest Medical – Dr. Charles Fogarty[.]” (Ex. 23/Gunn Docs. 1617 (emphasis added).) The bates labeled Lung and Chest records included with Thompson’s letter contained only Note A. (Ex. 10/Thom. Docs. 32163-32165.)

Feldman and Mann formed the belief that Defendants were actively concealing Note B and Note C in an attempt to hide the fact that Defendants had manipulated the language of Fogarty’s operative July 21 Note, and in an effort to hide Defendants’ true, malicious intent in bringing the MMA against Plaintiffs. For example, on February 16, 2008, Feldman emailed King and Mann a block quote from the “Comments” section of Note B, noting that it differed from another version of the July 21 Note that King’s paralegal had provided Feldman, and asking whether King had given him “all Fogarty records.” (Tex. 14/Mann 98.) Likewise, on one of the multiple copies of Note B contained in Mann’s file, Feldman attached a handwritten sticky note commenting that this record did not contain the Bates stamping that Thompson had included on the Note A he had produced:

FOGARTY NOT BAILIFF STAMPED
NO STAMP OF RECEIVE BY SS

(Ex. 28/Mann 24620-24623.)^{33,34}

On February 21, 2008, Feldman sent Mann an email listing reasons he thought might

³³ Ex. 28 is attached behind Tab 28.

³⁴ Feldman frequently used “Bailiff stamped” in place of “Bates stamped.” *See, e.g.*, Tab 21/JUA 1102 and Tab 20/Mann 4911, 2338, and 2100 (Feldman emails using “Bailiff Stamped” to refer to “Bates stamped”).

explain “Fogarty Chart (non-production) Possibilities,” which Feldman believed included Defendants’ attempt to hide case-related communications between Fogarty and Thompson, or to conceal “something that [Fogarty] did not want us to see[.]” (Ex. 14/Mann 68.) Further, in an email to Mann dated March 20, 2008, Feldman found significant that a particular witness for Casey, one Dr. Waid, block quoted in his report language from Note C, when that particular note version was not produced by Thompson in the MMA. (Ex. 14/Mann 20759-20760.) Feldman, who believed this proved that Thompson intentionally failed to produce Note C during the MMA, declared in his email that Waid “did not talk to Fogarty, but quotes from Fogarty report that Thompson/[Ken] Anthony sent to him, but Thompson Failed to produce it to us! Failed!” (Ex. 14/Mann 20760.)³⁵ In this same email string, Feldman and Mann then compared the “CMF³⁶ . . . report from 07-21-05,” noting that “[i]t has the ‘difficulty concentrating’ due to an air emboli in it,” but lacked the “Strattera” quote they had found in another version of the July 21 Note. (Ex. 14/Mann 20759-20760.) Feldman concluded, “This Fraud must be exposed to the fullest.” (Ex. 14/Mann 20759.)

Feldman and Mann continued discussing the fact that Thompson’s production included only a copy of Note A, and did not include the version of that note possessed and produced by other persons during the MMA, in a July 9, 2008, email titled, “Missing in Action.” (Ex. 14/Mann 23.) This email discusses the fact that Note A “was also removed and not provided to SS (it is also not in Dr. Gonda’s record),” and Feldman’s belief that this was evidence that Fogarty “tried to help Thompson with lawsuit, because he felt patient was wronged....So we have only one recourse, lawsuit against both of them for manipulating the process...” (Ex. 14/Mann 23; *see also* Mann 19533 (Feldman email stating that Thompson knowingly withheld records from Waid (whose report block quoted from Note C), and therefore could not “avoid malicious prosecution charge”).)

³⁵ Attorney Ken Anthony initially served as one of Casey’s co-counsel in the MMA. (See Ex. 10/Thom. Docs. 864.)

³⁶ Fogarty’s full name is Charles Michael Fogarty.

Initially during the MMA, Feldman and Mann planned to conduct discovery regarding the fact that only Note A was included in the Lung and Chest documents Thompson bates stamped and produced to Plaintiffs' counsel. (Ex. 14/Mann 20224.) On June 9, 2008, Feldman emailed Mann, asking, "Do you still want to retrieve non-produced (hidden) Fogarty records before his deposition (Kimbrell, Smith, Medical Records custodian)." (Ex. 14/Mann 20224.) Feldman and Mann, however, ultimately chose to avoid engaging in discovery on the issue of the July 21 Note versions during the MMA, and instead decided to wait to use this "evidence" against Defendants in the lawsuit they intended to file against Defendants after the MMA concluded. (See Ex. 14/Mann 20038.) On June 15, 2008, Feldman wrote Mann regarding "cmf," stating:

I just do not think we need to give CMF any chance to explain-away anything... We no longer want him to incriminate Thompson before lawsuit, we do not need his testimony before the lawsuit..just interrogatories..Air Embolus is on Record (Wade [sic]), Organic Brain Injury manifested by "taking Strattera, as well so is the fact he send Air Embolus to Gonda without looking at the records...Let CMF and Thompson duke it out after lawsuit in? . . .

Plus Documents Production (Everything that he send to Thompson- . . . What else do we need from CMF? . . .

We do not need CMF to explain anything away before the lawsuit[.]

(Ex. 14/Mann 20038.)

Consistent with this plan, when Fogarty was deposed in the MMA on December 12, 2008, he was not questioned regarding Thompson's document production in the MMA, or any version of the July 21 Note other than Note A. (See Ex. 7/King Dep. 107.) Likewise, when Plaintiffs deposed Dr. Smith of Lung and Chest on September 2, 2009, they did not question him about any versions of the July 21 Note or regarding Lung and Chest's records. (See Ex. 10/Thom. Docs 2892-2912 (Smith transcript).)³⁷ This was despite the fact that the Lung and Chest records King received in July 2006 in response to his MMA subpoena contained Note B, and the file chart for Casey that was attached as an exhibit to Smith's deposition contained Note A and Note C. (Ex. 7/King Dep. 93-100; Ex. 15/Smith Dep. 22-27.)

³⁷ Plaintiffs did depose Waid and Smith regarding these topics in this present lawsuit.

On March 17, 2010, Feldman emailed Mann, reminding Mann that Plaintiffs “have virtually uncontrovertible [sic] evidence of Fogarty Spoliation of Evidence designed to make sure we do not find-out about his early involvement with Case,” excerpting information regarding spoliation of evidence, and asking whether Mann believed spoliation was relevant to the upcoming trial of the MMA. (Ex. 14/Mann 7982.) In reply, Mann reiterated Plaintiffs’ plan to avoid using this evidence in the MMA, and instead to use it in the case Plaintiffs intended to file – and did file – against Defendants after the MMA concluded. (Ex. 14/Mann 7982.) Mann stated: “Not really. More punch in the abuse of process and civil conspiracy.” (Ex. 14/Mann 7982.)

These facts prevent Plaintiffs from arguing legitimately that they lacked possession or awareness during the MMA of any July 21 Note version other than Note A. Since Plaintiffs possessed and were aware of the July 21 Note versions during the MMA more than three years before Plaintiffs filed this suit, no grounds actually or arguably relating to those documents can support the application of equitable tolling to spare Plaintiffs’ claims from being time-barred.

C. Equity Weighs Against The Application Of Equitable Tolling in This Case.

Equitable tolling also should not be applied to extend the limitations period on Plaintiffs’ claim in this case because it would not serve the interests of justice, and because “[h]e who seeks equity must do equity.” *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (Ct. App. 1994). Plaintiffs have not done equity, because they have advanced in this case the unsupported and illegitimate claim that they did not possess Note A, Note B, and Note C until April 2016, when the record reflects that Plaintiffs have had those documents for over a decade. In addition, the evidence shows that Plaintiffs intentionally avoided engaging in discovery on the July 21 Note versions during the MMA, to prevent Fogarty from “explain[ing] away” that matter in advance of this lawsuit, and to afford Plaintiffs “[m]ore punch” in this current action for abuse of process. (Ex. 14/Mann 7982, 20038.)

As discussed fully above, the evidence in this case shows that Plaintiffs not only obtained

each of the July 21 Note versions as early as August 2006, but that Plaintiffs and their counsel also discussed and were aware of differences between and among these documents throughout the MMA. Based on this information, Plaintiffs could have engaged in discovery efforts aimed at exploring the July 21 Note versions and their possession by various entities and providers. Plaintiffs did not do so. Instead, Plaintiffs specifically planned during the MMA to save that discovery for this lawsuit, and to avoid allowing Fogarty to “explain-away anything” before Plaintiffs sued Defendants for abuse of process. (Ex. 14/Mann 20038.) Plaintiffs have, in fact, engaged in that discovery during this action, deposing Dr. Waid, Dr. Smith, and even Attorney Ken Anthony – all while falsely proclaiming that they had been unaware of and lacked possession of all three July 21 Note versions until April 2016.³⁸

Plaintiffs have not done equity, so they should not be able to invoke its aid. For this additional reason, equitable tolling should not be applied to spare Plaintiffs’ abuse of process claim from dismissal under the statute of limitations.

Conclusion

Plaintiffs’ abuse of process claim is time-barred, because Plaintiffs filed this suit more than three years after the limitations period on that claim started running. Defendants therefore respectfully request that Defendants’ Motion for Summary Judgment be granted.

June 15, 2017

By: /s/ Ellen S. Cheek
Michael B.T. Wilkes (S.C. Bar #6107)
mwilkes@wilkeslaw.com
Ellen S. Cheek (S.C. Bar #69642)
echeek@wilkeslaw.com

WILKES LAW FIRM, P.A.
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113
Attorneys for Defendant Charles M. Fogarty, MD

³⁸ In this present action, Plaintiffs deposed Attorney Anthony on April 26, 2017, Dr. Waid on May 2, 2017, and Dr. Smith on May 5, 2017. The primary focus of Plaintiffs’ questioning of these witnesses was the July 21 Note versions.

/s/ Matthew H. Henrikson
Matthew H. Henrikson
HENRIKSON LAW FIRM
1164 Woodruff Road
Greenville, SC 29607
Attorney for Ray E. "Chuck" Thompson

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EXHIBIT

1

From: gfeld3232@aol.com
Sent: Thursday, August 07, 2008 7:47 PM
To: milton.mann@gmail.com
Subject: Fwd: Check out South Carolina Judicial Department - Opinions

what would be the reason not to send complete record to MUSC? among many other things

-----Original Message-----

From: GFeld3232@aol.com
To: Bronchnu@aol.com
Sent: Sat, 11 Aug 2007 2:49 pm
Subject: Check out South Carolina Judicial Department - Opinions

B. Civil Conspiracy

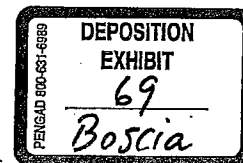
The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988); Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005); Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); see also Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp., 358 S.C. 460, 470, 596 S.E.2d 51, 56-57 (2004) ("A civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing special damage.") (citation omitted). It is essential that the plaintiff prove all of these elements in order to recover. Lyon v. Sinclair Refining Co., 189 S.C. 136, 200 S.E. 78 (1938). The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff." Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986).

[Click here: South Carolina Judicial Department - Opinions](#)

1. We have at least Casey plus his Lawyer and Possibly Fogarty plus Chuck Thompson's Wife
2. As for Abuse of Process that is already fact (He had no right to speak to Press about trial matter..Violation of Civil Procedure)

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EXHIBIT

2

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

William Mark Casey,

Plaintiff,

vs.

Gregory J. Feldman MD, Joseph
A. Boscia III, MD, Upstate Lung and
Critical Care Specialists PC, and
Devendra Shantha MD,

Defendants.

COMPLAINT

C.A. No. 2006-CP-42-~~1222~~ 1728
(JURY TRIAL REQUESTED)

The Plaintiff, complaining of the acts of the Defendants above, would respectfully show unto this Court as follows:

1. That the Plaintiff is a citizen and resident of the County of Spartanburg, State of South Carolina.
2. That the Defendant, Gregory J. Feldman MD, upon information and belief, is a citizen and resident of the County of Spartanburg, State of South Carolina.
3. That the Defendant, Joseph A. Boscia III, MD, upon information and belief, is a citizen and resident of the County of Spartanburg, State of South Carolina.
4. That the Defendant, Upstate Lung and Critical Care Specialists PC, is an association organized and existing under the laws of South Carolina and engaged in substantial business in the County of Spartanburg, State of South Carolina.
5. At all times herein mentioned, Defendants Gregory J. Feldman MD and Joseph A. Boscia III, MD, acted both individually and as servants, agents and employees of Upstate Lung and Critical Care Specialists PC, acting within the course and scope of their employment. On or

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MAILED
CLERK OF COURT
SPARTANBURG, SC

about May 28, 2004, the Plaintiff, William Mark Casey, was a patient of the Defendants, Feldman, Boscia and Upstate Lung and Critical Care Specialists PC. After the development of the physician-patient relationship, these Defendants were negligent, careless, reckless, willful and wanton in Mr. Casey's treatment, care, management, surgical evaluations and surgical procedures, all of which resulted in severe and extensive injury to the Plaintiff.

6. That the Defendant, Devendra Shantha MD, upon information and belief, is a citizen and resident of County of Spartanburg, State of South Carolina, and is employed as an anesthesiology physician doing substantial business in the County of Spartanburg, State of South Carolina. At all times herein mentioned involving Defendant Devendra Shantha MD, a physician-patient relationship existed with the Plaintiff, William Mark Casey. The Defendant, Devendra Shantha MD, was negligent, careless, reckless, willful and wanton in Mr. Casey's treatment, care, management, surgical evaluations and surgical procedures, all of which resulted in severe and extensive injury to the Plaintiff.

7. As a direct and proximate result of the negligence, carelessness, recklessness, willful and wantonness on the part of the Defendants, Mr. Casey suffered real and immediate physical and mental injuries including, but not limited to, a perforated bronchial wall allowing air bubbles to escape from the lung into adjacent blood vessels, causing air emboli with resultant loss of blood circulation to the brain causing permanent brain damage with cognitive/dysfunction, memory loss, depression and other problems associated with brain damage. He has also endured physical pain and suffering, mental anguish and distress and will continue to suffer such damage in the future along with the problems from permanent brain damage as stated above. Mr. Casey's injuries are permanent and disabling to the point that he has been physically disabled from employment and has not worked since suffering the injuries stated herein and,

upon information and belief, Mr. Casey will be permanently disabled from employment with resulting loss of income. Mr. Casey has lost the normal enjoyment and quality of life, the ability to engage in social and physical activities in which he previously participated, and suffered embarrassment and humiliation along with causally related past and future medical expenses and other economic losses.

8. The injuries and damages sustained by the Plaintiff, William Mark Casey, are a direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness on the part of the Defendants in failing to possess the degree of care, competence, judgment and skill ordinarily and customarily possessed by similar healthcare providers under similar circumstances, or in failing to exercise that degree of care, competence, judgment and skill ordinarily and customarily exercised by similar healthcare providers under similar circumstances, and in deviating from ordinary and customary standards of medical care in one or more of the following particulars, to wit:

A. As to Defendant Joseph A. Boscia III, MD:

- (1) In failing to obtain a complete history and physical examination of the patient, William Mark Casey, to include any history of aspirating a radiopaque/metallic foreign body, onset and details of physical problems and symptoms supporting aspiration of metallic foreign body;
- (2) In failing to obtain clinical correlation supporting ingestion of a metallic foreign body as recommended by the radiologist in his interpretation of the sole AP chest x-ray taken in the emergency room;
- (3) In failing to obtain appropriate diagnostic studies to include a complete set of PA and lateral chest x-rays and/or chest CT scans, which would have involved minimal risk to the patient, and which would have confirmed or eliminated the presence of a radiopaque/metallic foreign body in the patient's lung prior to subjecting the patient to a flexible bronchoscopy on May 28, 2004;
- (4) In engaging in flexible bronchoscopy surgical procedure on May 28, 2004, to remove a radiopaque/metallic foreign body from the lung without

first confirming the presence of said foreign body in the lungs, since this presence of said foreign body was the only indication for the procedure and there was no urgency given the patient's absence of any supporting history, symptoms, physical findings, for aspiration of said foreign body;

- (5) In failing to engage in conservative diagnostic treatment that would have revealed the patient did not have a radiopaque/metallic foreign body present in his lung, thereby eliminating the need for flexible bronchoscopic procedure on May 28, 2004, which, in fact, failed to show a radiopaque/metallic foreign body;
- (6) In failing to obtain washings or biopsies during the flexible bronchoscopy surgical procedure on May 28, 2004, (particularly with no visualization of metallic foreign body on bronchoscopy) for further laboratory diagnosis to provide indication for rigid bronchoscopy; or if washings or biopsies were obtained, in failing to have appropriate laboratory tests completed on the washings or biopsies to support the need for rigid bronchoscopy with YAG laser;
- (7) In failing to review the CT chest scan, (which he ordered four hours after the May 28, 2004, bronchoscopy), given that the bronchoscopy did not show any radiopaque/metallic foreign body and that the negative chest CT eliminated the need for the rigid bronchoscopy with YAG laser to remove said foreign body;
- (8) In failing to communicate to the patient that no radiopaque/metallic foreign body was visualized during the flexible bronchoscopy procedure and that the CT chest scan taken four hours after the flexible bronchoscopy on May 28, 2004, was also negative for the presence of a radiopaque/metallic foreign body in the patient's left upper lung or any area of his chest;
- (9) In failing, prior to the patient's discharge on May 29, 2004, to cancel the rigid bronchoscopy scheduled for June 3, 2004, to be done by Gregory J. Feldman MD, for removal of the radiopaque/metallic foreign body, given the finding of no foreign body on chest CT done the day before in addition to the findings of no signs or symptoms of aspiration and no visible foreign body on flexible bronchoscopy;
- (10) In failing to communicate during the period between May 29 and June 3, 2004, with his partner and co-physician responsible for managing the Plaintiff's medical care, Gregory J. Feldman MD, that the chest CT scan performed on May 28, 2004, was negative for a radiopaque/metallic foreign body in the patient's lung and that the rigid bronchoscopy for removal of the now non-existent radiopaque/metallic foreign body was, thus, no longer indicated;

- (11) In failing to properly follow Spartanburg Regional Medical Center's mandated Policies and Procedures for certain Standards of Care in place for the safety and proper treatment of the patient;
- (12) In failing to communicate the full extent of the errors and deviations of standard of care to the patient, William Mark Casey, and all appropriate Spartanburg Regional Medical Center officials and committees, as indicated, errors which were committed by this and/or the other Defendants that resulted in severe injuries to Mr. Casey, as set forth in Spartanburg Regional Medical Center's policy of Disclosure of Unanticipated Outcomes.

B. As to Defendant Gregory J. Feldman MD:

- (1) In failing to obtain a history and physical from the patient, thus failing to recognize patient's lack of symptoms (no wheezing, shortness of breath, cough or other symptoms typically associated with foreign body aspiration) did not support aspiration of the alleged radiopaque/metallic foreign body;
- (2) In failing to obtain clinical correlation of aspiration of and presence of radiopaque/metallic foreign body as opposed to an artifact above or below the chest on film;
- (3) In failing to review, consider or repeat conservative diagnostic treatment during the period of between May 29 and June 3, 2004, which should have caused him to cancel the rigid bronchoscopy previously scheduled for June 3, 2004;
- (4) In failing to order and review PA and lateral chest x-rays and review the previously obtained chest CT scan, which would have been the most reasonable next step, prior to the rigid bronchoscopy with YAG laser;
- (5) In failing to review patient's medical records from the patient's hospital admission on May 28, 2004, through patient's discharge on May 29, 2004, to include flexible bronchoscopy records and all diagnostic tests;
- (6) In failing to order additional diagnostic studies, in the absence of Dr. Boscia's visualization of said foreign body on previous bronchoscopy, and chest CT negative for said foreign body, to justify the need for proceeding with potentially life-threatening rigid bronchoscopy with YAG laser on June 3, 2004;
- (7) In failing to obtain proper Informed Consent from patient, discussing risks, potential benefits, and alternatives to rigid bronchoscopy with YAG

laser and failure to disclose negative test results, including absence of visible foreign body on fiberoptic bronchoscopy, and absence of foreign body on chest CT, prior to patient's arrival in operating room;

- (8) In failing to participate, or adequately participate, in the mandated "Time Out" meeting of the entire surgical team prior to the June 3, 2004, procedure which should have prevented the procedure from going forward;
- (9) In failing to exercise appropriate medical judgment and failure to consider the high risk of using rigid bronchoscopy with YAG laser and associated instrumentation to vaporize or remove a substantial radiopaque/metallic foreign body given the known risks of fire, perforation and air emboli from said procedure and the absence of any history in an asymptomatic patient with no cough, shortness of breath, wheezing, chest film atelectasis, or other indication for said high-risk invasive procedure;
- (10) In continuing to use the rigid bronchoscope with YAG laser and associated instrumentation to remove or vaporize what Defendant Feldman believed was a foreign body in the patient's lung, even though the expected foreign body was not visualized, subjecting the patient to the risk of fire in the lung and death had such radiopaque/metallic foreign body been present;
- (11) In continuing to use the rigid bronchoscope, YAG laser and associated instrumentation to remove tissue not knowing the character of said tissue, i.e., metallic foreign body, crown, or congenital abnormality, subjecting the patient to risks of fire, perforation and attendant complications;
- (12) In failing to correlate increased blood pressure and heart rate with a complication, such as perforation of the bronchial wall and continuing to attempt to remove non-existent radiopaque/metallic foreign body, despite destabilization of vital signs, including elevated blood pressure and increased pulse;
- (13) In failing to recognize the severity of the patient's symptoms and likelihood of bronchial wall perforation, and continuing the rigid bronchoscopic procedure for a substantial additional period of time, allowing continued air bubbles to escape from the lungs into the blood vessels, causing air emboli resulting in permanent brain damage to Mr. William Mark Casey;

- (14) In failing to properly follow Spartanburg Regional Medical Center's mandated Policies and Procedures for Standards of Care in place for the safety and proper treatment of the patient;
- (15) In failing to communicate the full extent of the errors and deviations of standard of care to the patient, William Mark Casey, and all appropriate Spartanburg Regional Medical Center officials and committees, as indicated, errors which were committed by this and/or the other Defendants that resulted in severe injuries to Mr. William Mark Casey, as set forth in Spartanburg Regional Medical Center's policy of Disclosure of Unanticipated Outcomes.

C. As to Defendant, Upstate Lung & Critical Care Specialists PC:

Defendants Gregory J. Feldman MD and Joseph A. Boscia III, MD, at all times herein mentioned were acting as agents and employees of Upstate Lung and Critical Care Specialists PC and were acting within the course and scope of their employment. Both Defendants Feldman and Boscia had a physician-patient relationship with the Plaintiff, William Mark Casey, and were jointly responsible for and involved in this patient's care. All allegations stated directly above or otherwise in this Complaint as to Defendants Feldman and Boscia are imputed to the Defendant Upstate Lung and Critical Care Specialists.

D. As to Defendant, Devendra Shantha MD:

- (1) In administering general anesthesia to the Plaintiff, William Mark Casey, on June 3, 2004, for removal of a radiopaque/metallic foreign body from the patient's lung or chest when he was aware prior to the procedure that the chest CT scan taken May 28, 2004, was negative for a radiopaque/metallic foreign body in the patient's chest;
- (2) In failing to communicate to the surgeon, Gregory J. Feldman MD, prior to the start of the procedure on June 3, 2004, that the chest CT scan taken May 28, 2004, was negative for the presence of a radiopaque/metallic foreign body in the patient's chest;
- (3) In failing to inform the patient during his Anesthesia Pre-Operative Evaluation that the surgical procedure for which he was scheduled (removal of radiopaque/metallic foreign body from the lung) was unnecessary given that the May 28, 2004, chest CT scan did not show said foreign body, and given that his knowledge that the chest CT, scan was negative;
- (4) In failing to participate, or adequately participate, in the mandated "Time Out" meeting of the entire surgical team prior to the June 3, 2004,

procedure which should have prevented the procedure from going forward;

- (5) In failing to immediately communicate to the surgeon, Defendant Gregory J. Feldman MD, as to the destabilization of the Plaintiff's vital signs during the procedure and allowing the procedure to continue for an additional substantial period of time, which ultimately resulted in Plaintiff's permanent injuries, including permanent brain damage;
- (6) In failing to properly follow the Spartanburg Regional Medical Center mandated Policies and Procedures for Standards of Care in place for the safety and proper treatment of the patient;
- (7) In failing to communicate the full extent of the errors and deviations of standard of care regarding the patient, William Mark Casey, to Spartanburg Regional Medical Center officials and committees, as indicated, errors which were committed by this and/or the other Defendants that resulted in severe injuries to Mr. William Mark Casey, as set forth in Spartanburg Regional Medical Center's policy of Disclosure of Unanticipated Outcomes.

9. The patient requests that he be awarded actual and punitive damages from the Defendants, jointly and severally, in an appropriate amount to be determined by a jury for the reasons stated in this Complaint.

WHEREFORE, based on the allegations set forth in this Complaint, Plaintiff prays:

- A. For a sum of actual and punitive damages as to each Defendant, jointly, and severally, in an amount to be determined by a jury;
- B. For the cost of this action; and
- C. For such other and further relief as the Court may deem just and proper.

BURTS, TURNER, RHODES & THOMPSON
Attorneys for Plaintiff
P.O. Box 3408
Spartanburg, SC 29304
(864)585-8166; Fax: (864) 583-6927

Dated: May 24, 2006
Spartanburg, South Carolina

By: Chuck Thompson
RAY E. THOMPSON, JR.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2006 MAY 24 PM 2:30
MAINGRITCHENS

EXHIBIT

3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) C.A. NO. 2010-CP-42-05743

Gregory J. Feldman, MD, Joseph A.)
Boscia, III, MD, Upstate Lung & Critical)
Care Specialists, PC, and Devendra)
Shantha, MD,)

COPY

Plaintiffs,)

Versus)

William Mark Casey, Ray E. "Chuck")
Thompson, and Charles M. Fogarty, MD,)

Defendants.)

DEPOSITION OF
GREGORY J. FELDMAN, M.D.

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of GREGORY J. FELDMAN, M.D. was taken on the 17th, 18th, and 21st days of October, 2016, commencing at the hours of 9:06 a.m., 9:09 a.m., and 1:15 p.m., respectively, in the offices of Wilkes Law Firm, Attorneys at Law, Spartanburg, South Carolina.

REPORTED BY: Rosalind Poole Walters,
Certified Verbatim Reporter-Master

LEGAL EAGLE
Certified Verbatim Reporters
Post Office Box 5682
Greenville, South Carolina 29606
(864) 587-7050 or (864) 467-1373
depos@legaleagleinc.com

Deposition of Gregory J. Feldman, M.D.

1 Pleas Court styled Casey versus Feldman, Boscia,
2 Upstate Lung and Critical Care Specialists, and
3 Devendra Shantha. I'm going to ask the court reporter
4 to mark as an exhibit the Complaint in that case.

5 (Defendant's Exhibit Number 1 marked)

6 EXAMINATION RESUMED BY MS. CHEEK:

7 Q. I'm going to ask you to agree that this is the lawsuit
8 that we are referring to when we say the medical
9 malpractice action. Is that acceptable?

10 A. Yes.

11 Q. The medical malpractice action was filed in 2006.
12 Correct?

13 A. Correct.

14 Q. And you were a defendant in that action. Correct?

15 A. Yes.

16 Q. Mr. Casey was the plaintiff. Correct?

17 A. Yes.

18 Q. Mr. Thompson was Casey's lawyer, the lawyer for the
19 plaintiff in that case. Correct?

20 A. Yes.

21 Q. And Dr. Fogarty in the medical malpractice action was
22 Mr. Casey's treating physician and was also named as an
23 expert witness. Correct?

24 A. Yes.

25 Q. The allegations in the medical malpractice action was

Deposition of Gregory J. Feldman, M.D.

1 that Mr. Casey had sustained brain injury and other
2 injuries as a result of alleged malpractice by you and
3 the other defendants. Correct?

4 A. I'm not recall any other damages other than brain,
5 brain injury, but you may correct me. From my memory,
6 it was just brain damage.

7 Q. In the Complaint, if you will, Mr. Casey also
8 complained of attending depression and some other
9 manifestations that were related to the brain injury.
10 Does that sound familiar?

11 A. No.

12 Q. Do you recall that Mr. Casey alleged that he had
13 suffered an air embolism as a result of a pneumothorax
14 and resulting complications from a rigid bronchoscopy
15 that you performed?

16 A. That is allegation, yes.

17 (Defendant's Exhibit Number 2 marked)

18 EXAMINATION RESUMED BY MS. CHEEK:

19 Q. Dr. Feldman, what's been handed you as Exhibit 2 in
20 this matter is a copy of the Second Amended Complaint
21 that's been filed in this present action, and you filed
22 this action in 2010 against Dr. Fogarty, Mr. Casey, and
23 Mr. Thompson. Correct?

24 A. We, Upstate Lung, myself, Dr. Shantha, and Boscia has
25 filed it in 2010.

Deposition of Gregory J. Feldman, M.D.

1 Burns Davison at the JUA. I'm going to ask that you
2 please read that to yourself, and then I have some
3 questions about it.

4 A. Yeah, I did. You want me to read the second page?

5 Q. Yes, please.

6 A. Yeah.

7 Q. Dr. Feldman, does this e-mail accurately summarize your
8 claim for abuse of process in this case?

9 A. This is just one of many e-mails. So if you take it
10 out of context, it does not. If you take it in the
11 context, it does.

12 Q. So you contend -- and, again, we're going to try to
13 work on a summary here. You contend the medical
14 malpractice action was not simply a frivolous lawsuit
15 where a plaintiff will fabricate injuries, for example,
16 your contention, I believe, is that the medical
17 malpractice action was completely false. Is that
18 correct?

19 A. I'll call it fraudulent.

20 Q. Fraudulent. You believe or you had stated to Messrs.
21 Mann and Davison that it was an outright invention of
22 the medical record, medical diagnosis, and evidence.
23 Is that correct?

24 A. Yes.

25 Q. And that is an accurate statement of your position?

Deposition of Gregory J. Feldman, M.D.

1 A. It is accurate statement.

2 Q. You also reference a scheme to file a malpractice
3 lawsuit against you, and that was one that you contend
4 that Dr. Fogarty and Mr. Thompson created in 2004. Is
5 that accurate?

6 A. It is scheme, yes.

7 Q. And you, again, believe that is not based on any facts?

8 A. Correct.

9 Q. Mr. Casey was not medically injured?

10 A. Yes.

11 Q. Dr. Fogarty didn't believe he had been injured?

12 A. Yes.

13 Q. Dr. Fogarty made up a bogus theory about how Casey had
14 been injured?

15 A. Yes.

16 Q. And that was not medically supported. Correct?

17 A. Correct.

18 Q. And that medical diagnosis by Dr. Fogarty was that Mr.
19 Casey had suffered an air embolism as a result of a
20 pneumothorax that occurred during a rigid bronchoscopy
21 you performed. Correct?

22 A. Yes, that's correct.

23 Q. As to Mr. Thompson, you believe that and have alleged
24 that Mr. Thompson used this diagnosis by Dr. Fogarty to
25 file the medical malpractice action. Correct?

Deposition of Gregory J. Feldman, M.D.

- 1 A. Correct.
- 2 Q. Again, that theory was false?
- 3 A. Fraudulent.
- 4 Q. Dr. Fogarty, Mr. Thompson, and Casey knew this was a
- 5 baseless diagnosis?
- 6 A. Fraudulent diagnosis.
- 7 Q. Okay. And these defendants in this case intended to
- 8 damage you by filing and obtaining a judgment against
- 9 you in the medical malpractice action. Correct?
- 10 A. No, I don't believe that they had any chance to obtain
- 11 judgment. The damage I would agree with that. There
- 12 was intent to damage me, yes, and us.
- 13 Q. And the intent was to damage you by getting an award
- 14 for medical malpractice against you?
- 15 A. I cannot get into the frame of mind. Damage me
- 16 personally, destroy my career, destroy my medical
- 17 group, destroy everything. That was an intent.
- 18 Q. Okay, we'll come back to intent shortly. Now, you had
- 19 mentioned in your e-mail to Mr. Burns, I believe, that
- 20 Thompson and Casey had done -- I'm looking at number
- 21 two in the e-mail.
- 22 A. Okay.
- 23 Q. That plaintiff, Mr. Casey and Chuck Thompson, are
- 24 trying to extort money from your insurance company.
- 25 Correct?

Deposition of Gregory J. Feldman, M.D.

1 A. Okay.

2 Q. I understand that you believe it was fraudulent, and
3 that's what we're here to explain. And this is the
4 early part of the deposition. You're going to get your
5 chance to tell me why for all of the reasons you
6 believe it was fraudulent, but for purposes of the
7 transcript and court reporter, I'm just going to have
8 to make that determination. Okay?

9 A. It's your deposition.

10 Q. Okay. Dr. Fogarty's diagnosis you allege in your
11 Second Amended Complaint was developed by Dr. Fogarty
12 from sometime in 2004 until he finally published it in
13 a medical record dated July 21, 2005. Is that
14 accurate?

15 A. I'm going to ask you to rephrase the question. What
16 part of your question is accurate?

17 Q. What I'm referring to as Dr. Fogarty's diagnosis was
18 actually you allege that he began forming that opinion
19 in 2004 and he ultimately wrote it in a medical record
20 dated July 21, 2005. Correct?

21 A. Yes, he started to develop this scheme in 2004, and he
22 entered the fraudulent medical record on that day with
23 what you call diagnosis and I call fraudulent
24 statement, yes. He filed a fraudulent statement on
25 that day. I agree with that.

Deposition of Gregory J. Feldman, M.D.

1 Q. Let's talk now about that July 21 note. And during
2 this deposition, I'm going to be referring to the July
3 21 note, but first I want us to get on the same page
4 about what we're talking about when I say July 21 note.

5 (Defendant's Exhibit Number 5 marked)

6 EXAMINATION RESUMED BY MS. CHEEK:

7 Q. In the medical malpractice action, you received a copy
8 of this July 21 note of Dr. Fogarty, and you'll see
9 that the medical malpractice action was used as an
10 exhibit in Dr. Fogarty's deposition and was Bates
11 stamped. I'll represent to you those are Bates stamps
12 added by Mr. Thompson's firm. So my question for you
13 is, you received a copy of this July 21 note in the
14 medical malpractice action. Correct?

15 A. Yeah, this is a defendant exhibit stamped in Dr.
16 Fogarty's deposition. So I believe that was 2008. In
17 2008, that accurately reflect the note.

18 Q. And also during the medical malpractice action, you
19 became aware that there were other versions of the July
20 21 note. Correct?

21 (Defendant's Exhibit Number 6 marked)

22 MR. MANN:

23 Ellen, this version is Number 6?

24 MS. CHEEK:

25 Yes. The one you just got is going to be 6, and

Deposition of Gregory J. Feldman, M.D.

1 Q. You have been handed what's been marked as Exhibit 8.
2 I'm going to refer you, if you would, to the lower e-
3 mail down here. It's a September 3, 2007 e-mail that
4 you sent to yourself, Subject Stratterra.

5 A. I'm sorry. What e-mail?

6 Q. If you'll look down here, please, sir.

7 A. My September '07? I see it.

8 Q. Yes, September 30, 2007 e-mail you sent to yourself.

9 A. Okay.

10 Q. And do you see there, Dr. Feldman, that you are quoting
11 from a Fogarty record?

12 A. Fogarty lawsuit record, not Fogarty record. I'm
13 quoting from Mr. Waid, Dr. Waid from Charleston.

14 Q. And you'll see that the language that you quote
15 corresponds to the language in Exhibit 7?

16 A. I do not. I did not have that record. This is record-
17 --

18 Q. But you see that the language---

19 A. Ms. Cheek, can I finish my answer?

20 Q. You may.

21 A. It's okay. You can -- it's okay if I can finish it?
22 Okay. What you called in here, I never had that
23 record. This is a direct quote from Dr. Waid,
24 neuropsychologist report that I did have. Okay? That
25 is where the quote comes from.

Deposition of Gregory J. Feldman, M.D.

1 Q. Okay. I understand.

2 A. This particular paper that you quote is not Bates
3 stamped. It's saying Thompson record, which we
4 uncovered in May of this year. I never had that
5 record, never saw that record, didn't know about that
6 record ever existed.

7 Q. Okay. The language itself that is in the record, you
8 will agree that what you quote from the Waid document
9 is the same language that appears in your Exhibit 7
10 note. Correct?

11 A. I agree with you on a very narrow definition that this
12 particular quote is appear in that note. In no way
13 that I knew that note existed. Dr. Waid did not have
14 any Fogarty notes.

15 (Defendant's Exhibit Number 9 marked)

16 EXAMINATION RESUMED BY MS. CHEEK:

17 Q. If you could please in the same regard look at what's
18 been marked as Exhibit 9. This is a February 16, 2008
19 e-mail from you to Spencer King and Attorney Mann. If
20 you could please read to yourself the first paragraph -
21 -

22 A. I see it.

23 Q. -- and the second. Actually, just read the whole e-
24 mail to yourself.

25 A. Yeah, I see it.

Deposition of Gregory J. Feldman, M.D.

1 King's chronology is the same language that appears in
2 Exhibit 6, which is what I refer to as the King note?

3 A. In what regard is quote the same?

4 Q. Pardon?

5 A. In what regard is quote the same?

6 Q. Well, is it the same language that is stated here in
7 this Exhibit 6, what I refer to as the King note?

8 A. It's not exactly the same, but brain damage is alleged
9 in both. But I've never -- I've never seen it until
10 you just showed it to me or until recently.

11 Q. But you did receive the Exhibit 10 e-mail. Correct?

12 A. It is not Bates stamped. Correct?

13 Q. Pardon?

14 A. It is not Bates, Bates stamped, is it?

15 Q. It was Bates stamped King, yes.

16 A. No. It's not Bates stamped in original malpractice
17 lawsuit.

18 Q. No. I would represent to you that is your attorney's
19 work product and wasn't produced---

20 A. To prevent difficulties in the future, I only seen
21 Bates stamped records in my medical malpractice
22 lawsuit. If it's not Bates stamped, I have not seen
23 it.

24 Q. Okay.

25 A. By Bates stamp, I'm referring to the Bates stamp in the

Deposition of Gregory J. Feldman, M.D.

1 Q. If you can read from where I pointed out where it says,
2 "And it is not just what has been done, perjury."

3 A. "With all due respect, you guys remind me my USSR
4 experience. Do not do that or this. KGB may find out,
5 et cetera."

6 Q. No.

7 A. Okay. "There is no legitimate reason to suborn
8 perjury, work product, admissibility, even materiality,
9 none, when even legitimate, not bogus like this. And
10 it is not just what has been done, perjury. But a
11 necessity to prove that they knew it was fraud, no
12 brain injury ever happened. And who else was involved
13 in procuring this, parentheses Fogarty. Of course I am
14 entitled to depose Chuck on these issues. So I am"---

15 Q. Okay, I'm going to stop you right there, Dr. Feldman.
16 Thank you. And this, again, underscores your position
17 that Mr. Casey had never suffered any brain injury.
18 Correct?

19 A. You talking about Mr. Casey never suffering brain
20 damage?

21 Q. Correct.

22 A. No, he never had brain damage, no.

23 Q. If you will flip to Number 16, this is an April 24,
24 2010 e-mail from you to Messrs. King, Mann, Davison,
25 and Gunn, and you will agree with me that you're

Deposition of Gregory J. Feldman, M.D.

1 A. Yeah, he reviewed his medical records, yes. That's not
2 allegation. It's a fact.

3 Q. Right. And then your position is those records have no
4 indication of any air embolism or neurological damage.
5 Correct?

6 A. The records that I have reviewed, Greg Feldman, has no
7 indication of any brain damage. I'm not going to speak
8 for Dr. Fogarty.

9 Q. But do I understand correctly you believe Dr. Fogarty
10 made up his diagnosis by not exploring the facts and
11 ignoring the records?

12 A. No. He has fabricated intentionally. It's a scheme.
13 Okay? You somehow try to ask me a question whether he
14 had some medical -- no. He has a legal, legal issue in
15 mind, how to hang Greg Feldman and company. So he has
16 fabricated medical record with a legal intent, not
17 medical intent. The medicine is a different
18 discussion. It is not part of this lawsuit.

19 Q. But Dr. Fogarty is a physician. Correct?

20 A. He has M.D. degree.

21 Q. And he wrote down in a medical office note a diagnosis
22 that you believe is false. Correct?

23 A. I don't know how we can overcome it. He did not make a
24 diagnosis. He created fraudulent medical record to
25 hang his colleagues, specifically me. Okay? That's

Deposition of Gregory J. Feldman, M.D.

1 what he did. Okay? He has a legal issue, how we can
2 embroil these people in the lawsuit and hang them.
3 okay? He has created diagnosis, legal diagnosis.
4 what's the difference between medical diagnosis and
5 legal diagnosis? Medical diagnosis is not without
6 medical certainty. It's a differential diagnosis.
7 It's a test and so forth. The legal diagnosis is
8 without a doubt. Okay? That is not medical diagnosis.
9 No physician makes diagnosis without a doubt. Okay?
10 Unsupported diagnosis without a doubt. All right? So
11 this is a legal diagnosis, not medical diagnosis for
12 lawsuit. Now, you may have a difference of opinion.
13 You may have different opinion. You asked me for my
14 opinion.

15 Q. No, I understand what you're saying, is that you
16 believe that Dr. Fogarty wrote in his note a diagnosis
17 for use in a lawsuit, that that's why he wrote that
18 note.

19 A. He mastermind a scheme, yes. Yes. We're getting
20 somewhere.

21 Q. But if Dr. Fogarty had written something that was true,
22 then we wouldn't have a lawsuit. Correct?

23 A. we wouldn't have medical malpractice lawsuit, correct.
24 There would never be medical malpractice lawsuit and no
25 lawsuit today, correct.

Deposition of Gregory J. Feldman, M.D.

1 Q. So what he wrote was false?

2 A. Fraudulent.

3 Q. Now---

4 A. I'm going to try to explain one more time. When you
5 say false, it's medically false. When I say
6 fraudulent, fraudulent, it's a legal terminology.
7 Okay? It make no difference to Dr. Fogarty what
8 diagnosis was. Okay? For him the only difference, the
9 only thing was how I can haul these people into the
10 court. That's what it was for. Okay? So false and
11 fraudulent may be not accurate. What medically false
12 was actually legal scheme, fraudulent scheme.

13 Q. Now, can a board certified neurologist examine Casey's
14 hospital records and --

15 A. I'm sure---

16 Q. Let me finish my question -- and support Dr. Fogarty's
17 conclusion that Mr. Casey had suffered an air embolism?

18 A. No physician could support the diagnosis, neither
19 neurologist nor anybody else.

20 Q. So you also believe -- I want to use these definitions,
21 and I've got to make sure I stick to them that I've
22 established here.

23 A. You haven't established any acceptable definition for
24 me.

25 Q. I understand you and I are going to disagree about that

Deposition of Gregory J. Feldman, M.D.

1 Q. So a differential diagnosis is one where a physician
2 such as Dr. Smith is opining that Casey may have PTSD.
3 Is that a differential diagnosis?

4 A. No. It is off-the-cuff remark. Don't know what's
5 going on. They're telling me that they -- this and
6 that. We send to psychiatrist. It's not a
7 differential diagnosis.

8 Q. What is a differential diagnosis?

9 A. Differential diagnosis is this. Potential -- well,
10 we'll use Casey as a differential diagnosis. Potential
11 drug abuse, potential litigious behavior, don't know,
12 history of depression, let's send to psychiatrist.

13 Q. So the diagnosing physician is listing things that may
14 be the cause of what the patient is exhibiting?

15 A. Complaining, not exhibiting. A complaint. A
16 complaint, unexplained complaint.

17 Q. Is it your opinion that for Dr. Fogarty to have stated
18 that Mr. Casey -- and I'm looking at Exhibit 5 -- Mr.
19 Casey may have permanent neurological defect, that
20 before writing that Dr. Fogarty would have had to have
21 sent Mr. Casey for neurological testing?

22 A. I cannot associate this case with any other discussion.
23 This is a fabrication. He sent him to the lawyer to
24 hang his colleagues. Okay? It made perfect sense for
25 him to write what he did, because for Mr. Thompson he

Deposition of Gregory J. Feldman, M.D.

1 needed without a doubt. Otherwise, he could not sue.
2 So he basically complied -- complied with Mr.
3 Thompson's needs and his own. Okay? without --
4 without a doubt, without medical certainty case go
5 nowhere.

6 Q. You've alleged, though, in paragraph 33 of the second
7 Amended Complaint that Dr. Fogarty did not perform any
8 basic neurological exam. Correct?

9 A. No, he did not.

10 Q. And is a neurological exam required before a physician
11 opines whether a patient may have mental impairment?

12 A. Yes.

13 Q. And as to Dr. Fogarty, you believe that his failure to
14 get a neurological test further indicates that Dr.
15 Fogarty's opinion is false. Correct?

16 A. I don't know what to do. It's a fabricated diagnosis.
17 It's a legal diagnosis. He did not do no physical
18 exam, no referral, but on purpose. Okay? He couldn't
19 write it down, all reflexes normal, pupils are equal,
20 and so forth, no evidence of any brain damage. Of
21 course he couldn't refer him to anyone. That would be
22 death of his scheme.

23 Q. So if he referred Casey to a neurological expert, then
24 that expert would have determined that Casey wasn't
25 brain-damaged?

Deposition of Gregory J. Feldman, M.D.

1 very rarely write down on paper why don't we hang
2 somebody.

3 Q. So you don't have any correspondence from Dr. Fogarty
4 and Mr. Thompson that says, in your words, Mr.
5 Thompson, I'll back you up, do you?

6 A. I do. Okay? Not in the words that you said, but in
7 the words that fully understandable to the jury what
8 they did.

9 Q. Now, if Dr. Fogarty had just seen Casey as a patient
10 after Casey left your care, you wouldn't be suing Dr.
11 Fogarty, would you?

12 A. Explain yourself, the question.

13 Q. If Dr. Fogarty had just seen Casey as a patient, there
14 would be no ground for a lawsuit against him. Correct?

15 A. I wouldn't even know about it. I mean, he's seen many
16 patients.

17 Q. And, likewise, if Dr. Fogarty had just formed a false
18 or fabricated in his mind a theory that you had
19 malpracticed against Casey, you wouldn't be suing him,
20 would you?

21 A. We are suing Dr. Fogarty not for seeing Mr. Casey. We
22 are suing Dr. Fogarty for fabricating the scheme.
23 That's why we're suing him. Somehow you tried to say
24 it's about medicine. It isn't. It has nothing to do
25 with medicine.

Deposition of Gregory J. Feldman, M.D.

1 Q. It's about what Dr. Fogarty wrote down. You're suing
2 him because he wrote down something that was false, in
3 your opinion, and used it as the basis of a lawsuit.

4 A. I don't know why, Ellen, you decided to put words in my
5 mouth. For the past two hours I'm trying to explain to
6 you that he did not write the note for the patient. He
7 wrote the note for the lawyer. It is not a medical
8 record. It's a legal record to file the lawsuit.
9 That's what he's getting sued for. He got caught.
10 okay? He got caught in writing record, not for the
11 medical purpose, but for legal purpose. A legal
12 purpose was to hang his colleagues, to embroil them in
13 multi-year litigation and to destroy their careers.
14 That's what he's getting sued for.

15 Q. And you had told me earlier that in order to do that,
16 in order to have a record to be used for a lawsuit, he
17 had to put the word undoubtedly in there?

18 A. Yes.

19 Q. So, at its core, what Dr. Fogarty did wrong was he
20 wrote that Mr. Casey undoubtedly had air embolism?

21 A. What do you mean wrong? He changed his note to become
22 a linchpin of his lawsuit, Fogarty lawsuit. That
23 lawsuit was Fogarty lawsuit. He needed a linchpin. He
24 changed it. He changed it way after it was written.

25 Q. Now, Dr. Feldman, Exhibit 5, this July 21 note that Dr.

Deposition of Gregory J. Feldman, M.D.

1 Fogarty was deposed on, that's the note that has the
2 word undoubtedly in it. Right?

3 A. Can I concentrate in answering your question on the
4 number, 7/21? That note was never written on 7/21. It
5 was fabricated much later.

6 Q. How do you know that?

7 A. I promise to bring you tomorrow the evidence. You
8 asked me what evidence do you have. I am bringing you
9 the evidence.

10 Q. But you've also told me that Dr. Fogarty, this note
11 right now that was produced in the litigation, that's
12 the one that has the word undoubtedly in it. Correct?

13 A. But it's a fabricated note. It is not written in July.
14 It's actually probably written sometime in 2006, year
15 later, before the lawsuit. That is not -- this is a
16 fabricated note, totally.

17 Q. This is the note that was produced in the lawsuit.
18 Correct? That's---

19 A. This is fabricated note.

20 MR. MANN:

21 Dr. Feldman, please answer. Excuse me, Ellen.

22 EXAMINATION RESUMED BY MS. CHEEK:

23 A. Yes.

24 Q. This document was produced in the lawsuit. Correct?

25 A. Correct, in 2006.

Deposition of Gregory J. Feldman, M.D.

1 one can file and receive social security disability
2 without having a lawsuit?

3 A. I guess I wasted two or three minutes. I'm going to
4 repeat myself.

5 Q. Yes or no?

6 A. I'm going to repeat myself.

7 Q. I'm going to ask you to answer my question.

8 A. I'm going to answer. I'm going to answer your
9 question. In Casey case, he needed organic brain
10 damage. In somebody else's case, not Casey case, okay,
11 I'm not a lawyer. In Casey case, I know for a fact
12 that he needed organic brain damage to receive
13 disability benefits, and that's what was decided
14 between them, that's what they needed. And the
15 lawsuit, the lawsuit, okay, the lawsuit, you ask the
16 lawyers about the legal system. The lawsuit was sent
17 to Social Security, allegations in the lawsuit, and
18 Aetna disability. That's where the lawsuit was needed
19 to give legitimacy to illegitimate fabrication. That's
20 why it was done. They had to have organic. PTSD was
21 not enough.

22 Q. So your position is that Casey and Thompson needed a
23 medical malpractice lawsuit to be filed in order to
24 obtain, apply for and obtain disability?

25 A. To legitimize it. To legitimize it, yes. Yes.

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Deposition of Gregory J. Feldman, M.D.

1 Q. Does the filing of a lawsuit, in your theory,
2 legitimize that, or don't you need a verdict that he
3 has been in fact brain-injured, you've malpracticed?
4 Is that what they need? Do they need the verdict or do
5 they just need the paper being filed?

6 A. I wasted five minutes. I'm going to repeat myself one
7 more time. They needed the lawsuit, allegation in the
8 lawsuit. Okay? They needed lawsuit allegations, all
9 right, to disseminate, to give credibility to the
10 outrageous theory. Okay? They also needed it for
11 Aetna disability, because it's only organic brain
12 damage would suffice for them. They would not be
13 passing by PTSD. Okay? They needed it in the lawsuit,
14 because a lawyer, the lawyer, like Mr. Thompson, is
15 free to protect it, or so they -- or they thought they
16 were. In the legal arena, if Mr. Thompson would write
17 all of that to Social Security disability and so forth,
18 okay, outside of the legal process, all right, he
19 couldn't have done it, okay, for that many years. All
20 right? The chicken come home to roost, but he couldn't
21 have done it for that many years. Yes, he needed to
22 pursue all that within the legal arena, because his
23 scheme required legal mess. Mr. Thompson is a lawyer.
24 You know that. He has a legal license. He abused his
25 legal license for that purpose. Okay? He served his

1 legal license for illegitimate purpose. And organic
2 brain damage, that's what he had to have.

3 Q. So I understand, I believe what you're telling me is
4 that the lawsuit was filed for the illegitimate purpose
5 of trying to obtain Social Security disability?

6 A. Aetna disability, Social Security disability, to
7 fabricate disability in general. He needed it to
8 fabricate disability in general. That was his total
9 priority. I've got to have a disability. If you're
10 not disabled, I got to have it. Casey needed it, too.
11 He needed disability. He needed Aetna benefits to
12 continue.

13 Q. So in filing the lawsuit for that purpose, the legal
14 process was abused by Thompson?

15 A. On behalf of Casey. There's another part. He filed a
16 lawsuit for Dr. Fogarty to follow his agenda.

17 Q. In filing the lawsuit on behalf of Dr. Fogarty, also,
18 the legal process was abused. Correct?

19 A. Yes. To pursue -- to file it for the agenda, yes.
20 That was a big part of this lawsuit.

21 Q. I'm going to refer you back to the Second Amended
22 Complaint, which is Exhibit 2, please.

23 A. To what page?

24 Q. We're just going to be working with this document for a
25 while, and I will tell you as we start this process,

Deposition of Gregory J. Feldman, M.D.

1 the reason that we are going through your allegations
2 here and talking about the factual bases for your
3 allegations is that the medical malpractice action, as
4 we've discussed before, does form the basis of your
5 claims. So, to the extent that some of this is very
6 well litigated in the underlying case, we're still
7 going to cover some of it.

8 A. It's your deposition, Ellen.

9 Q. All right. In paragraph seven of your Second Amended
10 Complaint, you allege Casey was admitted to Spartanburg
11 Regional Medical Center with chest pain on May 28,
12 2004. Is that correct?

13 A. That's correct.

14 Q. Paragraph eight, a chest x-ray was performed that
15 indicated a small foreign body and that clinical
16 correlation was suggested. Is that correct?

17 A. Correct.

18 Q. Paragraph nine states that Dr. Boscia performed a
19 flexible bronchoscopy which did not reveal an object.
20 Correct?

21 A. I do. I see that.

22 Q. Paragraph 10 states---

23 A. It goes on to say that it did reveal abnormal tissue.
24 You omitted that, but I don't know is it relevant or
25 not to discussion. It say, "Accordingly, Dr. Boscia

Deposition of Gregory J. Feldman, M.D.

- 1 Q. Let's go back to Exhibit 2. I'm looking at paragraph
2 12. Your allegation is---
- 3 A. What are we looking at? One more time.
- 4 Q. Paragraph 12, please.
- 5 A. Page 3?
- 6 Q. Correct.
- 7 A. Okay, I'm on it.
- 8 Q. It states, "Dr. Feldman performed that procedure,"
9 referencing the rigid bronchoscopy, "with Dr. Shantha,
10 who was the attending anesthesiologist." Correct?
- 11 A. Correct.
- 12 Q. Now, a CT scan was performed on Casey between the
13 flexible and rigid bronchoscopies. Correct?
- 14 A. Correct.
- 15 Q. And that CT scan was negative. It did not show the
16 presence of a foreign body. Correct?
- 17 A. You talking about lung CAT scan or brain CAT scan?
- 18 Q. This is the CT scan that was performed of Casey's lungs
19 between the flexible and rigid bronchoscopy.
- 20 A. Yeah, that was negative.
- 21 Q. And you performed the rigid bronchoscopy regardless?
- 22 A. Yes.
- 23 Q. Now, in the medical malpractice action, your lawyers
24 assessed that you committed malpractice as to Casey by
25 performing an unnecessary procedure. Correct?

Deposition of Gregory J. Feldman, M.D.

1 A. Who said that?

2 Q. Your lawyers.

3 A. No. That's incorrect.

4 Q. So in the medical malpractice action, you're not aware
5 of your lawyers' belief that the rigid bronchoscopy was
6 a questionable procedure, especially in the face of a
7 negative CT scan?

8 A. No. My discussion with my lawyers was very simple.
9 That's what the plaintiff allegations were, not that
10 what I've done was malpractice or anything in any
11 manner that I've done. That's allegation from Mr.
12 Thompson and the crowd.

13 Q. Now, your---

14 A. You know that the jury found that we'd done nothing
15 wrong here. Right?

16 Q. I know what the jury verdict was.

17 A. Okay. Thank you.

18 Q. Now, in the medical malpractice action, the JUA was
19 your malpractice insurer?

20 A. They were.

21 (Defendant's Exhibit Number 17 marked)

22 EXAMINATION RESUMED BY MS. CHEEK:

23 Q. I'm going to hand you what's been marked as Exhibit 17.
24 Dr. Feldman, this Exhibit 17 is a January 15, 2008
25 letter from your lawyer Spencer King to Judy Wilbanks

1 to present a fraudulent case. Be concerned. I think
2 that was just a candid assessment to the JUA adjuster
3 that, look, you see who we're dealing with. There's no
4 brain damage. There's no lung damage. But who knows?

5 Q. But that's not what Mr. King told you, was it? Mr.
6 King told you that he thought there were actually jury
7 issues as to liability and damages. Correct?

8 A. Thank you for giving me this letter, because I haven't
9 seen it. He's candidly appraising the fraudulent
10 scheme, the fraudulent extortion scheme, but there's no
11 damages.

12 Q. Well, let's take a look at what Mr. King told you.
13 (Defendant's Exhibit Number 20 marked)

14 EXAMINATION RESUMED BY MS. CHEEK:

15 Q. This is a July 28, 2009 letter to Drs. Feldman, Boscia,
16 and Attorney Mann. This is a letter that Mr. King
17 wrote. In the fourth paragraph, he says, "In my
18 judgment, there are jury issues both as to liability
19 and damages. The jury will have support from testimony
20 and evidence should they choose to return a verdict
21 against you. The plaintiff's strongest position is the
22 procedure was performed without fully apprising patient
23 plaintiff of all the circumstances; i.e., the negative
24 CT scan."

25 A. You talking about CT scan of the brain?

Deposition of Gregory J. Feldman, M.D.

1 Q. Of the chest.

2 MR. MANN:

3 wait for a question, please.

4 EXAMINATION RESUMED BY MS. CHEEK:

5 Q. Do you agree with me that Mr. King is telling you and
6 Dr. Boscia that he believes there are jury issues in
7 this case?

8 A. Is that a question?

9 Q. Do you agree that Mr. King here on July 28, 2009 is
10 telling you and Dr. Boscia and Attorney Mann that, in
11 his judgment, there are jury issues to be decided in
12 the case?

13 A. No, I don't, and I'm going to qualify this question.
14 This is a letter written at our request for JUA to give
15 us full control of the case, that we did nothing wrong,
16 that we want to proceed on our own, that we do not want
17 to have JUA to represent us in a way that will impede
18 our ability to prove our position that it's a fraud,
19 that we cannot discuss fraud with these people, that
20 they are basically on a fraudulent collision course and
21 so forth. Mr. King has apprised us, as any lawyer
22 would, that in the jury system that exists today, that
23 me and Dr. Boscia have significant material risk. We
24 took it under advisement and we really appreciated what
25 he did, but it has nothing to do with the case. It has

1 to do with us, okay, not wanting JUA to worry about it.
2 we knew it was a fraud, that the case cannot be proven
3 other than the fraud. we knew that. Okay? What Mr.
4 king did not know, and neither did I, it's a fabricated
5 case. If he did that, if he knew that back then, okay,
6 he wouldn't write that letter. He knew that was a
7 baseless lawsuit. As a good malpractice lawyer, he
8 defend baseless lawsuit with no lung injury, no brain
9 injury, or no injury of any kind. He knew that.
10 Nevertheless, as a lawyer, he want his client, which is
11 JUA, to know there's a risk in our jury system, and he
12 also want his client, which is Greg and Joe, Feldman
13 with Boscia, to know that I'm not advising you of that,
14 it's your decision, but I'm advising you that because I
15 see in the jury system stranger things happen. In his
16 defense, perhaps even today, he does not know that the
17 records were fabricated. He did not know that. If he
18 had known that, I would have known that, too. He did
19 not know.

20 Q. Now, you discussed with Mr. King the differences in the
21 July 21 note. We've already seen that.

22 A. I discuss with him differences between Dr. Fogarty note
23 and I was looking for neurologist. Where has Dr. Waid
24 got his note? I couldn't find it. I said -- I was
25 repeatedly asking Mr. King to produce me a note which I

Deposition of Gregory J. Feldman, M.D.

1 thought coming from neurologist. Okay? Because the
2 note did not match. Okay? And Dr. Fogarty did not
3 produce it. I in a wild dream would not believe that
4 somebody would fabric the record.

5 Q. But you knew that other physicians whose records you
6 were getting were quoting Dr. Fogarty and that the
7 language they quoted was different than what you had.
8 Correct?

9 A. Ellen, I did not. Okay? Absolutely not.

10 Q. You didn't know that they were quoting Dr. Fogarty?

11 A. 2006, the lawsuit was filed. From 2006 until September
12 2007, nothing was happening at all, nothing. Okay?
13 There was no records that I had. There was no concern
14 that I had, okay, about malpractice issue. I had
15 concern about my personal life, but not about
16 malpractice issue. Okay, I wasn't -- it was like it
17 was a mistake. Mr. Thompson was a partner with Mr.
18 Turner, Noel Turner who had lung cancer. I was taking
19 care of Noel Turner. He was my patient. Okay? Mr.
20 Turner wrote an apologetic letter saying, Dr. Feldman
21 and Dr. Boscia, I don't know nothing about it. So to
22 me, it was a reputable firm that made some kind of
23 strange mistake. I was looking for that. I was
24 looking where is this note that came from, because
25 logically the law firm, in my mind, was highly

1 reputable people. He was a dear patient of mine. He
2 was a gentleman. Okay? In my wildest dream, I could
3 not -- I could not imagine that, what has happened.
4 Okay? It wasn't about Fogarty. It's about people who
5 file the lawsuit. The head of the firm was my dear
6 patient. Okay? And Dr. Boscia's patient. We took
7 care of his severe, severe lung cancer for years, and
8 COPD. Okay? That is the firm that filed the lawsuit.
9 It wasn't about Fogarty. There's got to be something
10 to it. Okay?

11 Q. So your position in 2007 was that you had no awareness
12 that Dr. Fogarty had anything to do with the lawsuit?

13 A. It was two documents I've seen in passing 2007, Dr.
14 Fogarty note, which was in medical language. I will
15 translate it into the English language. Crazy. And a
16 report from neuropsychologist. That's all I have. I
17 had no other records. Didn't really have any reason to
18 look at any other records, because to me this is Mr.
19 Turner, my patient, who write me apologetic letter.
20 This is going to be tossed. Okay? This is a mistake.
21 And indeed nothing was happening, nothing whatsoever.
22 okay? No deposition. No nothing. So I was -- okay,
23 so I had that letter from Mr. Turner saying, Dr.
24 Feldman, I assure you if I only knew. That was my
25 frame of mind back then. Okay? I didn't know that

Deposition of Gregory J. Feldman, M.D.

1 Thompson was married Kimbrell. I didn't know any of
2 that. I didn't know that the records were fabricated.
3 I had no reason whatsoever even to be concerned. I was
4 concerned about my personal life due to the lawsuit. I
5 had no reason to be concerned that lawsuit was going to
6 go forward. That was a bizarre note, no doubt, but
7 that connection, who would know.

8 Q. So when was it that you had reason to think the lawsuit
9 was going forward?

10 A. Well, we had a deposition with Mr. Casey in 2007. I
11 think it was October, September. And he said nobody
12 told him he had brain damage. So I said that's it, the
13 case is over. All right? That was over. Where my
14 concern started crop up was in 2008. In 2008, there
15 was a deposition of Dr. Paladugu taken in 2008,
16 Paladugu, which he was a hospitalist. And during that
17 deposition, it was produced a letter where they have a
18 -- Thompson and Fogarty have created crazy x-ray.
19 Okay? They sent it. They hook up something to the
20 patient. Wasn't any medical reason. At the lawyer
21 request. I start getting very worried. whoa, whoa,
22 whoa, whoa, whoa. A lawyer sending a patient for the
23 x-ray to attach something to his body. Not to diagnose
24 pneumonia, not to diagnose any medical condition. In a
25 lawsuit. That was the first sign I start getting

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1 worried. Okay? I said, whoa, whoa, whoa, whoa, whoa.
2 A lawyer sending the patient for the x-ray to the
3 doctor's office, a totally unnecessary x-ray. I start
4 getting worried. But after MRI, it was -- it was clear
5 that we got it. We got evidence. After MRI we got it.

6 Q. And when was the MRI?

7 A. I'm talking about MRI of the brain.

8 Q. When was the MRI of the brain?

9 A. We discovered MRI of the brain in 2008, sometime August,
10 September. Anonymous letter was written and actual
11 thing came to -- it was 2009 when we got our hands on
12 it, but -- but that was it. After we got MRI, we knew
13 what we got.

14 Q. So 2008 MRI. Is that right?

15 A. Yes.

16 (Defendant's Exhibit Number 21 marked)

17 EXAMINATION RESUMED BY MS. CHEEK:

18 Q. Let me hand you what's been marked as Exhibit 21.

19 A. 2008 was anonymous letter.

20 Q. Okay. So what's marked as Exhibit 21 is an October 19,
21 2009 letter from Spencer King to you. Do you see that?

22 A. I do.

23 Q. And in the second paragraph, he states, "You have
24 argued that you did not believe this case has legal or
25 medical merit. I must tell you that it does. There is

Deposition of Gregory J. Feldman, M.D.

1 factual evidence and expert testimony that will be
2 forthcoming in the trial that unnecessary procedures
3 were performed that resulted in damage to Mark Casey."
4 Do you see that?

5 A. I do.

6 Q. And you agree that Mr. King was telling you his
7 assessment of the case at that point. Correct?

8 A. In only one manner. He's try to warn me, Greg, your
9 and Dr. Boscia desire to get JUA uninvolved, uninvolved
10 has consequences for you. That's the only thing. He
11 knew I've done nothing wrong. He said, Greg, I'm going
12 to write you a legal letter, okay, because I cannot as
13 a lawyer advise you to go bare, meaning with no
14 insurance. All of that has bearing on only one thing.
15 Okay? We wanted to proceed to trial. We wanted to
16 file the lawsuit ourselves, okay, because neither
17 contract nor Judge Hayes will let us do that. Judge
18 Hayes took it under advisement and said that our strong
19 desire cannot go forward until the trial, the
20 malpractice trial is over. He wrote an opinion, and he
21 wrote the letter. We were fighting JUA who filed the
22 lawsuit that we must proceed ourselves. Okay, we must,
23 because we understand they have a contractual
24 obligation to the JUA. They're hired by JUA. They're
25 getting paid by JUA. They're working for JUA. But we

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1 felt that there is no case. It's absolutely meritless
2 and it began to emerge signs of fraud. We didn't know
3 about fraudulent record. Neither did Mr. King. If he
4 did, he wouldn't write this letter.

5 Q. Now, your position is that Mr. King wrote this letter
6 to you for purposes of the JUA?

7 A. For his own purpose as a lawyer to advise us not to go
8 bare.

9 Q. Do you believe that what Mr. King wrote in this letter
10 is an accurate statement of his belief?

11 A. We're going to ask him. I believe that was accurate
12 statement of his belief that there's exposure, that he
13 as a good lawyer cannot advise me not to have
14 insurance, and I believe that he was trying to be as
15 persuasive as he can that we have a risk. We knew we
16 had no risk.

17 Q. But on paper Mr. King has advised you that he believes
18 the case has legal and factual merit. Correct?

19 A. I do not believe that for a second. You're asking me.
20 We'll ask Mr. King. I did not believe that the case
21 had any merit whatsoever, none. Now, let me sidetrack
22 to that, sidetrack to that, and this is important
23 sidetrack, Ellen. Are you hear -- are you going to
24 shuffle your papers or listen to me?

25 Q. I'm listening.

LEGAL EAGLE
864-587-7050

1 A. Okay. I have told Mr. King, Mr. King, my life is too
2 precious. Okay? I don't want to go forward with this
3 lawsuit. Okay? This is eating us alive. This
4 pneumothorax is nothing. Okay? You can settle
5 pneumothorax. You know, we caused pneumothorax. Yeah,
6 it's -- didn't patient cause no harm, but we caused a
7 complication. I admit it. Okay? I caused a
8 pneumothorax. I don't remember exactly what there is.
9 I haven't seen pneumothorax, but I accept
10 responsibility I caused pneumothorax. I said, I caused
11 pneumothorax. I didn't see any perforation. It could
12 have been postop period. We have patients who have a
13 pneumothorax after postop period from other surgeons.
14 It happens, but I accept responsibility. Okay? You
15 can settle pneumothorax. That's not -- that's not big
16 issue for me. In fact, it's a non-issue for me. Okay?
17 I caused a pneumothorax. But after my good name
18 maligned with bogus and fictitious brain damage, that
19 will never be settled, ever. Okay? If I file a
20 lawsuit -- I am filing a lawsuit. I know you're
21 concerned about me. I know you're concerned about
22 money. It's not about money. Okay? It will never,
23 ever get settled. Okay? But Judge Hayes, as a good
24 judge as he is, His Honor has made a ruling that we
25 have to wait until the trial is over, and we complied

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1 with his ruling. We waited. He made a ruling that
2 until the trial will complete, we can do nothing.

3 Q. You're talking about with respect to the JUA you can do
4 nothing. Correct?

5 A. Well, it's -- that's it. You have a contractual
6 obligation to JUA. Okay? Couldn't do nothing until
7 the -- you know, Judge Hayes has decided that he isn't
8 going to rule on it until the lawsuit was over, and
9 when the lawsuit was over, that's -- that was entirely
10 on his Honorable Judge Hayes that he decided to
11 postpone. Otherwise, if we won that case, we won't
12 have a JUA. Okay? You will be dealing with Greg
13 Feldman and Joe Boscia, not JUA. But pneumothorax I
14 told him many a times over, pneumothorax, settle it.
15 It not was my life. It's a minor uneventful
16 complication. It's no big deal. I owned that
17 pneumothorax. I produced a complication. I said it
18 back then. I'm telling you now. It's not an issue,
19 never was. The pneumothorax would have gone away in
20 one day.

21 Q. Now, Mr. Casey was in ICU for three days. Correct?

22 A. For one day.

23 Q. One day?

24 A. Yes.

25 Q. On that point, let's just take a look at your second

Deposition of Gregory J. Feldman, M.D.

1 Amended Complaint, if you can dig it out.

2 A. Okay. What we looking at?

3 Q. I'll tell you in just a minute. Can you look at
4 paragraph 13?

5 A. I have it.

6 Q. It says, "At the close of the rigid bronchoscopy, Mr.
7 Casey suffered a pneumothorax, a known risk, and was
8 required to stay in the hospital through June 6, 2004."
9 Correct?

10 A. I do, correct.

11 Q. And do you see that that's three days from June 3, the
12 procedure?

13 A. In the hospital. In ICU he stayed one day. He was in
14 ICU because he -- I decided to put -- not I.
15 Anesthesiologist decided to put a tube down. Once
16 you're intubated, you have to be in ICU. I took the
17 tube out next morning.

18 Q. So in the medical malpractice action, your lawyers
19 understood Casey had been damaged as a result of the
20 pneumothorax. Correct?

21 A. No. They knew there was no damage neither to the lung,
22 chest, or brain. They knew that. Okay? They were
23 just concerned about me going bare. We did not want
24 JUA on the case. We wanted to take full control, but
25 Judge Hayes ruled otherwise. The control belongs to

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1 Q. This has been marked as Exhibit 23, and it's a Lung and
2 Chest file that was produced in the medical malpractice
3 action, Dr. Feldman, but at the back of it, about --

4 A. Give me the number.

5 Q. -- three-quarters of the way through at Thompson 32205.

6 A. 32 --

7 Q. Yes, 32205.

8 A. -- 205, and that's a record that produced in Thompson
9 litigation. Correct?

10 Q. Correct.

11 A. Okay. I'm on it.

12 Q. So what I'm looking at within this Lung and Chest
13 production are Upstate Lung records that apparently
14 were received by Lung and Chest after they started
15 treating---

16 A. Yeah, they were requested by Maria Kimbrell, at the
17 time Mr. Thompson girlfriend. She requested the
18 records from us. But that's how they got the Lung and
19 Chest records. Does that refresh your memory?

20 Q. Yes, I appreciate that. I actually knew that, but
21 that's okay. We've got it on the record now.

22 A. Okay.

23 Q. So I am looking at -- just date-wise is what I want you
24 to take a look at.

25 A. Which one?

Deposition of Gregory J. Feldman, M.D.

- 1 Q. It looks to me like on page 3---
- 2 A. Help me out. What page?
- 3 Q. I'm getting there. 32218. I want you to keep your
- 4 finger there.
- 5 A. Just a second. Got it.
- 6 Q. Now I want you to keep your finger there, but then go
- 7 back to 32226.
- 8 A. I have both those pages marked.
- 9 Q. Okay, great. If you'll look at the 32226, what I read
- 10 this to be, that this is a health history that Mr.
- 11 Casey or somebody on his behalf has filled out on June
- 12 8, 2004. Do you see that up at the top?
- 13 A. It was him.
- 14 Q. Okay. So I infer that he's in your office June 8.
- 15 would you agree?
- 16 A. June 8, yes.
- 17 Q. Then flipping back to---
- 18 A. 2004. June 8, 2004.
- 19 Q. Yes, sir. Then flipping ahead to where you have 32218,
- 20 I see on this Upstate Lung record as June 11, 2004. Do
- 21 you see that?
- 22 A. I see that, yes.
- 23 Q. And Mr. Casey comes back, if you flip ahead to 32214---
- 24 A. You're confusing me. What you want me to do?
- 25 Q. I want you to go up here to 32214.

Deposition of Gregory J. Feldman, M.D.

- 1 A. 32214, and I'm still keeping the pages on those? I'm
2 holding three pages.
- 3 Q. Okay. Can you juggle, too?
- 4 A. No, but that's okay.
- 5 Q. All right. So the 32214, there's a date of it looks
6 like an office visit of June 25, 2004. Do you see
7 that?
- 8 A. June 25, I see that.
- 9 Q. So you'd agree with me that per your Upstate Lung
10 records, we have Casey appearing at your office June 8,
11 June 11, June 25. Correct?
- 12 A. Yes.
- 13 Q. I read from the June 25 note that he is complaining of
14 pacing and walking in circles?
- 15 A. Where is that?
- 16 Q. Let's see here. Well, let me ask you, did Casey
17 present at your office with complaints over not being
18 able to sit down?
- 19 A. Can I come on your side?
- 20 Q. Sure.
- 21 A. Well, I don't want to be in anybody's space, but---
- 22 Q. I just don't know what you're going to do over here.
- 23 A. Thompson 032226, in underlying medical malpractice
24 litigation number 00377, it's marked June 8, 2004. It
25 is in Casey handwriting.

Deposition of Gregory J. Feldman, M.D.

1 Q. Yes.

2 A. Okay. No complaints. Okay? He marks chest pain, high
3 blood pressure. Okay? And that's it. He had
4 absolutely no complaints of any kind when he came to my
5 office.

6 Q. Okay.

7 A. Chest plain his complaint was. That's the only
8 complaint that we have when we're talking about June 8,
9 2004.

10 Q. So looking at that same document, in this case 32226,
11 for the June 8 follow-up, Mr. Casey has also indicated
12 some muscle, joint, and bone pain, weakness, numbness
13 in back, feet, legs, and neck. Do you see that?

14 A. That's correct.

15 Q. And under Respiratory, he's also checked wheeze?

16 A. He did.

17 Q. Do you see that?

18 A. Yes. When I say---

19 Q. And if you can---

20 A. Sorry. When I said no kind, he indicated by circling
21 something, he wasn't circling anything.

22 Q. He checked it off then. Excuse me. Now, looking at
23 that Bates label in this litigation, that June 25
24 office visit note, the 32214.

25 A. One-four?

Deposition of Gregory J. Feldman, M.D.

1 Q. Yes, please.

2 A. Let me check. Yeah, I got it.

3 Q. Up at the top, Present illness plus reason for visit,
4 there's written, "Gets tired easily, continues to have
5 some chest tightness, reporting chronic back pain,
6 continues to have trouble resting, sister reports he's
7 pacing and cannot sit down because he hurts." Do you
8 see that?

9 A. I do.

10 Q. And then below that it says, "Patient complains of
11 pacing floors and continued not sleeping." Do you see
12 that?

13 A. Yes, one month after procedure. Right?

14 Q. The procedure was on June 3, several weeks after it.

15 A. That's a good question. Did you read nursing notes?
16 He consume ungodly number of narcotics, ungodly.

17 Q. Okay. And then if you could flip to the 32213.

18 A. Which one?

19 Q. 32213.

20 A. One-three. I have it.

21 Q. The page before that.

22 A. I have it.

23 Q. There's a handwritten note. Actually, it looks like
24 two of them. I'm going to refer you to the one at the
25 bottom of the page here.

Deposition of Gregory J. Feldman, M.D.

1 A. Where it's saying Boscia?

2 Q. Yes. And then there's a 6/25/04 William Casey. It
3 says, "William Casey: The only question I have for you
4 is what can you do to help me stop walking in circles?"
5 Do you see that?

6 A. I have it. Do you know who wrote it?

7 Q. Do I know who wrote it?

8 A. Yeah.

9 Q. No.

10 A. It wasn't Casey. Right?

11 Q. I don't know who wrote it.

12 A. Okay. Me either. I'm just asking.

13 Q. And then take a look then at 32209, please.

14 A. 32209, I have it.

15 Q. And the date on this is 6/25/04 again. It says page 1
16 of 3. Okay, I'm reading down at the bottom. There's
17 an incomplete -- well, there's a sentence that starts
18 on this page 1 of 3 and then continues to the other,
19 but it says, "Patient reported all he wanted was
20 something that would stop him from pacing all the time
21 and be able to sleep at night." Do you see that?

22 A. Yes, like drugs he's referring to. Right?

23 Q. And it says, "He reported he has to take the Zanaflex
24 just to sleep, but he did not want to just be put to
25 sleep, he just wanted to rest and stop pacing." Do you

Deposition of Gregory J. Feldman, M.D.

1 see that?

2 A. I do.

3 Q. Then, "Patient reported he was able to rest and sit and
4 watch TV before all this happened, and now he just
5 finds himself pacing." Do you see that?

6 A. I see that.

7 Q. So do you agree that when Mr. Casey came back to
8 Upstate Lung within a month of his procedure that he
9 was complaining, among other things, of pacing and
10 walking in circles?

11 A. He was not complaining to me, no, I disagree.

12 Q. Was he complaining to somebody at Lung and Chest of
13 these complaints?

14 A. This is a nursing note. So apparently he told
15 somebody. Never complained to me on anything. Never
16 seen him pacing, never seen him walking in circles,
17 never seen him do anything of any kind.

18 Q. Now, did you see Mr. Casey on any of those occasions?

19 A. Yes, I have.

20 Q. Which date? And if I've missed a date, then please
21 clarify for me. I have June 8, 11, and 25.

22 A. He came in June 8, and I also seen him on end of June.
23 I see him on two occasions. I see him on June 8, and I
24 also see him on 7/7/04, July 7.

25 Q. Can you refer me to a page, please?

1 A. Well, Dr. Fogarty was, but he acted in a surrogate
2 name, Casey.

3 Q. So Casey, surrogate or not, was --

4 A. Surrogate.

5 Q. -- seeking money from your insurer. Right?

6 A. I don't think he was seeking anything. He was asked a
7 question, Mr. Casey, what -- do you have brain damage?
8 who told you that? He said nobody.

9 Q. Well, that was not the exact question that was asked
10 Mr. Casey, was it?

11 A. Well, I don't want to argue with you. I mean, that's a
12 question was asked to Mr. Casey. Mr. Casey, who told
13 you you have a brain damage? He said no one. You have
14 all day tomorrow. I'll bring it to you, too.)

15 Q. I'm supposed to have it in my file over here.

16 A. I do have it. I told you I'll bring tomorrow.

17 MR. MANN:

18 She asks a question, you answer. She asks a
19 question, you answer.

20 WITNESS:

21 Thank you, Mr. Mann.

22 MR. MANN:

23 It will go faster.

24 EXAMINATION RESUMED BY MS. CHEEK:

25 Q. Now, Dr. Fogarty and you had practiced medicine

Deposition of Gregory J. Feldman, M.D.

1 together and had an acrimonious split is what's alleged
2 in your Second Amended Complaint. Correct?

3 A. Since '92 until the year 2000.

4 Q. And in September of 2004, you started a research
5 company as alleged in your Second Amended Complaint.
6 Correct?

7 A. Yes.

8 Q. And that company was S. Carolina Pharmaceutical
9 Research. Correct?

10 A. In 2004, there was S. Carolina Pharmaceutical Research.

11 Q. What was the last thing you said?

12 A. I said in year 2004, the company name was S. Carolina
13 Pharmaceutical Research.

14 Q. And you owned that company along with Dr. Boscia and
15 Anna Buice. Correct?

16 A. Yes, correct.

17 Q. Now, you recently sold a portion of S. Carolina. Is
18 that right?

19 A. We did.

20 Q. So Great Point Partners was the purchaser. Correct?

21 A. Yes.

22 Q. And that's a venture capitalist or venture capital
23 organization, more or less?

24 A. Health fund.

25 Q. What was that?

Deposition of Gregory J. Feldman, M.D.

1 A. Page 4?

2 Q. Yes.

3 A. Okay.

4 Q. It says, "Prior to the medical malpractice action, Dr.
5 Fogarty actively sought to interfere with Dr. Feldman's
6 and Boscia's research company and their patient care."
7 My question to you, and you may have already answered
8 it, was what acts did he do in attempting to interfere?

9 A. Well, say if you're the referring physician, you refer
10 patient to Feldman, that they're not going to deal with
11 them ever again, we'll just write on the chart that --
12 some nasty stuff about me on the patient's chart, some
13 stuff like that. And as far as research is concerned,
14 just writing numerous letters to the sponsors, untrue
15 letters, but, nevertheless, written to them and talking
16 to a lot of people.

17 Q. Did Dr. Fogarty ever threaten to interfere with your
18 research business? Did he ever tell you, Dr. Feldman,
19 I'm going to make sure you go down, or make any of
20 those type threats?

21 A. Not to me, but to the referring physician he did.

22 Q. So he didn't make any of those threats to you?

23 A. I didn't speak to him. We were not on speaking terms.

24 Q. When was the last time you spoke to Dr. Fogarty
25 substantively?

1 A. I haven't.

2 Q. Would it be more than 10 years?

3 A. I can't -- can't really tell you. There was a
4 substantive discussion about research during the phone
5 conferences with sponsors and so forth. It wasn't my
6 conversation with Dr. Fogarty. It was a conversation
7 with other people, with other people on the research
8 site, several sites. It wasn't my conversation with
9 Dr. Fogarty, though. So I cannot really tell you. My
10 memory doesn't go as far as 10 months. I haven't
11 talked to him substantively since I left in year 2000.

12 Q. And, likewise, Dr. Fogarty didn't ever threaten you to
13 interfere with your patient care. Is that correct?

14 A. Explain to me what threat is.

15 Q. Tell you, Greg, or Dr. Feldman -- and I don't know how
16 y'all---

17 A. What do you mean you don't know? We haven't -- we
18 haven't talked.

19 Q. Well, okay. Then the answer to my question first was
20 Dr. Fogarty never threatened you to interfere with your
21 research business. You said that's correct, we haven't
22 spoken. Likewise, Dr. Fogarty never threatened you to
23 interfere with your patient care. Correct?

24 A. He did not talk to me since 2000 on any subject.

25 Q. On page 7, paragraph 45 of the Second Amended

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1 Complaint.

2 A. Okay.

3 Q. The paragraph says, "A more perfect case of individuals
4 could not have been available for Dr. Fogarty's use in
5 his efforts of destruction aimed primarily at Drs.
6 Feldman and Boscia." And I'm focusing on the last
7 clause of that paragraph, Dr. Fogarty's efforts of
8 destruction and primarily at you and Dr. Boscia. Did
9 those include the letters and statements and chart
10 notations that you just described to me?

11 A. There was no individual, to my knowledge, that he
12 hasn't talked to about me. He's obsessed. So my
13 understanding is from Anna, Hailey, Steve, and those
14 are people who work with him, there has been not a
15 single individual that he hasn't talked about it.
16 Every day he was obsessed about Feldman. That -- it
17 was a true obsession, just unrelenting obsession, not
18 even a week, day, every day. There was not a day. But
19 to me, I never talked to him since -- for 10 years, or,
20 rather, he hasn't talked to me.

21 Q. And when it says efforts of destruction aimed primarily
22 at Dr. Boscia and you, was there somebody else other
23 than Dr. Boscia and you that these efforts of
24 destruction were---

25 A. Dr. Shantha had a very, very, very rough time, and what

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1 we think that he was just an innocent bystander,
2 dragged in in a hateful scheme directed against me and
3 Boscia.

4 Q. Now, at this time, so we're in the 2004 time frame
5 where you've started S. Carolina and you said that Dr.
6 Fogarty is engaged in these efforts of destruction,
7 what is he trying to destroy?

8 A. Destroying what I start to create, which is a new
9 platform, new entity, a magnificent contribution to the
10 research industry, a magnificent piece in the
11 community. He's trying to destroy everything. He
12 couldn't stand it.

13 Q. And how would -- and I want your words, but Dr. Fogarty
14 was trying to destroy you by disparaging you?

15 A. Well, by filing the lawsuit in a case against me and
16 Boscia.

17 Q. Was that a piece of his efforts of destruction?

18 A. A major piece of his efforts of destruction, yes.

19 Q. So in addition to disparaging you, as you have told me--
20 --

21 A. The word is yours, disparaging. I here did not use
22 that word. I used a fabrication of a lawsuit. I used
23 embroiled us in his scheme of being trapped in a
24 lawsuit. That's what words I used, but disparaging was
25 entirely come out of you.

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1 Q. When you told me that Dr. Fogarty was writing notes and
2 charts that were---

3 A. I want to separate two things. They are not related.
4 S. Carolina lawsuit is, okay, is unrelated to the
5 lawsuit that we're talking about right now. The
6 lawsuit is based on a malpractice scheme. Okay? Not
7 on S. -- anything that he done in S. Carolina is
8 background, nothing more than background. It's pure
9 and simple, apples and oranges.

10 Q. But you've described to me things that you said Dr.
11 Fogarty was doing in the 2004 or 2005 time frame that
12 were an attempt---

13 A. To S. Carolina?

14 Q. To you.

15 A. Separate S. Carolina, malpractice lawsuit that he has
16 originated and filed in the case against me. Separate
17 those two. It's very difficult for me to talk about
18 the issue without separating them. One is simple
19 background.

20 Q. Why is the background relevant?

21 A. Frame of mind.

22 Q. And the frame of mind was that Dr. Fogarty was trying
23 to destroy you?

24 A. Yes.

25 Q. Now, on page 4 of your Second Amended Complaint,

Deposition of Gregory J. Feldman, M.D.

1 paragraphs 25 and 26. In 25 you allege that you --
2 actually, let me go back to 24. You say, as a result
3 of Dr. Fogarty's efforts to hamper your and Dr.
4 Boscia's business efforts, you and Dr. Boscia were
5 forced to sue Dr. Fogarty to clear your names in an
6 effort to prevent further damage to their reputation
7 and business. Is that correct?

8 A. It is correct, but S. Carolina filed the lawsuit, but
9 we were forced to agree on it. That would be correct.

10 Q. So S. Carolina is you, Dr. Boscia, and Ms. Buice.
11 Correct?

12 A. That would be correct.

13 Q. I'm sorry. Yes?

14 A. Yes.

15 Q. And S. Carolina, you, and your partners, filed it to
16 clear your names in an effort to prevent further damage
17 to your reputation and business. Correct?

18 A. That's true.

19 Q. And when it says in 24 clear "their" names, that's
20 talking about you, Dr. Feldman. Correct?

21 A. And S. Carolina. He was writing letters about S.
22 Carolina including our names in those letters, and
23 mostly me. Okay? I don't think he mentioned Boscia,
24 but mostly me, but because those letters mostly were
25 written on S. Carolina, then my name was included into

Deposition of Gregory J. Feldman, M.D.

1 those letters as well as Anna Buice' name as well as
2 Hailey Williams' name, although Hailey was not an owner
3 of S. Carolina.

4 Q. In paragraph 25, it says you filed an S. Carolina
5 Complaint, and that was in 2005. Correct?

6 A. Yes.

7 Q. And Attorney Mann represented you in that lawsuit.
8 Correct?

9 A. Yes.

10 Q. And Dr. Fogarty was represented by Holcombe Bomar and
11 this law firm. Correct?

12 A. Is the name of the firm Holcombe Bomar that you're in?

13 Q. Wilkes Law Firm.

14 A. It was Wilkes Law Firm, as far as I know.

15 Q. Do you know whether Koger Bradford and Holcombe Bomar
16 represented Dr. Fogarty, too?

17 A. Don't remember.

18 (Defendant's Exhibit Number 24 marked)

19 EXAMINATION RESUMED BY MS. CHEEK:

20 Q. This is 24. Dr. Feldman, that Exhibit 24, do you agree
21 with me that's the Summons and Complaint that your
22 entity S. Carolina Pharmaceutical Research filed
23 against Dr. Fogarty?

24 A. Yes, it is our entity, S. Carolina Pharmaceutical
25 Research, versus Charles Fogarty, M.D., Summons from

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1 2005.

2 Q. And in this lawsuit, you asserted, S. Carolina asserted
3 two different accounts. One was for intentional
4 interference with respect to contractual relations.
5 Then if you flip a couple pages back, then you have
6 another count for defamation, slander, and libel. Do
7 you see that?

8 A. I do.

9 Q. And your allegations were that Dr. Fogarty was
10 intentionally interfering with your contracts and was
11 defaming you, libeling you. Correct?

12 A. Yes.

13 Q. You were deposed in S. Carolina on October 30, 2006.
14 Do you recall that?

15 A. I do.

16 Q. And you testified in that lawsuit that Dr. Boscia and
17 you made the decision to sue Dr. Fogarty. Is that
18 correct?

19 A. The board -- well, LLC doesn't have a board. It wasn't
20 LLC. Yeah, Anna Buice, myself, and Dr. Boscia made the
21 decision on behalf of the corporation.

22 Q. And you testified during that deposition that you
23 believed that Dr. Fogarty was concentrating on you in
24 the spring of 2005. That sounds consistent with what
25 you've told me today. Is that correct?

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1 A. Yes.

2 Q. And this is because, what you had testified then, that
3 people were coming to you saying that Dr. Fogarty was
4 accusing you of unethical conduct. Is that correct?

5 A. He wasn't accusing me of unethical conduct. He was
6 stating that if they're going to refer patients to me,
7 he would stop referring to them. It was nothing about
8 unethical conduct of my contract. It was his conduct.

9 Q. So Dr. Fogarty wasn't accusing you of unethical
10 conduct?

11 A. He was accusing corporation of stealing his database.
12 He was accusing corporation of using his database. He
13 was accusing corporation of appropriating his secrets.
14 It was just corporate -- accusation of corporate
15 misbehavior. As far as personally me, I never work
16 with him. It was mostly Anna, Hailey, and others.
17 That's who he was accusing of that. I was -- I left in
18 year 2000.

19 Q. But your belief at that time in your deposition was
20 that Dr. Fogarty was trying to damage S. Carolina by
21 getting people to question your reputation and ethics?

22 A. Not at all. I think that he was trying to crush S.
23 Carolina by any means, mostly questioning Anna Buice
24 and Hailey Williams primarily.

25 Q. You've described to me Dr. Fogarty's animosity towards

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- 1 you. Correct?
- 2 A. He has personal animosity toward me before I left.
- 3 That's the reason I left.
- 4 Q. So when it came to the S. Carolina lawsuit, these
- 5 efforts of destruction you said were aimed primarily at
- 6 you and Dr. Boscia. Correct?
- 7 A. Primarily at S. Carolina, mostly Anna and Hailey.
- 8 Q. And you said that most of the letters and things of
- 9 that sort referenced you?
- 10 A. Mostly Anna and Hailey. Me was just in passing. I
- 11 left in year 2000. Okay? I haven't been in that
- 12 practice from 2000 until 2005, for five years already.
- 13 Okay? So Anna and Hailey, that's who he was primarily
- 14 referencing. Me was just in passing.
- 15 Q. Okay. But you---
- 16 A. Boscia he never mentioned.
- 17 Q. But you testified in that case that you believed that
- 18 Dr. Fogarty was concentrating on you.
- 19 A. On S. Carolina. He was trying to destroy S. Carolina.
- 20 Q. And S. Carolina is your company. Correct?
- 21 A. Thirty-three percent owner back then.
- 22 Q. In paragraph 26 of your Amended Complaint on page 4---
- 23 A. I'm confusing the documents. Is that the document
- 24 we're looking at?
- 25 Q. No, sir. Let's go back to your Second Amended

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1 insurance trial. Okay? This is -- this is mind-
2 boggling. S. Carolina? Thompson requested record of
3 S. Carolina? Why would he do that? This is a
4 background to impeach Fogarty on the stand. S.
5 Carolina came to place only because Thompson had
6 requested it.

7 Q. So back to the Second Amended Complaint. In paragraph-

8 --

9 A. Whoa, whoa, whoa, whoa, whoa. Just a second. Just a
10 second. Let me get it.

11 Q. Page 4, paragraph 29.

12 A. Just a second. What page we looking at?

13 Q. Page 4, paragraph 29.

14 A. Twenty-nine, got it.

15 Q. This reads or you allege, "Dr. Fogarty directly
16 benefited himself by derailing his business
17 competitors' efforts in the S. Carolina litigation due
18 to the tremendous pressure created in their lives by
19 publicizing the baseless allegations of a 'permanent
20 brain injury' within the destructive scheme." Now,
21 you've alleged that Dr. Fogarty derailed your efforts
22 in S. Carolina. Correct?

23 A. I alleging that the background that Dr. Fogarty has
24 created circumstances where they became far less
25 important or not important. Our lives were turned

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1 upside-down. That's what we're alleging, and he
2 directly benefited from that.

3 Q. Now, you say that he's benefited himself by the
4 publicizing of the baseless allegations of a permanent
5 brain injury within the destructive scheme. What
6 publicizing are you talking about?

7 A. Newspaper.

8 Q. And what is the connection between Dr. Fogarty and the
9 newspaper?

10 A. Direct. We're going to have a jury to decide that. It
11 was direct connection. It was part of his plan.

12 MR. MANN:

13 Ellen, off the record.

14 (Off the Record; 2:42 -- 2:55 p.m.)

15 (Defendant's Exhibit Number 28 marked)

16 EXAMINATION RESUMED BY MS. CHEEK:

17 Q. Dr. Feldman, before we went off the record we were
18 talking in generalities about a newspaper, and I've
19 marked as Exhibit 28---

20 A. Much more generalities to me than to you, I guess.

21 Q. Well, we're getting into the specifics now. I've
22 handed you what's been marked as Exhibit 28, and it's a
23 May 31, 2006 page or portion of a page from Spartanburg
24 Herald-Journal. Correct?

25 A. Yes.

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1 Q. There's an article, "Man Sues Lung Specialists; Claims
2 Surgery was Botched." Is this the newspaper article
3 that we were discussing earlier?

4 A. Well, I personally saw it on Internet. So I guess it
5 was in newspaper, but I saw it on Internet.

6 Q. And your contention is that Dr. Fogarty published this
7 article or had some hand in its publication?

8 A. Not at all. My contention he mastermind everything,
9 absolutely everything. This is just small part of it.
10 So my contention is that Dr. Fogarty has mastermind
11 every single allegation with one intent, to destroy us.
12 This is just a small part of his plan.

13 Q. The newspaper article is a small part?

14 A. Well, the leakage to the -- to the press through the
15 legal channel is part of his plan, yes.

16 Q. And the plan was to have the medical malpractice action
17 filed against you based on his brain injury---

18 A. Whose brain injury?

19 Q. Casey's brain injury.

20 A. Casey never had a brain injury.

21 Q. Dr. Fogarty's plan, you said this article was a small
22 part of the plan?

23 A. Right.

24 Q. The overall plan --

25 A. Right.

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1 Q. -- was to have a medical malpractice action lawsuit
2 filed against you?

3 A. Right.

4 Q. In which you were alleged to have malpracticed and
5 brain-injured Casey. That was the allegation?

6 A. It's far more than that. This is firing lasers.
7 There's a lot of that. The -- his plan was to insert
8 into the lawsuit the most damaging allegations that can
9 practically destroy somebody, but yes, that's my
10 contention.

11 Q. So these allegations are destructive.

12 A. Yes.

13 Q. Is that correct?

14 A. Yes. They're designed to be destructive.

15 Q. And the publishing of this was damaging to you?

16 A. That will be for the jury to determine, but yes, my
17 contention it was extraordinarily damaging to me and
18 others.

19 Q. And the theory of recovery asserted in Casey's lawsuit,
20 in the medical malpractice action was stated in this
21 article. Correct?

22 A. No.

23 Q. Well, look with me in the second column. Let's begin
24 at the very end of the first column. "According to the
25 lawsuit, a procedure in June 2004 caused Casey to

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1 Q. -- in the S. Carolina case.

2 A. Right.

3 Q. And you'll agree with me that what this indicates was
4 on 6/26/2006, Dr. Fogarty in the S. Carolina case
5 produced, among other things, this document. Correct?

6 A. I already -- I already considered that.

7 Q. Okay. Now, in your Second Amended Complaint, back to
8 paragraph 29, page 4.

9 A. Okay.

10 Q. You have talked about S. Carolina and the publicizing
11 of the allegations in the newspaper.

12 A. Right.

13 Q. Did you and your partners dismiss S. Carolina because
14 of the newspaper article?

15 A. I had no idea that Dr. Fogarty was connected to Casey
16 case in any way other than his progress note. S.
17 Carolina was simply dismissed because we had to move on
18 with our lives. Okay? This is -- it was a very
19 expensive lawsuit. Okay? Anna Buice, others have
20 decided that we're moving on with our business. S.
21 Carolina lawsuit was dropped. Corporate lawsuit was
22 dropped because the principals no longer had any heart
23 in it.

24 Q. So it wasn't because of the tremendous pressure created
25 in your life from this article?

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1 A. And we had no heart in this. Before this article has
2 committed upheaval. We just had no idea where it's
3 coming from. Looking for neurologist, looking for MRI,
4 thinking maybe he overdose himself, maybe he was hit by
5 the car. Looking for something. Okay? There was no
6 absolutely idea what's going on with Casey life. This
7 is a young man who was absolutely fine. Something
8 happened. What has happened? Who knows? Okay?
9 Haven't seen him since 2004. Okay? Who knows? So
10 let's find out the facts. Let's decide what's going
11 on. Okay? But this was no way that the principals had
12 any heart in it. The business was booming, the S.
13 Carolina business. Okay? Time to move on.

14 (Defendant's Exhibit Number 30 marked)

15 EXAMINATION RESUMED BY MS. CHEEK:

16 Q. So let's just take a look at Exhibit 30. This is the
17 stipulation of Dismissal with Prejudice of the S.
18 Carolina action. It was filed February 15, 2007.

19 A. Right.

20 Q. And you have just explained to me that this dismissal
21 did not have anything to do with the publishing of the
22 article that's Exhibit 28 or the medical malpractice
23 lawsuit. Correct?

24 A. It has nothing to do with that other than we were --
25 had no heart anymore in this lawsuit. Okay? We could

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1 have proceeded, but everybody decided this is too much
2 in our life. This is a minutia now. S. Carolina is --
3 lawsuit needs to be closed. It's draining money. It's
4 draining resources. It's draining energy. Let's move
5 on.

6 Q. This may be my misunderstanding, but before --

7 A. Probably was.

8 Q. -- before we move on off of this, the reasons you've
9 just listed for S. Carolina deciding to drop this
10 lawsuit did not include that article or the medical
11 malpractice actions being filed, yes or no?

12 A. Well, I can't answer you yes or no. I'm trying to
13 explain it to you.

14 Q. Okay.

15 A. There is not one single issue or second single issue.
16 There's many issues. Okay? Let's concentrate on
17 business. It cost a lot of money. Our heart is not in
18 this. We have practice revealed. We have many things
19 revealed. We have to deal with community and so forth.
20 This is a distraction. Okay? Let's dismiss it. All
21 right? So yes, S. Carolina was filed for many reasons.
22 One of the reasons, as you rightly pointed out, is to
23 put a sock in Dr. Fogarty mouth and stop badmouthing
24 us. Okay? I'm talking about us, S. Carolina. All
25 right? This is a issue has nothing to do with Anna

1 Buice, has nothing to do with S. Carolina. Okay? This
2 is lawsuit filed personally against us and
3 anesthesiologist. We'll deal with that. No reason for
4 Anna to be involved.

5 Q. With all of that said and there being many reasons for
6 your dropping S. Carolina, was the medical malpractice
7 action one of them?

8 A. It was one of them, and certainly don't want to
9 minimize the significance of it as far as emotional
10 state for decision-makers, but you make a decision what
11 best for the corporation. After all, you're officer of
12 corporation. You make a decision what best for the
13 corporation, not what best for you.

14 Q. Once again if you will turn back to your Second Amended
15 Complaint.

16 A. What page?

17 Q. Now I'm on page 7, paragraph 48. You've alleged that
18 in 2004, Dr. Fogarty got wind of Casey's procedure and
19 convinced Casey's sister to allow him to review some of
20 the medical records. Do you see that?

21 A. I see it.

22 Q. What evidence do you have of that interaction between
23 Dr. Fogarty and Casey's sister, Carole Hyslop?

24 A. Hyslop trial testimony. Mr. Hyslop knows that we have
25 discovered back in 2010, however, that we had trial

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- 1 A. I have no idea. I have no idea whether he did or he
2 didn't. There's no nursing notes that we can see.
3 There's nothing. There's no -- there's absolutely
4 nothing in this note to indicate that, but perhaps he
5 did. Let me show you why I say that. You see that
6 signature?
- 7 Q. I do.
- 8 A. Do you see this?
- 9 Q. I do.
- 10 A. Do you see any signature?
- 11 Q. No.
- 12 A. Thank you.
- 13 Q. What's your point about signatures, Dr. Feldman?
- 14 A. Well, there's no signature. Okay? There's numbers,
15 the numbers, CMF, cc Dr. Gonda. This note has never
16 been in Gonda's office. This is what has been in Dr.
17 Gonda's office. F, Frank. Not this.
- 18 Q. Let's take a break for a minute.
- 19 (Off the Record; 3:41 -- 3:58 p.m.)
- 20 EXAMINATION RESUMED BY MS. CHEEK:
- 21 Q. Dr. Feldman, in the medical malpractice action we had
22 marked the Complaint as an exhibit, and that Complaint
23 was filed against you on May 24, 2006. And I have seen
24 records where you received a copy of that Complaint, I
25 believe, the following day. Do you have any

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1 recollection of that, or does that sound approximately
2 correct?

3 A. I don't have a recollection, but it's approximately
4 correct.

5 Q. When you were served with that Complaint, you read it.
6 Correct?

7 A. Don't really recall. I may have been busy. May have
8 read it later. Don't have independent recollection
9 when did I read it, but I did read it at some point.

10 Q. And you saw the allegations that had been made against
11 you?

12 A. Allegations made against me? I have read the Complaint
13 containing allegations.

14 Q. Correct. So you saw what Mr. Casey had alleged against
15 you in his lawsuit. Correct?

16 A. I have seen that, yes.

17 Q. Now, this is the same Casey. I mean, you recognized
18 Mark Casey's name. You knew who was suing you.

19 Correct?

20 A. Yes.

21 Q. And this is the same person that you had last seen June
22 2004, approximately, from our review of your file when
23 he was at your office seeking drugs and support for his
24 disability?

25 A. I believe it was June 27 when I see him last time.

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1 Q. Okay. So almost two years prior. It had been almost
2 two years since you'd seen Mr. Casey. Correct?

3 A. Something like that.

4 Q. And at the last time you had seen Mr. Casey, you've
5 explained to me that Casey was seeking refills on
6 prescriptions and seeking assistance with his
7 disability, both of which you thought were medically
8 unwarranted. Correct?

9 A. He was asking for pain prescriptions, and he was asking
10 to put him out of work, and he was asking whether he
11 can play golf. Okay? So I told him yes, you can play
12 golf. If you can play, you can go back to work. As
13 far as the pain medicine, I ain't writing any.

14 Q. When you read the allegations in the Complaint that he
15 was brain-damaged and that he was accusing you of
16 malpractice --

17 A. Right.

18 Q. -- based on your having seen him after the rigid
19 bronchoscopy, you thought that's inaccurate?

20 A. Yes. It was crazy.

21 Q. You also saw the theory of -- well, you also saw that
22 alleged in the Complaint was how he thought the injury
23 had happened, and it was the air embolism that he had
24 suffered?

25 A. Yes.

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1 Q. And you thought not only is Casey not damaged, but that
2 theory is not accurate?

3 A. Outlandish, yeah, crazy.

4 Q. Now, after you were sued you reported the lawsuit to
5 your insurer. Correct?

6 A. Yes.

7 Q. You were then assigned counsel?

8 A. Yes.

9 Q. Your counsel was Spencer King. Correct?

10 A. Correct.

11 Q. Now, you had said -- I believe this is true. I believe
12 Mr. King also represented Dr. Boscia, and Dr. Shantha
13 was represented by Billy Gunn. Correct?

14 A. Mr. King represented myself, Dr. Boscia, and Upstate
15 Lung, but Dr. Gunn -- Billy Gunn represented Dr.
16 Shantha.

17 Q. And you spoke to Mr. King about the allegations that
18 were asserted against you and your opinion regarding
19 them. Correct?

20 A. Yes. At some point, he came to my office and talked to
21 us.

22 Q. Mr. King ultimately filed an Answer on your behalf.
23 Correct?

24 A. I think so. I'm sure he did, yes.

25 (Defendant's Exhibit Number 32 marked)

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1 EXAMINATION RESUMED BY MS. CHEEK:

2 Q. This is 32. Would you agree with me that this is a
3 cover letter serving a copy of the Answer that Mr. King
4 filed on your behalf in that medical malpractice
5 action?

6 A. I agree.

7 Q. And you see the date on the filing is July 12, 2006.
8 Correct?

9 A. Yes.

10 (Defendant's Exhibit Number 33 marked)

11 EXAMINATION RESUMED BY MS. CHEEK:

12 Q. Now, you've been handed Exhibit 33, which is a June 20,
13 2006 letter to Billy Gunn from Chuck Thompson, and this
14 letter to Billy indicates that Mr. Thompson is sending
15 to Billy on that date, June 20, complete copies of the
16 following medical record for Mark Casey as delivered
17 from his medical providers. Do you see that in the
18 first sentence?

19 A. I see that he's saying enclosed please find a complete
20 copy of the following medical records of Mr. Mark Casey
21 as delivered from his medical providers.

22 Q. And included in that list is number six. It says Lung
23 and Chest Medical, Dr. Charles Fogarty. Correct?

24 A. Yes.

25 (Defendant's Exhibit Number 34 marked)

1 EXAMINATION RESUMED BY MS. CHEEK:

2 Q. We've marked as 34 a June 30, 2006 letter from Billy
3 back to Chuck thanking him for providing copies of the
4 medical records.

5 A. Are you talking about 34?

6 Q. Yes.

7 A. It says, "Thanks for the extension."

8 Q. "Thanks for the extension." And then in this next
9 sentence, "Thanks also for providing us with copies of
10 the medical you have." Do you see that?

11 A. Okay.

12 Q. So based on this correspondence, it appears, would you
13 agree, that Mr. Thompson before your Answer was filed
14 in the medical malpractice case has produced medical
15 records of Mark Casey that include the Lung and Chest
16 file?

17 A. I agree with that.

18 Q. Let's see if we can dig out from your stack here what
19 was marked previously as Exhibit 23.

20 A. You want me to do something with it?

21 Q. I just want you to have it in front of you, please. We
22 had talked about these earlier, Dr. Feldman, and these
23 are the Bates labeled copies of the Lung and Chest file
24 that were produced in the medical malpractice action
25 from Mr. Thompson's file. Would you agree with me?

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1 A. I agree with you.

2 Q. And we had looked earlier at the back where your
3 Upstate Lung records were contained. I'd like you now
4 to look at Thompson 32163.

5 A. Just a second. What you want me to do?

6 Q. If you'll look in here at Thompson---

7 A. What page number?

8 Q. 32163.

9 A. 163? I am looking..

10 Q. Okay. And will you agree that that document appearing
11 at 32163 through 32165 is the unsigned document office
12 note that's dated July 21, 2005 that we've been
13 discussing earlier?

14 A. Yes. It also appears to be a faking printed medical
15 record. So when we're saying signed, we don't sign
16 them anymore. But it's a fake. Okay? So it's
17 electronic signature, but it's not electronic medical
18 record. But that's how I would sign today. I would
19 sign Gregory J. Feldman, but it would not be my written
20 signature.

21 Q. When your counsel received Casey's medical records
22 after you were sued about the time or right before you
23 were filing your Answer, you reviewed the medical
24 records. Correct?

25 A. No.

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1 Q. You did not?

2 A. No.

3 Q. Your lawyers reviewed the medical records, didn't they?

4 A. I'm sure they did.

5 Q. And in the medical records that they received and
6 reviewed included the July 21 note that we're looking
7 at right now. Correct?

8 A. I'm certain.

9 Q. And this note pairs up with the allegations that are
10 asserted against you in the medical malpractice action
11 complaint. Correct?

12 A. Not even close.

13 Q. Not even close, okay. You've explained to me today
14 that Dr. Fogarty, in your opinion, prepared this note
15 and---

16 A. You're talking about which one?

17 Q. This one.

18 A. The one that is labeled 7/21/06?

19 Q. Right.

20 A. But which one? There are three of them.

21 Q. 7/21/05. Okay, I thought we---

22 A. Are you talking about the one that was in this file or
23 the others that were produced today? Which one?

24 Q. So what we're talking about is the one -- let's pair
25 this up. I'd like you to do what you need to do to

1 confirm that that Bates labeled note --

2 A. Corresponding to this. Right?

3 Q. -- contained in the Lung and Chest file corresponds to
4 Exhibit 5.

5 A. Okay, here's how I know. It's saying 000440, 000440.
6 That is a Bates stamp number from malpractice
7 litigation. Now, this note, as you can see, has no
8 numbers on it. Okay? So there was no way possible for
9 me to see them.

10 Q. But you will agree that the note that we're looking at
11 in this Exhibit 23 that's dated July 21 is the same one
12 that we've been talking about and marked as Exhibit 5?

13 A. Yes. Yes.

14 Q. And that note, the Exhibit 5 and the one that's
15 contained in this Exhibit 23, you've explained to me
16 that that's the one that you contend that Dr. Fogarty
17 wrote that Casey undoubtedly had air emboli given his
18 lengthy duration of anesthesia, and that Dr. Fogarty
19 wrote that in order to have the medical malpractice
20 action filed against you. Correct?

21 A. Correct.

22 Q. And in the medical malpractice action Complaint, there
23 are allegations consistent with this note. Correct?

24 A. There is no allegation inconsistent with that note, but
25 there's many other allegations that are not in the

1 note.

2 Q. Do you want to try to find your Exhibit 1? All right,
3 let's take a look at Exhibit 1, please.

4 A. Okay.

5 Q. And I am looking on page 2. I would like you to read
6 to yourself that paragraph, please.

7 A. Which one?

8 Q. Paragraph seven on page 2.

9 A. The one that is in yellow?

10 Q. Yes.

11 A. Okay.

12 Q. Do you agree that that paragraph seven recites that Mr.
13 Casey suffered an air embolism during the rigid
14 bronchoscopy or the pneumothorax and suffered brain
15 damage and resulting in other consequences?

16 A. Yeah. Memory loss, depression, other problems
17 associated with brain damage, sure.

18 Q. And do you agree that that is not verbatim, but that
19 those allegations are the same that are contained in
20 Dr. Fogarty's July 21 office note?

21 A. Again, I answered your question. I said it's not
22 inconsistent with anything that Dr. Fogarty wrote in
23 the note, but it's more than that. And that's the best
24 I can answer.

25 Q. Okay. So the---

Deposition of Gregory J. Feldman, M.D.

1 A. So my answer to your question, it's not inconsistent
2 with his note.

3 Q. If something's not inconsistent, Dr. Feldman, if I read
4 air embolism in Dr. Fogarty's records and I read air
5 embolism in the medical malpractice Complaint, I'm
6 hooking up air embolism. If somebody said that this
7 person suffered an air embolism --

8 A. Right.

9 Q. -- who was it? It was Dr. Fogarty, wasn't it?

10 A. I don't know. There was discovery to be had. Okay?
11 what he base his opinion on? Okay? I was personally
12 looking for his previous notes, because, you know, it's
13 just out of the blue, without a doubt, air emboli,
14 which is impossible. So what the man has based his
15 opinion on? Okay, let's find out. We have discussed
16 it's outlandish and crazy. I agree with you, but it
17 has to be based on something. So we were waiting for
18 that something to come up. So maybe he had talked to
19 the neurologist on the phone. Maybe there's MRI
20 somewhere is done. I don't know. Okay? Let's find
21 out. I mean, what your reaction would be?

22 Q. Okay. Dr. Feldman, you're sued by a patient who the
23 last time you saw him was fine.

24 A. Yeah.

25 Q. He two years later is suing you for a brain injury

Deposition of Gregory J. Feldman, M.D.

1 caused by an air embolism.

2 A. Pretty crazy.

3 Q. Before you answer, you get medical records from a known
4 nemesis that says this guy has an air embolism.
5 Correct?

6 A. Yeah, but it doesn't say what it's based on. So what
7 Mr. King has told me, let's find out. I said, okay
8 let's find out.

9 Q. But you do see that the lawsuit -- the opinion itself
10 may warrant discovery, but the lawsuit is based on Dr.
11 Fogarty's---

12 A. I'm not following your question. If you ask me the
13 question, maybe this will help me, yes or no. What was
14 the question one more time?

15 Q. When you received the lawsuit and you received Dr.
16 Fogarty's medical records --

17 A. Right.

18 Q. -- you were able to see that the air embolism alleged
19 in the lawsuit came from Dr. Fogarty. That medical
20 diagnosis on which the suit was filed was right here in
21 Dr. Fogarty's medical records.

22 A. Yeah, pretty crazy note, I agree, and that's how we
23 characterized it, pretty crazy. Let's find out what
24 it's based on.

25 Q. And, as you have said -- and, for the record, I don't

1 think you and I agree on it, but I understand that your
2 opinion is that it was a crazy theory and---

3 A. What do you mean you and I agree on it? Are you a
4 doctor? You have a lawyer opinion about a medical
5 issue? Everybody think it's crazy, not just me. You
6 want to state medical opinion, fine.

7 (Defendant's Exhibit Number 35 marked)

8 EXAMINATION RESUMED BY MS. CHEEK:

9 Q. That's 35. Also in the medical malpractice action,
10 your lawyers served discovery on plaintiffs seeking
11 information in discovery about their allegations.
12 Correct?

13 A. Yes.

14 Q. What I've handed you is a document entitled Plaintiff's
15 Supplemental Responses to Written Interrogatories of
16 Defendants Feldman and Boscia, M.D. and Upstate Lung
17 and Critical Care Specialists, P.C., and Defendant
18 Devendra Shantha, M.D. If you will please turn to page
19 2 of that. Actually, I'm sorry, Dr. Feldman, keep on
20 page 1 for just a minute.

21 A. Okay.

22 Q. I'm going to read right below the "To" line. It says,
23 "In compliance with scheduling order of Judge Roger L.
24 Couch filed 8/16/07, and plaintiff supplements his
25 interrogatory responses to identify the following

Deposition of Gregory J. Feldman, M.D.

1 seizure disorder, it's conceivable to have a MRI -- I
2 mean seizure disorder is conceivable not necessarily
3 secondary to a stroke. But if a seizure is secondary
4 to a stroke, it would be visible on MRI. So some
5 people with seizures have normal MRI. But if seizure
6 is secondary to stroke, it would be visible.

7 Q. I understand. So for some neurological impairments a
8 person can suffer an impairment and still have a normal
9 MRI. That is not the case with a stroke.

10 A. No.

11 Q. Did I get it right? Did I say that correctly?

12 A. Yes. You stated it correctly.

13 Q. Now, in this case for Mr. Casey, Mr. Casey had a normal
14 MRI. Is that correct?

15 A. Yes. We have uncovered normal MRI. Absolutely we did.

16 Q. And your position is that because the MRI was negative,
17 that proves that Mr. Casey did not have a neurological
18 condition or defect?

19 A. There was no indication for MRI, and my contention is
20 entirely different from what you just stated. It's not
21 a medical case. It's a fraud case. It wasn't that MRI
22 was negative. MRI done under assumed name outside
23 hospital and concealed. That what matters to me, not
24 result, because there was no indication for MRI to
25 begin with.

1 Q. If the result had been that Casey had a neurological
2 impairment, that would have mattered for the case.

3 A. Not at all. He could have -- he could have overdosed
4 himself. He could have crashed himself. cerebral
5 embolism is not possible in any of that. Okay? So not
6 at all. Significant MRI for me is not result of it.
7 There was no indication for it. It's how it was done.

8 Q. So if Casey's MRI had returned abnormal, your position
9 would be that it wasn't because of an air embolism, it
10 would have had to have been something else?

11 A. Right. If you have injury, of course.

12 Q. Pardon?

13 A. If the injury is permanent, of course, permanent
14 meaning not transitory. There is transitory events
15 that do not result in damage, but they're gone.
16 Talking about permanent injury. Once you said
17 permanent, it would be seen on MRI. I can give an
18 example. TIA, mini stroke, before stroke, transitory
19 ischemic attack. Okay? That's what separates from a
20 stroke. MRI is negative. No neurological injury. But
21 symptoms like blindness in the eye for a second. Gone
22 away. Okay? But once you have permanent blindness or
23 some abnormal vision, it would be seen on MRI.

24 (Defendant's Exhibit Number 37 marked)

25 EXAMINATION RESUMED BY MS. CHEEK:

Deposition of Gregory J. Feldman, M.D.

1 Q. I hand you what's been marked as Defendant's Exhibit
2 37. Have you had an opportunity to review that?

3 A. I did.

4 Q. This is a February 11, 2009 e-mail you sent to Attorney
5 Mann. In the first sentence you say, "We do not care
6 if patient had air embolus." Down below, you also say,
7 "Medical facts are not really important, intent is."

8 A. Yeah, it wasn't medical case. It was a fraud case.
9 So, I mean, you can waste all your time, but it is a
10 fraud. It's a basic fraud. Okay? So you can scream
11 all over the place that there's no MRI, there's no
12 medical facts, there is no medical testimony. You are
13 dealing with a fraud case. So that is what is most
14 important. This is basically what it is, because at
15 the time -- at the time, we were convinced that fraud
16 upon the court has been perpetrated. This is the e-
17 mails in preparation for the motion for fraud upon the
18 court. Okay? which is we still can assert, but that's
19 definition. But this is what -- this is preparation
20 for filing a motion for fraud upon the court. So when
21 you have a fraud upon the court, it's not about
22 medicine, because it has nothing to do with the medical
23 facts. It has to do with perpetrated fraud on the
24 court.

25 Q. If Mr. Casey had an air embolus, then Dr. Fogarty's

Deposition of Gregory J. Feldman, M.D.

1 diagnosis of his having an air embolism would have been
2 accurate. Correct?

3 A. Not at all. This is February 11, 2009. This is
4 already we know about normal MRI, Aetna neurologist
5 testimony, which was concealed. It's all uncovered
6 here. Okay? So this is a motion for fraud upon the
7 court with multiple, multiple deposition taken,
8 psychiatrist deposition, clear-cut depression, MRI
9 totally normal, uncovered Aetna neurologist testimony,
10 all uncovered. So this is preparation for fraud upon
11 the court which was clear-cut fraud. Okay? So this is
12 not a medical discussion. Okay? This is a discussion
13 about motion for fraud upon the court. So that's -- we
14 do not care about anything about medicine in the fraud
15 upon the court, because it's not about medicine.

16 Q. The medical malpractice action was based on a claim of
17 medical malpractice, though. Correct?

18 A. Medical malpractice action was a fraud. It was based
19 on fraudulent assumption, fraudulent medical records,
20 and fraudulent testimony. Okay? So discussing medical
21 facts does you no good when you have a fraudulent
22 medical record. It's almost exercise in futility.

23 Q. Well, can you make a fraudulent medical record that
24 contains an accurate fact-based diagnosis?

25 A. You're the lawyer. Fraudulent by definition is false.

Deposition of Gregory J. Feldman, M.D.

1 Q. Can you make---

2 A. Nothing fraudulent can be accurate. It by definition
3 is false. That's the definition of being fraudulent.
4 It's false no matter what. Even if some other patient
5 could have something, okay, that is irrelevant in the
6 particular case of the fraud. Fraud is always false.
7 I'll find you the quote from Supreme Court.

8 Q. If fraud is always false---

9 A. Always false.

10 Q. If the diagnosis in this case was accurate, if Casey
11 had suffered an air embolism, then Dr. Fogarty's
12 diagnosis would have been true.

13 A. I'm shocked we're discussing legalities and legal
14 issue, because it's not a medical issue. Fraud, even
15 if it's rise to the accurate conclusion, is always
16 false. Okay? The clock is right occasionally. Okay?
17 Twice a day. You cannot arrive to the accurate
18 conclusion by fraud. Okay? To respond to your medical
19 question, unrelated to Casey, because Casey never had
20 the terrible emboli, could not possibly have it. But
21 unrelated to the case, if Dr. Feldman accidentally make
22 a conclusion that is correct for somebody, some other
23 patient and so forth, that's not medical evidence.
24 It's just a correct guess.

25 Q. Okay. I think I understand what you're trying to tell

Deposition of Gregory J. Feldman, M.D.

1 me is that you believe, your position is that Dr.
2 Fogarty didn't believe that Casey had an air embolism
3 and, therefore, if he perchance came up with a
4 diagnosis that said he had and Casey actually had an
5 air embolism, it would still be a fraudulent diagnosis?

6 A. It is not medical case; therefore, I cannot discuss
7 with you medical diagnosis. It's a fraudulent case of
8 framing people and causing brain damage. The terrible
9 embolism is a genius diagnosis because you can't detect
10 it. Once you assert that it is a diagnosis with
11 medical certainty, that's all the lawyer needs. So the
12 lawyer request of Fogarty only one thing, medical
13 certainty. Then you bamboozle the expert, you
14 bamboozle jury, you bamboozle everything and get
15 disability where there's none and so forth. Okay? so
16 the case from the very beginning was staged that no
17 test can disprove your theory to the court, not to the
18 medical professionals, to the court, because court
19 doesn't deal with fraud, except in our particular case
20 it would. It deals with legitimate testimony. And if
21 the doctor with a medical license say something without
22 a doubt, that's all the court require. That is the way
23 you get to the summary judgment. To deal with the
24 fraud, court is not equipped. Who would imagine that a
25 physician will frame his colleague, no matter how much

1 you hate him? Who would imagine that? This legal
2 system not designed for that, but that's what we've
3 got.

4 Q. I thought that you had told me earlier that an air
5 embolism would have resulted in a positive --

6 A. For any physician, but not---

7 Q. -- MRI.

8 MR. MANN:

9 Wait, wait, wait.

10 EXAMINATION RESUMED BY MS. CHEEK:

11 A. I'm sorry. For any physician, yes, but not for the
12 court. The court require opinion with medical
13 certainty. It does not require an opinion that is
14 accurate. Okay? That is not prerogative of the court.
15 The court's only concerned, okay, medical certainty,
16 without a doubt. That's what Thompson needed from
17 Fogarty. That's all he needed from him.

18 Q. Didn't we discuss earlier that an MRI would show
19 whether a patient had suffered an air embolism?

20 A. A stroke or air embolism?

21 Q. Air embolism.

22 A. You're confusing things now medically. Let me try to
23 explain it to you. Air embolism during heart surgery,
24 for example, happens in the neighborhood of 20,000 in
25 every case. Okay? It's insignificant. If it's

1 EXAMINATION RESUMED BY MS. CHEEK:

2 A. It sound very unfamiliar.

3 MR. MANN:

4 Wait a minute.

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. We talked yesterday about Mark Casey being deposed in
7 the medical malpractice case.

8 A. We did.

9 Q. Did you attend Mr. Casey's deposition?

10 A. Yes, I did.

11 Q. And we had seen in Exhibit 36 that deposition was taken
12 August 29, 2007. would you agree with that?

13 A. I do.

14 Q. I'm going to hand you what's been marked as Exhibit 41.
15 This is a September 5, 2007 letter from Billy Gunn to
16 Judy Wilbanks.

17 A. Billy Gunn is Dr. Shantha attorney. Right?

18 Q. I understand.

19 A. Thank you.

20 Q. And he's reporting on the Casey deposition. I'm going
21 to refer you to page 7.

22 A. How is it marked? King what?

23 Q. It's going to be King 239 at the bottom.

24 A. 239?

25 Q. Page 7 at the top of the letter.

Deposition of Gregory J. Feldman, M.D.

1 A. Okay.

2 Q. The third paragraph. It says, "Enclosed is a copy of a
3 report from L. Randolph Waid, a licensed clinical
4 psychologist in Mount Pleasant." Do you see that?

5 A. I do.

6 Q. And then if you will flip to the back of Mr. Gunn's
7 letter, do you see a copy of Dr. Waid's report?

8 A. I do.

9 Q. Flip to page 2 of Dr. Waid's. It's King 242.

10 A. 242. Got it.

11 Q. In the fourth paragraph, the last two sentences Dr.
12 Waid reports, "Dr. Fogarty stated that with regard to
13 Mr. Casey's difficulty concentrating, quote, air emboli
14 had been reported as a complication of laser
15 bronchoscopy, even without perforation of the
16 endotracheal tree." Do you see that?

17 A. I do.

18 Q. Would you agree that Dr. Waid is quoting from Exhibit 7
19 which says, quote, with reference to the patient's
20 difficulty concentrating, air emboli have been reported
21 as a complication of laser bronchoscopy, even without
22 perforation of the endotracheal tree?

23 A. I disagree. Dr. Waid -- Dr. Waid never produced any
24 reports from Dr. Fogarty.

25 Q. Do you agree that he has quoted in here in his report

1 from a Dr. Fogarty record?

2 A. I disagree that he quoted from Dr. Fogarty record. He
3 never produced Dr. Fogarty record.

4 (Defendant's Exhibit Number 42 marked)

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. You've been handed Exhibit 42, which is Mann 23 Bates
7 stamped document. It's an e-mail from you to Attorney
8 Mann dated July 9, 2008. Do you see that?

9 A. I do.

10 Q. I'm going to refer you down to number four. Can you
11 read the first and second lines there?

12 A. "Dr. Fogarty 2005 'definite air embolus' note also
13 removed and did not provide to Social Security. It is
14 also not in Dr. Gonda record."

15 Q. So when you're talking about definite air embolus,
16 we're talking about this Exhibit 5. Correct?

17 A. That's the only exhibit I ever had back then.

18 Q. Then you also say it is not in Dr. Gonda's record. So
19 I infer from this you've reviewed Dr. Gonda's record
20 and you did not find this Exhibit 5, this Bates stamped
21 note.

22 A. The Dr. Gonda record that was provided to me contained
23 no records from Fogarty at all. Those were pretty
24 shocking when we discovered in Thompson production.

25 Q. Can I go off the record here for a second?

Deposition of Gregory J. Feldman, M.D.

1 Yeah. So if you could just say Exhibit 1, 2, 3,
2 4, 5, 6, 7, 8, 9, 10, whatever or however you want to
3 put it, but if you say a note dated June 21, '05, we've
4 got three of those.

5 EXAMINATION RESUMED BY MS. CHEEK:

6 Q. Now, when the medical malpractice action was filed in
7 2006 and you received, your lawyers received a copy of
8 the Lung and Chest records --

9 A. Yes.

10 Q. -- you realized that Dr. Fogarty's July 21 note formed
11 the basis of allegations asserted against you in the
12 lawsuit.

13 A. This is false.

14 MR. MANN:

15 Hold on one second. Greg, you've got to wait.
16 objection.

17 EXAMINATION RESUMED BY MS. CHEEK:

18 Q. You understood very early in the litigation, the
19 medical malpractice action, that Dr. Fogarty was Mr.
20 Casey's treating physician?

21 A. No.

22 Q. You understood early in the medical malpractice action
23 that Dr. Fogarty was involved with Mr. Casey?

24 A. Yes.

25 Q. You understood early in the medical malpractice action

Deposition of Gregory J. Feldman, M.D.

1 that Dr. Fogarty's air embolism, cognitive deficit
2 writing or opinion formed the basis of Casey's
3 complaints against you.

4 A. I did not.

5 Q. You saw the Complaint filed against you in the medical
6 malpractice action. Correct?

7 A. Yes.

8 Q. You saw that Mr. Casey had alleged permanent brain
9 injury as a result of an air embolism. Correct?

10 A. Yes.

11 Q. And Dr. Fogarty in his July 21 note that we've
12 referenced as Exhibit 5 stated that Casey had suffered
13 an air embolism --

14 A. Yes, he did.

15 Q. -- and possible neurological injury. Correct?

16 A. Yes, he did.

17 Q. Yesterday you stated to me that you understand that a
18 medical malpractice case in the legal system requires
19 an expert opinion to support the plaintiff's position.
20 Correct?

21 A. Correct.

22 Q. And early in the medical malpractice case action, you
23 understood that Dr. Fogarty was providing that service
24 to Casey. Correct?

25 A. Did not.

Deposition of Gregory J. Feldman, M.D.

1 Q. You in the medical malpractice action quickly
2 determined that Dr. Fogarty was providing some
3 assistance to Casey.

4 A. I did not.

5 Q. You told your attorneys early in the medical
6 malpractice action that you thought Dr. Fogarty was
7 involved in that case. Correct?

8 A. Yes, they knew that he was involved.

9 Q. And you told your attorneys that you thought that he
10 was orchestrating that litigation. Correct?

11 A. Yeah, I had a suspicion that he was.

12 Q. You also told your counsel in the medical malpractice
13 action early on that you believed Dr. Fogarty had
14 leaked news of the lawsuit to the Spartanburg Herald-
15 Journal. Correct?

16 A. I did not. Did not know that.

17 Q. You told your lawyers that you thought he had.
18 Correct?

19 A. Yeah, I was suspicious of that.

20 (Defendant's Exhibit Number 49 marked)

21 EXAMINATION RESUMED BY MS. CHEEK:

22 Q. Exhibit 49 is a September 4, 2007 letter from Spencer
23 King to Judy Wilbanks at the JUA. Do you see that?

24 A. Yes.

25 Q. Please turn to page 2 of that letter, JUA 390.

Deposition of Gregory J. Feldman, M.D.

1 A. I am on it.

2 Q. If you will count down to the fifth full paragraph.

3 A. Is that where he has, "He says he"? That's the one?

4 Q. It begins, "When he and his sister."

5 A. Ah, I got it.

6 Q. Could you read that paragraph into the record, please?

7 A. "When he and his sister did not get satisfactory answer

8 from the insureds, they visited the competitive

9 pulmonary group Lung and Chest. Dr. Fogarty of Lung

10 and Chest, and your insured, Dr. Feldman, are bitter

11 rivals and have been involved in litigation.

12 Apparently, both believe that every problem in their

13 lives stem from some action of the other. Dr. Feldman,

14 in this case, believes Dr. Fogarty is supporting Casey

15 in this litigation."

16 Q. That last sentence, "Dr. Feldman, in this case,

17 believes Dr. Fogarty is supporting Casey in this

18 litigation," is true statement.

19 A. I was suspicious of that.

20 (Defendant's Exhibit Number 50 marked)

21 EXAMINATION RESUMED BY MS. CHEEK:

22 Q. Exhibit 50 is an October 10, 2007 letter from Spencer

23 King to Judy Wilbanks.

24 A. Yes.

25 Q. Do you agree?

Deposition of Gregory J. Feldman, M.D.

1 A. Yes.

2 Q. Spencer writes, "Dear Judy: Just for your information,
3 I am copying you on some, but not all of the e-mails
4 that Dr. Feldman has sent to me attempting to direct
5 this litigation, most of which deal with ancillary
6 issues, minutia such as the article in the Herald-
7 Journal, all suits against competitors, et cetera, et
8 cetera." Do you see that?

9 A. Yes.

10 Q. He writes, "I have directed him to seek legal advice of
11 others, parents, he has his own attorney, closed parents,
12 if he feels he has redress. My sole job is to defend
13 this lawsuit. That does not include filing suit
14 against anyone." Do you see that?

15 A. Yes.

16 Q. In the first paragraph or sentence, he references an
17 article in the Herald-Journal. I infer that's the
18 Herald-Journal article about the Casey litigation.
19 Would that be correct?

20 A. That's incorrect. This is something that troubled me
21 greatly after the article came out. I was very
22 tormented. He perceived that I'm interfering with his
23 litigation, but this was a major issue in my life. So
24 he said that if I have any extraneous issues other than
25 that, leave him alone. That's basically what it says.

Deposition of Gregory J. Feldman, M.D.

1 And he said, Greg, I'm here to defend malpractice case.
2 okay? All other issues that trouble you, I understand,
3 but that's not my problem.

4 Q. And the other issues were questions of possible legal
5 redress in relation to the medical malpractice action.
6 Correct?

7 A. It then came to the point of legal redress. Back then
8 didn't have legal case. okay? I really start to worry
9 about legal redress after MRI came out. That when I
10 start thinking this is bad.

11 Q. After what came out?

12 A. MRI of the brain.

13 Q. The MRI came out.

14 A. That is where -- that when I start mostly focusing on
15 this.

16 Q. When you received the medical malpractice action, you
17 told me yesterday that you knew from your treatment of
18 Mr. Casey that this man was not injured.

19 A. When he left my practice. When he left my practice. I
20 didn't know what happened to him. Overdose, hit his
21 tree with head. I thought it was something, okay, that
22 happened. It's a crazy note. From a physician
23 perspective, it's insane note. I give you that. okay?
24 But I thought something happened to him, okay, after he
25 left. Maybe he overdose himself. And that's what I

1 thought. Okay? And, basically, what it was, we were
2 thinking that the man has overdosed himself.

3 Q. You did not believe for a day that the medical
4 malpractice action was a legitimate malpractice lawsuit
5 where Casey was seeking legal redress from injury you
6 had given him. Correct?

7 A. Let me correct you. Not for a day, but for a second.

8 Q. And early on in the medical malpractice action after
9 you received this lawsuit, you began exploring possible
10 redress for being, in your opinion, falsely sued.
11 Correct?

12 A. Well, you're talking about frivolous lawsuit.
13 Frivolous lawsuit is not a crime. I have been sued
14 before frivolously. Other people have. So this is not
15 an actionable thing in United States, frivolous
16 lawsuit. Fraud is different, of course, but no,
17 frivolous lawsuit is -- there's nothing really we can
18 do about it, about frivolous lawsuit. This is just how
19 it is.

20 Q. You assessed early in the medical malpractice action
21 this wasn't simply a frivolous lawsuit. Correct?

22 A. Yeah. I assessed it was a frivolous lawsuit initially,
23 yes.

24 Q. You assessed early in the medical malpractice action
25 that you had possible claims against the people that

1 Q. During the medical malpractice action, you researched,
2 did you not, potential causes of action that you might
3 be able to assert against Dr. Fogarty, Mr. Thompson,
4 and Casey. Correct?

5 A. I think that I was very upset about them, and yes, I
6 wanted to sue them, but for me to sue them back then, I
7 had to get over Judge Hayes, and Judge Hayes was
8 increasingly more and more involved, postponed the
9 trial. Honorable Judge Hayes assemble us in one room
10 for a day, weekend to mediate the case. He has
11 basically put a -- put a damper on all of that and said
12 that he ain't going to rule until the case is over
13 where I can do any of that.

14 Q. Your understanding was that Judge Hayes was prohibiting
15 you from filing a countersuit --

16 A. Right.

17 Q. -- or a lawsuit until he ruled on the medical
18 malpractice action?

19 A. Yes. Yes, he prohibited me from doing that.

20 Q. Now, in terms of the causes of action that you explored
21 based on what you believed to be an abusive lawsuit,
22 those included conspiracy. Correct?

23 A. Correct.

24 Q. Slander, false publicity. Would that be correct?

25 A. No. We moved on from that.

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1 Dr. Fogarty, but he worked for another firm. It had
2 nothing to do with us at the time.

3 (Defendant's Exhibit Number 62 marked)

4 EXAMINATION RESUMED BY MR. HENRIKSON:

5 Q. Let me show you 62. Is this an e-mail from you to
6 Spencer King wherein you're advising him that Mr. Mann
7 has become an attorney for Allied and he might be
8 involved with the malpractice action?

9 A. Yes.

10 Q. And, in fact, he did ultimately become involved in the
11 malpractice action?

12 A. Yes, he did.

13 Q. On whose behalf?

14 A. On behalf of Upstate Lung, Joe Boscia, and Greg
15 Feldman.

16 Q. And how did he bill for that?

17 A. Sent me bills.

18 Q. And you have those bills?

19 A. I don't know, but I'm sure we do.

20 Q. And did you advise Mr. King that Mr. Mann was going to
21 continue to function as personal counsel to Upstate
22 Lung and the individual defendants?

23 A. I did.

24 Q. And this is a full-time position for Mr. Mann?

25 A. Yes.

Deposition of Gregory J. Feldman, M.D.

1 discussed patients.

2 Q. And on Wednesday -- well, do you recall talking to him
3 on the phone at any time Wednesday prior to his
4 deposition being over?

5 A. I did not.

6 Q. You did not?

7 A. Did not.

8 Q. Is your testimony then that if you talked to him
9 Wednesday, it would have been after his deposition was
10 over?

11 A. Most likely.

12 Q. Most likely? Yes or no?

13 A. Most likely.

14 Q. Well, that leaves the door open. Did you talk to him
15 during his deposition or did you talk to him after his
16 deposition?

17 A. I most certainly remember talking to him after the
18 deposition. I have no recollection of talking to him
19 during the deposition at all.

20 Q. And how long did you talk to him on Wednesday?

21 A. A few minutes. Maybe five minutes.

22 Q. And that was to tell him nothing arose on any of your
23 patients today?

24 A. Pretty much. But -- but you asked me question whether
25 we discussed the case. We have, but that's the answer.

1 others, but mine primarily because I'm a driving force
2 behind Alliance concept and expansion, and that's
3 happened for several years just because of me being not
4 capable of dealing with anything but the lawsuit. We
5 started opening sites again in 2010.

6 Q. So from the time the lawsuit was filed, how many hours
7 a day or a week would you spend on this lawsuit?

8 A. Every minute.

9 Q. Every minute, 12 hours a day?

10 A. I've been tormented every minute. We spent --
11 emotionally or physically? Emotionally every minute.

12 Q. Physically?

13 A. It was hard for me to remember. I have probably
14 infringed on my lawyers more than I would wish I did.
15 I annoyed the heck out of Spencer King, I know, but I
16 not necessarily was helpful to them. But for me, I
17 spent extraordinary amount of time just reviewing the
18 literature, reading about it, just tried to understand
19 what's happening. It would be very difficult to
20 calculate number of hours. In thousands.

21 Q. Over what period of time?

22 A. Over the lawsuit from 2006 to 2010.

23 Q. In an average week---

24 A. Many thousands of hours.

25 Q. In an average week or month, how many hours would you

Deposition of Gregory J. Feldman, M.D.

- 1 A. Prior to MRI, no.
- 2 Q. No, okay. Prior to your discovery or learning about
- 3 the MRI -- and we're talking about the one that was
- 4 taken in North Carolina?
- 5 A. Yes.
- 6 Q. Prior to that time, had you ever done any research into
- 7 any possible causes of action --
- 8 A. Yes.
- 9 Q. -- against Mr. Casey, Mr. Thompson, or Dr. Fogarty?
- 10 A. Yes.
- 11 Q. And when did you first do that?
- 12 A. It was -- I was very interested in what has been
- 13 transpiring, and sometime after Casey deposition, maybe
- 14 2007.
- 15 Q. I'm sorry?
- 16 A. Maybe in 2007.
- 17 Q. When in 2007?
- 18 A. Don't recall exactly.
- 19 Q. And what research did you do?
- 20 A. Just Internet browsing.
- 21 Q. But what were you looking for? What were you browsing
- 22 on the Internet?
- 23 A. For example, abuse of process require willful act, and
- 24 I would research what willful act is. Conspiracy
- 25 require somebody being in the same room talking to one

Deposition of Gregory J. Feldman, M.D.

1 another and having knowledge of the plan. So I learned
2 that from Internet, what conspiracy is. So I was
3 researching. I'm not a lawyer. I was researching
4 legal terms what exactly what -- what it means. I
5 researched malicious prosecution. I was interested in
6 what is exactly malicious prosecution is in the state
7 of South Carolina. And just legal research, what are
8 legal and legal definitions are. Just tried to educate
9 myself on -- I was researching whether there's any
10 frivolous lawsuit was actionable, whether has been any
11 lawsuits filed by physicians, successfully filed by
12 physicians on the basis of just being wrongfully
13 frivolous lawsuit. I couldn't find any of that. So I
14 was researching what is exactly is actionable and what
15 isn't.

16 Q. And abuse of process and civil conspiracy and malicious
17 prosecution were not causes of action that were brought
18 against you or Upstate Lung or Dr. Boscia or Dr.
19 Shantha in the Casey matter. Correct?

20 A. In the Casey matter?

21 Q. In the original Casey filing.

22 A. Yeah, that's correct.

23 Q. In 2006.

24 A. Right.

25 Q. So you were not researching causes of action that were

Deposition of Gregory J. Feldman, M.D.

1 brought against you; you were researching causes of
2 action that you wanted to bring against Casey, Dr.
3 Fogarty, and Mr. Thompson. Correct?

4 A. I'll say to answer this -- it's incorrect. I was
5 researching what is the possible recourse of somebody
6 like me that was facing a frivolous lawsuit. I was not
7 able to find a recourse.

8 Q. Well, you did research on civil conspiracy and abuse of
9 process. Correct?

10 A. Yes.

11 Q. And isn't it true that at the time that you were doing
12 that research, that you formulated the opinion that you
13 had those causes of action against Dr. Fogarty, Mr.
14 Thompson, and Mr. Casey?

15 A. Yeah, I came to that conclusion in 2008 after MRI. I
16 came to that conclusion.

17 Q. Did you come to that conclusion any sooner than that?

18 A. Not before MRI, no.

19 Q. Let me ask you to look at Exhibit 69, which should be
20 in that stack right there.

21 A. You find it for me, please.

22 Q. Excuse me?

23 A. Find it for me, please.

24 Q. I'm going to ask the court reporter to find it for you

25 --

- 1 A. That's fine.
- 2 Q. -- if she doesn't mind doing that.
- 3 A. No problem. Thank you.
- 4 Q. Exhibit 69, that is an e-mail from you to Dr. Boscia on
- 5 August 11, 2007 at 2:49 p.m. Correct?
- 6 A. I do.
- 7 Q. And the subject is, "Check out South Carolina judicial
- 8 department, dash, opinions." Is that what it says?
- 9 A. I did it, yes.
- 10 Q. And this is something that you arrived at in the e-mail
- 11 that you created after you had done research into civil
- 12 conspiracy and abuse of process that you described to
- 13 me a little while ago. Correct?
- 14 A. I haven't arrived to any conclusion. It's research.
- 15 Q. Excuse me?
- 16 A. I haven't arrived to any conclusion. It's research.
- 17 That's a mental impression. Much more goes into the
- 18 conclusion than mental impressions.
- 19 Q. The question was, the writing that you have in this e-
- 20 mail was the result of your personal research into the
- 21 causes of action of civil conspiracy and abuse of
- 22 process. Correct?
- 23 A. That's false.
- 24 Q. That's false?
- 25 A. Mm-hmm.

Deposition of Gregory J. Feldman, M.D.

1 Q. Then tell me where I'm wrong.

2 A. It's far more than this research into legal cases. In
3 legal cases you have to pull out legal precedents, you
4 have to pull out authoritative literature, legal
5 authoritative literature. It's very difficult to do
6 for a non-lawyer, because I am a medical doctor. It's
7 much easier for me to pull authoritative literature in
8 medicine like we discussed with Parnes. That's pretty
9 clear. That's authoritative literature in medicine.
10 But on legal issues, to pull out authoritative legal
11 issue, you need to research what S. Carolina [ph] court
12 decided, what appellate court decided, what this court
13 has decided, what -- you know, many, many things you
14 need to pull. This is a -- but yes, I was very
15 interested in the subject.

16 Q. So the question is, the content of Exhibit 69 is part
17 of the result of your specifically researching civil
18 conspiracy and abuse of process as causes of action in
19 the state of South Carolina. Correct?

20 A. That's false.

21 Q. All right. Tell me why that's wrong.

22 A. Well, it's wrong because all of that is a mental
23 impression. It's not conclusions.

24 Q. I didn't ask that. I didn't say the word conclusion in
25 that question, did I?

Deposition of Gregory J. Feldman, M.D.

1 A. What did you ask?

2 Q. I asked you, isn't it true that the content of this e-
3 mail that you wrote is the result of personal research
4 that you did into the causes of action of civil
5 conspiracy and abuse of process in the state of South
6 Carolina, yes or no.

7 A. You're stating a question I don't understand. Clarify
8 it.

9 Q. All right. The content of this e-mail -- right?

10 A. Mm-hmm.

11 Q. It has B in bold, "B, period, civil conspiracy"?

12 A. Yes.

13 Q. And then it talks about the elements of civil
14 conspiracy in South Carolina, and there's some case law
15 and there's some language there. Right?

16 A. Yes.

17 Q. And then down below, there's reference to abuse of
18 process. Right?

19 A. Yes.

20 Q. It says, "Abuse of process that is already fact."
21 Right?

22 A. Yes.

23 Q. Here's my question. Were you born with this knowledge
24 of what civil conspiracy and abuse of process is in
25 South Carolina, or did you have to, I don't know,

1 browse on the Internet or do something to find out this
2 information?

3 A. Had to browse Internet.

4 Q. So did you browse on the Internet before you wrote this
5 e-mail?

6 A. Yes.

7 Q. So you browsed on the Internet and you were looking at
8 the topics of civil conspiracy and abuse of process as
9 causes of action in South Carolina, and after you did
10 some of that for some period of time you wrote this e-
11 mail. Correct?

12 A. Correct.

13 Q. Thank you. And civil conspiracy and abuse of process
14 were the two causes of action that you ultimately
15 brought against Dr. Fogarty, Mr. Casey, and Mr.
16 Thompson in the suit that we're sitting for here today.
17 Right?

18 A. Yes.

19 (Defendant's Exhibit Number 74 marked)

20 EXAMINATION RESUMED BY MR. HENRIKSON:

21 Q. And were you doing a lot of research into this at this
22 time?

23 A. Yes.

24 Q. And let me show you what is Exhibit 74. 74 is an e-
25 mail from you to you that talks about invasion of

1 privacy. Is that right?

2 A. I see that.

3 Q. Were you also looking into that?

4 A. At invasion of privacy?

5 Q. Yes.

6 A. I don't recall, but this is -- let me see. "The laws
7 also vary by state and nation. South Carolina has
8 strict law against invasion of privacy." This is
9 research on invasion of privacy.

10 Q. And this is dated June 14, 2007. Is that right?

11 A. It is.

12 Q. This is, again, an e-mail that you generated and then
13 you sent to yourself?

14 A. Yes, I did.

15 (Defendant's Exhibit Number 75 marked)

16 EXAMINATION RESUMED BY MR. HENRIKSON:

17 Q. Let me show you what's been marked as Exhibit 75. And
18 this is an e-mail that you initially sent to yourself
19 on June 14, 2007. Is that right?

20 A. I'm not sure, but one of the date I recognize August
21 27, Thursday, 16 August 2007, 7:43.

22 Q. Why don't you look at the one that's right below that.

23 A. It says June, Thursday, 14 June 2007.

24 Q. And does that appear to be the date of the original e-
25 mail?

Deposition of Gregory J. Feldman, M.D.

1 A. It does.

2 Q. The e-mail to yourself.

3 A. Yes.

4 Q. Does that appear to be similar to the content of
5 Exhibit 74?

6 A. Correct.

7 Q. And in this e-mail you have forwarded it to your
8 attorney who was representing you, one of the attorneys
9 representing you in the Casey case, and you forwarded
10 it to that attorney on 16 August 2007. Right?

11 A. Wednesday, March 19, 2008.

12 Q. No. Look below, original message. It was sent from
13 you to Mr. Mann on Thursday, 16 August 2007 at 7:43
14 p.m. Is that correct?

15 A. Yes.

16 (Defendant's Exhibit Number 76 marked)

17 EXAMINATION RESUMED BY MR. HENRIKSON:

18 Q. Let me show you Exhibit 76. And this is an e-mail
19 where the original e-mail is from you to you dated
20 Friday, 17 August 2007 at 6:34 p.m. Is that correct?

21 A. Correct.

22 Q. And the subject is "Countersuit." Is that right?

23 A. Yes.

24 Q. And then it looks like there's a link to something
25 that's entitled "Fighting Fire with Fire: Physician

Deposition of Gregory J. Feldman, M.D.

1 Countersuits." Is that right?

2 A. It does say that.

3 Q. So at least at August 17, 2007, you were thinking about
4 countersuits against the people who sued you in the
5 Casey case. Isn't that correct?

6 A. That's false.

7 Q. Why is that false?

8 A. It doesn't say anything about fighting fire with fire,
9 physician countersuits about anything, about anybody
10 there.

11 Q. I understand that, but in August of 2007, you had been
12 -- how many suits against you were pending at that
13 time?

14 A. I have no pending lawsuit. I have a lawsuit from Casey
15 against me. He's not a physician.

16 Q. I didn't ask you that, did I? You had one case against
17 you.

18 A. Yes.

19 Q. And that was Casey.

20 A. Yes.

21 Q. And you're doing this research in August of 2007, and
22 one of the articles or pieces of material that you turn
23 up in your research is something entitled Fighting Fire
24 with Fire, colon, Physician Countersuits. Right?

25 A. Yes.

1 Q. And you thought enough of that article that you sent it
2 to yourself. Is that right?

3 A. Yes.

4 Q. And this article or this is indicative that in August
5 2007 you are thinking about physicians making
6 countersuits when they have been sued. Isn't that
7 right?

8 A. Yes.

9 Q. Okay, thank you.

10 (Defendant's Exhibit Number 77 marked)

11 EXAMINATION RESUMED BY MR. HENRIKSON:

12 Q. I'm going to show you what is Number 77, and this is an
13 e-mail, the original e-mail that you sent to yourself
14 Friday, 17 August 2007 at 6:53 p.m. Correct?

15 A. This is August 7, 2008.

16 Q. Please look down at the original message.

17 A. August 2007. Friday, 17 August 2007.

18 Q. That's when you sent it from you to yourself. Right?

19 A. Yes, I did send it to myself.

20 Q. And you got this from the South Carolina Judicial
21 Department Opinions?

22 A. It looks like it.

23 Q. And this looks like a description or language from a
24 case regarding conspiracy. Is that right?

25 A. Yes, it is.

CERTIFICATE OF REPORTER

I, ROSALIND POOLE WALTERS, a Notary Public in and for the state of South Carolina, do hereby certify that the foregoing 532 pages represents a true and accurate transcript of the deposition of GREGORY J. FELDMAN, M.D., which was taken by me on the 18th, 19th, and 21st days of October, 2016.

That the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rosalind Walters

Rosalind Poole Walters, CVR-M
Notary Public for South Carolina
Commission Expires: 12-18-16

EXHIBIT

4

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) C.A. NO. 2010-CP-42-05743

Gregory J. Feldman, MD, Joseph A.
Boscia, III, MD, Upstate Lung & Critical
Care Specialists, PC, and Devendra
Shantha, MD,

COPY

Plaintiffs,

Versus

William Mark Casey, Ray E. "Chuck"
Thompson, and Charles M. Fogarty, MD,

Defendants.

DEPOSITION OF
JOSEPH A. BOSCIA, M.D.

Pursuant to Notice of Deposition and/or agreement
in the above-entitled case, the deposition of JOSEPH A.
BOSCIA, M.D. was taken on the 19th day of October, 2016,
commencing at the hour of 9:12 a.m. in the offices of
Wilkes Law Firm, Attorneys at Law, Spartanburg, South
Carolina.

REPORTED BY: Rosalind Poole Walters,
Certified Verbatim Reporter-Master

LEGAL EAGLE
Certified Verbatim Reporters
Post Office Box 5682
Greenville, South Carolina 29606
(864) 587-7050 or (864) 467-1373
depos@legaleagleinc.com

Deposition of Joseph A. Boscia, M.D.

1 pertaining to this matter?

2 A. I don't recall.

3 Q. Typically, how did you communicate with Dr. Feldman
4 regarding this case after it was filed in 2006 and
5 moved forward?

6 A. We sit right in front of each other, behind each other.
7 So we see each other on a daily basis. It's usually
8 with verbal communications.

9 Q. And, at the time, did you and he ever text or e-mail
10 about this case?

11 A. I might have. We might have.

12 Q. And no one has ever asked you to try to locate any of
13 those texts or e-mails?

14 A. I don't remember. I don't recall.

15 Q. Would you agree that Dr. Feldman appears to be a
16 prolific e-mailer?

17 A. I agree.

18 Q. And, I mean, we've seen a lot of e-mails that you were
19 either copied on or received from Dr. Feldman. Have
20 you had a chance to review any of those prior to your
21 deposition?

22 A. I have not.

23 Q. Have you reviewed any documents other than the second
24 Amended Complaint in this case prior to today?

25 A. I was shown some documents while we were going through

Deposition of Joseph A. Boscia, M.D.

- 1 discovery, and the---
- 2 Q. In the Casey case?
- 3 A. No, sir, in this case. And the Second Amended
- 4 Complaint.
- 5 Q. And do you recall what documents you reviewed other
- 6 than the Second Amended Complaint?
- 7 A. Medical records, testimonies from depositions from the
- 8 Casey case, if I recall.
- 9 Q. Have you reviewed your deposition in the Casey case at
- 10 any time since you gave it?
- 11 A. No.
- 12 Q. Who was your lawyer in the Casey case?
- 13 A. Billy Gunn.
- 14 Q. And prior to Mr. Gunn being your lawyer, were you
- 15 represented by anybody else?
- 16 A. It might have been Spencer King, but Mr. King and Mr.
- 17 Gunn were our attorneys, Mr. King for Dr. Feldman and
- 18 Mr. Gunn for me.
- 19 Q. And then did Mr. Mann ever represent you at any time
- 20 during the Casey case?
- 21 A. Yes.
- 22 Q. And when did he represent you during the Casey case?
- 23 A. Since he was employed by us and our corporation. He's
- 24 been representing me ever since.
- 25 Q. And when was that?

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Deposition of Joseph A. Boscia, M.D.

- 1 Q. And the MRI eventually did get to your attorneys
2 through one mechanism or another I think about two
3 years prior to the trial. Isn't that correct?
- 4 A. I believe so.
- 5 Q. So they had that information, and still continued to go
6 to trial two years later. So your attorneys having
7 that MRI obviously did not prevent the case from going
8 any further. Right?
- 9 A. Correct.
- 10 Q. And would you agree that there can be a brain injury
11 without manifestation on an MRI?
- 12 A. Yes.
- 13 Q. So the fact that there was a clear normal MRI of the
14 brain could be evidence of there being no brain injury,
15 but it does not rule out a brain injury?
- 16 A. Correct.
- 17 Q. So, just to be sure, Mr. Casey could have had a brain
18 injury that was at some level not detectable by an MRI
19 and in fact -- well, let me ask you. Is that correct?
- 20 A. Yes.
- 21 Q. Okay. And do you recall that being a point of
22 contention between the experts regarding the MRI?
- 23 A. That he did not have brain damage and he had no
24 structural damage on his MRI?
- 25 Q. Right.

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Deposition of Joseph A. Boscia, M.D.

1 A. Any of those statements are true.

2 Q. And do you recall -- and I think you just agreed to
3 this. Do you recall the arguments on Mr. Casey's
4 behalf that you can have a normal MRI but still have a
5 brain injury?

6 A. Yes.

7 Q. And those issues all went for the jury to decide.
8 Correct?

9 A. Yes.

10 Q. All right. One second. So I want to make sure that I
11 understand that that is what you believe these items
12 that you have described to me, this is what you think
13 the basis of the case that was filed on your behalf is.
14 And that's probably not grammatical, but if you
15 understand it.

16 A. I understand, but it's those points that, again, kind
17 of made me think that maybe there was some other --
18 some other issue that would tie me up now for many,
19 many years in a court of law that, again, I should not
20 be involved in, but, you know, how are you going to
21 prove, you know, brain damage with a normal MRI when an
22 abnormal MRI does not rule out brain damage. So it's
23 almost a rabbit hole that you could kind of go down for
24 years, which we did, which we did, because that's what
25 was asked of me at the time after the -- you know, it

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1 started with a newspaper article and being served with
2 my first lawsuit.

3 Q. And there were other damages claimed in the other suit
4 other than a brain injury. Is that right?

5 A. I just remember the brain, brain damage, and a botched
6 bronchoscopy leading to brain damage, permanent brain
7 damage is all I remember, sir.

8 Q. Wasn't Mr. Casey in ICU for some period of time?

9 A. He was sedated because of a pneumothorax and a
10 pneumomediastinum, and while he was settling down
11 getting his chest tube, yes, he was on life support,
12 sedated, and then quickly extubated the next morning.

13 Q. And that was as a result of the bronchoscopy, the
14 pneumothorax?

15 A. A bronchoscopy that I never performed.

16 Q. I didn't ask you that. Somebody did. Right? It was
17 Dr. Feldman.

18 A. Correct.

19 Q. We know that.

20 A. Correct.

21 Q. So I'm not asking you for that. I'm just saying that
22 there was a pneumothorax that resulted from a procedure
23 that Dr. Feldman performed that ultimately resulted in
24 the patient having to be on life-support in ICU for
25 some period of time?

Deposition of Joseph A. Boscia, M.D.

1 A. Yes.

2 Q. So aside from a brain injury, there's still some other
3 injury that resulted from the procedure. Do you agree
4 with that?

5 A. Yes. Yes.

6 Q. Did you participate at all in the decision to proceed
7 with the rigid bronchoscopy?

8 A. Yes.

9 Q. And what was your input into that decision?

10 A. I did the original flexible fiber optic bronchoscopy
11 for chest pain. Based on my findings, which are
12 documented in other areas, with some granulation tissue
13 in the left bronchus, I felt it important for that
14 piece of tissue to be investigated through a
15 intervention -- with an interventional bronchologist,
16 which my partner is.

17 Q. And there was a CT taken at some point?

18 A. Correct.

19 Q. And the CT was clear. Is that correct?

20 A. Correct.

21 Q. So do you think that there was any fair criticism of
22 doing the rigid bronchoscopy on the basis of a clear
23 CT?

24 A. You would have to ask Dr. Feldman what the indications
25 for a rigid bronchoscopy are. My responsibility was to

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Deposition of Joseph A. Boscia, M.D.

1 did not get informed consent, that would be against
2 standard of care.

3 Q. Do you know Chuck Thompson? Do you know who that is as
4 we sit here today?

5 A. Yes.

6 Q. Did you know him at any time prior to the filing of the
7 Casey lawsuit in May of 2006?

8 A. No.

9 Q. Do you know from your discussions with Dr. Feldman or
10 independently whether or not Dr. Feldman had ever known
11 or had any association with Mr. Thompson prior to May
12 of 2006?

13 A. I don't know.

14 Q. Were you involved at all in the decision to bring a
15 lawsuit against Dr. Fogarty in the S. Carolina matter?

16 A. Yes.

17 Q. In I think that was 2004?

18 A. Yes.

19 Q. And what was your motivation or intent or your basis
20 for your agreeing to or approval of that lawsuit being
21 filed?

22 A. Dr. Fogarty was sending letters to sponsors saying that
23 we were unethical, we weren't fit to do research, and
24 we thought that was damning to a new research company,
25 and we just wanted it to cease and desist.

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Deposition of Joseph A. Boscia, M.D.

1 Q. And then at some point thereafter, the case was
2 voluntarily dismissed?

3 A. Yes.

4 Q. Did you participate in the decision to voluntarily
5 dismiss the S. Carolina case?

6 A. Yes. It was a corporate decision to dismiss that case,
7 yes.

8 Q. And what individuals within the corporation were
9 involved in that decision?

10 A. Dr. Feldman, myself, Anna Buice, and our attorney, Mr.
11 Milton Mann.

12 Q. Tell me how those discussions went. You have a case.
13 I guess you feel---

14 MR. MANN:

15 Objection.

16 MR. HENRIKSON:

17 Form?

18 MR. MANN:

19 You want an explanation?

20 MR. HENRIKSON:

21 No. It looked like you were going to add to it.

22 You were just making an objection on the record?

23 MR. MANN:

24 (Counsel nods head).

25 MR. HENRIKSON:

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Deposition of Joseph A. Boscia, M.D.

1 Q. And how did Ms. Buice vote?

2 A. Yes.

3 Q. How did Dr. Feldman vote?

4 A. Yes. It was unanimous.

5 Q. When did you first become aware that Dr. Fogarty had
6 either seen Mr. Casey or was otherwise involved in the
7 Casey case?

8 A. I knew, again, through the community. It's a very
9 small community. There's not that many practicing
10 physicians. So when Mr. Casey left our practice, he
11 already was I believe either seeing or had made an
12 appointment to see Dr. Fogarty. So it was pretty --
13 pretty early in 2004, if I recall, through the
14 community.

15 Q. When did you first learn that there had been any kind
16 of problem with the rigid bronch procedure?

17 A. The morning -- the morning after, I believe. Dr.
18 Feldman, of course, called me. I'm the consultant. I
19 mean, I'm the one who started the consult, so he called
20 me that afternoon and told me that he unroofed the area
21 of granulation, that under that granulation he didn't
22 find anything metallic, but it's gone, it's cauterized,
23 and that was the last I heard until the following day
24 when he said, you know, he had a pneumothorax. A known
25 complication of doing any type of manipulation with an

Deposition of Joseph A. Boscia, M.D.

- 1 airway is a pneumomediastinum or a pneumothorax.
- 2 Q. And that's caused by what mechanically?
- 3 A. Mechanical perforation of an airway.
- 4 Q. I mean, that's with the laser?
- 5 A. Most likely from a laser, yeah. Now, I don't know if
- 6 he put any other instruments down there. That I don't
- 7 know. I wasn't at the procedure, but my understanding
- 8 was it was a laser that helped to unroof.
- 9 Q. And do you not do rigid bronchoscopies?
- 10 A. No, sir.
- 11 Q. Let me ask you then about the next time that you had
- 12 any contact with Mr. Casey. Do you recall when that
- 13 was after the procedure?
- 14 A. I'm sure it was within a month of the procedure. I
- 15 don't remember specifically.
- 16 Q. Do you recall seeing Mr. Casey and his sister in your
- 17 office?
- 18 A. That was after subsequent follow-ups.
- 19 Q. And do you recall at some point they were asking
- 20 questions about why it was necessary to proceed so
- 21 quickly with the rigid bronchoscopy?
- 22 A. I'm sure there's records somewhere, because I believe
- 23 that conversation was all recorded by my office staff.
- 24 Q. Right. I'm just asking what you remember.
- 25 A. I don't remember much.

Deposition of Joseph A. Boscia, M.D.

1 Q. Do you remember anything about that?

2 A. I do remember them mentioning about a CT scan and that
3 you'll be hearing from my attorneys. That's about all
4 I remember.

5 Q. Can you locate Exhibit 23 in that stack? It should be
6 in order.

7 A. 23.

8 Q. Okay, great. If you can go then to -- down at the
9 bottom there are Bates stamps, and it's Thompson 32209,
10 and this refers to -- is this an office note from
11 Upstate Lung?

12 A. This I believe is a summation of what happened, but
13 there were actually handwritten -- handwritten yellow
14 note paper by my staff. Here's one of them. No. But
15 I believe that's a summary of what was said. Hold on.
16 Okay.

17 Q. So page 209?

18 A. 209.

19 Q. Does that appear to be a summary of the patient
20 complaint in connection with a June 25, 2004 visit?

21 A. Yes.

22 Q. And it looks like there are some quotes there.
23 "Patient and sister here this visit. Patient came back
24 for a return follow-up visit. Patient's sister started
25 asking questions to Dr. Boscia re: the rigid bronch.

Deposition of Joseph A. Boscia, M.D.

1 Sister, Carol Casey, wanted to know, quote, why the
2 urgency of doing a bronch, end quote. Explained to
3 patient that something was seen on the x-ray, but he
4 was unable to see it on the fiber optic bronch, but
5 something was there." Do you recall being asked that
6 question and providing that response, understanding
7 this is a summary and it's not word for word?

8 A. Yes.

9 Q. You remember that, okay. Do you recall Mr. Casey
10 having any problems following the procedure that were
11 reported to you or your office such as his having
12 trouble sleeping, his feeling like he had to pace,
13 being unable to stop pacing, him having personality
14 changes, anything like that?

15 A. All subjective issues. The answer is yes. He
16 expressed those issues to me subjectively.

17 Q. And do you recall him saying that he just wanted to be
18 able to rest and stop pacing?

19 A. He reported to me subjectively, yes.

20 Q. And when you say subjectively, you mean that there was
21 no objective evidence of that other than just what he
22 told you?

23 A. Correct. What he said.

24 Q. And at that point, did you have any reason to
25 disbelieve him?

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Deposition of Joseph A. Boscia, M.D.

- 1 Q. Did you ever explain to Mr. Casey or his sister that
2 the rigid bronchoscopy proceeded with a negative CT
3 scan?
4 A. Yes.
5 Q. And when did you first tell them that?
6 A. Well, she had the report with her.
7 Q. So that was something that she knew already?
8 A. Correct. She came in with the CT scan report.
9 Q. And did she ask you why the rigid bronchoscopy was done
10 --
11 A. Yes.
12 Q. Let me finish the question for the court reporter.
13 A. I'm sorry.
14 Q. -- in the face of a negative CT scan?
15 A. Yes.
16 Q. And what was your response?
17 A. "You need to ask Dr. Feldman." In fact, I believe I
18 got them an appointment to talk to him about that rigid
19 bronch. Anything specifically related to the flexible
20 bronch I was more than happy to comment on and the
21 reason of why I sent them for the flexible bronch and
22 the rigid bronch. Again, it's clearly stated here
23 about a foreign body and came to the hospital with
24 chest pain. So chest pain, foreign body required a
25 bronchoscopy, and -- a flexible bronchoscopy for direct

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Deposition of Joseph A. Boscia, M.D.

1 visualization of the airways and then, based on what my
2 findings were, I sent him to a higher level of care.
3 So anything related to the rigid bronch I deferred to
4 Dr. Feldman.

5 Q. But I understood you to say that you recommended the
6 rigid bronch and that you recommended the rigid bronch
7 with the knowledge that the CT was clear. Is that
8 right?

9 A. Correct.

10 Q. And if there was a metallic object in his chest,
11 wouldn't that have been revealed by the CT?

12 A. No.

13 Q. No?

14 A. Not necessarily.

15 Q. Tell me why not.

16 A. CAT scans are very good for parenchymal abnormalities.
17 They're not very good for airway pathology.

18 Q. Why was a CT scan ordered then?

19 A. To see if it was a parenchymal problem, if this foreign
20 body had eroded in the parenchyma, in which case I
21 would have needed a surgeon, not an interventional
22 bronchologist.

23 Q. Do you contend that the -- let me strike that. You
24 talked about the bases for the filing of your lawsuit,
25 and, as I understand what you said, was you were really

1 concerned about the continuation of the lawsuit in the
2 face of two items that you think if your lawyers had
3 received would have truncated the length of time that
4 you had to participate in the lawsuit. That's really
5 your argument. Right?

6 A. Correct.

7 Q. So the continuation of the lawsuit, did that damage you
8 in any way?

9 A. Yes.

10 Q. How were you damaged?

11 A. Number one, there was a newspaper article that was on -
12 - in the Herald-Journal that specifically listed my
13 name as performing a botched bronchoscopy leading to a
14 patient with a permanent brain damage. So I had only
15 been in the community for three years, and I thought
16 that was unfair considering I didn't recall doing a
17 flexible fiber optic bronchoscopy leaving a man
18 permanently brain-damaged. So recuperating from those
19 types of things in a very small community is somewhat
20 difficult. I have since overcome that, but at the
21 time, it took many, many years to finally gain the
22 trust of this community because of that newspaper
23 article.

24 Q. How do you know that?

25 A. Because patients would come in and say it to the other

Deposition of Joseph A. Boscia, M.D.

1 physicians, to Dr. Feldman and then eventually to Dr.
2 Erb, that they didn't want to see Boscia because he
3 does botched procedures and leaves people brain-
4 damaged.

5 Q. Well, wasn't Dr. Feldman's name in there, too?

6 A. I can't speak on behalf of Dr. Feldman, but I can tell
7 you that on my behalf it was very difficult for
8 somebody being in the community for only three years
9 recovering from that type of publicity in the
10 newspaper.

11 Q. Let me ask you to take a look at Exhibit 28. Is this
12 the article that you're talking about?

13 A. Yes.

14 Q. And your name is mentioned as a defendant. Is that
15 correct?

16 A. Yes.

17 Q. But doesn't it specifically say that Dr. Feldman
18 performed a rigid bronchoscopy and it was during that
19 surgery that Casey suffered a perforated bronchial wall
20 and the procedure was continued even after Casey's
21 vital signs began to destabilize? Are you reading
22 that?

23 A. At the end of the paragraph, it specifically states
24 that Feldman performed a rigid bronchoscopy on Casey,
25 but if you look in the first to second paragraph there,

1 my name is listed right there in the article.

2 Q. Right. It says---

3 A. Gregory Feldman and Joseph Boscia and anesthesiologist.
4 Man sues. Claims surgery was botched. And everybody
5 knows that I do bronchoscopies. They don't know the
6 difference between a rigid bronchoscopy or a flexible
7 bronchoscopy. They just know that I do bronchoscopies.

8 Q. But do you think they know what it says when the
9 article says, "On June 3 of that year, Feldman
10 performed a rigid bronchoscopy on Casey using a laser
11 even though a CT scan showed there was no such object
12 in the lung, according to the Complaint. It was during
13 that surgery -- Feldman's surgery, not Boscia's
14 surgery, Feldman's surgery -- that Casey suffered a
15 perforated bronchial wall and the procedure was
16 continued even after Casey's vital signs began to
17 destabilize the lawsuit states." Isn't that what the
18 article says?

19 A. Yes.

20 Q. And you're saying that people based on this article
21 would go to Dr. Feldman and say, hey, Dr. Feldman, I
22 don't want to see Boscia based on this article?

23 A. Correct.

24 Q. But they are delighted to see Feldman who the article
25 specifically says caused the problem?

Deposition of Joseph A. Boscia, M.D.

- 1 A. Correct, because he had been in the community a lot
2 longer than I had. That's correct.
- 3 Q. So how many patients did you lose?
- 4 A. Again, I'd have to undergo, you know, discussions with
5 accountants.
- 6 Q. I'm asking as you know today.
- 7 A. I don't know.
- 8 Q. You say you've been damaged. Were you damaged
9 financially?
- 10 A. By, again, taking a long time to build up a practice
11 that should have been, you know, quicker to build in
12 three or four years.
- 13 Q. And over what period of time did you suffer that
14 damage?
- 15 A. Five to six years after that, after that suit.
- 16 Q. How do you know when that period ended? I mean, what's
17 the demarcation of when you stopped being damaged by
18 the lawsuit?
- 19 A. Because a jury of my peers found me not guilty.
- 20 Q. And that was in May of 2010?
- 21 A. Correct.
- 22 Q. So your testimony is the damage started from the time
23 the lawsuit was filed?
- 24 A. Yes.
- 25 Q. Do you have any opinions as to how this story got in

Deposition of Joseph A. Boscia, M.D.

1 the newspaper?

2 A. I don't know.

3 Q. And the newspaper story was about a week after the
4 filing of the lawsuit?

5 A. Yes.

6 Q. As we sit here today, you do not have any idea as to
7 the amount of damages you think financially you think
8 you lost?

9 A. No. I would defer that to my accountants.

10 Q. If I were to represent to you that your adjusted gross
11 income in 2007 was \$652,505, does that sound about
12 right to you?

13 A. Yes.

14 Q. And that would have been the next tax year after the
15 lawsuit and the article?

16 A. Yes.

17 Q. And then the following year it was \$994,580?

18 A. Yes.

19 Q. And the next year it was \$1,111,724?

20 A. Yes.

21 Q. And the next year it was \$1,868,148?

22 A. Yes.

23 Q. And the next year it was \$2,026,549?

24 A. That is -- no, that can't be correct. Those are
25 combinations of research and practice.

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1 It's not there anymore. And he talks again about
2 neurological deficits, which again there really is no
3 neurological exam except a pupils are symmetric, but, I
4 mean, there's no, you know, muscle strength or, you
5 know, other cranial nerves exam. It's a very
6 superficial exam with really just one element of a
7 neurological exam being done. He does have again a
8 psychological exam, and, again, Dr. Grace is a
9 psychologist, not a neurologist.

10 Q. And I appreciate that sort of global assessment of all
11 three, but what I was really asking about specifically
12 with that question was if you look at paragraph three
13 under Comment on the pages that we discussed, what
14 differences do you see in the third paragraph of each
15 of these? Are there any significant differences there
16 that you see?

17 A. No.

18 Q. Okay. So the difference that you have pointed out are
19 that under the neurological on Exhibit 5 it says, "The
20 patient had some readily apparent difficulty staying
21 focused with answers to questions and had difficulties
22 repeating numbers backwards on a simple cognitive
23 screen." That's what that says. Right? And then on
24 Exhibit 6 under neurological, it says, "The patient had
25 difficulty staying focused with answers to questions

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Deposition of Joseph A. Boscia, M.D.

- 1 Q. Can I just assume then fairly that for this entire
2 matter, the Casey matter, this case that you're
3 bringing now, that you would defer to Dr. Feldman for
4 his decisions and opinions and input?
- 5 A. Depends on the question.
- 6 Q. Okay. With respect to Dr. Feldman when he first got
7 this lawsuit, did you have a discussion with him about
8 it?
- 9 A. Yes.
- 10 Q. What was his reaction to getting this lawsuit? And
11 when I mean this lawsuit, I mean the Casey lawsuit in
12 2006.
- 13 A. I'm sorry. The malpractice case?
- 14 Q. Yes, the 2006 case.
- 15 A. In 2006, when we got served for our malpractice case in
16 2006?
- 17 Q. Yes, sir, exactly.
- 18 A. It was disheartening.
- 19 Q. Well, what was his reaction regarding the substance of
20 the allegations?
- 21 A. That we'll see what discovery brings out and we'll
22 either defend it or settle depending on what the --
23 depending on what the -- what the complaint is.
- 24 Q. Did he believe that he had been negligent?
- 25 A. No.

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1 A. Correct.

2 Q. And then, from time to time, as either the protocol or
3 some other matters dictate, you may or may not see the
4 patient during the course of the study?

5 A. Yes.

6 Q. And do you always see -- and I say patient. I meant
7 research subject. When you see the research subject,
8 do you always see the research subject at the end of
9 the study when it's over?

10 A. Not necessarily. Not necessarily. Again, it depends.
11 Some of them do require an exit physical examination;
12 some studies do not.

13 Q. Why don't we break for lunch now, come back at 1:00,
14 and we will pick up there.

15 A. Sure.

16 (Off the Record; 11:54 a.m. -- 1:10 p.m.)

17 EXAMINATION RESUMED BY MR. HENRIKSON:

18 Q. Doctor, take a look at Exhibit 1. I think it's right
19 there on top. And we'll call that the Casey complaint.
20 That's the one that was filed in 2006 against you and
21 the stated defendants and which was referenced in the
22 newspaper article that we talked about. Is that
23 correct?

24 A. Yes.

25 Q. Have you reviewed that lately?

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1 A. Not lately.

2 Q. Do you understand as identified in the newspaper
3 article that the Complaint alleges that during the
4 rigid bronch procedure that air emboli got to the
5 brain? Is that correct?

6 A. Yes.

7 Q. And caused permanent brain damage. Is that right?

8 A. Yes, to my understanding.

9 Q. And you had earlier testified today that you knew that
10 to be atomically impossible?

11 A. Yes.

12 Q. So when you read this Complaint in 2006 after you were
13 served, you understood and you knew that the
14 allegations were anatomically impossible. Is that
15 right?

16 A. Yes.

17 Q. And so you knew at the time in 2006 when you got this
18 lawsuit that it was false and baseless, because you
19 knew that physically, atomically what was being alleged
20 was not possible?

21 A. Yes.

22 Q. Okay. You had mentioned that you do numerous
23 disability claim depositions?

24 A. On behalf of my patients, yes.

25 Q. Right. And, typically, that is a situation where there

Deposition of Joseph A. Boscia, M.D.

1 I asked you since the beginning of this deposition.

2 A. Oh, I'm sorry.

3 Q. Nine o'clock this morning.

4 A. I'm sorry.

5 Q. Have you had any contact through any medium with Dr.
6 Feldman?

7 A. Yes.

8 Q. Tell me about that.

9 A. E-mail and phone conversation.

10 Q. Tell me about your e-mails with Dr. Feldman.

11 A. Of course, my cell phone has been off. So I opened it
12 up when I went outside. There were three, three e-
13 mails about -- am I allowed?

14 Q. Yeah. If you want to.

15 A. I can tell you about the conversations?

16 Q. Sure.

17 A. Of course, today---

18 MR. MANN:

19 I have no objection unless I'm copied.

20 EXAMINATION RESUMED BY MR. HENRIKSON:

21 A. Today is our first strategy meeting with our new
22 partners, of which I won't be available for. So I had
23 to call my new chief executive officer who personally
24 invited me to the meeting and give my regrets and,
25 also, part of the conversation was please give my

Deposition of Joseph A. Boscia, M.D.

1 -regrets to my new corporation that I will not be there
2 for my first planning meeting. The other part of it
3 was, again, some of the questions and issues that arose
4 in my deposition about the three letters, the three
5 opinion letters, about, again, what we knew in 2004
6 during the -- or 2006 when we did the first discovery,
7 about what was produced, that we saw only the one
8 letter in that discovery and that the other letters
9 were not -- were not shown to us.

10 Q. And how many e-mails do you have between you and Dr.
11 Feldman since 9 o'clock this morning?

12 A. Again, I opened up my phone at 12 o'clock, and he sent
13 me three e-mails, which two I trashed because I didn't
14 know how to handle them, but first was, again, a PDF
15 file that he sent me, and it said CMF December 22, '08
16 deposition record subpoena. You open it up.

17 MR. MANN:

18 As long as I'm not copied on it, you're fine. And
19 Matt, you're welcome, if you've got somewhere you want
20 to forward a copy, we can print it off. I don't care.

21 EXAMINATION RESUMED BY MR. HENRIKSON:

22 A. And what was highlighted, it says here, "Dr. Fogarty,
23 the notice of deposition asked you to bring records
24 with you. Have you seen that notice?" "Yes, sir. Mr.
25 Thompson showed me the notice this weekend." "Did you

Deposition of Joseph A. Boscia, M.D.

- 1 bring those records?" "Yes, sir." "Can I see what you
2 brought?" "Do you want to put the box on the"---
3 "Yeah, that's the best thing." "Okay." Then
4 attachments is just again that one -- that one letter.
5 Q. Let me ask you. How many e-mails since 9 o'clock this
6 morning, how many e-mails either to Dr. Feldman or from
7 Dr. Feldman have you engaged in?
8 A. Three were sent to me.
9 Q. Have you sent any back?
10 A. No.
11 Q. And how about the two that you received that were
12 deleted?
13 A. That's two of the three. All three have been deleted.
14 They're in my trash bin.
15 Q. But they're still retrievable?
16 A. Correct. I just read you the first one. You want to
17 read -- I can read you the second one, too.
18 Q. That's all right. What we'll probably do is just get
19 you to forward those e-mails to us.
20 MR. MANN:
21 If you'll forward them to me, I can send them
22 immediately to you.
23 WITNESS:
24 And I believe they're all public record, too,
25 because they're already---

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1 MR. MANN:

2 Boscia, just send them to me, please, and then I
3 will get them to them. If they want to make a copy,
4 they're welcome to print them out.

5 WITNESS:

6 Can I do that?

7 MR. HENRIKSON:

8 Yeah.

9 MR. MANN:

10 Just forward them to me.

11 WITNESS:

12 You're forwarded on them.

13 MR. MANN:

14 So you've already forwarded them to me?

15 WITNESS:

16 No. Okay, wait. One of them was forwarded.

17 MR. MANN:

18 So you forward them to me.

19 WITNESS:

20 I'm going to forward you the ones that are not
21 forwarded.

22 MR. MANN:

23 I didn't see where was I copied on any of them.

24 WITNESS:

25 That's what it says. Your name is there.

1 MR. MANN:

2 Do you want to go off the record?

3 MR. HENRIKSON:

4 We're still on until we get this squared away.

5 MR. MANN:

6 Okay, I do see one that he's talking about where I
7 was copied on. Without waiving attorney-client
8 privilege, I will send it to you. I don't have any
9 problem with that, but I'm not doing a global waiving
10 of attorney-client privilege. Okay? Is that fair?

11 MR. HENRIKSON:

12 Yeah. I mean, I think under the circumstances
13 since they were received during the deposition, that
14 that wouldn't apply anyway.

15 MR. MANN:

16 But, you know, you understand I didn't originate
17 them.

18 MR. HENRIKSON:

19 I understand.

20 WITNESS:

21 No, he definitely didn't originate them.

22 MR. HENRIKSON:

23 I believe you. We need to take a break and take a
24 look at those.

25 EXAMINATION RESUMED BY MR. HENRIKSON:

Deposition of Joseph A. Boscia, M.D.

1 Q. Before we go, if you have any other communications with
2 anybody until the deposition is over, can you just
3 preserve those, let us know?

4 A. So open up my phone and check my e-mails or just let
5 you know?

6 Q. I don't have a problem with you doing that, but if
7 you're receiving communications from Dr. Feldman or
8 anybody else --

9 MR. MANN:

10 Absolutely.

11 EXAMINATION RESUMED BY MR. HENRIKSON:

12 Q. -- then we just want to be able to look at it.

13 MR. MANN:

14 Sure.

15 EXAMINATION RESUMED BY MR. HENRIKSON:

16 A. Will do.

17 Q. And just before we go, since 9 o'clock this morning,
18 have you sent anybody any texts or e-mails?

19 A. No.

20 Q. Okay. Thank you.

21 (Off the Record; 1:32 -- 1:54 p.m.)

22 (Defendant's Exhibit Numbers 66, 67, and 68 marked)

23 EXAMINATION RESUMED BY MR. HENRIKSON:

24 Q. Dr. Boscia, we are back from a break, and we've learned
25 earlier that Dr. Feldman has been communicating with

Deposition of Joseph A. Boscia, M.D.

- 1 you during the deposition, and you have produced to us
2 three e-mails that were sent to you by Dr. Feldman.
3 Have you read these e-mails?
- 4 A. No.
- 5 Q. And the first one was sent to you by Dr. Feldman at
6 9:30 a.m. this morning, and that was Exhibit 66. Is
7 that correct?
- 8 A. Yes.
- 9 Q. And the subject of that e-mail is "CMF Decem 22, 08
10 deposition records subpoena." Is that right?
- 11 A. Yes.
- 12 Q. And your e-mail here is bronchnu@aol.com. How long has
13 that been your e-mail address?
- 14 A. A long time.
- 15 Q. Do you receive---
- 16 A. When e-mails started. When AOL started their e-mail
17 server. So add it up.
- 18 Q. Okay. At least it isn't CompuServe. Do you have any
19 other e-mails that are in use, that have been in use
20 since 2006?
- 21 A. Yes.
- 22 Q. And what are those?
- 23 A. I don't know their names specifically because they're
24 part of the research company. One is through CU
25 Pharmaceutical Research. The other is through S.

Deposition of Joseph A. Boscia, M.D.

1 Carolina Pharmaceutical Research.

2 Q. Can you get those and provide those to your lawyer?

3 A. I can.

4 Q. Thank you. How about Dr. Feldman? It looks like his
5 is Gfeld3232@aol.com. Have you been communicating with
6 him at that e-mail address since 2006?

7 A. Yes.

8 Q. To your knowledge?

9 A. Oh, yes.

10 Q. So the second e-mail is Exhibit 67, and that was sent
11 to you from Dr. Feldman at 10:04 this morning. Is that
12 correct?

13 A. Yes.

14 Q. And the subject of that is, "Knew no evidence for Brain
15 Damage." Is that what that says?

16 A. Yes.

17 Q. And then there's an attachment that is entitled, "In
18 their own writing.pdf." Is that correct? If you look
19 at the top where it was sent to Mr. Mann at 1:31.

20 A. Oh, attachment, yes. Yes. Okay, yeah. Yes, I see it.

21 Q. And then in Exhibit 66, there's an attachment that just
22 has a number identification, 201605111524.pdf?

23 A. Yes.

24 Q. And then the third e-mail is Exhibit 68, and that was
25 sent to you at 10:26 today by Dr. Feldman. Is that

1 correct?

2 A. Yes.

3 Q. And that is entitled "Electronic Medical Records," and
4 the attachments are "Wilson Smith-dash-electronic
5 medical records.pdf." Is that right?

6 A. Yes.

7 Q. And Dr. Feldman and you discussed last night that you
8 were going to give your deposition this morning. Is
9 that correct?

10 A. Yes.

11 Q. And he knew that you were going to give your deposition
12 this morning starting at 9 o'clock?

13 A. Yes.

14 Q. And he was covering your patients for you today knowing
15 that you would be in this deposition today. Is that
16 correct?

17 A. Correct.

18 Q. Now, you have also testified that today since 9 o'clock
19 when the deposition started and you were sworn that you
20 have had a phone conversation with Dr. Feldman?

21 A. Yes.

22 Q. Do you remember what you talked about with Dr. Feldman
23 in that phone conversation? Let me ask you this first.
24 when was that phone conversation?

25 A. When we took our break at 12 o'clock.

Deposition of Joseph A. Boscia, M.D.

- 1 Q. And where did you go? Where were you between the time
2 we broke at 12:00 till the time we got back at 1:00?
3 A. In my car.
4 Q. And where is your car parked?
5 A. In the parking lot across the street.
6 Q. And tell me what you did in your car.
7 A. Called my wife, hung up with her. Called Feldman to
8 get an update on my patients. Again, he's covering my
9 practice today. And then he said, I sent you e-mails.
10 I said, oh, that's -- that's great, that's great. And
11 that was it.
12 Q. And did he drop the topic then, or did you and Dr.
13 Feldman have any --
14 A. No, because I told him---
15 Q. Let me get my question on the record, please, sir.
16 A. I'm sorry. I'm sorry.
17 Q. -- any conversation whatsoever about either the
18 substance of the e-mails or the substance of your
19 testimony in any way?
20 A. Dr. Feldman said, you read the e-mails, you understand
21 when you read the e-mails. And then I asked him to
22 give my condolences or my regrets to the -- to my new -
23 - my new bosses.
24 Q. Did Dr. Feldman say anything else to you relative to
25 this case in that phone conversation?

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- 1 A. No.
- 2 Q. How long was that phone conversation?
- 3 A. Do not recall.
- 4 Q. It was literally an hour --
- 5 A. Five, 10 minutes.
- 6 Q. -- and a half ago.
- 7 A. Five, 10 minutes.
- 8 Q. Five, 10 minutes?
- 9 A. It might have been seven and a half minutes, maybe 8.6
- 10 minutes.
- 11 Q. Well, then we'll just ask you to preserve your records
- 12 regarding that so if we ever have to find out --
- 13 A. You can have---
- 14 Q. -- specifically---
- 15 A. You can have access to that, yes, sir.
- 16 Q. Thank you. I would also ask that you preserve any
- 17 communication that you've had written, electronically
- 18 stored in any way with Dr. Feldman for the last 30
- 19 days. Okay?
- 20 A. Sure.
- 21 Q. And if you would preserve that and provide that to your
- 22 attorneys, I would appreciate it.
- 23 A. Sure.
- 24 Q. And when you talked to Dr. Feldman, about what time was
- 25 that?

Deposition of Joseph A. Boscia, M.D.

- 1 A. Between 12:00 and 12:15.
- 2 Q. Because we broke here I think about 11:56. So did you
- 3 call Dr. Feldman first or your wife?
- 4 A. My wife.
- 5 Q. So that would have been a short call then. Right?
- 6 A. You'll have to subpoena my phone records to find out
- 7 for sure. I don't remember. I don't recall.
- 8 Q. I'm trying to put the math together. We left here at
- 9 12:56.
- 10 A. I thought it was --
- 11 Q. I mean 11:56.
- 12 A. -- 12 o'clock. Yeah.
- 13 Q. You said you had a phone call---
- 14 A. I walked across the street.
- 15 Q. Okay. Can I just get the question out?
- 16 A. Sorry.
- 17 Q. You said you had a phone call with Dr. Feldman between
- 18 12:00 and 12:15. Right?
- 19 A. Yes.
- 20 Q. So after you hung up with Dr. Feldman, what did you do
- 21 then?
- 22 A. Went to Groucho's and -- well, actually, I called my
- 23 new boss and gave him my regrets that I couldn't make
- 24 our first planning meeting. And then I called my wife
- 25 back, and then I walked to Groucho's and realized I

1 didn't have my wallet, and so I went back here and
2 called my wife again. She said she was going to bring
3 me some money or food, and I said no, it's okay. And
4 then I came up here.

5 Q. When you talked to Dr. Feldman last night and you
6 talked about the substance of this case and his
7 testimony and your testimony. Correct?

8 A. Yes.

9 Q. Did he tell you that he was still under oath and that
10 he had been instructed to not discuss his testimony or
11 this case with any person?

12 A. I don't remember him saying that.

13 Q. And you understand what under oath means. Right?

14 A. Mm-hmm. Yes.

15 Q. You and Dr. Feldman both took the same oath that you
16 would take in court, and it obligates everyone who
17 takes that oath to tell the truth.

18 A. Yes.

19 Q. And the truth being the complete truth without any
20 hesitation. Correct?

21 A. Yes.

22 Q. And you understand that there are legal consequences
23 for not doing that?

24 A. Yes.

25 Q. In the conversation with Dr. Feldman last night, do you

Deposition of Joseph A. Boscia, M.D.

1 recall now about how long that conversation was?

2 A. I don't. Again, probably 10 minutes, 15 minutes,
3 again, the majority of it being discussing our
4 patients, our sign-outs.

5 Q. Did he initiate the call?

6 A. He did.

7 Q. What number did he call you on?

8 A. My cell phone.

9 Q. What is that number?

10 A. 706-7992.

11 Q. And who is your cell provider?

12 A. Verizon.

13 Q. How long have you had that number?

14 A. For 16 years.

15 Q. When you talked to Dr. Feldman last night, you
16 testified that you and he discussed the timeline of
17 events. Is that right?

18 A. Yes.

19 Q. Isn't it true that Dr. Feldman told you that the
20 timeline that he thought you should discuss was from
21 2008 forward?

22 A. No. I'm bad with all timelines. Again, it was a very
23 busy time in my life. It all meshed together. So I
24 don't remember when I became certified as a PI. I
25 don't remember when I had to recertify my boards. I

LEGAL EAGLE
864-587-7050

1 don't remember a lot of things, being so busy. So it
2 was, put it into perspective, Joe. 2004, we opened up
3 our research business. 2005, we had the letters sent
4 to the sponsors. Then we wrote the lawsuit cease and
5 desist. Are you following me? Yes, I got it. 2008,
6 finally we go to, you know, the Casey lawsuit. 2010,
7 we go to court. In 2008, we start noticing that
8 there's some funniness going on in the discovery of
9 information that Spencer King and -- and Billy Gunn are
10 going through. So to put that into perspective because
11 I'm just bad with -- with dates.

12 Q. That's what he told you last night?

13 A. Mm-hmm.

14 Q. Yes?

15 A. Yes.

16 Q. You just need to say yes for the record.

17 A. Yes.

18 Q. How about prior to last night, when is the last time
19 you have had a substantive conversation with Dr.
20 Feldman about this case?

21 A. Monday night.

22 Q. And tell me about that conversation.

23 A. Again, I testified that it was sign-outs of patients,
24 which was the majority of the conversation because I'd
25 been covering his practice for two days, and then

Deposition of Joseph A. Boscia, M.D.

- 1 issues. what did they ask you? what -- what were the
2 questions? Are they going back to 2004? Are they
3 going specifically 2008 forward? You know, give me a
4 time frame so I know to put my mind in a time frame.
- 5 Q. This is Monday of this week?
- 6 A. Mm-hmm.
- 7 Q. Monday evening?
- 8 A. Mm-hmm.
- 9 Q. You're saying yes?
- 10 A. Yes.
- 11 Q. And are you asking him those questions, or is he asking
12 you those questions?
- 13 A. I don't recall, because, again, the conversation's back
14 and forth. Joe, I know you bad with dates. I'm like,
15 yeah, I'm really bad with dates, you know.
- 16 Q. Did he provide you with any information regarding the
17 questions that were asked of him and the testimony?
- 18 A. General comments.
- 19 Q. And how long was that conversation?
- 20 A. I don't recall.
- 21 Q. Was it more or less than 30 minutes?
- 22 A. Less than 30 minutes.
- 23 Q. And did he initiate the phone call to you?
- 24 A. Yes.
- 25 Q. And was that on your cell phone?

1 A. Yes.

2 Q. Between Monday night, that phone call and -- today's
3 Wednesday. Right? So Tuesday night when you had that
4 call, did you have any other conversation with Dr.
5 Feldman through any medium regarding or touching in any
6 way on this case?

7 A. No, not on the case. He called me again this morning
8 because he just needed to know where my patients were
9 and what he had to do for me. So...

10 Q. And this morning, did y'all say anything about this
11 case?

12 A. Mm-mm. That I had to be here at---

13 Q. You're saying no?

14 A. No. No, no.

15 Q. And then with respect to prior to Monday, when is the
16 last time you and Dr. Feldman had any contact or
17 conversation through any medium regarding the substance
18 of this case?

19 A. I don't recall.

20 Q. Was it more than a week or 10 days?

21 A. Sir, I don't recall that.

22 MR. HENRIKSON:

23 You know, this is just unusual. So let me do
24 this. I'm not wasting your time, but we do need to
25 take a short five-minute break before we go forward.

Deposition of Joseph A. Boscia, M.D.

1 A. Yes. Yes.

2 Q. So your allegation is that the S. Carolina litigation
3 you believe was related to the Casey malpractice case.
4 Is that right?

5 A. Yes.

6 Q. And you believe that the Casey case was somehow a
7 retaliation by Dr. Fogarty for the S. Carolina
8 litigation. Is that right?

9 A. Yes.

10 Q. And I think you've already testified you believe that
11 the Casey malpractice case, that it was improper to
12 file that lawsuit?

13 A. Yes.

14 Q. Now, when that lawsuit was filed and you testified that
15 you and Dr. Feldman knew immediately that, based on the
16 allegations being anatomically impossible, that you
17 knew that that was a baseless lawsuit at that point.
18 Correct?

19 A. Yes.

20 Q. When did you first from any source begin to get any
21 inkling that you had grounds to file any kind of claim
22 against Dr. Fogarty, Mr. Casey, or Mr. Thompson arising
23 out of the Casey lawsuit?

24 A. Part of the discovery after we were served with the
25 Casey lawsuit, the discovery went very, very slowly. I

1 remember Mr. Gunn and Mr. King telling us there's
2 really nothing going on in this case, guys, we don't
3 really hear much and it's probably going to be dropped.
4 And then in 2008, Mr. King produced the MRI. Because
5 he had already deposed Mr. Casey, and at that time, the
6 understanding was nobody told Mr. Casey he was brain-
7 damaged until he read it in the newspaper, that no MRI
8 was obtained to either confirm or dispute brain injury
9 on diagnostic studies. So when we got the MRI scan,
10 you know, we raised kind of a hand like, boy, this is
11 kind of getting a little convoluted, it's getting a
12 little -- you know, a little strange, and then Mr. King
13 let us know that it was -- the MRI was done under a
14 false name to try to cover the identity of Mr. Casey.
15 So when we started to hear about backdoor -- scratch
16 that.

17 Q. She can't scratch it. Whatever you say gets on the
18 record.

19 A. -- shady dealings, shady dealings, it just made me
20 raise my hand and say are we dealing with straight -- a
21 straight problem, or are we dealing with another
22 underlying problem that may tie us up the next six-plus
23 years and it not necessarily be directly related to a
24 medical malpractice case. Of course, as the -- so 2008
25 really is when we started to kind of raise our hands in

CERTIFICATE OF REPORTER

I, ROSALIND POOLE WALTERS, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 130 pages represents a true and accurate transcript of the deposition of JOSEPH A. BOSCIA, III, M.D., which was taken by me on the 19th day of October, 2016.

That the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rosalind Walters

Rosalind Poole Walters, CVR-M

Notary Public for South Carolina

Commission Expires: 12-18-16

EXHIBIT

5

FILE COPY

THE WARD LAW FIRM, P.A.

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May 22, 2008

(via facsimile 583-6927 and U.S. Postal Service)

Ray E. Thompson, Jr., Esquire
PO Box 3408
Spartanburg, SC 29304

Rc: *William Mark Casey v. Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung and Critical Care Specialists, PC, and Devendra Shantha, MD*
CA No.: 2006-CP-42-1728
Discovery Issues

Dear Chuck:

I am writing this letter per your request to put in writing answers to questions you had and issues you had with our Interrogatory responses in this case.

Dr. Feldman received a call from the Endoscopy Suite at Spartanburg Regional Medical Center on June 3, 2004, approximately one to one and a half hours before Mark Casey's procedure was to begin to inform him that Mark Casey had arrived in pre-op. Spartanburg Regional has a practice of calling Dr. Feldman when his first patient of the day arrives in order for Dr. Feldman to time his arrival at Spartanburg Regional appropriately. Dr. Feldman's office is within a five minute drive of Spartanburg Regional.

Dr. Feldman left his office promptly after receiving the call from Spartanburg Regional on June 3, 2004 informing him that Mark Casey had arrived in pre-op. Dr. Feldman estimates that he arrived at Spartanburg Regional approximately one hour before he began the procedure on Mark Casey on June 3, 2004.

Dr. Feldman treated approximately fourteen patients the morning of June 3, 2004 before departing for Spartanburg Regional to perform the procedure on Mark Casey. Dr. Feldman knew he was going to perform a rigid bronchoscopy on Mark Casey on May 28, 2004, shortly after Dr. Boscia's flexible bronchoscopy procedure was unsuccessful. Dr. Feldman reviewed the film from

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Chuck Thompson
May 22, 2008
Page 2

Mark Casey's chest x-ray on May 28, 2004 at Spartanburg Regional. Dr. Feldman cannot remember exactly when he was informed of the definite date and time he would perform the rigid bronchoscopy on Mark Casey. Dr. Feldman believes that he was probably called the afternoon or evening before Mark Casey's rigid bronchoscopy procedure on June 3, 2004 to inform him of the definite date and time of the procedure.

Dr. Boscia did not review the May 28, 2004 CT scan results of Mark Casey before Mr. Casey underwent the rigid bronchoscopy procedure on June 3, 2004.

Defendants Feldman and Boscia have agreed that they will identify by name and give a summary of the expected testimony of any potential witnesses at the trial of this case that they may call that have not been deposed when all of the depositions that are contemplated in this case have been completed.

Dr. Feldman did not review the chest x-ray report from the May 28, 2004 chest x-ray before performing the rigid bronchoscopy procedure on Mr. Casey on June 3, 2004. Dr. Boscia's May 28, 2004 op note and Dr. Boscia's May 28, 2004 history and physical of Mark Casey were not reviewed by Dr. Feldman before Dr. Feldman performed the rigid bronchoscopy procedure on Mark Casey on June 3, 2004. Dr. Boscia's reports on Mark Casey were not in Mark Casey's medical records file at Spartanburg Regional before the rigid bronchoscopy was performed on June 3, 2008.

Spartanburg Regional had no chart on Mark Casey on June 3, 2004 when Dr. Feldman arrived to perform the rigid bronchoscopy procedure on Mark Casey on June 3, 2004. Upon arrival, Dr. Feldman immediately requested Dr. Paladugu's history and physical of Mark Casey.

Dr. Feldman spent approximately five to ten minutes with Mark Casey in the holding room in the Endoscopy Suite at Spartanburg Regional Medical Center sometime between thirty to sixty minutes before performing the rigid bronchoscopy procedure on June 3, 2004. During Dr. Feldman's five to ten minute conversation with Mr. Casey before performing the rigid bronchoscopy on June 3, 2004, Dr. Feldman took his own history and physical of Mark Casey and compared it with Dr. Paladugu's history and physical upon its arrival to the endoscopy suite sometime before the rigid bronchoscopy procedure was performed by Dr. Feldman.

Dr. Feldman, during the five to ten minutes conversation with Mr. Casey also informed Mr. Casey of the risks, benefits, and alternatives to performing the rigid bronchoscopy, as well as the likely outcome for Mr. Casey if the rigid bronchoscopy were not performed. Dr. Feldman informed Mr. Casey that the risks of the rigid bronchoscopy included: pneumothorax, sore throat, and possible death. Dr. Feldman told Mr. Casey the alternative to the rigid bronchoscopy was to do nothing. Dr. Feldman informed Mr. Casey that if he did not perform the rigid bronchoscopy and there was a foreign body present in his lung, he would likely experience continued chest pain and other possible medical complications. The anesthesiologist would also explain the risks and complications.

During the five to ten minute conversation with Mr. Casey before performing the rigid bronchoscopy, Dr. Feldman obtained Mark Casey's informed consent and filled out the informed consent form dated June 3, 2004 with Mr. Casey in the holding room in the Endoscopy Suite

KING 000053

Chuck Thompson
May 22, 2008
Page 3

sometime between thirty to sixty minutes before Dr. Feldman performed the rigid bronchoscopy (Bates stamp number 000132).

After performing the rigid bronchoscopy on Mark Casey on June 3, 2004, Dr. Feldman discussed the procedure with Mark Casey's sister at Spartanburg Regional. Dr. Feldman informed Mark Casey's sister that he could not find a metallic object or a foreign body when performing the rigid bronchoscopy. Dr. Feldman told her that he probably vaporized the foreign body with the laser during the rigid bronchoscopy. Dr. Feldman further told Mark Casey's sister that Mr. Casey could go home shortly because there was no foreign body present in his lung. This discussion took place before Mark Casey developed pneumothorax in the post-op recovery room.

After Mark Casey's pneumothorax was treated by Dr. Feldman and Dr. Nguyenduy, Dr. Feldman discussed Mark Casey's treatment with Mark Casey's sister at Spartanburg Regional again. Dr. Feldman told Mark Casey's sister that the pneumothorax was a complication of the rigid bronchoscopy procedure and that it was not life threatening. Dr. Feldman told Mark Casey's sister that Mark Casey should not lift anything heavy for two to four weeks after discharge from Spartanburg Regional due to the pneumothorax.

Dr. Feldman had a conversation with Mark Casey after Dr. Boscia performed a flexible bronchoscopy on May 28, 2004. During this conversation, Dr. Feldman discussed with Mark Casey the need for a rigid bronchoscopy, that Dr. Feldman would be performing the rigid bronchoscopy, Dr. Feldman took a history (verbal) from Mr. Casey, and Dr. Feldman either dictated a note, or made a handwritten note regarding his visit with Mr. Casey that did not reach the Spartanburg Regional medical records pertaining to Mr. Casey.

After Dr. Feldman performed the rigid bronchoscopy on June 3, 2004, and before Mr. Casey's discharge from Spartanburg Regional, Dr. Feldman had discussions with Mark Casey. During these discussions Dr. Feldman told Mark Casey that he should not lift anything or participate in rigorous activity for approximately two to four weeks after his discharge from Spartanburg Regional due to the pneumothorax.

Sometime after Mark Casey's discharge from Spartanburg Regional after the rigid bronchoscopy, Dr. Feldman had further discussions with Mark Casey about his job. These discussions stemmed from Mark Casey informing Dr. Feldman that he had severe back pain. Dr. Feldman explained to Mr. Casey that he is not the appropriate physician to diagnose and treat back pain. Dr. Feldman further told to Mr. Casey that if his back was bothering him so severely, he should probably pursue less rigorous work than his then current job at Michelin. Dr. Feldman said that Mark Casey's back problems have nothing to do with the rigid bronchoscopy, the flexible bronchoscopy or any other treatment received from Dr. Feldman or Dr. Boscia.

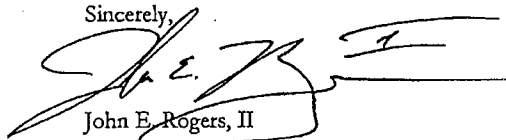
Before performing the rigid bronchoscopy on Mark Casey on June 3, 2004, Dr. Feldman did not know that a CT scan was ordered by Dr. Boscia on May 28, 2004. Dr. Feldman first became aware that a CT scan had been performed on Mark Casey on June 3, 2004 after Mark Casey developed pneumothorax post-rigid bronchoscopy procedure. Dr. Boscia did not discuss the results of the CT scan of May 28, 2004 with Mark Casey before the rigid bronchoscopy procedure was performed on June 3, 2004.

KING 000054

Chuck Thompson
May 22, 2008
Page 4

This letter should answer all the remaining discovery issues we discussed during our May 21, 2008 meeting at your office. You will advise the Court to dismiss your Motion to Compel and Sanctions. As soon as the releases for records are signed by Mr. Casey, we will cancel that Motion as well. I have also enclosed a second supplemental response to your Interrogatory number 10 posed to Dr. Feldman (I believe I gave you a copy of this yesterday). If there is anything that has not been answered in this letter that we discussed in our meeting on May 21, 2008, please let me know.

Sincerely,



John E. Rogers, II

JERII:dmn

cc: William U. Gunn, Esquire (via facsimile 585-3844 and U.S. Postal Service)
M. Noel Turner, III, Esquire (via facsimile 583-6927 and U.S. Postal Service)
F. Milton Mann, Jr., Esquire (via facsimile 583-5235)

KING 000055

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*ALSO MEMBER NORTH CAROLINA BAR

October 10, 2007

Judy Wilbanks, Claims Specialist
JUA
PO Box 128
Greenville, SC 29602

Re: William Mark Casey v. Gregory J. Feldman, MD, Joseph A. Boscia, III,
MD, Upstate Lung and Critical Care Specialists, PC, and Devendra
Shantha, MD
CA No.: 2006-CP42-1728
Our File No.: 26-0266

Dear Judy:

Just for your information, I am copying you on some, but not all of the e-mails that Dr. Feldman has sent to me attempting to direct this litigation, most of which deal with ancillary issues, minutia such as the article in the Herald-Journal, all suits against competitors, etc., etc.

I have directed him to seek legal advice of others (he has his own attorney) if he feels he has redress. My sole job is to defend this lawsuit. That does not include filing suit against anyone.

I just wanted you to have this information.

I am

Very truly yours,

H. Spencer King
The Ward Law Firm, P.A.

HSK/dch

KING 001571

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Direct No. 864-591-2364

June 16, 2006

Carolinás Center For Advanced Management of Pain
Medical Records Custodian
1330 Boiling Springs Road
Suite 2700
Spartanburg, SC 29303

Re: William Mark Casey v. Gregory J. Feldman, MD, Joseph A. Boscia, III,
MD, Upstate Lung and Critical Care Specialists, PC, and Devendra
Shantha, MD
CA No.: 2006-CP42-1728
Our File No.: 26-0266

Dear Records Custodian:

These **medical records and billing records** are being sought based on a medical malpractice lawsuit filed by William Mark Casey. A copy of this letter and subpoena are being sent to her attorney. Accordingly, I am providing notice under state and federal law that I am seeking the production of the information contained in the subpoena. The subpoena contains instructions for responding to it. Unless Plaintiff or her attorneys raise an objection within ten (10) days of the receipt of this subpoena, you should produce the records as specified in the subpoena.

We will, of course, pay reasonable costs for production of these documents.

I am

Very truly yours,

Donna C. Hill
Donna C. Hill, C.L.A.
Paralegal to H. Spencer King

/dch

Enclosure

cc: Chuck Thompson, Esquire w/enclosure
William U. Gunn, Esquire w/enclosure

*16 pages of e
6-23-06*

Pain Center
20

KING 001664

R-1-92

INITIAL VISIT

NAME: Wm Casey AGE 33 SEX m DATE 9/23/92
 HOSPITALIZATIONS: Hemorrhoid surgery x 2 yrs ago

ILLNESSES: ØMEDICATIONS: ØALLERGIES: UNKASMOKE: 10²⁰/2PK per/d: pk yrs. ETOH 2 wks DRUGS ØSOCIAL: (M) S W D 2 CHILDREN OCCUPATION Mechanic

FAMILY HK:

Father: Age: 69 DM HBP KIDNEY DIS Mother: Age: 67 TB CA HARD ART. HtD SCD OTHERS STROKE ALL Siblings: 2 brothers GOITER SEIZURE 1 sisterDT(UTD) PPD(UTD) IMMUN(UTD) Health Maintenance Discussed PRESENT ILLNESS: Blacked out

9-23-92- Pt scheduled for CT Scan of Brain on Wed, Sept 30, 1992
 @ MBH also scheduled for EEG @ 10:30 that same morning, EEG/
 P. Lawless

Gonda - 2

9/21/92

MARK CASEY

BS Pt.

10967

Dr. Cupstid

On Call Note:

Received a call from Carol Casey this evening about 6:45. She says that 48 hrs. ago she witnessed her brother Mark, age 33, having a seizure episode. She was sitting with him on his deck when he seemed to fall asleep and slump in his chair. He then had projectile vomiting which was followed by a tensing of all his muscles and generalized shaking. He fell out of the chair and cont'd to have movements which by her description sound like tonic/clonic seizure episode. Upon awakening sev. mins. later, he was transiently confused and drowsy. Soon felt back to normal although felt very fatigued. Pt. did not seek

KING 001876

feeling well today. One set him up an appt. with Dr. Gonda for Wed., 7/23 but is concerned that he may need attention earlier, plus she wanted to describe the episode to me since she will not be able to accompany him to his appt. and will not be available at the time that he sees Dr. Gonda. Apparently there is no previous personal hx. of family hx. of seizure disorder. Mr. Casey is otherwise in good health and is very athletic. Told her I will speak with Dr. Gonda about the pt. and hopefully we can begin to arrange his workup before his appt. on Wed. Of course, if any changes in his condition occur prior to the Wed. appt., they should call immediately or have him come to the ER. Carol Casey's phone number is 587-1631. Mark Casey's telephone number is 574-8269. DNR:gc/da

9/23/92

MARK CASEY

10967

Dr. Gonda

1. Syncope

- S: 33 y/o, white male comes in for the first time. Six days ago he was sitting on his deck talking to his sister. He had been working swing shifts and was very tired. He had had very little sleep. He had drank one beer. Also, he had taken a cold medicine a few days earlier and also a pain pill, which he does not know the name of, for some elbow pain. He was sitting there and he became rather nauseated, felt a little disoriented, and passed out. He does not recall anything else. His sister saw him slump over and thought he was joking. After about a minute he started gurgling and vomiting. He was unconscious for about 2 minutes and then came to. Sister said that his eyes did roll back in his heads and his arms appeared stiff, but she did not see any jerking movements. He had no incontinence and did not bite his tongue. As soon as he came to he felt fine, was alert, oriented, no postictal state. He has no previous history of seizure or fainting spells and there is no family history of seizure. Patient has no medical problems, is on no medication. Drinks a couple of beers maybe once or twice a month, and smokes less than one-half pack of cigarettes per day.
- O: No distress, Weight is 170 3/4 pounds. B/P is 138/94. Temp is 98.8. HEENT: pupils are equal, round, reactive to light; extraocular movements are intact; discs are sharp; cranial nerves are grossly intact; TM's and throat are clear; neck is supple; thyroid is not enlarged; no carotid bruits; lungs are clear. Heart is regular. Normal S-1, S-2. No murmur or gallop. Abdomen is soft, non-tender, no organomegaly. Extremities reveal full range of motion. DTR's are 2+. Motor and sensory are grossly intact. EKG shows a normal sinus rhythm. No abnormalities. Urinalysis is normal.
- A: Syncope episode. Differential diagnosis includes true syncope or fainting vs. a seizure. One could make a case for syncope based on a multitude of facts including lack of sleep, drinking one beer, cold medicine and a pain pill. I think seizure disorder needs to be ruled out despite that he had no incontinence and was not postictal.
- P: Patient is scheduled for an EEG and a CT scan of the brain at Mary Black next week. Will not start him on medications at this time unless he has a recurrence. Precautions given concerning repeated episodes in dangerous places such as driving. Profile III also drawn today. May need to follow up with a neurology consult for second opinion.

/FG:al

Gonda -1

KING 001877

10/5/92

MARK CASEY

10967

Dr. Gonda

1. Syncopal episode

Mark comes back for a follow up. Feeling quite well. Has had no further episodes. See previous note. Had a CT scan which was normal. Also, EEG was normal. Dr. Ringle recommended if seizure disorder was highly suspected, should do a sleep deprived study. I have discussed results with patient. He and I both feel that this episode was probably a syncopal episode due to lack of sleep, having taken a narcotic pain pill, having drank one beer, and having been on some cold medications. Do not feel that this is a seizure as he was not postictal. For the present time will do no further studies unless he has another episode. Also discussed patient's cholesterol which was 233 with a triglyceride of 446. His HDL was low at 26. LDL could not be calculated due to high triglyceride. Have also discussed the cholesterol with patient. I have given him some literature. He will repeat a profile III in about 2-3 months.

/FG:al

1/4/93

MARK CASEY

10967

Dr. Gonda

2. Conjunctivitis3. URI

S: 34 y/o, white male with redness and drainage from left eye for about 3 days. No vision problems. Has also had a cold with cough and congestion.

Q: No distress. Pupils are equal, round, reactive to light. Extraocular movements are intact. Left eye reveals conjunctiva is a little inflamed. Minimal drainage is noted. Anterior chambers are clear. Fluorescein stain is negative. Throat is clear. TM's are clear. Neck is supple. Lungs are clear.

A: As above.

P: Ilotycin ophthalmic ointment 1/2 inch ribbon OS qid x 5-7 days; PV Tussin 1-2 tsp. q 4-6 hours for cough. Follow up prn.

/FG:al

11-93 - Enter LA + birth # 2017 for correction. Called to K-Mart US!
11-14-97. il scheduled pt. for L-S spine @ NBRH, pt can go
anytime = Drs. Order Dr.

11/17/97 called pt. told them all labs NC. continue
ultran. Proceed to X-ray's. PDW

11/14/97

MARK CASEY

10967

Dr. Gonda

LOW BACK PAIN
JOINT PAINS

S: This 39-year-old white male comes in with low back pain for one year. It typically hurts more on the right side, but occasionally he feels it in both legs. He denies any bowel or bladder problem. He has been going to a chiropractor for a year. He has been to several. They all say he is out of alignment. They adjust him and he feels good for a while, but it recurs. He has a real strenuous job at work. He builds tires at Michelin. There is lots of bending, stooping, lifting, pulling, etc. He always hurts more by the end of the week, but come Monday his back feels better. He also has lots of problems with joints in his hands, primarily the PIP-joints. Occasionally they feel swollen and tender. He denies any urethritis and no recent eye problems. There is no family history of arthritis. The patient has been taking Advil, two and three times a day. This does give him some relief, but it always comes back.

Gonda - 3

over

KING 001878

- O: On physical examination, he is in no acute distress. VITALS are stable. Back exam reveals full range of motion, no tenderness whatsoever to palpation. Straight leg raise is negative. DTRs are 2+. Motor and sensory are grossly intact. Exam of the hands reveals no obvious swelling, redness, deformity, or heat. There may be a little bit of tenderness in several of the PIP-joints in both hands. Rest of joint exam is normal.
- A: Chronic back pain and also joint pains of the hands.
- P: LS-spine x-rays. Arthritis profile, at his request. Samples and prescription of Ultram, 50 mg, one q.i.d. Explained to patient that I may add a second medicine, that being an anti-inflammatory. See him back in a month after he has been on the medicine. DNR:PEG/dpp

10962

DATE	TIME	CALLER	PT. NAME - CHART #	PHONE #	ALL: P.S.C.O.	MD
1-12	12:00	Mark Casey	10962	5768269		Gonda
AGE	WT.	T.	BY	MEDS.	RE:	
			ML		Mom passed away today. has had to sit at hospital a is sore & stiff can you call in something for this? has an appt. Jan. 21. called a EB	
DISPOSITION				DRUG STORE: K-Mart	BY:	TIME: 4

6/14/98 - pt. notified re. lipid panel report. I informed pt. profile is abnormal. TT, TG, HDL, LDL, VLDL, means risk of CAD. Begin on Niasin 1/4 handout for niasin (EM)

Gonda - 4

KING 001879

01/21/98

WILLIAM CASEY

10967

Dr. Gonda

A: HEALTH MAINTENANCEB: FAMILY HISTORY OF CORONARY ARTERY DISEASEC: FAMILY HISTORY OF DIABETES

S: This 39-year-old white male comes in for a physical. He is having no real problems today. Both parents just died within the last few months. His father died of a MI at age 73. He had his first MI at age 54. His mother died at age 72. She had heart disease, carotid artery disease, and diabetes. She had recently had bypass surgery. Patient smokes a half of a pack of cigarettes per day. He denies chest pain or shortness of breath. Appetite is good and he moves his bowels well. His back pain is doing very well on Ultram. He is up-to-date on his immunizations. He drinks, maybe, a six-pack of beer per month. He is married. He exercises regularly.

O: On physical examination, he is in no distress. Blood pressure is 120/78. Pulse is 88. HEENT is normal. Disks are sharp. Neck is supple, with no thyromegaly or carotid bruit. Lungs are clear. Heart is regular, with no murmur. Abdomen is soft, with no organomegaly. GU exam is normal, with no hernia. Rectal reveals normal sphincter tone. Prostate is smooth and nontender. Stool is hemoccult-negative. Extremities reveal full range of motion, with no edema of the lower legs. Distal pulses are 2+. Skin is without rash. Back exam reveals he has good range of motion and there is no tenderness today. DTRs are 2+. Urinalysis is negative. CBC shows a hemoglobin of 15.0 and hematocrit of 41.2%. Platelets are 400,000.

A: Diagnosis as above. Also, chronic low back pain.

P: Check a lipid profile, he is fasting. Encouraged to quit smoking. Renew Ultram, 50 mg, t.i.d. to q.i.d., #120 with five refills. Recommend a physical at least every two years.

DNR:FEG/dpp

240
720

08/26/98

MARK CASEY

10967

Dr. Gonda

E: CHRONIC LOW BACK PAIND: NICOTINE ABUSEF: DYSLIPIDEMIA

S: This 39-year-old white male comes in for medicine refill. He is doing fairly well. Ultram has helped his back, usually takes three to four per day. He still smokes a half of a pack of cigarettes per day. He was taking Niacin for his lipids, but he quit about a month ago. He never came back to have labs rechecked.

O: On physical examination, he is in no acute distress. Blood pressure is 114/80. Pulse is 88. Weight is 175-pounds. Neck is supple. Lungs are clear. Heart is regular, with no murmur. Abdomen is soft and nontender. Back reveals fairly good range of motion. There is mild tenderness in the lumbosacral area. Lower extremities reveal no edema. He has crepitus in both knees. Review of chart shows he had a LS-spine, which was normal. An arthritis panel was normal. A lipid profile showed triglycerides of 299, cholesterol of 239, HDL of 22, and LDL of 157. Ratio was 10.8. Coronary risk factor was 2.0.

A: Diagnosis as above.

P: Renew Ultram, 50 mg, one p.o. t.i.d. to q.i.d., #120 with five refills. Encouraged him to go back on Niacin and increase up to 1000 mg b.i.d. One Aspirin with each dose to avoid the flushing. Once he has been on it three months, come back for a lipid profile.

DNR:FEG/dpp

Gonda - 5

KING 001880

DATE 9/5/98	TIME 1:25	CALLER Mark Casey	PT. NAME - CHART # 10967	PHONE # 8269	ALL: P.S.C.O. Honda
AGE	WT.	T.	BY me	MEDS.	RE: Concerning
Script Ultram (mail order). He said to call them & they would give a form ~~for~~ about to script.					
DISPOSITION: Would not give much info. He said you & him had talk about this & you know what he needed.					
I will write it (mail order) for DRUG STORE: 1-888-327-9797 TIME: A P					
90 day supply, it's cheaper than ~~getting~~ getting it @ no.					
AGE	WT.	T.	BY	MEDS.	RE: He said you & him
had discussed it being cheaper that way. Worth to check info.					
DISPOSITION: i.e. 960 Ultram 50mg					
For LBP #360/T					
DRUG STORE:				BY:	TIME: A P

02/01/99

MARK CASEY

10967

Dr. Gonda

E: CHRONIC LOW BACK PAIN

- S: Patient is 40-year-old white male with chronic back pain who comes in for checkup and medicine refill. He has days when the Ultram and the Tylenol just do not help. He works at Michelin building tires. He does a lot of lifting, a lot of standing, and a lot of walking on the concrete. 12-hour days are murder. He currently is in the process of building a house. He will be moving soon. He will have an exercise room. He also applied for a different position at Michelin that would not require as much lifting. He has not been doing any back exercises.
- O: On physical examination, patient is in no acute distress. Vitals are stable with a blood pressure of 96/68. Back examination reveals excellent range of motion. There is mild tenderness in the right lumbosacral area. The abdomen is soft and nontender. Str is negative. Deep tendon reflexes are 2+. Motor and sensory are grossly intact. Review of chart shows normal lumbosacral spine in 11/97 and normal arthritis profile in 11/97.
- A: Chronic low back pain.
- P: Back exercises provided again. Increase Ultram 50 mg one to two po t.i.d. to q.i.d. #720 with one refill. Also, a second prescription for local filling. Add Darvocet-N 100 one q.-four to six hours for moderate pain #60 with one refill. Precautions given concerning chronic use of this medicine. I wanted to set him up for physical therapy but patient declined. He wants to wait until after he moves and possibly changes his job and see if this helps. If it does not help, will then set him up for physical therapy. DNR:FEG/scs

Gonda - 6

KING 001881

New Patient Information Sheet							
WELCOME TO OUR PRACTICE!							
Please help us serve you better by taking a few minutes to provide the following information.							
PATIENT INFORMATION							
ACCOUNT #	SOCIAL SECURITY NUMBER	TITLE	LAST NAME	FIRST NAME	M		
10962	[REDACTED]		CASEY	William	Mark		
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
714 Three Wood Lane							
ZIP CODE	CITY		STATE				
29388	Woodruff		SC				
HOME PHONE		EMERGENCY CONTACT PHONE/NAME					
		576-3542					
BIRTHDAY	SEX (M, F)	RACE					
58	M	C					
MARITAL	☐ M-Married	☐ W-Widowed	EMPLOYMENT	☐ R-Retired	STUDENT	☐ P-Part	REL TO INSURED
	☐ S-Single	☐ D-Divorced	☐ F-Full	☐ P-Part	☐ N-None	☐ F-Full	☐ N-None
	☐ X-Separated					☒ SE-Self	☐ SP-Spouse
							☐ CH-Child
EMPLOYER/SCHOOL NAME							
Michelin Tire							
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE	CITY		STATE		BUSINESS PHONE		
LIST NAMES AND AGES OF OTHER FAMILY MEMBERS LIVING IN YOUR HOUSEHOLD. ARE THEY FOOTHILLS PATIENTS?							
None							
FINANCIALLY RESPONSIBLE PARTY (IF OTHER THAN PATIENT)							
ACCOUNT #	SOCIAL SECURITY NUMBER	TITLE	LAST NAME	FIRST NAME	M		
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE	CITY		STATE				
HOME PHONE		BIRTHDAY		SEX (M, F)		RACE	
MARITAL	☐ M-Married	☐ W-Widowed	EMPLOYMENT	☐ R-Retired	STUDENT	☐ P-Part	REL TO INSURED
	☐ S-Single	☐ D-Divorced	☐ F-Full	☐ P-Part	☐ N-None	☐ F-Full	☐ N-None
	☐ X-Separated					☒ SE-Self	☐ SP-Spouse
							☐ CH-Child
EMPLOYER/SCHOOL NAME							
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE	CITY		STATE		BUSINESS PHONE		
PRIMARY INSURANCE COMPANY NAME				MAILING ADDRESS		ATTENTION	
Cigna							
TELEPHONE #		POLICY #		GROUP #		EXP. DATE	
SECONDARY INSURANCE COMPANY NAME				MAILING ADDRESS		ATTENTION	
TELEPHONE #		POLICY #		GROUP #		EXP. DATE	
I hereby authorize the release of any medical or other information necessary to process insurance claims and hereby authorize payment of benefits directly to this practice for medical service rendered to myself or my dependents. I understand that I am responsible for any amount not covered by insurance. A photostatic copy of this authorization shall be considered as effective and valid as the original.							
SIGNATURE: Mark Casey				DATE: 2-1-99 Gonda - 7			

KING 001882

DATE 3/8/99	TIME 2:00	CALLER R. Hon Pharm	WILLIAMS PT. NAME - CHART # Mark Casey	PHONE # 476 2112	ALL: P.S.C.O.	MD Gonda
AGE	WT.	T.	BY CL	MEBS:	RE: 10967	
Wants to have Darvocet refilled at R. Hon Pharm.						
Got it filled first time at K-Mart.						
DISPOSITION Darvocet-N 100 #60 / ϕ						
called to drug store				DRUG STORE:	BY:	TIME: 7

11/99 - pharmacist (walmart) called to verify that pt. was to receive #720 pills of Ultram. I gave OK b/c that was his rx in Feb. -93

11/02/99

MARK CASEY

10967

Dr. Gonda

LOW BACK PAIN, CHRONIC

- S: Patient is a 40-year-old white male who comes in for medicine refill. He says his back is doing quite well. He has cut down on his Ultram, but he is getting ready to go back to his strenuous work at Michelin, so he will increase the dosage again. He plans to quit smoking tomorrow as he turns 41 tomorrow. He also states he is having intermittent troubles with erections. He still wakes up in the morning if he has to use the bathroom with an erection. It still works well at times but not all the time.
- O: On physical examination, patient is in no distress. Blood pressure is 125/75. Pulse is 72. Weight is 180-pounds. Back reveals full range of motion with no tenderness. Straight leg raise is negative. Deep tendon reflexes are 2+. Motor and sensory are intact.
- A: As above. His back pain seems to be stable.
- P: Renew Ultram 50 mg one to two p.o. t.i.d. to q.i.d. #720 with one refill. Darvocet-N 100 one q.-four to six hours p.r.n. pain #60 with one refill.
- A: Nicotine abuse.
- P: Congratulated him on his decision to quit. If he has any problems, he can check back with me and will try to help.
- A: Erectile dysfunction.
- P: Explained to patient that the most likely cause is the cigarette smoking. Did not do an examination today. Did not go into details. If after he quits smoking, the problem persists, come in for an evaluation. DNR, FEG/scs

Gonda - 8

KING 001883

1/8/00 - Appt. @ mcs for PT on 5/11/00 @ 9⁰⁰ AM
Order sent to pt.

5/10/00 - Spoke to Susan @ home - @ auth. needed for PT — (2)

05/08/00

MARK CASEY

10967

Dr. Frank E. Gonda

D: CHRONIC LOW BACK PAIN

S: This 41-year-old white male is in for medicine refill. He is having intermittent episodes of fairly significant back pain. It seems to be worse always after 12-hour shifts at Michelin Tire. Darvocet does not help for this, and he would like to have Lortab. He has had it before with no troubles. He works eight 12-hour shifts per month, and he would only take the medicines during that time. He continues to take the Ultram and this has worked fairly well except when he has the 12-hour shifts. The pain is concentrated in the lower back and is not radiating. He has no bowel or bladder problems.

O: On physical examination, he is in no acute distress. Blood pressure is 110/80. Pulse is 76. Weight is 171-pounds. Back reveals good range of motion. There is no tenderness. Straight leg raising is negative. DTR's are 2+. Motor and sensory are intact.

A: Chronic low back pain.

P: Renew Ultram 50 mg, two p.o. q.i.d., #720 with one refill. Long discussion about narcotics. Have given him Lortab-5.0, one p.o. q. six to eight hours p.r.n. moderate pain, #20 with five refills. #20 pills should easily last him the entire month. Set him up for physical therapy. I would like for him to attend the rehabilitation program for the back.

DNR: Dr. Frank E. Gonda/jmm

7

DATE	TIME	CALLER	PT. NAME - CHART #	PHONE #	ALL: P.S.C.O.
5/8/00	9:00	Wm. Casey		476-	Gonda
AGE	WT.	T.	MEDS:	RE:	
can you call in some pain meds was given Lortab. Pt knows you only give Relafen which is Anti-inflammatory. Pt wanted to know if you would call in something for pain. You have given him Lortab in the past and it has helped. Not due. Given 4/20/5 5/2000 helped @ PR					

Gonda - 13

KING 001884

08/28/00

MARK CASEY

10967

Dr. Frank E. Gonda

WRIST PAIN

- S: This 41-year-old white male is in with wrist pain for the last two months. He thinks it is probably related to the repetitive activity he does at Michelin building tires. He denies numbness, tingling, or burning in his fingers. He says he has pain at the wrist on the ulnar side. Sometimes it feels weak and just wants to give out. He has had no specific injury.
- O: On physical examination, he is in no distress. Blood pressure is 130/80. Pulse is 80. Weight is 182-pounds. The left wrist reveals excellent range of motion. There is no redness or swelling. There is a little tenderness over a rather prominent distal ulna. There is no crepitus. Pulses are 2+. Tinel sign and Phalen sign are negative. Hand grip is normal. Motor and sensory are grossly intact. X-ray of wrist is negative for arthritic changes.
- A: Wrist pain with a normal examination. Possibly related to repetitive activity at work. No sign of carpal tunnel syndrome.
- P: Reassurance. Moist heat. Relafen 500 mg, two p.o. q.-day, #60 with one refill. GI precautions given. He might need to come off of this job for a couple of weeks to let his wrist get better. If he needs to do this, he may have to go through Workman's Comp.
- DNR: Dr. Frank E. Gonda/ jmm

10/24/00 - Appt. @ Spine for L-spine mri on 11/4/00 @ 9:00 am, own funds + sub E pt - (C)
 10/26/00 - Appt. @ Dr. Gonda on 11/4/00 @ 9:00 am - (C)
 11 - MRI with request sent to Med. Director - (C)

10/26/00

WILLIAM CASEY

10967

Dr. Frank E. Gonda

CHRONIC LOW BACK PAIN

- S: This 41-year-old white male is in for recheck and medicine refill. He thinks his back pain did improve a little bit with physical therapy. He still has pain everyday whether he is working or playing ball. He did increase the number of Lortab that he took and ran out early. He has not had any in a while. He thinks the Ultram also helps some. He has pain everyday, 24-hours a day in his lower back bilaterally. The pain is non-radiating. He has no bowel or bladder problems. He has no numbness, tingling, or weakness in his legs. X-rays in 1997 of the lumbar spine were negative.
- O: On physical examination, he is in no distress. Blood pressure is 130/80. Pulse is 80. Weight is 178.5-pounds. Back reveals no deformity and has excellent range of motion. There is discomfort with twisting, tilting, and forward bending. There is some tenderness to deep pressure bilaterally in the lower lumbar/upper sacral area. No muscle spasm is noted. Straight leg raising is negative. DTR's are 2+. Motor and sensory are intact.
- A: Chronic low back pain.
- P: Renew Ultram, 50 mg two p.o. q.i.d., #720 with one refill. Lortab-5.0, one q.-four to six hours for moderate pain, #20 with five refills. This is supposed to last six months. Schedule for an MRI of his LS-spine. Schedule him an appointment to the Chronic Pain Clinic. I am hoping that they will find him a candidate for some steroid injections.
- DNR: Dr. Frank E. Gonda/ jmm

10/31/00 - Neurologist (M) spine & legs @ U.S. , no pre-reqs for MRI - (C) Gonda - 14

KING 001885

DATE 11/18/01	TIME 12:57	CALLER Fair Intel	PT. NAME - CHART # Wm. Casey	PHONE # 583-0053	ALL P.S.C.O. Gonda
AGE 42	WT. 190	BY ML	MEOS 10967	RE: 10967	
Prescription: Ultram, 50 mg two p.o. q.i.d. #720 with one refill. Add Zanaflex, 4 mg. Start with a half a tablet q.-h.s., increase every three days by half a pill. Can potentially go up to 24 mg a day in a split dosage. Gave him samples #15, also a prescription for #60 with two refills. It turns out the chronic pain doctor had given him some Zanaflex, but the patient never increased the dosage and did not take it very long. Let me know how he does with this.					
DISPOSITION 883-0370 Fax					
Jared to Heather 11/19/01 BY: SET TIME A P					

4/19/01 Samples given Zanaflex 4mg # 15
 Date Drug Name # Dispensed
 Lot Number: Inlets: 63

Patient was educated regarding proper administration, drug interactions and possible side effects. Patient has been instructed to call our office with any questions or problems.

04/19/01

MARK CASEY

10967

Frank E. Gonda, M.D.

D: CHRONIC LOW BACK PAIN

- S: This 42-year-old white male is in for medicine refill. He had to increase recently the Ultram because he was having increased back pain. It is currently the only medicine he has been taking. He did go to the Pain Clinic, but he had not had his MRI, so they did not do much for him. He said that he had too many bills and was unable to afford getting the MRI done. Pain remains concentrated in his mid-lower back. It is non-radiating. There is no bowel or bladder problem. He denies numbness, tingling, or weakness in his legs.
- O: Patient is in no distress. Blood pressure is 120/90. Pulse is 76. Weight is 192-pounds. Back examination reveals excellent range of motion. There is mild tenderness in the mid-lumbosacral area. Paraspinal muscles have tenderness and maybe a little spasm. Straight leg raise is negative. Deep tendon reflexes are 2+. Motor and sensory are intact.
- A: Chronic low back pain.
- P: Ultram, 50 mg two p.o. q.i.d. #720 with one refill. Add Zanaflex, 4 mg. Start with a half a tablet q.-h.s., increase every three days by half a pill. Can potentially go up to 24 mg a day in a split dosage. Gave him samples #15, also a prescription for #60 with two refills. It turns out the chronic pain doctor had given him some Zanaflex, but the patient never increased the dosage and did not take it very long. Let me know how he does with this.
- DNR: Frank E. Gonda, M.D./ejb

Gonda - 15

KING 001886

FOOTHILLS FAMILY MARY BLACK HEALTH SYSTEM OUTPATIENT QUESTIONNAIRE

PATIENT NAME: William Mark Casey DATE: Oct 26, 2000

PHYSICAL

Please answer yes or no to the following questions:

	Yes	No
Do you have any new difficulty with daily living activities? (EG: stair climbing, easily tired)	_____	_____ <u>X</u>

Explain: _____

PATIENT/FAMILY EDUCATION/LEARNING

Circle all that apply to patient:

Non English Speaking: Needs an interpreter
Primary Language _____
Hearing Impairment
Visual Impairment
Deaf
Blind
Hearing Aids
Difficulty Reading

NUTRITIONAL SCREEN

Please answer yes or no to the following questions:

	Yes	No
1) I have an illness or condition that made me change the kind and/or amount of food I eat.	_____	_____ <u>X</u>
2) Unintentional weight loss or gain greater than 10 pounds over the last month.	_____	_____ <u>X</u>
3) Swallowing difficulty over the past 3 months.	_____	_____ <u>X</u>

REVIEWED BY: Andy Bolin DATE: 10/26/00
Gund - 16

980

KING 001887

Mark Casey

10967

DATE 5/01/2017	TIME 2:00 PM	CALLER M. Casey	PT. NAME - CHART #	PHONE # 476-9400	ALL-P.S.C.O.	MD Gonda
AGE 42	WT. 179	T. M	BY RET	MEDS: Rx - Mail Order	RE: 10967	
Zanaflex 4mg						
H-6 9d depends on work schedule						
DISPOSITION 330 130 130 6 540						
DRUG STORE: 723						
BY: 7 TIME: A P.						

09/07/01

MARK CASEY

10967

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAIN

C: NICOTINE ABUSE

G: ERECTILE DYSFUNCTION

S: This 42 year old white male is in for follow up with his above medical problems and for medicine refill. The last time he was here we added Zanaflex and he says that has helped dramatically and he sleeps well all night. He usually takes about three a night. At times he has increased the dosage of the Ultram and he will take three pills four times a day. I have warned him that the maximum dose is 400 mg per day and he is taking more than that. His only complaint today is that he has problems with erections, which he has had four three or four years. He is unable to achieve a complete erection. He still has orgasm and then losses the erection right away. He has been smoking for 25 years. He has no interest in quitting. He does tell me that he tried a Viagra from a friend and it worked extremely well. He would like a prescription.

O: Patient is in no distress. Blood pressure is 130/92. Pulse is 80. Weight is 179-pounds. Neck is supple. Lungs are clear. Heart is regular. Abdomen is soft. GU examination is normal. Testes are descended with no hernias and no atrophy of the testicles. The back reveals good range of motion but lots of discomfort with movement in all directions. There is mild tenderness in the lumbosacral area. Straight leg raising is negative. Deep tendon reflexes is 2+.

A: Chronic low back pain.

P: Renew Ultram, 50 mg two p.o. q.i.d #720 with one refill. Zanaflex, 4 mg three q.-h.s. #270 with one refill.

A: Erectile dysfunction.

F: Encourage to quit smoking. Check a testosterone level. Add Viagra, 100 mg one p.o. one hour prior to relation #10 with five refills. Follow up six months or p.r.n.

DNR: Frank E. Gonda, MD/ dlg

4/21- pt notified re. Total + free testosterone level. sub. pt. it shows low test. level. if viagra fails, conts hormone replacement. — Gonda

Gonda - 9

KING 001888

PATIENT INFORMATION UPDATE

Please help us serve you better by taking time to review our services. Listed below is your account information. If any items are incorrect, please cross it out and write in the correct data on an add update form file. Thank you.

PERSONAL INFORMATION

Name (MC) William M Casey
Address 714 Three Wood Lane
City, St - Zip Woodruff, SC 29388

Home Phone 864-476-9100
Cell Phone 864-579-3000

Birthdate 1958 Age ... 48 Sex ... M
Social Security # .. [REDACTED]

SUBSCRIBER INFORMATION

Subscriber # 90967
Name (MC) William M Casey

INSURANCE INFORMATION

Primary CIGNA
Patient Code WC
Policy # [REDACTED]
Insured Code WC
Group # 5534-850

Secondary
Patient Code
Policy #
Insured Code
Group #

AUTHORIZATION

- I authorize the release of any medical or other information to process insurance claims.
- I authorize payment of medical benefits directly to this practice for the services rendered.

William Mark Casey Sept 7, 2017
Signed Date

Updated 09/07/01 User: ML Version: 6-9-98 HSC.

Gonda - 10

KING 001889



PPN/PPO

Employee: WILLIAM M. CASEY
Social Security Number: [REDACTED]
Employer: MICHELIN NORTH AMERICA
Group Plan Number: 9603-ASO



NETC

This card does not guarantee coverage or confirm eligibility.

8-9010
RECEIVED

MAY 05/2000

BY: [Signature]

RECEIVED

SFP 07 2001

BY: [Signature]

To obtain PPO benefits, you must inform your PPO physician that you are a PPO patient, submit a claim form to the physician, and pay the costs indicated by that provider.

Certification is required before any elective hospital admission or within two working days after an Emergency or Maternity admission. Failure to do so will affect benefits.

For certification call: 1-800-621-4309

These group benefits are administered by CONNECTICUT GENERAL LIFE INSURANCE COMPANY.

Claim Office Address:
Greenville Claim Office
Station B, P.O. Box 6185
Greenville, SC 29606-6185

Claim Office Phone Number:
1-800-544-4534

DC-6123

Gonda - 11

KING 001890

599-3499

Mark Casey

5-8-00

Gonda - 12

KING 001891

FOOTHILLS FAMILY MEDICINE MARY BLACK HEALTH SYSTEM OUTPATIENT QUESTIONNAIRE

PATIENT NAME: William Mark Casey DATE: March 6, 2002

PHYSICAL

Please answer yes or no to the following questions:

	Yes	No
Do you have any new difficulty with daily living activities? (EG: stair climbing, easily tired)	_____	<u>✓</u>

Explain: _____

PATIENT/FAMILY EDUCATION/LEARNING

Circle all that apply to patient:

Non English Speaking: Needs an interpreter

☒ Primary Language English

☐ Hearing Impairment

☐ Visual Impairment

☐ Deaf

☐ Blind

☐ Hearing Aids

☐ Difficulty Reading

NUTRITIONAL SCREEN

Please answer yes or no to the following questions:

	Yes	No
1) Have you had an illness or condition that made you change the kind and/or amount of food you eat?	_____	<u>✓</u>
2) Have you had any unintentional weight loss or gain greater than 10 pounds over the last month?	_____	<u>✓</u>
3) Do you have swallowing difficulty?	_____	<u>✓</u>

WED BY: Dr. Mark Casey DATE: 3/6/02

ated by the patent or nurse on the first visit of the year.

Gonda - 17

983-OPQ/00

KING 001892

NAME <u>William Casey</u>	DATE <u>3-1-02</u>	CHART # <u>10967</u>	Wt. <u>178</u>
C.C. <u>H. States "still having back pain, needs to m"</u>			BP - L <u>130/90</u>
<u>William</u> — <u>Ebol pa</u>			BP - R
			Pulse <u>80</u> (reg/irreg)
			Temp. <u>O, A</u>
			Resp.
			Vision - OD
			OS
			Corrected, Uncorrected
			Pain Score 0-5

03/06/02

MARK CASEY

10967

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAING: ERECTILE DYSFUNCTION

S: This 43-year-old white male is in for follow up on his problems and for medicine refill. He denies chest pain or shortness of breath. His appetite is good, and he moves his bowels well. He has chronic back pain. The Ultram helps as does the Zanaflex, but he still is in pain everyday. He again is requesting Lortab. We have discussed Lortab before, and it is best that we stay away from this. He has problems with erections, and Viagra has worked well. As far as his back is concerned, he has pain 24-hours a day. It is worse at the end of his work shift. Also when he wakes up in the morning he has lots of pain. On a scale of one to ten it is about a six when he wakes up in the morning.

O: Patient is in no distress. Blood pressure is 130/90. Pulse is 80. Weight is 178-pounds. Neck is supple. Lungs are clear. Heart is regular. Abdomen is soft and nontender. Back reveals full range of motion and no tenderness. Straight leg raising is negative.

A: As above.

P: Counseled in detail. I still think it is a good idea to stay away from narcotics. Renew Ultram, 50 mg two p.o. q.i.d., #720 with one refill. Also gave him a prescription for two weeks for local purchase. Zanaflex, 4 mg two q.h.s. At one time he was taking three, but he says he only takes two now. #180 with one refill. Renew Viagra, 100 mg one p.o. one hour prior to relations, #10 with five refills. Finally add Neurontin, 100 mg start with one at bedtime. May increase to two at bedtime if no problems. This is to see if we can reduce his chronic pain. #60 with two refills. Will let me know how he does, and if it improves his back pain, we can do mail order. *F*

DNR: Frank E. Gonda, MD/ jmm

8/13/02. Pt. here for ref on meds. no prob. pain over 10 — *Stomach*
new

Gonda - 18

KING 001893

08/13/02

MARK CASEY

10967

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAIN
G: ERECTILE DYSFUNCTION
C: NICOTINE ABUSE

- S: Mark is in today for follow up of the above problems and also for medicine refill. He is actually early. He has run out of medication because his wife was sneaking some of his medicines. After 20 years of marriage, they are separating and getting a divorce. She is being treated for depression. Last time he was here I put him on Neurontin, but he says it did not help after two month's worth of medicine. He still has back pain everyday. It does not keep him from working although it makes work difficult. It does not keep him from playing golf. He is still smoking one-half to one pack of cigarettes per day. He denies bowel or bladder problems. He has no pain in his legs. He still has erection problems, and Viagra works well.
- P: Patient is in no distress. Weight is 173-pounds. Blood pressure is 112/78. Pulse is 80. Neck is supple. Lungs are clear. Heart is regular. Abdomen is soft and nontender. Back reveals good range of motion, no tenderness to palpation. Straight leg raising is negative.
- A: As above.
- P: Counseled in detail. Patient never went for his MRI. He says he cannot afford it, and his insurance will not pay for it at this time. Renew Ultram, 50 mg two p.o. q.i.d., #720 with one refill. Also a one month supply with one refill from local purchase. Zanaflex, 1 mg two p.o. q.h.s., #180 with one refill. Also prescription for local purchase. Renew Viagra, 100 mg one p.o. one hour prior to relations, #10 with five refills. Follow up in six months or p.r.n.
- DNR: Frank E. Gonda MD/jmm

DATE	TIME	CALLER	PT NAME	CHART#	PHONE	ALL: DRUGS
11/21/02	10:30		William Mark Casey			Gonda
11/21/02	11:00	BY	17	Med: Ultram	RE:	Back pain
Like stretching exercises. As told him to make an apt						
DISPOSITION						
Lortab 5.0 #720/p						
I am 6-8 pm pain						
DRUG STOP						
C.B. Reidville Rd						
576-4399						

1/23/03 - pt presents for refill for ultram. pain score 6 - 8
 30
 B
 200

01/23/03

MARK CASEY

17804

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAIN
G: ERECTILE DYSFUNCTION
C: NICOTINE ABUSE

Gonda -19

- S: Mark presents today for follow up of the above problems and for medicine refill. He has no chest pain or shortness of breath. His appetite is good, and he moves his bowels well. Back pain is stable as long as he takes his medicines. He continues to smoke probably less than a half-pack of cigarettes per day. He still has plenty of refills on his Viagra.

KING 001894

New Patient Information Sheet							
WELCOME TO OUR PRACTICE!							
Please help us serve you better by taking a few minutes to provide the following information.							
PATIENT INFORMATION							
ACCOUNT #	SOCIAL SECURITY NUMBER	TITLE	LAST NAME	FIRST NAME	MI		
201804	[REDACTED]		CASEY	William	M		
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
620 Melrose Park Lane							
ZIP CODE	CITY	STATE					
29369	MOORE	SC					
HOME PHONE		EMERGENCY CONTACT PHONE/NAME					
864 574-8755							
BIRTHDAY	SEX (M, F)	RACE					
[REDACTED] 58	M	C					
MARITAL	☐ M-Married	☐ W-Widowed	EMPLOYMENT	☐ R-Retired	STUDENT	☐ P-Part	REL TO INSURED
☐ S-Single	☐ D-Divorced	☒ X-Separated	☒ F-Full	☐ P-Part	☐ N-None	☐ F-Full	☐ N-None
		☐ SE-Self	☐ SP-Spouse	☐ CH-Child			
EMPLOYER/SCHOOL NAME							
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE				CITY	STATE	BUSINESS PHONE	
LIST NAMES AND AGES OF OTHER FAMILY MEMBERS LIVING IN YOUR HOUSEHOLD. ARE THEY FOOTHILLS PATIENTS?							
FINANCIALLY RESPONSIBLE PARTY (IF OTHER THAN PATIENT)							
ACCOUNT #	SOCIAL SECURITY NUMBER	TITLE	LAST NAME	FIRST NAME	MI		
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE				CITY	STATE	BUSINESS PHONE	
HOME PHONE		BIRTHDAY		SEX (M, F)	RACE		
MARITAL	☐ M-Married	☐ W-Widowed	EMPLOYMENT	☐ R-Retired	STUDENT	☐ P-Part	REL TO INSURED
☐ S-Single	☐ D-Divorced	☐ X-Separated	☐ F-Full	☐ P-Part	☐ N-None	☐ F-Full	☐ N-None
		☐ SE-Self	☐ SP-Spouse	☐ CH-Child			
EMPLOYER/SCHOOL NAME							
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE				CITY	STATE	BUSINESS PHONE	
PRIMARY INSURANCE COMPANY NAME		MAILING ADDRESS		ATTENTION			
TELEPHONE #		POLICY #	GROUP #	EXP. DATE			
SECONDARY INSURANCE COMPANY NAME		MAILING ADDRESS		ATTENTION			
TELEPHONE #		POLICY #	GROUP #	EXP. DATE			
I hereby authorize the release of any medical or other information necessary to process insurance claims and hereby authorize payment of benefits directly to this practice for medical service rendered to myself or my dependents. I understand that I am responsible for any amount not covered by insurance. A photostatic copy of this authorization shall be considered as effective and valid as the original.							
SIGNATURE: <i>Mark Casey</i>				DATE: 1-23-03			

983-NPI-102

KING 001895

FOOTHILLS FAMILY MEDICINE MARY BLACK HEALTH SYSTEM OUTPATIENT QUESTIONNAIRE

PATIENT NAME: William Casey DATE: 1-23-03

PHYSICAL

Please answer yes or no to the following questions:

	Yes	No
Do you have any new difficulty with daily living activities? (EG: stair climbing, easily tired)	<u> </u>	<u> ✓ </u>

Explain: _____

PATIENT/FAMILY EDUCATION/LEARNING

Circle all that apply to patient:

Non English Speaking: Needs an interpreter

Primary Language English

Hearing Impairment

Visual Impairment glasses

Deaf

Blind

Hearing Aids

Difficulty Reading

NUTRITIONAL SCREEN

Please answer yes or no to the following questions:

	Yes	No
1) Have you had an illness or condition that made you change the kind and/or amount of food you eat?	<u> </u>	<u> ✓ </u>
2) Have you had any unintentional weight loss or gain greater than 10 pounds over the last month?	<u> </u>	<u> ✓ </u>
3) Do you have swallowing difficulty?	<u> </u>	<u> ✓ </u>

REVIEWED BY: D. Hannon M.D. DATE: 1/23/03
Gonda - 21

* To be updated by the patient or nurse on the first visit of the year.

983-OPQ

KING 001896

Patient Information Sheet							
WELCOME TO OUR PRACTICE!							
Please help us serve you better by taking a few minutes to provide the following information.							
PATIENT INFORMATION							
ACCOUNT #	SOCIAL SECURITY NUMBER	TITLE	LAST NAME	FIRST NAME	MI		
			CASEY	William	M		
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
620 Melrose Park Lane							
ZIP CODE	CITY	STATE					
29369	Moore	SC					
HOME PHONE		EMERGENCY CONTACT PHONE/NAME					
864 574-8755		205-9577 DONNA CASEY					
BIRTHDAY	SEX (M, F)	RACE					
MARITAL	☐ M-Married ☐ W-Widowed	EMPLOYMENT	☐ R-Retired	STUDENT	☐ P-Part	REL TO INSURED	☐ OT-Other
☐ S-Single ☐ D-Divorced ☒ X-Separated	☐ F-Full ☐ P-Part ☐ N-None	☐ F-Full ☐ N-None	☐ SE-Self ☐ SP-Spouse ☐ CH-Child				
EMPLOYER/SCHOOL NAME							
Michelle Tye Corp							
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
International Drive							
ZIP CODE	CITY	STATE		BUSINESS PHONE			
	Spartanburg	SC		864 599-3000			
LIST NAMES AND AGES OF OTHER FAMILY MEMBERS LIVING IN YOUR HOUSEHOLD. ARE THEY FOOTBALL PATIENTS?							
TRAVIS (19) KRISTEN (17) NO							
FINANCIALLY RESPONSIBLE PARTY (IF OTHER THAN PATIENT)							
ACCOUNT #	SOCIAL SECURITY NUMBER	TITLE	LAST NAME	FIRST NAME	MI		
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE	CITY	STATE					
HOME PHONE		BIRTHDAY		SEX (M, F)		RACE	
MARITAL	☐ M-Married ☐ W-Widowed	EMPLOYMENT	☐ R-Retired	STUDENT	☐ P-Part	REL TO INSURED	☐ OT-Other
☐ S-Single ☐ D-Divorced ☐ X-Separated	☐ F-Full ☐ P-Part ☐ N-None	☐ F-Full ☐ N-None	☐ SE-Self ☐ SP-Spouse ☐ CH-Child				
EMPLOYER/SCHOOL NAME							
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE	CITY	STATE		BUSINESS PHONE			
PRIMARY INSURANCE COMPANY NAME		MAILING ADDRESS		ATTENTION			
CIGNA Healthcare		PO Box 30575		Spartanburg SC 29230-0575			
TELEPHONE #	POLICY #	GROUP #		EXP. DATE			
864 5		3162696/TX 4-98					
SECONDARY INSURANCE COMPANY NAME		MAILING ADDRESS		ATTENTION			
TELEPHONE #	POLICY #	GROUP #		EXP. DATE			
I hereby authorize the release of any medical or other information necessary to process insurance claims and hereby authorize payment of benefits directly to this practice for medical service rendered to myself or my dependents. I understand that I am responsible for any amount not covered by insurance. A photostatic copy of this authorization shall be considered as effective and valid as the original.							
SIGNATURE: William M Casey				DATE: June 23, 2003			
				Gonda - 22 983-P1-503			

KING 001897

FOOTHILLS FAMILY MEDICINE - BOILING SPRINGS
Acknowledgement of Receipt of Notice of Privacy Practices

Attached please find FOOTHILLS FAMILY MEDICINE - BOILING SPRINGS' Notice of Privacy Practices. Your name and signature on this cover sheet indicate that you have received a copy of FOOTHILLS FAMILY MEDICINE - BOILING SPRINGS' Notice of Privacy Practices on the date indicated. The notice is yours to keep.

If you have any questions regarding the information set forth in FOOTHILLS FAMILY MEDICINE - BOILING SPRINGS' Notice of Privacy Practices, please do not hesitate to contact Rita Sigers, Privacy Officer at (864) 591-0745.

Printed Name of Patient: William Mark Casey

Signature: William Mark Casey

Authority to Sign If Not Patient: _____

Date: June 29, 2003

**Request for authorization for disclosure of Protected Health Information
to family member(s), friend(s), or caregiver(s)**

Family member(s), friend(s), or caregiver(s) authorized to receive PHI:

Name

Relationship

Patient Signature: William Mark Casey

Patient DOB: 58

Mother's Maiden Name: Hudson

If the person(s) authorized above call for access to your PHI, they will have to give the above identifiers in order to have access to the information over the phone.

This includes billing information.

Picture ID will be required if requesting access in person.

Gonda - 23

KING 001898

1/23/03 Mark Casey

Gonda

- O: Patient is in no distress. Blood pressure is 124/88. Pulse is 80. Weight is 180-pounds. Neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular with no murmur. Abdomen is soft and nontender. Back reveals full range of motion. He has mild tenderness in the paraspinal muscles. Straight leg raising is negative. Deep tendon reflexes are 2+. Motor and sensory are intact.
- A: As above. He appears stable.
- P: Encouraged to quit smoking. Renew medications which include: Ultram, 50 mg two p.o. q.i.d., #720 with one refill. Zanaflex, 4 mg two p.o. q.h.s., #180 with one refill. One month on each for local purchase. Follow up in six months or p.r.n.
DNR: Frank E. Gonda, MD/jmm

1/23/03 Pt. in for re/ + RF med - states 5 on pain scale 2nd print

1/23/03 Samples given Paxil CR 12.5 # 3bx
 Date Drug Name # Dispensed
 Lot Number: 23P06 1-05 Initials: JTC

Patient was educated regarding proper administration, drug interactions and possible side effects. Patient has been instructed to call our office with any questions or problems.

06/23/03

Mark CASEY

17804

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAIN

G: ERECTILE DYSFUNCTION

FAMILY DISCORD

H: DEPRESSION

- S: This 44-year-old white male is in for follow up of his back pain. He says that is stable. It hurts as usual, but medicines make his pain tolerable. He still plays golf three to four times a week. He still works full-time. He complains today that he thinks he is depressed. He stays very angry and frustrated. He is moody. He has trouble sleeping, trouble concentrating. His appetite is decreased, and he has lost some weight. He does not enjoy daily activities. He says he is sad all the time. He is going through a divorce which actually is a good thing, but he has had troubles with his teenage children. They have done a lot of bad things recently. His son has even stolen his credit cards and has messed up his credit for him. He has done everything possible to be a good parent, and they have both turned out to be not the best kids. He denies ever being depressed before.
- O: Patient is in no distress. Blood pressure is 134/94. Pulse is 72. Weight is 172-pounds. Neck is supple. Lungs are clear. Heart is regular. Abdomen is soft and nontender. Back reveals a slightly decreased range of motion, but no significant pain with movement. Straight leg raising is negative. Deep tendon reflexes are 2+. Mental status examination reveals he is alert, oriented, and coherent. Speech is not rapid or pressured. There are no feelings of helplessness or hopelessness. There are no suicidal or homicidal thoughts. Sensorium is clear.
- A: Chronic low back pain. This is stable.
- P: Renew Ultram, 50 mg two q.i.d.; Zanaflex, 4 mg two q.h.s.
- A: Erectile dysfunction.
- P: Viagra, 100 mg one p.o. one hour prior to relations, #10 with five refills.
- A: Depression.
- P: Counseled in detail. Begin Paxil-CR, 12.5 mg one q.-day, samples for three weeks. A prescription for #30 with one refill. See him back in two months to see how he is doing.
DNR: Frank E. Gonda, MD/jmm

8/21/03 Pt. in for re/ Paxil - states he felt a difference on med - states 0 on pain scale - JTC

Gonda - 24

KING 001899

William Casey

8/27/03 Date Samples given Effexor XR 75mg # 2bx
 Lot Number: 3023834 4/04 Initials: JHC
 Patient was educated regarding proper administration, drug interactions and possible side effects. Patient has been instructed to call our office with any questions or problems.

8/27/03 Date Samples given Effexor XR 37.5/75 # 1bx
 Lot Number: 3033288 12/03 Initials: JHC
 Patient was educated regarding proper administration, drug interactions and possible side effects. Patient has been instructed to call our office with any questions or problems.

96
 45
 35

08/27/03

MARK CASEY

17804

Frank E. Gonda, MD

H: DEPRESSION

D: CHRONIC LOW BACK PAIN

S: This 44-year-old white male is in for follow up on his depression. He has been on Paxil for two months and cannot tell any improvement whatsoever. He had no side effects from it. He continues to feel down-in-the dumps. He attributes it to all of the family problems that he has had including his two teenage kids who are pretty much failures. He has done everything he could for them. He does not blame himself, but he still feels bad about it. His job is not getting any easier, and he continues with chronic low back pain. He thinks part of his depression is from the back pain, and he wishes to start back on some medicine. He has been buying from friends, Percocet, 10 mg. He says he could easily take two or three a day. He has no trouble working with it. He says it makes life tolerable as far as the pain is concerned.

Patient is in no distress. Blood pressure is 122/88. Pulse is 72. Weight is 171-pounds. Patient is alert, oriented, and coherent. Speech is not rapid or pressured. There are no feelings of helplessness or hopelessness. There are no suicidal or homicidal thoughts. Sensorium is clear. Recheck of the back is not done today.

A: Depression in a patient with chronic low back pain.

P: Counseled in detail. Trial of Effexor-XR, 37.5 mg one q.-day times one week and then 75 mg one q.-day, samples for four weeks and then a prescription for four weeks. He is also given a prescription for Percocet, 10/325 one p.o. b.i.d., #60 with one refill. Explained to patient that part of pain treatment can also be antidepressants which frequently help reduce the pain. He is willing to continue on an antidepressant. See him back in two months.

DNR: Frank E. Gonda, MD/jmm

DATE	TIME A	CALLER	PT. NAME - CHART #	PHONE #	ALL: P.S.C.O.
9/23/03	10:50	William Casey	217804	486-6131	Gonda
AGE	WT	TE	BY	MEDS	RE:
44	171			Effexor XR, Percocet	
needs no fill Had forgotten this is 9/23/03 pt stated					
9/23/03 Im to PC a class II drug he had 3 more days					
a carte and refills. Will use Percocet instead. left but pharma. usually					
- pt has used #120 in one month? let him get RF					
Not fill early. Pick up Friday. Redville Rd. - per pharma. info					
against the law to put RF on narcotics. like this - had to write new Rx -					
notified pt - JHC					
Gonda - 25					
JHC notified pt					

KING 001900

Patient Information Sheet							
WELCOME TO OUR PRACTICE!							
Please help us serve you better by taking a few minutes to provide the following information.							
PATIENT INFORMATION							
ACCOUNT #	SOCIAL SECURITY NUMBER	TITLE	LAST NAME	FIRST NAME	M		
			CASEY	William	Mark		
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
240 LIGHTWOOD Farm Road							
ZIP CODE	CITY	STATE					
29388	Woodruff	SC					
HOME PHONE		EMERGENCY CONTACT PHONENAME					
864 486-9131							
BIRTHDAY	SEX (M, F)	RACE					
-1958							
MARITAL	☐ M-Married	☐ W-Widowed	EMPLOYMENT	☐ R-Retired	STUDENT	☐ P-Part	REL. TO INSURED
☐ S-Single	☐ D-Divorced	☐ X-Separated	☐ F-Full	☐ P-Part	☐ N-None	☐ F-Full	☐ N-None
				☐ SE-Self	☐ SP-Spouse	☐ CH-Child	
EMPLOYERSCHOOL NAME							
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE	CITY	STATE		BUSINESS PHONE			
LIST NAMES AND AGES OF OTHER FAMILY MEMBERS LIVING IN YOUR HOUSEHOLD. ARE THEY FOOTHILLS PATIENTS?							
FINANCIALLY RESPONSIBLE PARTY (IF OTHER THAN PATIENT)							
ACCOUNT #	SOCIAL SECURITY NUMBER	TITLE	LAST NAME	FIRST NAME	M		
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE	CITY	STATE					
HOME PHONE		BIRTHDAY		SEX (M, F)		RACE	
MARITAL	☐ M-Married	☐ W-Widowed	EMPLOYMENT	☐ R-Retired	STUDENT	☐ P-Part	REL. TO INSURED
☐ S-Single	☐ D-Divorced	☐ X-Separated	☐ F-Full	☐ P-Part	☐ N-None	☐ F-Full	☐ N-None
				☐ SE-Self	☐ SP-Spouse	☐ CH-Child	
EMPLOYERSCHOOL NAME							
STREET ADDRESS (ROAD OR STREET)				(APARTMENT # OR SECOND ADDRESS LINE)			
ZIP CODE	CITY	STATE		BUSINESS PHONE			
PRIMARY INSURANCE COMPANY NAME				MAILING ADDRESS		ATTENTION	
Cigna							
TELEPHONE #		POLICY #		GROUP #		EXP. DATE	
SECONDARY INSURANCE COMPANY NAME				MAILING ADDRESS		ATTENTION	
TELEPHONE #		POLICY #		GROUP #		EXP. DATE	
I hereby authorize the release of any medical or other information necessary to process insurance claims and hereby authorize payment of benefits directly to this practice for medical service rendered to myself or my dependents. I understand that I am responsible for any amount not covered by insurance. A photostatic copy of this authorization shall be considered as effective and valid as the original.							
SIGNATURE: Mark Casey				DATE: Oct 20, 2023			

Pt just had address change

Gonda - 26

KING 001901

Mark Casey

12/20/03 Pt. in for rx Effexor - states it did keep some - states on pain scale - JTC

12/20/03 MRI @ MBH of L5 spine 10/24/03 @ 815 - JTC
(Ø per art per Yusuf J. @ medcost)

10/20/03

MARK CASEY

17804

Frank E. Gonda, MD

B: CHRONIC LOW BACK PAIN

H: DEPRESSION

S: This 44-year-old white male is in for follow up on the above problems. He says his depression is markedly improved on the Effexor. He is less moody, less irritable. He is sleeping better. Stresses do not seem to bother him as much. The only side effect is delayed ejaculation. Back pain continues everyday. Some days it is worse than others. Recently he has noticed some numbness on the top of his right foot. The pain is non-radiating from his back into his legs.

O: Patient is in no acute distress. Blood pressure is 134/92. Pulse is 88. Weight is 177.5-pounds. Back reveals mild tenderness in the lumbosacral area, decreased range of motion, increased pain with extension. Straight leg raising is negative. Deep tendon reflexes are 2+. Motor and sensory are grossly intact. There may be a small area of numbness on the lateral aspect of the right foot and ankle. Mental status examination is normal.

A: As above.

P: Continue Ultram, 50 mg two q.i.d., no refill needed. Continue Zanaflex, 4 mg two q.h.s., no refill needed. Patient says he rarely takes that because it makes him too sleepy. Continue Viagra, 100 mg no refill needed. Renew Effexor-XR, 75 mg one q.-day, #30 with two refills. Lortab, 10/500 one b.i.d. for pain, #60 with two refills. Add Bextra, 10 mg one q.-day for antiinflammatory, #30 with two refills. GI precautions given. Schedule for MRI. Review of chart shows that he was supposed to have gone for an MRI several years ago but had some insurance problems, and he never did. He will be scheduled for this. Follow up in three months.
DNR: Frank E. Gonda, MD/Jmm11/4/03 Epidural @ MBH on 11/6/03 @ 1230 - faxed records - JTC
(Ø auth per Christi @ Cigna)

DATE	TIME A	CALLER		PT NAME - CHART #	PHONE #	ALL: P.S.C.O	MD
11/5/03	TIME P			Mark Casey	680-59229		Gonda
AGE	WT	HT	BY	MEDS	PE		
			JTC				
-pt states Percocet helped more than Lortab - given #60 on 10/20/03 + has #14 left (#46 in 15 days)							
DISPOSITION							
11/5/03 told him he Ø get Percocet + to take Lortab as instructed - Ø early RPT - JTC							
DRUG STORE				BY	TIME	A P	
				OK	7		

Gonda - 27

KING 001902

Mark Casey

TIME 11:30 AM DATE 11/7/03 PHONE 680.96.48
 NAME Mark Casey PARENT sister
 ADDRESS _____
 HISTORY Chronic LBP - Chronic CHARGE IF ANY
Contact not helping.
 WORKING DIAGNOSIS Chronic LBP
 TREATMENT TO ER tonight
To office Mon. AM.
 REMARKS (PHARMACY CALLED) 17804 7

2/15/03 Pt. in for discussion re: epidural inj. - states it of
 help - made pain worse - also RF Ultram - states 7-8 m. pain
 scale - G. Calvert, LPN

12/15/03 WILLIAM CASEY

17804

Frank E. Gonda, MD

CHRONIC LOW BACK PAINH: DEPRESSION

- S: This 45-year old white male with chronic low back pain and depression is in for follow up of the above problems and for medicine refill. Since I saw him last time he went and had one epidural, which did not work. It made his pain worse. He was out of work for several days. He is frustrated that he had to pay for the shot and he was out of work and it did not help. He did have an MRI which showed two bulging disks but no ruptures. He does not want to see a neurosurgeon because he would not be interested in surgery. He believes that the Effexor has helped his depression. He still has all the same family problems but everything is stable.
- O: Patient is in no distress. Blood pressure is 126/94. Pulse is 88. Weight is 177-pounds. Neck is supple. Lungs are clear. Heart is regular. Abdomen is soft and nontender. Back has good range of motion, no tenderness. Straight leg raising is negative. Deep tendon reflexes is 2+.
- A: As above.
- P: Counseled in detail. Suggested we go see another anesthesiologist at Regional Hospital to see if they could help with the shots. He did not want to see the ones at Mary Black Hospital. We will check his Insurance. Renew Ultram, 50 mg two p.o. q.i.d. #720 with one refill. Effexor-XR, 75 mg one q.-h.s. #90 with one refill. Bextra, 10 mg one q.-day #90 with one refill. Lortab, 10/500 one b.i.d. #30 with no refills. He ran out early. He still has another refill on his last prescription on the Lortab. I also gave for local purchase Ultram, 50 mg two q.i.d. #100 with no refill. The patient will let me know what he wants to do and we will go from there.

DNR: Frank E. Gonda, MD/ dfg

Gonda - 28

KING 001903

DATE 12/3/04	TIME 3:50	CALLER William Casey	PT NAME - CHART # Casey	PHONE # 486-9131	ALL RSCG MD
AGE 11/3/58	WT 180	BY JLL	MEDS Lortab	FE 0217804	
Has a question about MRI test					
DISPOSITION 12/04 RF Lortab + Viagra - states he go back for another					
epidural right now b/c he's trying to pay last one off JTC					
How can we be so depressed, so much pain, going thru divorce & P					
still have sex 2-3 x/wk. Lortab keeps him. no Refills					
- states he may use 4 one ul & now the next					
12/04 will call tomorrow for appt next ul					
DISPOSITION					
DRUG STORE: BY: JTC TIME: A P					

2/18/04 Pt. in for recheck + RF needs - states 6 on pain scale - JTC
(William)
12/10/04 MARK CASEY 13640 Frank E. Gonda, MD
17804

D: CHRONIC LOW BACK PAIN
E: DYSLIPIDEMIA
G: ERECTILE DYSFUNCTION
H: DEPRESSION

- S: This 45-year old white male is in for follow up of the above problems and medicine refill. He is tells me he has discontinued his Effexor. He does not feel depressed. He stopped it about a month ago. He was having a problem with delayed ejaculation so he discontinued it. He needs a refill on Viagra. It works well and he has had no problems with it. He has been taking the Bextra twice a day and wants to know if we can increase the dosage. He continues to have chronic low back pain. It is worse after long days at work. He is having some joint pains in his hands also.
- O: Patient is in no distress. Blood pressure is 134/96. Pulse is 88. Weight is 180-pounds. Neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular with no murmur. Abdomen is soft and nontender. Back reveals decreased range of motion and mild tenderness in the lumbosacral area. Straight leg raising is weakly positive bilaterally with full extension. Deep tendon reflexes are 2+. Hands reveal no swelling, no redness and no heat.
- A: As above. He appears stable. He has stopped his antidepressant. Review of chart shows that his lipids have been elevated in the past. He was supposed to start on Niacin but he says he never did.
- P: Check a lipid profile and an ATL. Treat lipids if needed. Renew Viagra, 100 mg one p.o. one hour prior to relations #10 with five refills. Renew Lortab, 10/500 one p.o. b.i.d. for pain #60 with two refills. Increase Bextra, 20 mg one q.-day #90 with one refill. That is for mail order. Follow up in three months or p.r.n.

DNR: Frank E. Gonda, MD/dlg

Gonda - 29

KING 001904

2-18-04. pt. notified Labs, Lipids venible, 3/1,
HDL ↓ (26) Start using low fat
diet - Inf mailed 40pt, ↑ exercise
at least 3x week ↓ 15 lbs.
Repeat Labs fasting in 3-6 months gH

3/4/04 pt. in for rx + RF med - states 6 on pain scale - JH

5/5/04 Samples given Lipitor 20mg #28 samples
Drug Name # Dispensed

Lot Number: 03650927 3/04 Initials: JH

Patient was educated regarding proper administration, drug interactions and side effects. Patient has been instructed to call our office with any questions or problems.

5/5/04. pt. notified Labs, Lipids venible, Begin
Lipitor 20mg 7 A.M. #28 samples
Lab in 4 weeks. JH

05/04/04

MARK CASEY

17804

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAIN

S: This patient is in for follow up on chronic low back pain. He is doing well with the medications. He does not need a refill on Viagra. He says his pain is well-controlled.

O: Patient is in no acute distress. Blood pressure is 134/86. Pulse is 80. Weight is 176-pounds. He has lost four pounds. Neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular with no murmur. Abdomen is soft and nontender. Lower extremities reveal no edema. Back reveals fairly good range of motion, but there is discomfort with twisting and tilting and some discomfort with palpation and percussion of the lower back. Straight leg raise is negative.

A: As above. He appears stable.

P: Check a lipid profile. Treat if needed. Renew medications which include: Ultram, 50 mg two p.o. q.i.d., #720 with one refill; Bextra, 10 mg one q.-day, #90 with one refill; Lortab-10/500, one b.i.d., #60 with one refill. Continue Zanaflex and Viagra. No refills needed. Follow up in three months or p.r.n.

DNR: Frank E. Gonda, MD/ jmm

DATE	TIME	CALLER	PT. NAME - CHART #	PHONE #	ALL: P.S.G.O.	MD
5/20/04	TIME 9	-	Mark Casey			Gonda
AGE	WT.	T.	BY	MEDS.	FE:	
			JH			
- pt states he called about his mail order + states he should receive Ultram on Tues						
- needs enough @ local pharm until then						
Disposition						
Ultram 50mg 2 qid for pain						
#60/p						
DRUG STORE: CVS-RL				BY:	TIME	Gonda - 30

pt notified persons. mach print

Call to: Dr. E. Gonda

KING 001905

INSURANCE COVERAGE INFORMATION: Please show all numbers on your card(s).**PRIMARY INSURANCE COVERAGE:**

Insured (Name on card) William M Casey Insured ID Number _____
 Insurance Co. Name: Blue Cross - Blue Shield Group/Member/Policy Number _____
 Address: _____ Effective Date: _____

SECONDARY INSURANCE COVERAGE:

Insured (Name on card) _____ Insured ID Number _____
 Insurance Co. Name: _____ Group/Member/Policy Number _____
 Address: _____ Effective Date: _____

IN CASE OF EMERGENCY

Name and Phone number of Emergency Contact:

Carole Lynne Casey (sister) 680-9648

GENERAL CONSENT FOR MEDICAL AND/OR SURGICAL TREATMENT

The patient referred on the registration forms, either personally or through the person legally empowered to give this consent obligate the patient as herein contemplated, requests and authorizes this office, its employees, agents, and other affiliates to provide general care for this and all subsequent requests for care. This will include, without limitation, routine diagnostic procedures and medical treatments, which is to include whatever procedures that are deemed necessary by the attending doctors or their affiliates.

Date May 4, 2004 Signature of Patient and / or Guardian, if patient is Minor William Mark Casey

AUTHORIZATION TO PAY BENEFITS TO THE PHYSICIAN

I hereby authorize the office of Mary Black Physician Group to release any medical information required during the course of examination and treatment and permit payment directly to them any benefits due for their services rendered. I recognize and accept responsibility for services rendered regardless of insurance coverage. This includes but is not limited to coinsurance, copayment, deductible and non-covered services.

Date May 4, 2004 Signature of Patient and / or Guardian, if patient is Minor William Mark Casey

MEDICARE AUTHORIZATION

I request that payment of authorized Medicare benefits be made either to me or on my behalf to Mary Black Physician Group for any services furnished to me by that physician or supplier. I authorize any holder of medical information about me to release to the Health Care Financing Administration and its agents any information needed to determine these benefits or the benefits payable for related services.

Date _____ Signature of Patient and / or Guardian, if patient is Minor _____

How were you referred to the practice?

☐ Dr. _____ ☐ Friend/Relative ☐ Radio ☐ Newspaper
☐ Other: _____ ☐ Hospital Referral Service

Gonda -31

KING 001906

FOOTHILLS FAMILY MEDICINE MARY BLACK HEALTH SYSTEM OUTPATIENT QUESTIONNAIRE

PATIENT NAME: William Mark Casey DATE: May 4, 2004

PHYSICAL

Please answer yes or no to the following questions:

	Yes	No
Do you have any new difficulty with daily living activities? (EG: stair climbing, easily tired)	<u> </u>	<u> ✓ </u>

Explain: _____

PATIENT/FAMILY EDUCATION/LEARNING

Circle all that apply to patient:

Non English Speaking: Needs an interpreter

Primary Language English

Hearing Impairment

Visual Impairment

Deaf

Blind

Hearing Aids

Difficulty Reading

NUTRITIONAL SCREEN

Please answer yes or no to the following questions:

	Yes	No
1) Have you had an illness or condition that made you change the kind and/or amount of food you eat?	<u> </u>	<u> ✓ </u>
2) Have you had any unintentional weight loss or gain greater than 10 pounds over the last month?	<u> </u>	<u> ✓ </u>
3) Do you have swallowing difficulty?	<u> </u>	<u> ✓ </u>

REVIEWED BY: Robert P. D. DATE: 5/4/04

* To be updated by the patient or nurse on the first visit of the year.

Gonda - 32

883-OPQR009

KING 001907

FOOTHILLS FAMILY MEDICINE - BOILING SPRINGS
Acknowledgement of Receipt of Notice of Privacy Practices

Attached please find FOOTHILLS FAMILY MEDICINE - BOILING SPRINGS' Notice of Privacy Practices. Your name and signature on this cover sheet indicate that you have received a copy of FOOTHILLS FAMILY MEDICINE - BOILING SPRINGS' Notice of Privacy Practices on the date indicated. The notice is yours to keep.

If you have any questions regarding the information set forth in FOOTHILLS FAMILY MEDICINE - BOILING SPRINGS' Notice of Privacy Practices, please do not hesitate to contact Rita Sigers, Privacy Officer at (864) 591-0745.

Printed Name of Patient: William Mark Casey
 Signature: William Mark Casey
 Authority to Sign If Not Patient: _____
 Date: June 29, 2004

**Request for authorization for disclosure of Protected Health Information
 to family member(s), friend(s), or caregiver(s)**

Family member(s), friend(s), or caregiver(s) authorized to receive PHI:

Name	Relationship
<u>Arcie Lynne Casey</u>	<u>Sister</u>
<u>Graeg Casey</u>	<u>Brother</u>
_____	_____
_____	_____

Patient Signature: William Mark Casey
 Patient DOB: [REDACTED] 1958
 Mother's Maiden Name: Hudson

If the person(s) authorized above call for access to your PHI, they will have to give the above identifiers in order to have access to the information over the phone.

This includes billing information.

Picture ID will be required if requesting access in person.

Gonda - 33

KING 001908

Mark Casey

12/04 Pt. in for hosp. Flt states they found a piece of metal in chest & when they went to remove metal they punctured lung - states this has caused ↑ pain along w/ original pain - sister states pt has ↑ anxiety about going to MD (the reason she's in the room) - states 5 on pain scale - JTC

6/29/04 Samples given Syr for 20mg # 4bx
Date Drug Name # Dispensed

Lot Number: 0365692 / 8/04 Initials: DM

Patient was educated regarding proper administration, drug interactions and possible side effects. Patient has been instructed to call our office with any questions or problems.

6/29/04 Samples given 3010 ft starter kit # 1 kit
Date Drug Name # Dispensed

Lot Number: 1118K03A / 7/1/05 Initials: DM

Patient was educated regarding proper administration, drug interactions and possible side effects. Patient has been instructed to call our office with any questions or problems.

06/29/04

MARK CASEY

17804

Frank E. Gonda, MD

CHEST WALL PAIN

ANXIETY DISORDER

RECENT PNEUMOTHORAX

- S: This 44-year-old white male is in here today with his sister. He has recently been in the hospital. Apparently he was having some chest pain while at work and was taken to Spartanburg Regional. The chest x-ray revealed a foreign metallic body in his chest. They thought it was a screw. Bronchoscopy was done which was negative. A repeat bronchoscopy was done with some sort of a laser treatment which resulted in a pneumothorax. He ended up on a respirator and with a chest tube. He still has chest pain. He has not been back to work. Ever since then he has been nervous and anxious. He cannot sit still. He is restless. He does not sleep well. Patient has been having chest pains for two months. It is worse with exertion. He feels it like a squeezing or a fullness in his left chest. It is always on the left side. There is no shortness of breath, some nausea, some diaphoresis occasionally. Since he has been out of work, he has had very little pain. The pain can come on while at work. He does a very strenuous job at Michelin. He can hurt for the entire eight or twelve hours of his shift. On occasion he has stopped because of the pain. The pain gets better, but then it comes back when he goes back to work. He has seen a cardiologist four years ago. He had a slightly abnormal stress test which led to a heart catheterization which was normal. Patient continues to smoke a pack of cigarettes per day. He continues on a lot of pain medicine for his low back pain.
- O: Patient is in no distress. Blood pressure is 126/94. Pulse is 100. Weight is 169-pounds. Neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular with no murmur, no extrasystole. Abdomen is soft and nontender. Left chest wall is exquisitely tender between two ribs, probably the sixth and seventh ribs anteriorly just to the left of the sternum. Pressure reproduces his pain. Back reveals no CVA tenderness. Lower extremities reveal no edema. Straight leg raise is negative.
- A: Diagnosis as above. I do not believe patient needs any cardiac evaluation or GI evaluation. He has no GI symptoms. I offered to set him up for gallbladder ultrasound or upper GI, but he declined at this time.
- P: He will continue current medications as listed in the chart. He will begin Zolof, 50 mg one p.o. q.-day, sample and prescription given. See him back in six to seven weeks.
DNR: Frank E. Gonda, MD/jmm

Gonda - 34

KING 001909

William Casey #17804
 7/27/04 - pt here for med check - no problems or pain etc
 Notified pt of lab - cont. med - called in Rx - etc

07/27/04 MARK CASEY 17804 Frank E. Gonda, MD

E: DYSLIPIDEMIA
 D: CHRONIC LOW BACK PAIN
 H: DEPRESSION
CHEST PAIN

- S: This 44-year-old white male is in for follow up of the above problems and for medicine refill. He has been on Lipitor now for four weeks continuously and needs lab work done to see if it has helped. He has been on Zoloft about three weeks and he thinks that he has mellowed out a little bit and is feeling a little bit better. He just got his prescription filled. He continues on his chronic back pain medicines of Ultram and Zanaflex and Bextra. No refills on that are needed. Those are mail order. He needs a refill on Lortab. He has had no side effects from the Lipitor or the Zoloft. He continues to have chest pain from his recent bronchoscopy and pneumothoracic chest tube. He has an appointment in a couple of day with Dr. Wilson Smith the Pulmonologist. The patient says that he has changed lung doctors because the others did not seem concerned over his problems.
- O: Patient is in no acute distress. Blood pressure is 120/76. Pulse is 76. Weight is 178-pounds. Neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular with no murmur. Abdomen is soft and nontender. Back reveals decreased range of motion. Straight leg raise is negative. Mental status examination is normal. He is alert, oriented, and coherent. Speech is not rapid or pressured.
- Diagnosis as above. He appears stable. Of note is that he has not returned to work yet. Check a lipid profile and an ALT. Renew Lipitor, 20 mg one p.o. q.-p.m #90 with one refill. This is for mail order. Adjust medicine if needed. Renew Zoloft, 50 mg one q.-day #30 with two refills. No mail order for that at this time. We will see him back in two months to see how he is doing for that. Renew Lortab, 10/500 one p.o. b.i.d. for pain #60 with two refills. Continue Ultra, Zanaflex, and Bextra.
- DNR: Frank E. Gonda, MD/ejb

8/17/04 Dismissed w/ Dr. Jay Grace - been seeing Mark & 3 wks
 better on Zoloft, still wants to ↑ still lots of anxiety.
 ↑ Zoloft 100mg + p.o. q.d. #30/2 8/17/04
 CR5 Ken Ivie R.D. 486-6990 [signature]

11/04 Pt. states he was sent here by Dr. Grace - to discuss new med
 (Cymbalta) & ortho surg so pt can RTW - states 3 on pain scale - etc

11/04 - appt. made w/ Dr. Glenn Scott on 9/20/04 @ 10:00 - Shannon m...

Gonda - 35

KING 001910

09/10/04

MARK CASEY

17804

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAIN

H: DEPRESSION

CHEST WALL PAIN

S: This 45-year-old white male is in for follow up on the above problems. He has been to the Pain Clinic. He is not satisfied with them and is not going back. He has been seeing Jay Grace who is a psychologist. Jay recently called and asked if we could increase Zolof 100 mg per day. He has been on the higher dose for three weeks and thinks the medicine has helped. Mark is seen today at the request of Jay Grace who suggests we switch him to Cymbalta. This is a combination drug. I believe it is an antidepressant with a mood stabilizer. I have not used it before and I do not have any experience and have not read anything about it. Mark continues to have his chronic low back pain. He continues to have chest pain. He has seen the pulmonologist who says his lungs are fine. Jay Grace also wants him to see an orthopedist to evaluate his back pain to see if he can return to work at the same level of exertion that he has been doing in the past. Currently he continues on Ultram, Zanaflex, Lortab, and Bextra.

O: Patient is in no distress. Blood pressure is 136/94. Pulse is 100. Weight is 180-pounds. Mental status examination is normal. Physical examination is not done today.

A: As above.

P: Continue current medications. Schedule him an appointment with orthopedist Dr. Glenn Scott to evaluate his chronic low back pain and his work capacity. Will discuss with Dr. Jay Grace concerning switching his medicines. I personally think it is too early to switch since he has only been on the higher dose of Zolof for three weeks.

DNR: Frank E. Gonda, MD/jmm

DATE	TIME	CALLER	PT NAME - CHART #	PHONE #	ALL: P.S.O.O	MD
9/23/04	1:45	W. Mark Casey		486-9131		Gonda
AGE	WT	BY	MEDS	FE		
			ALL Zolof	217804		
PT calling to see if he can up his dosage						
to 30 mg						
9/23/04 10:10 AM 3pm						
DISPOSITION						
Cont Zolof 100mg qd						
Add Zolof 50mg qd						
Flu 4 wks						
F						
DRUG STORE						
CWS-486-						
BY:						
TIME						
A						
P						

7 #28 samples pt. notified - samples given 6/9/10 - DNR

-we only had 2 boxes of Zolof 50mg samples. will call pt. when we get more in stock

9/23/04 Samples given Zolof 50mg # 26x

Date

Samples given

Drug Name

Dispensed

Lot Number: 0104099 13-1-06

Initials: Jmm

Patient was educated regarding proper administration, drug interactions and side effects. Patient has been instructed to call our office with

Gonda - 36

KING 001911

09/22/04

MARK CASEY

17804

Frank E. Gonda, MD

H: DEPRESSIOND: CHRONIC LOW BACK PAIN

S: Telephone conversation with psychologist Dr. Jay Grace who is following patient for anxiety and depression. Dr. Grace sent a note suggesting increasing Zoloft or adding Cymbalta. We discussed this today. I have no experience with this new medicine, and I felt uncomfortable adding it to the Zoloft. Therefore when Dr. Grace sees Mark later this week if he has not shown further improvement, patient will call and I will increase Zoloft to 150 mg q.-day. If he does not respond to that, we could switch him to Cymbalta or we could have a psychiatrist see him who may feel comfortable using both medicines together.

DNR: Frank E. Gonda, MD/jmm

10/6/04 Samples given Zoloft started # 1pk
 Date Drug Name # Dispensed

Lot Number: 00052044 2406 Initials: GC

Patient was educated regarding proper administration, drug interactions and possible side effects. Patient has been instructed to call our office with any questions or problems.

DATE 9/22/04	TIME 3:30 P	CALLER Dr. Jay Grace	PT. NAME - CHART # Mark Casey	PHONE # 516-0-1512	ALL. P.S.C.O. Gonda
AGE 42	WT. 180	HT. 5'10"	EDUC. HS	RE. 217804	
Dr. has noticed that pt has improved some in certain areas, but feels that it needs to be referred to a psychiatrist. Want to know if you want to refer him or do you want him to. He suggests Dr. Jeff Smith or Dr. Toney Gomban. - Notified Dr. Grace he suggested to wait and discuss w/ Dr. Gonda					
On Monday due to Dr. Gonda being off - A/P					
OK to refer to psychiatrist					
DISPOSITION					
DRUG STORE					
Notified Dr. Grace OK to refer.					

9/24/04 H. in for rev - states he's out of mid-state l. on pain scale 2° back pain - GC

Gonda - 37

KING 001912

10/19/04

VERMONT CASEY
mark

17804

Frank E. Gonda, MD

CHRONIC LOW BACK PAINDEPRESSIONHYPERCHOLESTEROLEMIAJ: ANXIETY DISORDER

S: This 45-year-old white male is in for follow up on the above problems and for medicine refill. His anxiety and depression are slightly improved on a higher dose of Zoloft. Psychologist Dr. Jay Grace has recommended a referral to a psychiatrist in Greenville. He continues with chronic low back pain. He has been out of work for about five months, and he is still in pain just about everyday, but not as bad. He does not feel he can return to work. He brings papers in for short-term disability. He saw orthopedist Dr. Lynn Scott who felt that patient could proceed with his work. He had no problem with his returning to his current work, but he did recommend finding an alternative. Dr. Scott's diagnosis was degenerative arthritis with bulging disks in the lumbosacral spine. Patient does not believe that he can return to the work that he has been doing.

O: Patient is in no acute distress. Blood pressure is 126/88. Pulse is 100. Weight is 177-pounds. Neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular with no murmur. Abdomen is soft and nontender. Back reveals decreased range of motion in all directions, no tenderness to palpation. Straight leg raise is weakly positive on the right. Strength in the lower extremities is normal. Deep tendon reflexes are 2+.

A: As above.

P: Renew medications which include: Ultram, 50 mg two q.i.d., #720 with one refill; Zanaflex, 4 mg two q.h.s., #180 with one refill; Lortab-10/500, one b.i.d., #60 with two refills; Bextra, 20 mg one q.-day, #90 with one refill; Lipitor, 20 mg one q.a.m., #90 with one refill; Zoloft, 100 mg one-and-a-half tablets q.a.m., #135 with one refill. Schedule appointment with Dr. Tony Goodbar, psychiatrist in Greenville. Check a lipid profile and an ALT. Adjust medicines as needed. Papers for short-term disability completed. Will be out of work for another three months.
DNR: Frank E. Gonda, MD/jmm

06/10/04 - I faxed referral forms as well as records to Dr. Goodbar, I called pt. to let him know what's going on + he states he already has appt. w/ Dr. Smith on 11/10 @ 4:20.

11/12/05 Pt. in for re-eval status 6 on pain scale - MC

01/12/05

MARK CASEY

17804

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAING: ERECTILE DYSFUNCTION

S: This 46-year-old white male returns for follow up of the above problems. Since I saw him last he has seen a psychiatrist in Greenville by the name of Jeffrey Smith who has him on Cymbalta, 60 mg one a day. He is off of Zoloft. He does not think he is much better. He needs refills on his pain medicine and his Viagra. He still has back pain. He has not returned to work. He has seen several specialists for his pain and his lung problems.

O: Patient is in no acute distress. Blood pressure is 116/84. Pulse is 68. Weight is 185-pounds. Lungs are clear with no wheezes. Heart is regular. Abdomen is soft and nontender. Back reveals good range of motion. Straight leg raise is negative.

A: As above.

P: Continue follow ups with the specialists. Renew Lortab-10/500 one b.i.d., #60 with two refills. Renew Viagra, 100 mg one p.o. one hour prior to relations, #10 with two refills. See him back in three months at which time he will be due his other medicines and lab updates.
Gonda - 38

Frank E. Gonda, MD/jmm

KING 001913

Mark Casey

Pt. in for MR - state 7 on pain scale ID ka. - JFC
(2° chronic pain)

04/05/05

MARK CASEY

17804

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAIN

E: DYSLIPIDEMIA

G: ERECTILE DYSFUNCTION

H: DEPRESSION

I: HYPERCHOLESTEROLEMIA

S: This 46-year-old white male is in for follow up on the above problems and for medicine refill. He denies chest pain or shortness of breath. His appetite is good, and he moves his bowels well. He continues on Cymbalta from his psychiatrist. He thinks the anxiety and depression are fairly stable. He continues with chronic low back pain. This has not changed. He has no problems with any of his medications.

O: Patient is in no distress. Blood pressure is up a little at 156/86. Pulse is 100. Weight is 187-pounds. Neck is supple with no thyromegaly or carotid bruits. Lungs are clear with no wheezes. Heart is regular with no murmur. Abdomen is soft with no organomegaly. Lower extremities reveal no edema. Straight leg raise is negative. Deep tendon reflexes are 2+. Back reveals fairly good range of motion. There is no tenderness to palpation at this time.

A: As above.

P: Renew medications which include: Ultram, 50 mg two q.i.d.; Zanaflex, 4 mg two q.h.s.; Viagra, 100 mg one p.o. one hour prior to relations; Bextra, 20 mg one q.a.m. Increase Lipitor to 40 mg q.a.m. #90 days with one refill on all medications. Renew Lortab-10/500 one b.i.d., #60 with two refills. Will come back fasting in the morning for lipid profile and an ALT. Adjust medicines further as needed. Continue with psychiatrist. Follow up in three months or p.u.m.

DNR: Frank E. Gonda, MD/jmm

5/16/05 Samples given Toradol 145mg # 1 Box of 28
Date Drug Name # Dispensed

Lot Number: 236662E2L X 2/14 Initials: JN

Patient was educated regarding proper administration, drug interactions and possible side effects. Patient has been instructed to call our office with any questions or problems.

5/16/05 pt not for labs. No improvement in Trig & HDL. Doc do diet & exercise cont Lipitor but ↓ to 40 mg 1/2 tablet q.d.
Add Toradol 145 mg 4 7 pm. 28 samples lab in 4 weeks

6/28/05 pt presents for chel. ✓; needs Rx. Lortab; pain scale 7. esp - bladder nec.

6/28/05 Samples given Toradol 145mg # 1 bx
Date Drug Name # Dispensed

Lot Number: 276322E2L / 7/1/06 Initials: DE

Patient was educated regarding proper administration, drug interactions and possible side effects. Patient has been instructed to call our office with any questions or problems.

Gonda - 39

KING 001914

06/28/05

MARK CASEY

17804

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAIN

I: HYPERCHOLESTEROLEMIA

S: This 46-year-old white male is in for refill on medications. He continues to have chronic low back pain. He remains out of work. He wakes up every morning with the same amount of pain. Since he has not been working, he has overall less pain. If he does any kind of yard work or house work his pain returns. He was recently switched to Mobic since Bextra was unavailable. He was also started on Tricor, and his Lipitor was reduced in half because triglycerides remained markedly elevated. He has had no side effects from the medication. He continues to see the psychiatrist in Greenville who now has him on Cymbalta, 60 mg two a day and Adderall-XR, 20 mg two a day.

O: Patient is in no acute distress. Weight is 184-pounds. Blood pressure is 118/84. Pulse is 68. Neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular with no murmur. Abdomen is soft and nontender. Back reveals mild tenderness in the lumbosacral area. There is discomfort with twisting and tilting. Straight leg raise is negative. Deep tendon reflexes are 2+. Motor and sensory are grossly intact.

A: Chronic low back pain, stable. Really unchanged.

P: Continue Mobic, 7.5 mg one q.-day; Zanaflex, 4 mg two q.h.s.; Ultram, 50 mg two q.i.d. No refills needed. Renew Lorib-10/500 one p.o. b.i.d., #60 with two refills.

A: Hyperlipidemia.

P: Check a lipid profile and an ALT. Continue Lipitor, 40 mg one-half tablet q.-day. Tricor, 145 mg one q.p.m., #90 with one refill. Samples for a month. Adjust medicines as needed. Continue with the psychiatrist and his medications. See him back in three months.

DNR: Frank E. Gonda, MD/jmm

DATE	TIME	CALLER	PT. NAME - CHART #	PHONE #	ALL: P.S.G.O.	MO
8/16/05	10:15	SELF	MARK CASEY	680-5929		Gonda
AGE	WT	HT	BY	MEAS.	RE	
46	183.5	58	HK			
Jame - pls. call						
8/16/05 pt. stated he has disability form to be						
filled out - stated we have form - told pt we have form -						
pt to get form + told him old form to see if we could						
fill out - OK						
I don't do disability forms -						
DISPOSITION	DRUG STORE	BY	TIME	A	P	

Gonda -40

KING 001915

Mark Casey #17804

DATE	TIME	CALLER	PT NAME - CHART #	PHONE #	ALL P.S.C.O.	MD
8/17/05	11:30	Self	Mark Casey	486-9873		Gonda
AGE	WT	HT	BY	MEAS	RE	
46	158	5'8"	He			
Jaime - pls. call						
DISPOSITION: 8/17/05 states Aetna never rec. records fr. us re: disability claim - told pt we sent records on 4/27/05 but that Aetna may have paid for records - never rec. them - told him he should pay us \$20 + we could fax to Aetna - but pt fax until we rec. pymt. - pt paid + records saved						

9/28/05 Pt. in for rev - states 5 on pain scale - IDV - Galvert, LPN - (2° back pain)

09/28/05

MARK CASEY

17804

Frank E. Gonda, MD

CHRONIC LOW BACK PAIN
HYPERCHOLESTEROLEMIA
ELEVATED BLOOD PRESSURE WITHOUT HYPERTENSION
ABDOMINAL PAIN WITH VOMITING

- S: This 46-year-old white male is in for follow up on the above problems and for medicine refill. He denies chest pain or shortness of breath. His appetite is good and he moves his bowels well. Recently a psychiatrist changed his medicines. Strattera was added but within a few days he was throwing up. He has continued to throw up for over two weeks. Dr. Fogarty, a pulmonologist, ordered an upper GI. As far as the patient knows the x-ray was normal. He was started on Prilosec over the counter and he is better. He has not thrown up in several days. His back pain is stable. He has no trouble with his medication. He denies muscle aches from Lipitor.
- O: Patient is in no acute distress. Blood pressure is up today at 162/104. Repeat blood pressure by me was 138/100. Pulse is 100. Weight is 182-pounds. Neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular with no murmur. Abdomen is soft and nontender. Lower extremities reveal no edema. Back reveals decreased range of motion with discomfort with movement and tenderness to palpitation in both lumbosacral areas. Review of upper GI report shows mild reflux into the distal esophagus and duodenal bulb irregularity, which could be from a peptic ulcer, but an ulcer was not seen.
- A: As above.
- P: Renew Ultram, 50 mg two q.i.d. #720 with one refill. Viagra, 100 mg one p.o. one hour prior to relations #30 with one refill. Lortab, 10/500 one b.i.d. #60 with two refills. Continue Lipitor, 40 mg one q.a.m. No refill needed. Tricor, 145 mg one q.h.s. No refill needed. Check a basic metabolic panel and ALT. Continue over the counter Prilosec. Follow up in a few weeks if he is still having problems.

Frank E. Gonda, MD/mhh

12/20/05 Pt. in for rev - needs chol ✓ - states 6-7 on pain scale - IDV - Galvert, LPN

Gonda - 41

KING 001916

12/20/05

MARK CASEY

17804

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAINI: HYPERCHOLESTEROLEMIA

S: This 47-year-old white male is in for refills and lab work. Back pain continues the same. He is having no troubles with any of his medication. The psychiatrist still has him on Remeron, and he thinks this has helped his depression. He is not worrying as much. I have told him today about potential increased risk of seizures when taking Ultram and antidepressants. He has been on both types of medicines for a long, long time and never had trouble. He understands that there is a risk, and he will consider stopping antidepressants. He will discuss with his psychiatrist. For the last several months, he has been on Tricor and Lipitor with no side effects. His numbers have improved.

O: Patient is in no distress. Blood pressure is up a little at 134/96. Pulse is 100. Weight is 184-pounds. The neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular without murmur. Abdomen is soft and nontender. Back reveals mild tenderness to palpation. He has good range of motion. Straight leg raise is negative.

A: As above.

P: Continue medicines as listed in the chart. The only refills are Lortab, 10/500 one b.i.d. #60 with two refills; Mobic, 7.5 mg one q.-day #90 with one refill. Check a lipid profile and ALT. Adjust medicines as needed. See him back three months.

DNR: Frank E. Gonda, MD/ ejb

7

3/13/06 pt. in for rev-states 7 on pain scale - IDV - Valvert, LNV

3/14/06 Samples given Vylorin 10/40 #4 packs

Date

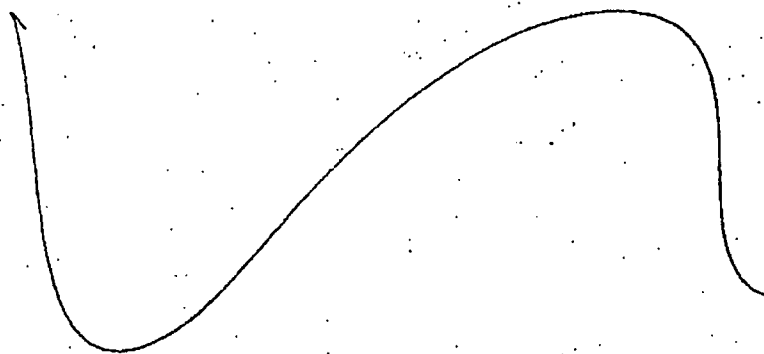
Drug Name

Dispensed

Lot Number: B6151 78-07 Initials: JH

Cont was educated regarding proper administration, drug interactions, and possible side effects. Patient has been instructed to call our office with any questions or problems.

3/14/06 pt notified labos; meds is working, cont Tricor
D/C Lipitor Begin Vylorin 10/40 ÷ 2d.
#28 samples. had 4 weeks fasting. JH



Gonda - 42

KING 001917

FOOTHILLS FAMILY MEDICINE MARY BLACK HEALTH SYSTEM OUTPATIENT QUESTIONNAIRE

PATIENT NAME: WM Mark Casey DATE: Jun 12, 2005

PHYSICAL

Please answer yes or no to the following questions:

	Yes	No
Do you have any new difficulty with daily living activities? (EG: stair climbing, easily tired)	<u>✓</u>	<u> </u>

Explain: trouble regaining strength + energy after June 04 bronchoscopy

PATIENT/FAMILY EDUCATION/LEARNING

Circle all that apply to patient:

Non English Speaking: Needs an interpreter

Primary Language English

Hearing Impairment

Visual Impairment

Deaf

Blind

Hearing Aids

Difficulty Reading

NUTRITIONAL SCREEN

Please answer yes or no to the following questions:

	Yes	No
1) Have you had an illness or condition that made you change the kind and/or amount of food you eat?	<u> </u>	<u>✓</u>
2) Have you had any unintentional weight loss or gain greater than 10 pounds over the last month?	<u>✓</u>	<u>✓</u>
3) Do you have swallowing difficulty?	<u> </u>	<u>✓</u>

REVIEWED BY: G. Colvert, LPN DATE: 6/12/05

* To be updated by the patient or nurse on the first visit of the year.

Gonda - 43

883-OPQ009

KING 001918

MARY BLACK PHYSICIAN GROUP	
Patient Information: This section refers to the PATIENT ONLY	
Account Number: _____	Chart Number: <u>17804</u>
Social Security Number: _____	Employed ☒ Retired _____
Last Name: <u>CASEY</u> Jr., II, _____	Employer: <u>Michelin Tire Corp</u>
First Name: <u>William</u> Middle Name: <u>MARK</u>	Address: _____
Maiden Name: <u>N/A</u> Spouse Name: <u>N/A</u>	Zip Code: _____
Address: <u>240 Lightwood Farm Road</u>	City/State: <u>Spartanburg SC</u>
Zip Code: <u>29338</u> City: <u>Woodruff</u> State: <u>SC</u>	Marital Status: <u>Divorced</u>
E-mail Address: _____ @ _____	Primary Care Physician: <u>Dr Gonda</u>
Home Phone: <u>(864) 486-9131</u>	Primary Care Physician Phone: _____
Work Phone: <u>(864) 680-5929</u> * <u>Home 2</u> Ext: <u>cell</u>	If Student ☐ Full-Time ☐ Part-Time
Birth Date (mm/dd/yy): _____ 58 Sex: ☒ Male ☐ Female	
Responsible Party: This section refers to the PERSON/PARTY WHO SHOULD RECEIVE THE BILL	
Relationship to Patient: ☐ Self(skip to next section) ☐ Parent ☐ Spouse ☐ Employer ☐ Other: _____	
Social Security Number: _____	If Employed, Employer: _____
Last Name: _____ Jr., II, _____	Address: _____
First Name: _____ MI _____	Zip Code: _____
Address: _____	City/State: _____
Zip Code: _____ City: _____ State: _____	
Home Phone: () _____	
Work Phone: () _____ Ext _____	
Birth Date (mm/dd/yy): _____ Sex: ☐ Male ☐ Female	If Student ☐ Full-Time ☐ Part-Time
Subscriber Information: This section refers to the PERSON IN WHOSE NAME THE INSURANCE IS LISTED	
Relationship to Patient: ☐ Self(skip to page 2) ☐ Parent ☐ Spouse ☐ Other: _____	
Social Security Number: _____	If Employed, Employer: _____
Last Name: _____ Jr., II, _____	Address: _____
First Name: _____ MI _____	Zip Code: _____
Address: _____	City/State: _____
Zip Code: _____ City: _____ State: _____	
Home Phone: () _____	
Work Phone: () _____ Ext _____	
Birth Date (mm/dd/yy): _____ Sex: ☐ Male ☐ Female	If Student ☐ Full-Time ☐ Part-Time
Gonda - 44	
Please ensure the office has a copy of your most recent insurance card(s)	

KING 001919

INSURANCE COVERAGE INFORMATION: Please show all numbers on your card(s).**PRIMARY INSURANCE COVERAGE:**

Insured (Name on card) _____ Insured ID Number _____
 Insurance Co. Name: _____ Group/Member/Policy Number _____
 Address: _____ Effective Date: _____

SECONDARY INSURANCE COVERAGE:

Insured (Name on card) _____ Insured ID Number _____
 Insurance Co. Name: _____ Group/Member/Policy Number _____
 Address: _____ Effective Date: _____

IN CASE OF EMERGENCY

Name, Relationship and Phone number of Emergency Contact:

CAROLE LYNN Hyslop sister 576-6537 / 680-9648

GENERAL CONSENT FOR MEDICAL AND/OR SURGICAL TREATMENT

The patient referred on the registration forms, either personally or through the person legally empowered to give this consent and obligate the patient as herein contemplated, requests and authorizes this office, its employees, agents, and other affiliates to provide general care for this and all subsequent requests for care. This will include, without limitation, routine diagnostic procedures and medical treatments, which is to include whatever procedures that are deemed necessary by the attending doctors or their affiliates.

Date Jan 12, 2005 Signature of Patient and / or Guardian, if patient is Minor William Mark Casey

MEDICAL RECORDS RELEASE

I authorize release of my medical records to PL/BS and permit a copy of this authorization to be used as the original.

Date Jan 12, 2005 Signature of Patient and / or Guardian, if patient is Minor William Mark Casey

AUTHORIZATION TO PAY BENEFITS TO THE PHYSICIAN

I hereby authorize the office of Mary Black Physician Group to release any medical information required during the course of examination and treatment and permit payment directly to them any benefits due for their services rendered. I recognize and accept responsibility for services rendered regardless of insurance coverage. This includes but is not limited to coinsurance, copayment, deductible and non-covered services.

Date Jan 12, 2005 Signature of Patient and / or Guardian, if patient is Minor William Mark Casey

MEDICARE AUTHORIZATION

I request that payment of authorized Medicare benefits be made either to me or on my behalf to Mary Black Physician Group for any services furnished to me by that physician or supplier. I authorize any holder of medical information about me to release to the Health Care Financing Administration and its agents any information needed to determine these benefits or the benefits payable for related services.

Signature of Patient and / or Guardian, if patient is Minor

How were you referred to the practice ...

Gonda - 45

☐ Dr. _____ ☐ Friend/Relative ☐ Radio ☐ Newspaper
☐ Other: _____ ☐ Hospital Referral Service

KING 001920

03/13/06

MARK CASEY

1704

Frank E. Gonda, MD

D: CHRONIC LOW BACK PAIN
 G: ERECTILE DYSFUNCTION
 H: DEPRESSION
 I: HYPERCHOLESTEROLEMIA
 J: ANXIETY DISORDER

S: This 47-year-old white male is in for follow up on the above problems and for medicine refill. He continues with the psychiatrist who has him on Adderall, Remeron and Ambien. He does not need a refill for his Lortab today because he says he got some from Dr. Fogarty. He does request a prescription for Norco. He says it is supposed to be safer on the liver. I told him I was not familiar with it and would have to read on it. Patient says he has increased stress, anxiety and depression because of pending law suit concerning the injury from when he had an endoscopy resulting in a pneumothorax. He has had problems ever since and he is waiting to go to trial.

O: Patient is in no acute distress. Weight is 188.5-pounds. Blood pressure is 132/86. Pulse is 88. Neck is supple with no thyromegaly. Lungs are clear with no wheezes. Heart is regular with no murmur. Abdomen is soft with no organomegaly. Lower extremities reveal no edema. Back reveals full range of motion and nontender.

A: As above.

P: Renew medications which include: Ultram, 50 mg two q.i.d.; Zanaflex, 4 mg two q.h.s.; Lipitor, 40 mg one q.a.m.; Mobic, 7.5 mg one q.a.m.; Tricor, 145 mg one q.h.s. #90 days with one refill on each. No refill needed on Viagra or Lortab. Continue meds from the psychiatrist. Check the PDR. Norco is hydrocodone and Tylenol, same as Lortab. It does have a lower dose of Tylenol by 175 mg, which I think is insignificant. No prescription for that given today. Check a lipid profile and ALT. Follow up in three months or p.r.n.

Frank E. Gonda, MD/ mhh

17804

DATE 3-16-06	TIME 2:30	CALLER Mark Casey	PT NAME - CHART # Wm Marshall Casey	PHONE # 486-9873	ALL: P.S.C.O. 3	MD. Gonda
AGE 47	WT. 188.5	BY VH	MEDS.	RE:		
from from medco needs to be faxed				To give med Rx for		
3/16/06 PM to RIC 4pm				a mail order		
DISPOSITION: 3/16/06 pt to have medco from home				No need to fax.		
3/16/06 also wants Rx for Norco - 175 mg				Dose of Norco is		
insignificant. No need to change since only 175 mg				BY: VH		
DRUG STORE:				TIME: A P		

pt had the back of Lortab from Dr. Fogarty & did not need refills

DATE 3/16/06	TIME 4:30	CALLER Mark Casey	PT NAME - CHART #	PHONE # 486-9873	ALL: P.S.C.O.	MD. Gonda
AGE	WT.	BY VH	MEDS.	RE:		
-Dr. Fogarty's office states pt got Lortab 10mg #150/500 on 2/12/06 -						
ACTION K.F.						
Gonda - 46						
DRUG STORE:				BY:	TIME:	A P

KING 001921

MARTIN BLICK PHYSICIAN GROUP	
Patient Information: This section refers to the PATIENT ONLY	
Account Number:	Chart Number: 17804
Social Security Number: [REDACTED]	Employed ☒ Retired ☐
Last Name: Casey Jr., II,	Employer: Michelin Tire Corp
First Name: William Middle Name: Mark	Address: International Drive
Maiden Name: Sponse Name:	Spartanburg
Address: 240 Lightwood Farm Road	Zip Code: 293
Zip Code: 29388 City: Woodstock State: SC	City/State: Spartanburg SC
E-mail Address: markmarkk @ aol.com	Primary Care Physician: Dr Gonda
Home Phone: (864) 486-9131	Primary Care Physician Phone:
Work Phone: (864) 680-5929 Ext	If Student ☐ Full-Time ☐ Part-Time
Birth Date (mm/dd/yy): [REDACTED] 1958 Sex: ☒ Male ☐ Female	
Responsible Party: This section refers to the PERSON PARTY WHO SHOULD RECEIVE THE BILL	
Relationship to Patient: ☒ Self (skip to next section) ☐ Parent ☐ Spouse ☐ Employer ☐ Other:	
Social Security Number:	If Employed, Employer:
Last Name: Jr., II,	
First Name: MI	Address:
Address:	
Zip Code: City: State:	Zip Code:
Home Phone: ()	City/State:
Work Phone: () Ext	
Birth Date (mm/dd/yy): Sex: ☐ Male ☐ Female	If Student ☐ Full-Time ☐ Part-Time
Subscriber Information: This section refers to the PERSON IN WHOM THE INSURANCE IS LISTED	
Relationship to Patient: ☒ Self (skip to page 2) ☐ Parent ☐ Spouse ☐ Other:	
Social Security Number:	If Employed, Employer:
Last Name: Jr., II,	
First Name: MI	Address:
Address:	
Zip Code: City: State:	Zip Code:
Home Phone: ()	City/State:
Work Phone: () Ext	
Birth Date (mm/dd/yy): Sex: ☐ Male ☐ Female	If Student ☐ Full-Time ☐ Part-Time
Gonda - 47	
Please ensure the office has a copy of your most recent insurance card(s)	

KING 001922

X Carole Lynne Hyslop Sister (864) 680-9648
 Name Relationship to Patient Phone Number
864 576-6537

The patient referred on the registration forms, either personally or through the person legally empowered to give this consent and obligate the patient as herein contemplated, requests and authorizes this office, its employees, agents, and other affiliates to provide general care for this and all subsequent requests for care. This will include, without limitation, routine diagnostic procedures and medical treatments, which is to include whatever procedures that are deemed necessary by the attending doctors or their affiliates.

X Mar 13, 2006 William M Casey
 Date Signature of Patient and/or Guardian, if patient is a minor

I hereby authorize this office of Mary Black Physician Group to release any medical information required during the course of examination and treatment and permit payment directly to them any benefits due for their services rendered. I recognize and accept responsibility for services rendered regardless of insurance coverage. This includes but is not limited to coinsurance, co-payment, deductible and non-covered services.

X Mar 13, 2006 William M Casey
 Date Signature of Patient and/or Guardian, if patient is a minor

I request that payment of authorized Medicare benefits be made either to me or on my behalf to Mary Black Physician Group for any services furnished to me by that physician or supplier. I authorize any holder of medical information about me to release to the Centers for Medicare and Medicaid Services (CMS) and its agents any information needed to determine these benefits or the benefits payable for related services.

Date Signature of Patient and/or Guardian, if patient is a minor

Attached please find Mary Black Physician Group's Notice of Privacy Practices. Your name and signature on this cover sheet indicate that you have received a copy of Mary Black Physician Group's Notice of Privacy Practices on the date indicated. This notice is yours to keep. If you have any questions regarding the information set forth in Mary Black Physician Group's Notice of Privacy Practices, please do not hesitate to contact Jane Neal, Privacy Officer at (864) 573-3787.

Printed Name of Patient: William Mark Casey
 Signature: William Mark Casey Date: Mar 13, 2006
 Authority to Sign If Not Patient: Carole Lynne Hyslop Travis Justin Casey

Request for authorization for disclosure of Protected Health Information to family member(s), friend(s), or caregiver(s).

Family member(s), friend(s), or caregiver(s) authorized to reviewer PHI:

Name	Relationship
<u>Carole Lynne Hyslop</u>	<u>sister</u>
<u>Jaegg Casey</u>	<u>brother</u>
<u>Travis Casey</u>	<u>son</u>

Patient Signature: William Mark Casey

Patient DOB: 11-03-1958 Mothers Maiden Name: Hudson

If the person(s) authorized above call for access to your PHI they will have to give the above identifiers in order to have access to the information over the phone. This includes bill information. Picture ID will be requested if requesting access in person.

General PIF Form 2006 11/16/05
 Gonda - 48

KING 001923

FOOTHILLS FAMILY MEDICINE

Physical, Nutritional, & Educational Screen

PATIENT NAME: William Mark Casey DATE: Mar 13, '06

PHYSICAL

Do you have any new difficulty with daily living activities? YES NO
(EX: stair climbing, difficulty bathing/dressing, easily tired, etc.)

Explain: chest pain under exertion - back pain

PATIENT/FAMILY EDUCATION/LEARNING

Circle all that apply to you:

Deaf
Blind

Visual Impairment
Hearing Impairment

Hearing Aids
Difficulty Reading

Non English Speaking: Needs an interpreter Primary Language English

Would you like any information about a previous diagnosis, medication, or health maintenance topic? YES NO

Please describe: _____

NUTRITIONAL SCREEN

Please answer yes or no to the following questions:

	YES	NO
1) Have you had an illness or condition that made you change the kind and/or amount of food you eat?	<u>✓</u>	_____
2) Have you had any unintentional weight loss or gain greater than 10 pounds over the last month?	<u>✓</u>	_____
3) Do you have swallowing difficulty?	_____	<u>✓</u>

REVIEWED BY: Mark Casey DATE: Mar 13, 2006

* To be updated by the patient or nurse on the first visit of the year.

983-PNEB-105

KING 001924

RECEIVED JAN 12 2005

25
JUN 07 2005
m

MAR 13 2006
m



WILLIAM M CASEY
ID:NIH251022977
OV 20/45
ROUTINE \$20

In South Carolina 1-800-327-3238 PREADMISSION REVIEW REQUIRED Outside South Carolina 1-800-334-7287

Provision: This plan requires preadmission review for all hospital inpatient admissions. Report emergency admissions within 24 hours. Benefits for elective admissions may be reduced unless preadmission review is obtained. See telephone numbers on the front of this card.

Members and Providers for online service log into My Insurance Manager at www.SouthCarolinaBlueCross.com.

Mental Health/Behavioral: Alcohol prescription and advice contact
CompPsych at 1-800-637-6221
Paramedical Services Center (PSC) 1-877-436-7888
South SC Customer Service 1-888-775-3858
First Advice Nurse Line 1-888-621-2543 (anytime)

Members: For information regarding PPO Network Providers, call:
1-800-910-2543 (anytime)
KeepMed: Physicians should all clients to your local plan following standard practice.

Employees and their families, including dependents, should be added to Blue Cross and Blue Shield of South Carolina, P.O. Box 9000, Greenville, SC 29608-9000.

Plan (a Licensed Certified Actuary) provides administrative claims services only and does not assume any financial risk or obligation with respect to claims.
Blue Cross and Blue Shield of South Carolina
An Independent Organism of the Blue Cross and Blue Shield Association

Gonda - 50

KING 001925



WILLIAM M CASEY

ID: MIH251022977 ROUTINE \$20

OV 20/35

In South Carolina
1-800-327-3238

PREADMISSION
REVIEW REQUIRED

Outside South Carolina
1-800-334-7287

Providers: This plan requires preadmission review for all hospital inpatient admissions. Report emergency admissions within 24 hours. Benefits for elective admissions may be reduced unless preadmission review is obtained. See telephone numbers on the front of this card.
Members and Providers for online service log into My Insurance Manager at www.SouthCarolinaBlueCross.com.

Mental Health/Substance Abuse preauthorization and claims contact
Counselors at: 1-800-537-6221
Personnel Service Center (PSC) 1-877-435-7998
Blue Cross of South Carolina Customer Service 1-800-773-3858
First Advice Nurse Lines 1-800-521-2583 (anytime)

Members: For information regarding PPO Network Providers, call:
1-800-610-2583 (anytime)
Hospital/Physician: Submit all claims to your local plan following standard procedure.

Employees submit their claims, including dental, should be filed to Blue Cross and Blue Shield, Piedmont Service Center, P.O. Box 6000 Greenville, SC 29605-8000.

Plan (or Licensed Controlled Agent) provides administrative claims services only and does not assume any financial risk or obligations with respect to claims.
Blue Cross and Blue Shield of South Carolina
An Independent Licensee of the Blue Cross and Blue Shield Association

OK

Gonda - 51

KING 001926



CARE TYPE
PPO

CIGNA HealthCare

Preferred Provider AccessSM - PBI

MICHELIN NORTH AMERICA

ACCOUNT 0000222

ID **251022977 01**

NAME WILLIAM M CASEY

SVC TYPE MEDICAL

Away From Home Care

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, HARTFORD, CT 06182
This identification card must be presented each time services are requested.
Possession of this card DOES NOT CERTIFY ELIGIBILITY FOR BENEFITS. Without
release of this card to obtain benefits is considered fraud.
HOSPITAL ADMISSION AND EMERGENCIES: You or your doctor must call the
toll-free number listed below to request certification prior to any non-emergency
hospital admission. Failure to do so will affect benefits. In an emergency
seek immediate medical care. You, your family or your doctor must call within
two working days of an emergency admission.

MAIL CLAIMS TO:
CIGNA HEALTHCARE, P.O. BOX 188038, CHATTANOOGA, TN 37417-8008

IMPORTANT TELEPHONE NUMBERS:
FOR CERTIFICATION CALL: 1-800-291-0888
FOR ALL OTHER INQUIRIES CALL: 1-877-435-7988

Gonda - 52

KING 001927

Connecticut General Life Insurance Co.  CIGNA HealthCare

COPAYS 25 100 5/25/40 10L 25
DR VISIT EMERGENCY PHARMACY VISION SPEC VISIT

ID # 250376304 02 GROUP 3152616/TAXH-78
PCP FRANCISCO GONDA PCP PHONE:864-578-9735
NAME WILLIAM CASEY

MEMBER SERVICES:1-800-832-3211
MENTAL HEALTH/SUBSTANCE ABUSE:1-800-691-6972
Medical Claims To: PO Box 26875 Charlotte, NC 28220-0575

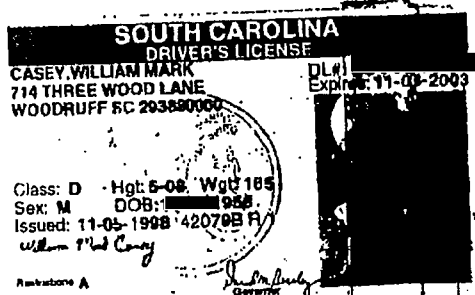
IMPORTANT INFORMATION

Present this card each time services are requested. Card possession DOES NOT CERTIFY ELIGIBILITY FOR BENEFITS. Member must satisfy all plan terms and conditions. Willful misuse of this card is considered fraud.

In an Emergency Seek care immediately. Go directly to the nearest hospital emergency room or call 911. Call your PCP for have someone call for you as soon as possible for further assistance and directions on follow up care. When possible, you should call your PCP within 48 hours.

Gonda - 53

KING 001928



Gonda - 54

KING 001929

Frank Casey #17804

4/12/06 Samples given Vytarin 10/40 # 1 pk of 7 pills
 Drug Name
 Lot Number: F4619/11-07 Intake: 10/40

Patient was counseled regarding proper administration, drug interactions, etc. Patient has been instructed to call our office with any questions.

4-14-06 pt no 40 labo. Lipids much better
 HDL still low, can't exercise
 & Red Wine. Chit Vytarin 10/40
 & 60 #30/1 Lab 2 weeks, script
 called to CVS Rduille Rd JN
 (more)

6/13/06 pt in for med. check up, chal., no prob., pain rated conv. D. Hannon

DATE 6/13/06	TIME A TIME P	CALLER Mark William Casey	PT NAME - CHART # 17804	PHONE # 486-9873	ALL P.S.O.	MD FG
AGE	WT	T	BY	MEDS	FE	
Court date coming up - Question regarding article in newspaper - respects your opinion - Has Question (personal) requests you call - SS						
6/14/06 SHS per no answer						
DISPOSITION			DRUG STORE	BY	TIME	A P

06/13/06

MARK CASEY

17804

Frank E. Gonda, MD

I: HYPERCHOLESTEROLEMIA

A: HYPERTRIGLYCERIDEMIA

- S: This 47-year old white male is for follow up of the above problems. He has been on Vytarin along with Tricor for a couple of months with no side effects. Lipids showed improvement. ALT was normal. He continues with chronic low back pain. He needs a refill on Lortab. He continues to have chest pains, no shortness of breath. He is now involved in a lawsuit with the pulmonologist because of a collapsed lung.
- O: Patient is in no distress. Blood pressure is 140/88. Pulse is 80. Weight is 188-pounds. Neck is supple, no thyromegaly or carotid bruit. Lungs are clear, no wheezes. Heart is regular, no murmur. Abdomen is soft and nontender. Back reveals fairly good range of motion, no tenderness. Straight leg raise is negative.
- A: As above. He appears stable. Lipids have improved.
- P: Renew Ultram, 50 mg two q.i.d. Lortab 10/500 one b.i.d. #60 with two refills, Mobic 7.5 mg one q.-day, Tricor 145 mg q.-h.s. No refill needed on that. Vytarin, 10/40 one q.-p.m. #90 days with one refill except for Lortab. Check a lipid profile and an ALT. Adjust medications as needed. Follow up in three months or p.r.n.

Frank E. Gonda, MD/ dlj

Gonda - 55

KING 001930

Start
here
C. of per
provides in
Gould

KING 001931


**MARY BLACK
OUTPATIENT THERAPY SERVICES**

 1700 Skylyn Drive
Spartanburg, SC 29317

 Phone: (864) 573-3828
Fax: (864) 573-3152

PLAN OF CARE
☒ PT

☐ OT

☐ ST

 Patient Name: Mark Case

 Date Of Birth: 58

 Diagnosis: Low back pain

 Referral: D. Brinda

 Patient Comments/Complaints: pt. cl. lumbar back pain. 6/10. pt. states pain worse p work, golf or p sleeping
**Evaluation Results
Problem List**

- ① Tdclapain
 ② AROM ① hip flex 7 1/2, add. 95%, ER 75%
 ③ L4/L5 lumbar lordosis ④ (L4) tightness/spasm ⑤ lumbar paraspinal m.
 and ⑥ piriformis m.

Comments:

Treatment Plan / Modalities:

- ① modalities p. n. m., IFC Estim.
 ② Therex/home p. gram ROM, stretching and strengthening

 Frequency: 2-3x/wk

 Duration: 3-4 wks

 Therapist Signature: [Signature]

 Date: 5-22-00

 Physician's Signature: [Signature]

 Date: 5/30/00
faxed 5/30/00

KING 001932

Phone (864) 573-3828
Fax (864) 573-3152



MARY BLACK
HEALTH SYSTEM

- ☒ Physical Therapy
☐ Occupational Therapy
☐ Speech Therapy

THERAPY PRESCRIPTION

Patient: William Chae
Diagnosis: Chronic CDP
Frequency: ☐ 1 visit ☐ 2 x Wk ☒ 3 x Wk ☐ 5 x Wk
Precautions: _____

☒ Eval and Treat

PROGRAMS/PROTOCOLS

☐ Hand Program	☐ Spinal Stabilization
☐ Wrist Program	☐ Total Joint Program
☐ Elbow Program	☐ Stroke Program
☐ Shoulder Program	☐ Parkinson's Program
☐ Cervical Program	☐ Fibromyalgia
☐ Back Rehab Program	☐ Aquatic Program
☐ Hip Program	☐ Amputee Program
☐ Knee Program	☐ Body Conditioning
☐ Foot/Ankle Program	☐ Program

MODALITIES

- | |
|---|
| ☐ Splinting |
| ☐ Ultrasound |
| ☐ E-Stim |
| ☐ Iontophoresis |
| ☐ Soft Tissue Mobilization |
| ☐ Joint Mobilization |
| ☐ Heat/Ice |
| ☐ Paraffin Bath |
| ☐ Traction |
| ☐ TENS |
| ☐ Whirlpool |
| ☐ Wound Care |

THERAPEUTIC EXERCISES/ACTIVITIES

☐ AAROM/AROM/PROM	☐ Gait Training
☐ Isometrics	☐ Balance Training
☐ Resistive/PREs	☐ Work Conditioning

SPEECH/LANGUAGE PATHOLOGY

☐ Eval and Treat	☐ Language
☐ Videofluoroscopy/MBS	☐ Voice
☐ Swallowing	☐ Cognition

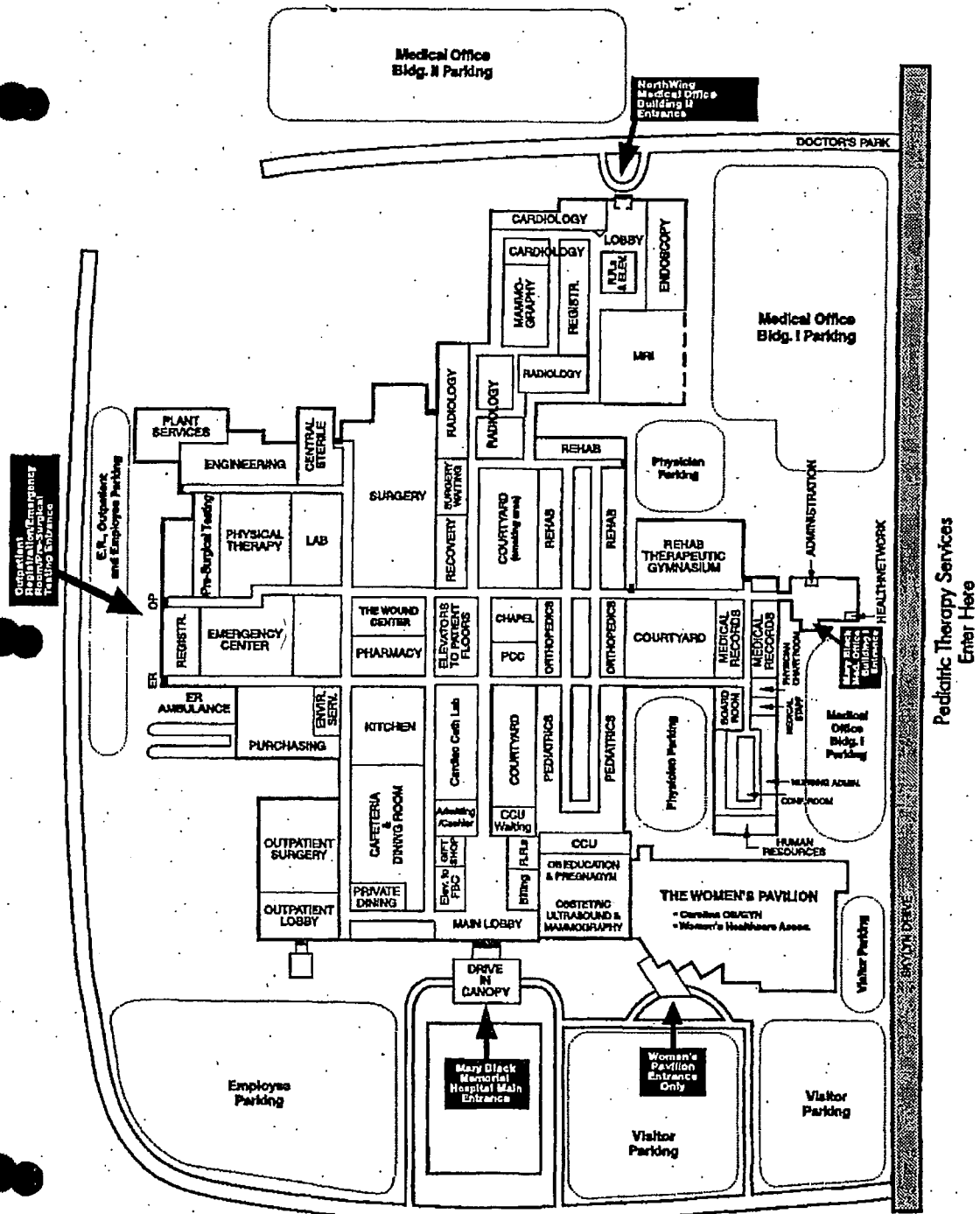
Specific Instructions:

Physician: Frank E. Jorde MD

Date: 5/22/10

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

KING 001933



KING 001934

2740
FOOTHILLS FAMILY MEDICINE
245 E BLACKSTOCK/PO BOX 321
DRAYTON SC 29333

STATEMENT

ADDRESS SERVICE REQUESTED

☐ CHECK HERE For Credit Card Payment

SHOW AMOUNT PAID HERE \$

OFFICE PHONE NUMBER 12/15/97 CLOSING DATE 210967 YOUR ACCOUNT NUMBER 01 PAGE NO. 28.80 NEW BALANCE

MR WILLIAM M CASEY
593 MCABEE ROAD
ROEBUCK, SC 29376-3213

FOOTHILLS FAMILY MEDICINE
245 E BLACKSTOCK/PO BOX 321
DRAYTON, SC 29333-0321

NOTE: Charges and payments are according to the
statement in order of the patient's statement.

RETURN THIS PORTION WITH PAYMENT

CHARGES APPEARING ON THIS STATEMENT ARE NOT INCLUDED ON ANY HOSPITAL BILL OR STATEMENT

DATE	PROVIDER NAME	EXPLANATION OF ACTIVITY	PATIENT NAME	CHARGES AND DEBITS	PAYMENTS AND CREDITS
111497	GONDA	OFFICE VISIT	WILLIAM	58.00	
111497	GONDA	ANA	WILLIAM	47.00	
111497	GONDA	RHEUMATOID FACTOR, QUANTITATIVE	WILLIAM	24.00	
111497	GONDA	ASO TITER	WILLIAM	34.00	
111497	GONDA	CRP	WILLIAM	39.00	
111497	GONDA	URIC ACID	WILLIAM	16.00	
111497	GONDA	CHECK PAYMENT	WILLIAM		-43.60
120397	GONDA	PPN PAYMENT	WILLIAM		-145.60

AFFILIATED WITH MARY BLACK HEALTH SYSTEM

STATEMENT CLOSING DATE 12/15/97 PLEASE INDICATE YOUR ACCOUNT NUMBER WHEN CALLING OUR OFFICE: 210967
NEW BALANCE 28.80
PAID AMOUNT

SEND INQUIRIES TO:
FOOTHILLS FAMILY MEDICINE
245 E BLACKSTOCK/PO BOX 321
DRAYTON SC 29333-0321

IF YOUR PAYMENT IS IN THE
MAIL, PLEASE DISREGARD THIS
STATEMENT.

KING 001935

10967
MARY BLACK MEMORIAL HOSPITAL
Cardiology Services

CASEY, WILLIAM

UP
Electroencephalographic Report

Date of Request: Age: 33 Sex: Male
Previous EEG (Date Taken):

REQUESTING PHYSICIAN: Dr. Gonda,

REPORT ON ELECTROENCEPHALOGRAM

COMMENTS: Posterior waking rhythm consisted of 9 hertz 25-30 microvolt symmetrical alpha activity that attenuated with eye opening. Hyperventilation and photic stimulation evoked little additional change.

Periods of light sleep are obtained with generalized symmetrical slowing of the background activity.

INTERPRETATION: This represents normal during waking state and brief periods of light sleep. If a seizure disorder is strongly suspected, repeat study with deeper stages of sleep following overnight sleep deprivation and/or sedation may be helpful.

ROBERT A. RINGEL, M.D.

EEG NUMBER ASSIGNED: #: 052-93

DD: 9/30/92

RT: 10/01/92

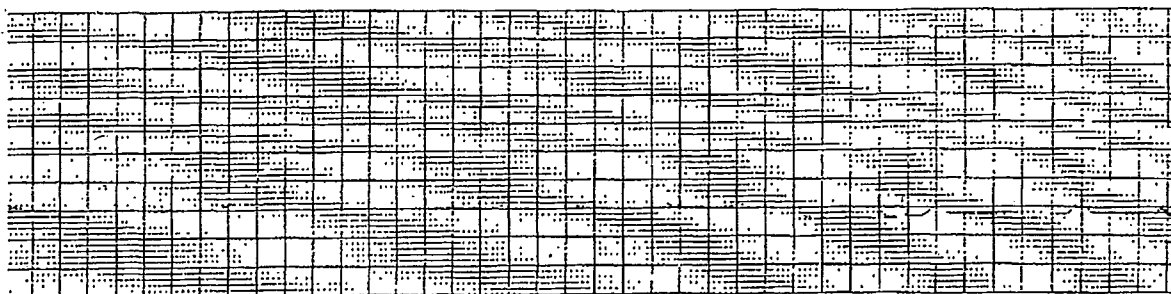
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KING 001936

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Burdick

P.N 007941

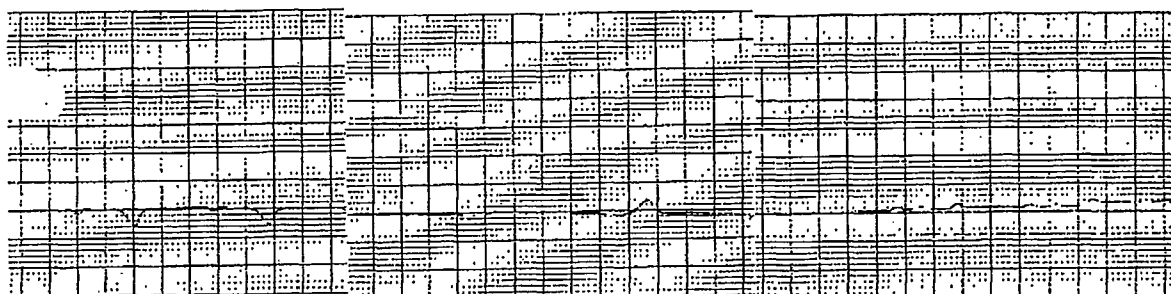
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aVR

aVL

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P.N 007941

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T

Burdick

P.N 007941

ATRIAL RATE _____	RHYTHM _____
VENT. RATE _____	P WAVES _____
P-R INTERVAL _____	T WAVES _____
QRS INTERVAL _____	S-T SEGMENT _____
Q-T INTERVAL _____	REMARKS _____
AXIS _____	
ELEC. POS. _____	
PATIENT POS. _____	

KING 001937

PATIENT William Casey AGE 33 SEX WM DATE 9-23-92
ADDRESS PO Box 799 HEIGHT _____ WEIGHT _____ ECG. NO. _____
Paeback, S.C. 29376 BUILD { LINEAR _____ CASE NO. _____
INTERMEDIATE _____
LATERAL _____
TELEPHONE _____ BLOOD PRESSURE _____ ROOM NO. _____
OCCUPATION _____ MEDICATION _____

DOCTOR(S) Gonda



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0-CL-7C

2 3

T C-0001 T

V1 V2 V3

T T

V4 V5 V6

T Burdick T T Burdick P.

KING 001939

PATIENT _____ AGE _____ SEX _____ DATE _____

ADDRESS _____ HEIGHT _____ WEIGHT _____ ECG. NO. _____

_____ BUILD { LINEAR _____ CASE NO. _____
 _____ INTERMEDIATE _____
 _____ LATERAL _____

TELEPHONE _____ BLOOD PRESSURE _____ ROOM NO. _____

OCCUPATION _____ MEDICATION _____

DOCTOR(S) _____



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CAROLINAS CENTER For Advanced Management of Pain

Comprehensive Evaluation
and Medical Management

Diagnostic and
Therapeutic Injections

Implantable Pain
Control Systems

Neuroablative
Procedures

International Spinal Injection Society

November 18, 2000

Dr. Frank Gonda
2212 Old Furnace Road
Boiling Springs, SC 29316

RE: William Casey

Dear Dr. Gonda:

Thank you for referring Mr. Casey to our pain clinic. The patient was examined on 11/08 and diagnosed with chronic mechanical low back pain, rule out degenerative disc disease, rule out facet joint pain, and myofascial dysfunction pain. Unfortunately, patient is still due for a MRI which he was planning to cancel. We had a lengthy discussion, and I advised him that, without that study, it is very hard to decide what can be done to help him with his pain. I am not in favor of any injection until we know the reason for his low back pain. Meanwhile, I advised him to continue with his Ultram, and I also put him on a trial of low dose Zanaflex. In my opinion, he should not be on any opioids at this time. He will call me if he proceeds with a MRI so that I can obtain the results and offer him some more appropriate modalities of treatment.

Thank you again for letting me participate in the treatment of this interesting patient. Please do not hesitate to call me if you have any questions.

Sincerely,

Y. Eugene Mironer, M.D.

American Pain Society

Society for Private Practice in Pain Management

Carolinus Center for Advanced Management of Pain

54 Bear Drive
Greenville, SC 29605
864-295-6399

279 East Kennedy Street
Spartanburg, SC 29302
864-583-0053

KING 001941



CAROLINAS CENTER For Advanced Management of Pain

Comprehensive Evaluation
and Medical Management

Diagnostic and
Therapeutic Injections

Implantable Pain
Control Systems

Neuroablative
Procedures

International Spinal Injection Society

June 17, 2004

Gregory J. Feldman, M.D.
1091 Boiling Springs Road
Spartanburg, SC 29303

RE: CASEY, William

Dear Dr. Feldman:

Thank you referring Mr. Casey to our pain clinic. He was seen about three and one-half years ago, after being referred by his family physician, Dr. Gonda. He was diagnosed with mechanical low back pain. I ordered an MRI scan of his lower back, but the patient never returned.

Today, the patient's clinical features have not really changed except for Mr. Casey appearing to be more depressed. He is also having some epigastric pain but on examination, this looks as if it is coming from his chest wall. I think he may benefit from being seen by a gastroenterologist. As far as his low back pain is concerned, it is purely mechanical, and his MRI is practically normal with two slightly bulging disks that are obviously not his source of pain. He received an epidural steroid injection by a radiologist at Mary Black, which did not help. Firstly, according to the picture that I have seen, they never got the needle into the epidural space and, secondly, the patient did not have pain that can be alleviated with an epidural steroid injection. I discussed treatment options with Mr. Casey, and, again, I think he would benefit from diagnostic and, hopefully, therapeutic lumbosacral joint injections. If this would provide relief for only a short period of time, then we would set him up for specific therapy for his pain.

Also, I believe Mr. Casey would benefit from seeing a psychologist or psychiatrist to treat his anxiety and depression. At this point, however, we will not address this issue.

Again, thank you again for allowing me to participate in the consultation and treatment of this patient.

Sincerely,

Y. Eugene Mironer, M.D.

YEM/ss/mds

cc: Frank E. Gonda, M.D.

(Dictated, not read)

Society for Private Practice in Pain Management

American Pain Society

Carolinus Center for Advanced Management of Pain

69 McDowell Street
Asheville, NC 28801

64 Bear Drive
Greenville, SC 29605

279 East Kennedy Street
Spartanburg, SC 29302

KING 001942

07/28/05 NEW 10:12 PMA 004 000 0019

SPARTANBURG REGIONAL MEDICAL CENTER

MB002

SPARTANBURG REGIONAL MEDICAL CENTER
Radiology Report

NAME: CASEY, WILLIAM
ORDERING PHYSICIAN: FOGARTY, CHARLES M
LOC: OPT DOB: 58
Pt. Type: OPT

UNIT #: 000146220
CI#: 1480551
AN#: S0520101451

Exam
50041 XR G I SERIES
74246

Date: 07/28/05 0836
Ord Diag: 787.03-VOMITING ALONE

Double-contrast upper GI, 7/28/2005

Indication: Several week history of nausea and vomiting

Findings: Under fluoroscopy the patient shows normal swallowing and esophageal motility. The esophagus distends normally. Note is made only of a single small distal esophageal mucosal cleft or diverticulum, this is only a few millimeters in size. With Valsalva no hiatal hernia is seen. During assessment of the stomach several episodes of mild reflux into the distal esophagus were seen.

The stomach distends normally with no abnormal mass or impression and no mucosal irregularity. The duodenal bulb is somewhat irregular, I do not see a discrete ulcer but this could be deformed from peptic ulcer disease. Contrast does freely progress through this into the duodenum. In the third portion of the duodenum there are 2 diverticula adjacent to one another. One is relatively prominent in size, equal to that of the duodenal bulb. No retained material is seen within these and contrast freely progresses through this to the proximal small bowel.

Impression: Small mucosal cleft or diverticulum noted in the distal esophagus. This is probably a normal variant although could represent focal change of mild esophagitis. A few episodes a very mild GE reflux were seen during this study.

2. Duodenal bulb somewhat deformed although no discrete ulcers seen. This could be change from peptic ulcer disease but there is no evidence of stricturing, contrast freely progresses into the proximal small bowel on this study.

2. 2 duodenal diverticula in the third portion of the duodenum, one of these is a giant diverticulum equal in size the duodenal bulb. They

FINAL

Page 1

9/28/05 - pt notified AKZB

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DATE: 9/28/2005

UGI shows what could be deformity from an ulcer, but not actually seen.
Cont. Abx. F/U if problem persist - will change med.
9/28/05 F

KING 001943

09/28/05 WED 10:14 PAA 004 000 0010

SPARTANBURG REGIONAL HEALTHCARE SYSTEM
SPARTANBURG REGIONAL MEDICAL CENTER
Radiology Report

NAME: CASEY, WILLIAM

ORDERING PHYSICIAN: FOGARTY, CHARLES M

LOC: OPT

Pt. Type: OPT

DOB: [REDACTED] 58

UNIT #: 000146220

CI#: 1480551

AN#: S0520101451

Checkin-Exam Code Summary
1480551-50041

otherwise appear unremarkable on this exam and are not likely of
clinical significance.

Read By: William T JoyceMD
Released By: William T JoyceMD

FINAL

Page 2

PRINTED BY: MB24851
DATE 9/28/2005

KING 001944



Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
Wilson R. Smith, Jr., M.D.
Mary Lou Applebaum, M.D.
Beth V. Edwards, PA-C

E. Bert Knight, III, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. Elm, F.N.R.
Cindy A. Edwards, F.N.R.

WILLIAM CASEY
77168
02-16-06

OFFICE NOTE

Chief Complaint

William Casey continues to have difficulty concentrating/multitasking. He has not had any further problems with nausea and vomiting since cutting back on his medication. He is followed by Dr. Gonda who increased the Lipitor to 20 mg daily and added Tricor. He continues to need two to three Lortab 5 a day for his pain which at this point appears to be chest wall in etiology.

Current Conditions

1. Difficulty with multitasking, concentrating, status post pneumomediastinum/pneumothorax.
2. Chest wall pain.
3. Hyperlipidemia.

Current Medicines

1. Combivent 1 puff four times daily as needed. (Rarely used since last visit.)
2. Lipitor 20 mg each evening.
3. Tricor each morning.
4. Ultram 50 mg four times daily as needed.
5. Lortab four times daily as needed.

Social History

The patient has been unable to work since his laser surgery and is applying for disability. No tobacco or alcohol.

Review of Systems

No additional findings on cardiorespiratory, GI or GU review.

Physical Examination

Vital Signs: Wt: 189.5, BP 138/72, HR 98, RR 20 and SaO₂ is 95% on room air.

General: No acute distress.

Skin: Normal turgor.

HEENT: Pupils symmetric.

Neck: No jugular venous distention.

(Continued to next page)

Pulmonary Medicine

Critical Care

Bronchoscopy

Asthma Therapy

Sleep Disorders

2030 North Church Place
Spartanburg, South Carolina 29303
Phone: (864) 582-6858 · Fax: (864) 542-9043

2755 South Highway 14, Suite 2300
Greer, South Carolina 29650
Phone: (864) 849-9500 · Fax: (864) 849-9501

KING 001945

WILLIAM CASEY

77168

02-16-06

Page Two

Physical Examination (Continued)

Chest: No wheezes, rales or rhonchi.

Cardiac: No murmur or gallop.

Abdomen: Not done.

Extremities: No edema or clubbing.

Neurological: Difficult staying focused and concentrating during our conversation evident.

Laboratory Data

The vital capacity is 4.17, 88% of predicted. FEV₁ 3.46, 90% of predicted.

Impression/Discussion/Plan

The patient's lung function remains stable. His dilemma is that mentally he is not up to snuff as far as returning to his old job or returning the skills for a new equivalent job. He is now approaching two years out and it appears likely he has achieved his maximum improvement, i.e. it is unlikely as time goes forward that he will have improvement in his ability to concentrate and recall/performance make "executive type decisions"/thinking.

The patient's lung function is in a range where he probably does not need to use the Combivent although he still has it on hand. He was encouraged to continue to try to exercise to maintain muscle mass, balance and coordination. He was instructed in diet with attention to his cholesterol and salt intake. He will check back the end of this summer/fall as needed.

Charles M. Fogarty, MD

Charles M. Fogarty, MD

CMF/ns

cc: Dr. Frank Gonda via fax 578-7098 (No hard copy will be sent)

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

KING 001946



Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Ricardo I. Mendoza, M.D.
J.R. Dill, F.N.B.

Fax: (864) 585-2102

Wilson P. Smith, Jr., M.D.
P. Ben Knight, III, M.D.
Mary Lou Applebaum, M.D.
Beth V. Edwards, PA-C

Fax: (864) 582-3750

WILLIAM CASEY

77168

07-21-05

OFFICE NOTE

Chief Complaint

William Casey returns for follow up on his 7/19 visit. At that time he was having dry heaves and nausea and this was felt possibly to be an interaction between the Strattera and the Cymbalta and he was advised to discontinue these. Since then he is better. He continues to have chest pain, a squeezing sensation, which can be present without exercise, although it is exacerbated by exercise.

We should note that it was this symptom that led him to go to the emergency room May 2004. Although the presenting complaint was chest pain, a chest film showed a metallic fragment. This was interpreted as being in the chest by the treating physician and the patient was referred for pulmonary consult and underwent bronchoscopy within hours of his presentation. The bronchoscopy did not show a foreign body, but rather an area of erythema, and he was scheduled for a laser bronchoscopy the following week. The laser bronchoscopy was performed, with the patient under lengthy anesthesia for 1 hour and 50 minutes, and was complicated by pneumomediastinum.

Since the procedure the patient has ultimately recovered from his pneumomediastinum, bilateral pneumothoraces requiring chest tubes, intubation and mechanical ventilation. However, he has been unable to work and is now depressed over his long-term outlook.

Current Medicines

1. Advair 250/50 twice daily.
2. Compivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lorazepam four times daily as needed.

Social History

He has been out of work now for a year and probably will be out of health insurance and a job, since he has been unable to hold gainful employment in the interim in large part because of his difficulties with concentrating and staying focused. The issue of his chest pain still remains unresolved. Cardiac evaluation was negative and his chest pain may be benign chest wall. On the plus side, he has quit smoking.

Continued...

2030 North Church Place, Spartanburg, South Carolina 29303 (864) 582-6858

Pulmonary Medicine

Critical Care

Bronchoscopy

Asthma Therapy

Sleep Disorders

KING 001947

WILLIAM CASEY
77168
07-21-05
Page Two

Family History

Coronary artery disease and hyperlipidemia, as previously noted.

Review of Systems

A cardiac catheterization in 2000 did not show any critical narrowing. The CT prior to his laser bronchoscopy was normal range except for incidentally noted coronary calcification. No additional findings on cardiorespiratory, GI or GU review.

Physical Examination

Vital Signs: Wt. 176.6, BP 153/91, HR 78, RR 20 and SaO₂ is 98% on room air.

General: No acute distress.

Skin: Normal turgor.

HEENT: Pupils symmetric.

Neck: No jugular venous distention.

Chest: No wheezes, rales or rhonchi.

Cardiac: No murmur or gallop.

Abdomen: Bowel sounds present. The patient felt like he might have the heaves while in the office but no emesis.

Extremities: No edema or clubbing.

Neurological: The patient had difficulty staying focused with answers to questions and could not repeat five numbers backward on a simple cognitive screen, but could repeat four numbers.

Laboratory Data

The vital capacity is 4.65 or 98% of predicted. The forced expiratory volume is 3.76 or 97% of predicted.

Today's cardiogram is normal range. Interestingly the cardiogram while he was in the hospital with his chest pain in May of last year showed nonspecific ST T-changes.

Impression

1. Chest pain, probably chest wall.
2. Nausea and vomiting, improved.
3. Persistent difficulty concentrating staying focused.
4. Status post laser bronchoscopy complicated by pneumomediastinum and pneumothoraces.

Continued...

KING 001948

Aug-30-05 04:47P

P. 03

WILLIAM CASEY
77168
07-21-05
Page Three

Comment

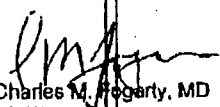
With reference to the patient's chronic squeezing chest pain, he does have risk factors for coronary artery disease in terms of his hyperlipidemia, family history, previous smoking and incidentally noted coronary calcification on Spartanburg Regional Medical Center CT. A formal coronary calcium score may be indicated and if elevated may be an indication to proceed with more vigorous cardiac workup. However, the chronicity increases the likelihood his chest pain is benign.

With reference to the patient's GI symptoms they do seem improved since discontinuing the Strattera and this really did not help with his staying focused anyway. However, he may still have some underlying pathology such as cholelithiasis or peptic ulcer disease and ultrasound of the gallbladder appears warranted. If symptoms persist we may consider an upper GI.

With reference to the patient's difficulty concentrating, air emboli have been reported as a complication of laser bronchoscopy even without perforation of the endotracheal tree with resultant leakage of air into extrapleural, vascular and mediastinal spaces. Although he is fortunate not to have any gross motor deficit, he may well have a permanent neurologic deficit in which case the indication for taking medication, such as Strattera, may be moot; the patient may simply need to recognize that although he would like to go back to work, he may be chronically disabled by his neurologic impairment/permanent brain damage.

Plan

We will check back with the patient with reference to his coronary calcium score and his gallbladder ultrasound. Further evaluation will proceed pending the results of above.


Charles M. Fogarty, MD
CMF/ns
cc: Dr. Gonda
Dr. Grace

KING 001949

17804



Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.R. Elm, F.N.P.

Fax: (864) 585 - 2102

Wilson P. Smith, Jr., M.D.
E. Bert Knight, III, M.D.
Mary Lou Applebaum, M.D.
Beth V. Edwards, PA-C

Fax: (864) 582-3750

WILLIAM CASEY

OFFICE NOTE

Mr. Casey returns for a follow up visit today. He is trying to resume activities. He has developed chest pain with exertion and so in view of the finding of coronary artery calcification on his CT scan and his exertional chest pain we will refer him for a Cardiolute stress test and consideration of pulmonary rehabilitation. EKG today is within normal limits and shows no acute changes.

Wilson P. Smith, Jr., M.D.
WPSjr/ns
cc: Dr. Gonda

MSD
8/2/04

2030 North Church Place, Spartanburg, South Carolina 29303 (864) 582-6858

Pulmonary Medicine

Critical Care

Bronchoscopy

Asthma Therapy

Sleep Disorders

KING 001950

06/29/04 TUE 10:32 FAX

SRVC MEDICAL RECORDS

DISCHARGE SUMMARY

PATIENT NAME: CASEY, WILLIAM

DOB: 1958

MEDICAL RECORD #: 146220

ACCOUNT NUMBER: 415400048

ADMISSION DATE: 06/03/2004 DISCHARGE DATE: 06/06/2004

ATTENDING PHYSICIAN: FELDMAN, GREGORY

FINAL DIAGNOSES:

1. Status post recent bronchoscopy with laser for abnormal appearing airway, on flexible bronchoscopy suspected foreign body.
2. Complication of the procedure was pneumomediastinum and pneumothorax requiring chest tube insertion by Dr. Nguyenduy.
3. Asthma and heavy smoking.
4. Disabling back pain with a bulging disk and arthritis, long.

PLAN: The patient is discharged home on prednisone 20 mg q.d., Percocet 1-2 pills t.i.d. p.r.n.. The patient will be seen in my office within a week. Diet and activity as tolerated.

HOSPITAL COURSE: This is a patient who underwent initial bronchoscopy by Dr. Boscia with finding of a quite irritated, blistered airway. Corresponding chest x-ray appeared to be missing dental material. The patient underwent bronchoscopy for assumption of airway caused by retained foreign body. It appeared to be that there was granulation tissue; however, after laser was applied it became apparent that instead of a normal airway, it is a pouch and procedure terminated with no foreign body recovered. The patient tolerated the procedure well; however, in recovery the patient suddenly developed subacute emphysema and x-ray revealed pneumomediastinum with pneumothorax on the left side. A small chest tube was inserted. The patient was kept on the respiratory overnight. His subcu air has subsided remarkably. The patient felt much, much improved. He was extubated and transferred to the floor. Repeat chest x-ray showed pneumothoraces on both right and left but unchanged in size and small at the time of discharge. The patient felt good with no complaints and was discharged home. We will assess in my office within the next two days. The patient has been instructed if he develops fever or increased subcu air or shortness of breath immediately to come back to see me.

DICTATED BY: GREGORY FELDMAN, M.D.

D:06/07/2004 09:28:57

T:06/11/2004 08:24:49/bt

68523/67665

CC:

TUAN NGUYENDUY, M.D., Consulting Physician

PRINTED BY: MB24851

DATE 6/29/2004

KING 001951

06/29/04 10:03 FAX

SPARTANBURG REGIONAL HEALTHCARE SYSTEM
SPARTANBURG, SC 29303**CONSULT**

PATIENT NAME: CASEY, WILLIAM
 DOB: [REDACTED] 958
 MEDICAL RECORD #: 146220
 ACCOUNT NUMBER: 414900306
 DATE OF SERVICE:
 ATTENDING PHYSICIAN: KOSER, ANDRAS
 ROOM:

HISTORY OF PRESENT ILLNESS: This 46-year-old smoking male presented to the hospital for chest pain. An initial chest x-ray on admission showed what appears to be a foreign body in the left mainstem bronchus. I am being asked to comment on this. This patient complains of pain in his chest that is sharp that goes directly straight to his back. There is a history of cough. No history of hemoptysis.

PAST MEDICAL HISTORY: includes hypercholesterolemia. No history of hypertension or diabetes.

SOCIAL HISTORY: He has a 25 pack year smoking history. He works at Michelin.

FAMILY HISTORY: Is noncontributory.

REVIEW OF SYSTEMS: Includes all mentioned in history of present illness. Also, he has chronic back pain, occasional headaches, occasional constipation. All other review of systems are negative.

PHYSICAL EXAMINATION: He appears well in no acute respiratory distress. Blood pressure is 150/90, pulse is 84. Pupils react to light. The oral mucosa is moist without thrush. Neck is supple. Heart is regular. Lungs are clear bilaterally. Abdominal exam reveal no hepatosplenomegaly. Extremities are without clubbing, cyanosis or edema. Skin is intact with no rashes. Joints are not inflamed. Neurologically, cranial nerves II through XII are intact without focality.

Chest x-rays been reviewed in it does show what appears to be an irregular metallic foreign body in the left mainstem bronchus.

IN SUMMARY: 46-year-old gentleman with what appears to be a foreign body in the left mainstem bronchus. He has consented to fiber-optic bronchoscopy which would be the most reasonable next step. Will perform fiber-optic bronchoscopy to see if this foreign body is removable. If it is not removable or granulated in, than rigid bronchoscopy in the operating room

CONSULT
 CASEY, WILLIAM
 146220

Page 1 of 2

LUC - Brothman
FR ? (David)

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 DATE 6/29/2004

KING 001952

06/29/04 TUE 10:55 FAX

SPRINT MEDICAL RECORDS

will be performed. Risks, benefits, and alternatives were discussed with Mr. Casey and he agrees to proceed with bronchoscopy.

DICTATED BY: JOSEPH A BOSCIA III, M.D.
D:05/28/2004 14:26:33
T:06/03/2004 11:25:39/b
65506/64110

cc: ANDRAS KOSER, M.D., Admitting Physician

2 cc
CSF
D
rigid
Bronchoscopy
procedures
very complex
(for local
bleeding
premedication
oxygen

[Handwritten signature]

CONSULT
CASEY, WILLIAM
146220

Page 2 of 2

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DATE 6/29/2004

KING 001953

00/28/04 10:00 PM

OP REPORTS

PATIENT NAME: CASEY, WILLIAM

DOB: [REDACTED] 1958

MEDICAL RECORD #: 146220

PROCEDURE DATE: 6/3/04

ACCOUNT NUMBER: 415400048

ROOM:

ICU

PROCEDURE PERFORMED: Rigid bronchoscopy with laser bronch.

ENDOSCOPIST: Dr. Feldman.

INDICATIONS FOR PROCEDURE: 45 year old had been worked up by Dr. Paladugu and my partner, Dr. Boscia, with the finding of abnormal granulation tissue and abnormal subsegment in the left upper lobe corresponding to what appeared to be a crown foreign body on chest x-ray. The patient is now undergoing procedure in attempt to removal of chest x-ray abnormality suggestive of a crown; the patient does have a history of a missing crown.

After general anesthesia was induced, the patient was intubated with a rigid bronchoscope, size 16, without any difficulty. Careful inspection of the tracheobronchial tree was undertaken. The entire tracheobronchial tree was examined, there was no finding of a foreign body, however, a quite abnormal subsegment in the left upper lobe which appeared to be a pouch/granulation tissue has been identified. Laser of the area has been done with 45 watts over a 2-second period. Granulation tissue has been vaporized with the appearance of what appeared to be crown lying on the surface. With using 35 watts energy of the laser, there was no possibility of removal of the crown because it was deeply imbedded, and laser energy was applied to the center of the crown and it has been vaporized. However, below the surface there has been no further foreign body seen. The assumption was made that the entire crown other than on the surface had been vaporized, and attempt to pull it with a biopsy forceps and passage of the basket was unsuccessful. The washings were done of the area, and the procedure was terminated. The patient was extubated in recovery.

Although the patient did quite well during the procedure, he suddenly developed considerable pneumomediastinum and having immediately arrived to the bedside, Dr. Nguyenduy's consultation has been obtained. The decision was done by Dr. Nguyenduy and myself to place a chest tube, because of the impossibility to rule out pneumothorax, however, chest x-ray does not show pneumothorax, there is no foreign body seen, and also endotracheal tube is in good position. The patient was intubated by Anesthesia prior to that.

IMPRESSION: It is unclear to me at this point whether the laser went through the cartilage, and since I have not identified or pulled the crown itself, if in fact there was a crown it has been vaporized and is no longer seen on x-ray. At this point the patient will transfer to the ICU,
DATE 6/29/2004

KING 001954

06/28/04 10:10:00 FRA

antibiotics will be administered for disruption of the bronchus and pneumomediastinum. This will be followed by CT surgery and certainly if air leak into the pneumomediastinum would not stop, surgical intervention will be required. Hopefully this can be avoided by conservative management, but it is uncertain to me at this time whether the crown was vaporized or essentially the laser went through the highly abnormal area of the lung suggestive of closed congenital pouch rather than a foreign body, and significant irritation from previous bronchoscopy.

DICTATED BY: GREGORY FELDMAN, M.D.

D:06/03/2004 16:02:26
T:06/03/2004 16:44:07/1b
67504/64298

cc:

OP REPORTS Page 2 of 2
CASEY, WILLIAM
146220

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##END
Authenticated by Gregory Feldman, M. D. On 6/04/04 2:35:35 PM

PRINTED BY: MB24851
DATE 6/29/2004

KING 001955

OP REPORTS

PATIENT NAME: CASEY, WILLIAM

DOB: [REDACTED] 1958

MEDICAL RECORD #: 146220

PROCEDURE DATE: 06/03/2004

ACCOUNT NUMBER: 415400048

ROOM:

PREOPERATIVE DIAGNOSES:

1. Possible left tension pneumothorax.
2. Bronchial trauma status post rigid bronchoscopy and laser therapy.
3. Cigarette smoking.
4. Dyslipidemia.

POSTOPERATIVE DIAGNOSES:

1. Possible left tension pneumothorax.
2. Bronchial trauma status post rigid bronchoscopy and laser therapy.
3. Cigarette smoking.
4. Dyslipidemia.

PROCEDURE: Emergency placement of a left thoracostomy tube.

SURGEON: Dr. Nguyenduy.

ANESTHESIA: IV narcotics.

INDICATIONS: The patient is a 45-year-old white male who is status post a rigid bronchoscopy for possible foreign body aspiration and postoperatively in the recovery room he developed subcutaneous emphysema and respiratory distress requiring insertion of endotracheal tube. He then became stable and concern of a left pneumothorax because of his subacute emphysema. Was asked to put in an emergency left thoracostomy tube.

PROCEDURE IN DETAIL: This is happening in the recovery room.

The patient was in the supine position, intubated and ventilated on the respirator. The left chest was scrubbed and painted with Betadine solution. A 3 cm incision was made at the x-ray line that is just above the 2nd intercostal space. A quick dissection was carried through with subcutaneous tissue to the muscle using the Matzenbaum scissors down to the intercostal space. Then using a Kelly clamp, the left pleural space was entered without any problems. Digital examination was performed and the lung was mobile and free from any adhesions at the site of entry. A 32 French trocar was inserted in the left pleural space without any problems with good air return which fogged the chest tube. The chest tube was anchored and stayed with 2-0 Prolene mattress sutures. The chest tube was then connected to collecting unit and placed on -20 cm water continuous wall suction.

Postprocedure chest x-ray was obtained and showed that the tube is in good vision in left pleural space with extensive

DATE

6/29/2004

KING 001956

06/29/04 TUE 10:34 FAX

DRUG MEDICAL RECORD

subacute and some continuous emphysema.

Dictated by: Tuan Nguyenduy, M.D.

D:06/03/2004 18:40:28

T:06/09/2004 06:07:50/ab1
67596/66415

CC:
GREGORY FELDMAN, M.D., Admitting Physician

OP REPORTS Page 2 of 2
CASEY, WILLIAM
146220

Note: Document is draft unless signed.<END FOOTER>

##END

Authenticated and Edited by Tuan Nguyenduy, M.D. On 6/14/04 2:02:37 AM

PRINTED BY: MB24851
DATE 6/29/2004

KING 001957

DISCHARGE SUMMARY

PATIENT NAME: CASEY, WILLIAM

DOB: [REDACTED] 1958

MEDICAL RECORD #: 146220

ACCOUNT NUMBER: 414900306

ADMISSION DATE: 05/28/2004 DISCHARGE DATE: 05/29/2004

ATTENDING PHYSICIAN: KOSER, ANDRAS

PRESENTATION AND HOSPITAL COURSE: This 45-year-old Caucasian male with a history of elevated cholesterol, history of herniated disc, history of arthritis, who apparently has been having vague chest discomfort every time when he goes to work. The patient came in because of tightness that went straight to the back according to the emergency room physician; however, upon the workup the patient was found to have a left main bronchus containing some foreign body that was metallic in nature. It looks like a screw. It could have been dental filling. The patient was seen in consultation with Dr. Feldman who asked Dr. Boscia to do fiberoptic bronchoscopy and take a look inside and see if he can get it out. Apparently the area was quite difficult to get to. Some bleeding was visualized on the left main bronchus and then tried to dig it out but couldn't find any piece of metal and, hence, he did not do it. The patient was to undergo rigid bronchoscopy a week or two weeks later in Dr. Feldman's office. We feel at this time that the patient does not need any further inpatient stay.

DISCHARGE DIAGNOSES:

1. Noncardiac chest pain.
2. Metallic foreign body in the left main bronchus.
3. Elevated cholesterol.
4. White coat hypertension.

DISCHARGE MEDICATIONS:

1. Lipitor 10 mg p.o. q.d.

DISCHARGE DISPOSITION: The patient is going home.

FOLLOW UP: The patient will follow up with Dr. Gonda in one week.

DICTATED BY: . RAJA PALADUGU, M.D.

D:05/29/2004 14:35:42

T:06/03/2004 08:31:40/bt

65743/64000

cc:

ANDRAS KOSER, M.D., Admitting Physician

PRINTED BY: MB24851

SEND

Authenticated by Raja Paladugu, M.D. On 6/29/2004 3:37:13 PM

KING 001958

06/29/04 TUE 10:34 FAX

ORNL MEDICAL RECORDS

PATIENT NAME: CASEY, WILLIAM
 MEDICAL RECORD #: 146220
 DATE OF BIRTH: 1958
 ACCOUNT NUMBER: 414900306
 DATE OF ADMISSION: 05/28/2004
 ROOM:

434

CHIEF COMPLAINT: Chest pain.

HISTORY OF PRESENT ILLNESS: This is a 45-year-old Caucasian male with a history of elevated cholesterol, history of herniated disk, and a history of arthritis apparently been having vague chest discomfort every time he goes to work. The patient comes in because of substernal chest tightness that radiates to the back. The patient had extensive cardiac workup done on the last admission which was in the year 2000, July. At that time the patient underwent cardiac catheterization, which showed normal coronaries. The patient comes in, does not give this chest pain history, doesn't have any associated symptoms whatsoever. No diaphoresis, no shortness of breath. Radiating to the back is the only one. No nausea. Currently feels fine. He says the patient was given some aspirin, nitroglycerin.

PHYSICAL EXAMINATION:

CNS: The patient is alert and oriented times three.
 HEENT: Normocephalic, atraumatic. Pupils are equal, round, and reactive to light and accommodation.
 CHEST: Clear to auscultation bilaterally.
 CARDIOVASCULAR: Regular rate and rhythm.
 ABDOMEN: Soft, nontender.
 EXTREMITIES: No cyanosis, clubbing, or edema.
 NEUROLOGICAL: Cranial nerves II through XII grossly intact. Motor 5/5 bilaterally. Sensory intact bilaterally.

REVIEW OF SYSTEMS: no fever or chills. No headache or dizziness. No cough or phlegm. Chest pain as described above. The rest of the review of systems essentially negative.

PAST MEDICAL HISTORY: Reveals a herniated disk and arthritis.

MEDICATIONS: Lipitor, Bextra, Ultram, Lortab.

ALLERGIES: No known drug allergies.

PAST SURGICAL HISTORY: Negative.

SOCIAL HISTORY: Positive smoker. Occasional ETOH.

ALLERGIES: No known drug allergies.

LABORATORY DATA: : CPK 103, MB 1.4, index 1:1 troponin less than 0.07, myoglobin 28.9, PT 12.3, INR 1.1, PTT 29.8. Sodium 137, potassium 3.9, chloride BUN 12, creatinine 0.8, glucose 96, HbA1c 5.9, Hb 12.2, hemoglobin 12, hematocrit 36, platelets 539.
 DATE 6/29/2004

KING 001959

06/29/04 TUE 10:35 FAX

SALE ADVANCE NOTICE

IMPRESSION/PLAN:

1. Noncardiac chest pain most likely secondary to _____ in the left main bronchus. We will get pulmonary to see this patient for possible bronchoscopy and removal if possible.
2. Hypertension. The patient's blood pressure is elevated. Never told that he has been hypertensive before, although the patient has been noncompliant with medications and follow up and, hence, we will keep an eye on the blood pressure. We will place the patient on Lopressor 50 mg q.d. for now. Has multiple blood pressure readings in the emergency room. Continues to stay high diastolic of 109.
3. Elevated cholesterol. We will check a lipid profile in the morning.

Dictated by: RAJA PALADUGU

D:05/28/2004 13:31:23
T:05/28/2004 15:55:39/bt
65475/62344

Cc:
ANDRAS KOSER, M.D., Attending Physician

H & P. Page 2 of 2
CASEY, WILLIAM
146220

Note: Document is draft unless signed.<END FOOTER>

Authenticated by Raja Paladugu, M.D. On 5/29/04 4:43:13 PM

PRINTED BY: MB24851
DATE 6/29/2004

KING 001960

06/29/04 TUE 10:35 FAX

ONLY MEDICAL RECORDS

SPARTANBURG REGIONAL HEALTHCARE SYSTEM
SPARTANBURG, SC 29303

CONSULT Page 1 of 2
CASEY, WILLIAM
146220

Note: Document is draft unless signed.
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CONSULT
PATIENT NAME: CASEY, WILLIAM
DOB: [REDACTED] 1958
MEDICAL RECORD #: 146220
ACCOUNT NUMBER: 414900306
DATE OF SERVICE:
ATTENDING PHYSICIAN: KOSER, ANDRAS
ROOM:

HISTORY OF PRESENT ILLNESS: This 46-year-old smoking male presented to the hospital for chest pain. An initial chest x-ray on admission showed what appears to be a foreign body in the left mainstem bronchus. I am being asked to comment on this. This patient complains of pain in his chest that is sharp that goes directly straight to his back. There is a history of cough. No history of hemoptysis.

PAST MEDICAL HISTORY: includes hypercholesterolemia. No history of hypertension or diabetes.

SOCIAL HISTORY: He has a 25 pack year smoking history. He works at Michelin.

FAMILY HISTORY: Is noncontributory.

REVIEW OF SYSTEMS: Includes all mentioned in history of present illness. Also, he has chronic back pain, occasional headaches, occasional constipation. All other review of systems are negative.

PHYSICAL EXAMINATION: He appears well in no acute respiratory distress. Blood pressure is 150/90, pulse is 84. Pupils react to light. The oral mucosa is moist without thrush. Neck is supple. Heart is regular. Lungs are clear bilaterally. Abdominal exam reveal no hepatosplenomegaly. Extremities are without clubbing, cyanosis or edema. Skin is intact with no rashes. Joints are not inflamed. Neurologically, cranial nerves II through XII are intact without focality.

Chest x-rays been reviewed in it does show what appears to be an irregular metallic foreign body in the left mainstem bronchus.

IN SUMMARY: 46-year-old gentleman with what appears to be a foreign body in the left mainstem bronchus. He has consented to fiber-optic bronchoscopy which would be the
DATE 6/29/2004

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

KING 001961

06/28/04 11:25:39 PM

most reasonable next step. Will perform fiber-optic bronchoscopy to see if this foreign body is removable. If it is not removable or granulated in, than rigid bronchoscopy in the operating room will be performed. Risks, benefits, and alternatives were discussed with Mr. Casey and he agrees to proceed with bronchoscopy.

DICTATED BY: JOSEPH A BOSCIA III, M.D.
D:05/28/2004 14:26:33
T:06/03/2004 11:25:39/lb
65506/64110

CC:
ANDRAS KOSEK, M.D., Admitting Physician

##END
Authenticated by Joseph A. Boscia, MD. On 6/07/04 5:08:40 PM

PRINTED BY: MB24851
DATE 6/29/2004

KING 001962

06/29/04 TUE 10:35 FAX

OP REPORTS

PATIENT NAME: CASEY, WILLIAM
DOB: [REDACTED] 1958
MEDICAL RECORD #: 146220
PROCEDURE DATE: 5/28/2004
ACCOUNT NUMBER: 414900306
ROOM:

PROCEDURE(S) PERFORMED: Bronchoscopy.

REASON FOR PROCEDURE: 45 year-old male with what appears to be a foreign body.

MEDICATIONS: Versed 10 mg IV (intravenous), Fentanyl 100 mcg IV (intravenous), topical lidocaine.

DESCRIPTION OF PROCEDURE: After informed consent was obtained, the right nostril was anesthetized with topical lidocaine. The bronchoscope was advanced to the trachea without difficulty. Trachea as well as right segmental and subsegmental bronchi were normal, patent, without bronchial pathology. However, upon entering the left main stem bronchus, the distal end where the take off of the left upper lobe starts on the medial wall, there is a very erythematous area that was easily friable. No observable foreign body was noted. The airway post the erythematous take off of the left upper lobe was normal. The bronchoscope was withdrawn. The patient tolerated the procedure well.

DICTATED BY: JOSEPH A BOSCIA III, M.D.

D:05/28/2004 14:37:52
T:06/03/2004 21:43:08/lf
G5517/64371

CC:
ANDRAS KOSER, M.D., Admitting Physician

OP REPORTS Page 1 of 1
CASEY, WILLIAM
146220

Note: Document is draft unless signed.<END FOOTER>

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Authenticated by Joseph A. Boscia, MD. On 6/07/04 5:08:47 PM

PRINTED BY: MB24851
DATE 6/29/2004

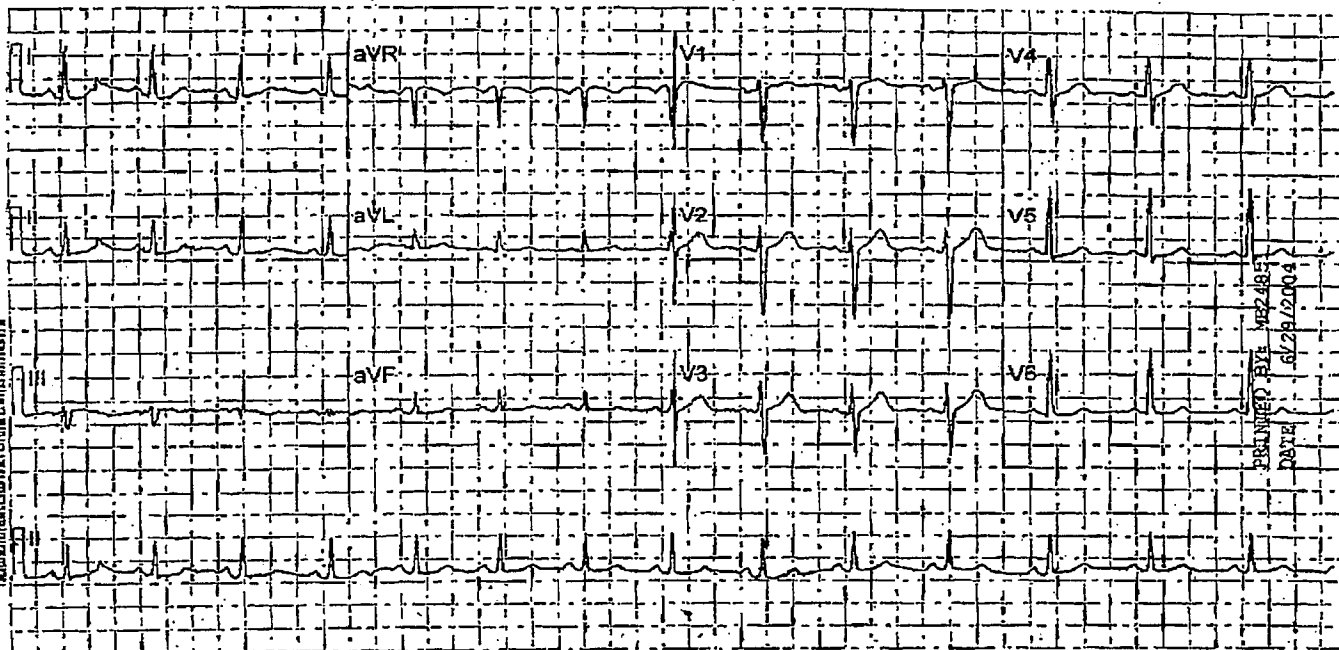
KING 001963

CASEY, WILLIAM
 ID#:146220
 45 years Male Caucasian
 Ord.Dr.BILL
 Tech:KB
 OPT. Priority:STAT
 DX:V2.9
 ACC#:0614900306

HR
 Time:09:44.50 05/29/04
 SPARTANBURG REG.MED.CENT.

Vent rate: 87 Sinus rhythm
 Lateral ST-T changes are nonspecific
 --Durations--
 P : 100
 QRS: 80
 --Intervals--
 PR : 134
 QT : 356
 QTc: 401
 Qtd: 24
 --Axes--
 P : 45
 QRS: 29
 T : 32
 Revisited by: Dr. Tom Robinson

Speed: 25 mm/s Limb Lead Gain: 10.0 mm/mV Chest Lead Gain: 10.0 mm/mV Filter(s): 60Hz Notch, 40Hz Artifact



CONFIRM Current ECG Printed 05/29/04 11:52:41 Transcribed By: Dr. Tom Robinson 05/29/04 11:52:36
 PL081 PL081.93/E.19/16.11/1.64

Page 1 of 1

KING 001964

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SPARTANBURG REGIONAL HEALTHCARE SYSTEM
Dept. of Cardiology Services
101 East Wood Street
Spartanburg, SC 29303

CARDIAC CATHETERIZATION REPORT: Left Heart Cath

NAME: CASEY, WILLIAM

UNIT#: 000146220

DATE: 07-20-2000 REFERRING MD: GONDA

AGE: 41

SEX: Male

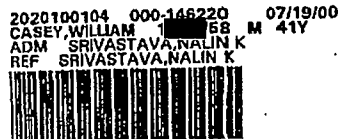
RACE: CAUCASIAN

HT: 68.0

WT: 175.0

BSA: 1.93

SMOKER: 0.5PPD X20YRS



CLINICAL HISTORY:

William Casey is a 41 year old gentleman with chest pain. Cardiolite stress testing showed inferior ischemia and he is now referred for cardiac catheterization.

PROCEDURE:

Left heart cath
Left ventriculography
Coronary angiography

COMMENTS ON PROCEDURE:

After informed consent was obtained the patient was brought to the Cath Lab for the procedure and prepped and draped in the usual fashion. The right femoral artery was anesthetized and punctured without difficulty and a 6 French sheath was placed. 6 FR JL4, JR4 and pigtail catheters were used for the procedure. After the procedure all catheters were removed. The sheath was removed and hemostasis was achieved without difficulty. The patient tolerated the procedure without difficulty and was returned to recovery in stable condition.

HEMODYNAMICS:

Blood pressure was 123/81. Left ventricular end diastolic pressure was normal. There was no gradient across the aortic valve on pullback.

ANGIOGRAPHIC DATA:

The left main coronary artery is normal.

The LAD and diagonal branch are normal.

The left circumflex and obtuse marginal branch are normal.

The RCA and posterior descending artery are normal.

Left ventricular ejection fraction was 60%. There was no mitral insufficiency.

At the end of the procedure the sheath was removed and a vasoseal collagen plug placed without difficulty.

SUMMARY:

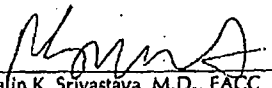
1. NORMAL CORONARY ANATOMY.

7/31/00 

2. NORMAL LEFT VENTRICULAR FUNCTION.

RECOMMENDATION:

EVALUATE NONCARDIAC CAUSES FOR CHEST PAIN.


Nalin K. Srivastava, M.D., FACC
Cardiology Consultants

NKS/r

cc: Office
Medical Records

D.D.: 7/20/00
T.D.: 7/21/00

2020100104 000-146220 07/19/00
CASEY, WILLIAM 68 M 41Y
ADM SRIVASTAVA, NALIN K
REF SRIVASTAVA, NALIN K


Printed On: 07/31/2000 10:02:36

ACQUISITION BY: WTTT MEDICAL

Cardiology

Consultants

Joseph R. Dorchak, M.D., F.A.C.C.
James R. Story, M.D., F.A.C.C.
F. Michael Eickman, M.D., F.A.C.C.
Barry L. Huey, M.D., F.A.C.C.
David G. Ike, M.D., F.A.C.C.

Larry E. Kibler, M.D., F.A.C.C.
Nalin K. Srivastava, M.D., F.A.C.C.
David J. Rodak, M.D.
Garrison Watts, M.D., F.A.C.C.
Robin Simpkins, R.N., A.N.P., A.C.N.P.

STRESS DUAL-ISOTOPE STUDY

NAME: CASEY, WILLIAM

DOB: [REDACTED] 58

DATE: JULY 17, 2000

CLINICAL HISTORY:

The patient is a 41-year-old gentleman with chest pain symptoms, referred for nuclear stress study.

DESCRIPTION OF STUDY:

Resting images were obtained after 3 mCi of thallium were injected. Subsequently, the patient walked for 9 minutes of the Bruce protocol, achieving a peak heart rate of 150. His EKG revealed nondiagnostic ST changes with peak exercise. Cardiolite, 25 mCi, was administered for the stress dose.

FINDINGS:

Interpretation of the rest and stress images reveals an inferior wall defect on the stress images, improved on the rest images, consistent with possible mild ischemia.

Gated ventriculography reveals an ejection fraction of 43 percent. The inferior wall appears to be hypokinetic.

IMPRESSION:

In summary, Mr. Casey's nuclear stress study today reveals possible mild inferior ischemia.

Nalin K. Srivastava, M.D.
Nalin K. Srivastava, M.D., F.A.C.C.
Cardiology Consultants, P.A.

NKS:AKW

cc: Frank E. Gonda, M.D.

MBM Physical Therapy

864-573-3152

p.2


**MARY BLACK
OUTPATIENT THERAPY SERVICES**

 1700 Skylyn Drive
Spartanburg, SC 29307

Phone: (864) 573-3828

Fax: (864) 573-3152

PT Therapy Discharge Summary

 Patient's Name: William Casey
 Diagnosis: chronic low back pain
 Treatment Rendered: Initial eval, home program instructions and training, TFC & sub TMT, Theraex
 Date of Service: 5-24-00, 5-24-00

 1. Assessment of Present Status: Pt states partial compliance w/ home program. Pt rates 3/10 pain lumbar back. Pt's ROM trunk ext 90%, rotation 70%. Pt's posture is lumbar lordosis.

 2. Were short term goals met? ☐ Yes ☒ No
 3. Were long term goals met? ☐ Yes ☒ No

 4. If goals were not met, please explain: Reason stated below.

5. Discharge Recommendations/ Pt/ Family Education/ Home program instructions?

Recommended pt return to MD for further PT - options

6. Reason for discontinuation of therapy:

☐ Met goals	☐ Pt. gained max. benefit
☐ Decline in medical condition	☒ Multiple refusals or noncompliant & physician is notified
☐ Failure to progress towards goals	☐ Non-Rehab candidate
☐ Prescribed # of treatments has been given	☐ Hospital discharge/ transfer

Other: _____

 7. Patient discharged to: ☒ Home ☐ Rehab facility ☐ SNF

☐ Another facility ☐ Expired

 Therapist Signature: Scott M. Li in PT Date: 6-16-00

ADDRESSOGRAPH

KING 001968

Cardiology

Consultants

Joseph R. Dorchak, M.D., F.A.C.C.
James R. Story, M.D., F.A.C.C.
F. Michael Eickman, M.D., F.A.C.C.
Barry L. Huey, M.D., F.A.C.C.

David G. Ike, M.D., F.A.C.C.
Larry E. Kibler, M.D., F.A.C.C.
Nalin K. Srivastava, M.D., F.A.C.C.
David J. Rodak, M.D., F.A.C.C.

Alejandro N. Lopez, M.D., F.A.C.C.
Kristen P. Nawabi, M.D.
John J. Gallagher, M.D., F.A.C.C.
Robin Simpkins, R.N., A.N.P., A.C.N.P.

17804

NUCLEAR STRESS STUDY

NAME: CASEY, WILLIAM M.

DOB: [REDACTED] 68

DATE: AUGUST 2, 2004

CLINICAL HISTORY:

Mr. Casey is a 45-year-old patient of Dr. Gonda. The patient has also seen Dr. Srivastava. This study is ordered by Dr. Wilson Smith for evaluation of chest pain. The patient had an abnormal calcium score by CT. The patient also had a normal catheterization in the year 2000.

DESCRIPTION OF STUDY:

Resting images were obtained after the administration of 10 mCi of Cardiolite. The patient then underwent Bruce protocol stress testing completing 9 minutes of exercise achieving 10.1 mets and 87 percent of the predicted maximum heart rate. At peak exercise, 25 mCi of Cardiolite were administered.

FINDINGS:

The raw images revealed no significant lung uptake.

The SPECT images revealed normal perfusion on stress and rest images. There was no evidence for ischemia.

The gated images revealed normal systolic function with a calculated ejection fraction of 58 percent. There were no regional wall motion abnormalities present.

IMPRESSION:

Normal study.

COMMENT:

Previous Cardiolite in July of 2000 revealed inferior ischemia. This was subsequently found to be a false-positive study. This study is normal.

David G. Ike, M.D., F.A.C.C.
Cardiology Consultants, P.A.
DGI:MSM

cc: Nalin K. Srivastava, M.D.
Frank E. Gonda, M.D.
Wilson P. Smith, Jr., M.D.

MSD
8/12/04

GLENN L. SCOTT, M. D.
200 DILLON CIRCLE
SPARTANBURG, SC 29307

Orthopaedic Surgery

Phone (864)582-3456
Fax (864)583-3579

NAME: William Casey

ADDRESS: 240 Lightwood Farm Rd
Woodruff, SC 29388

SSN: [REDACTED]

AGE: 45

TELEPHONE: 864-486-9131

DATE OF EXAM: 09-20-04

This 45 year old male patient was seen with complaints of chronic low back pain dating back to several years. He is an employee of Michelin Tire Corporation where he works on the production line. However, he has not worked since May 28. This has been for reasons other than his back, although he was advised to have his back evaluated prior to returning to work. He states that the job that he does is quite strenuous, that he works 12 hour shifts and he has a lot pushing, pulling and rotation type movements associated with his job. He has worked for Michelin for about 20 years. He states that his back pain is relatively constant, but worse when he first wakes up the a.m. He also has some pain in the anterior aspect of his chest. He has had an extensive evaluation for cardiac disease which, apparently, has been nonrevealing.

His complete medical history was documented and reviewed. He smokes about a quarter of a pack of cigarettes a day, drinks socially but not excessively. Other than mentioned above, his review of systems, medical and social history and family history are nonrevealing.

On exam, the patient is a well developed male. Weight 177. Blood pressure 102/74. Pulse 88. Head is normocephalic. Pupils are equal and reactive and extra ocular muscles are intact. He shows good range of motion without spasm or tenderness in the cervical spine. Also, motion is symmetrical from side to side. His upper extremities show good range of motion in the shoulders, elbows, wrists and hands. His muscular development is symmetrical and reflexes are symmetrical at the biceps, triceps and brachial radialis. He has good grip. His chest shows good expansion and contraction. There is no thoracic spasm or point tenderness. His heart has a regular rate and rhythm.

Exam of the lumbar spine, again, shows no visible or palpable sustained paravertebral spasm. He has a reversal of his lumbar curve as he flexes and extends. There is no list and his motions from side to side are symmetrical. He has some increased pain on hyper extension and at the end ranges of rotation. Straight leg

KING 001970

GLENN L. SCOTT, M.D.
200 DILLON CIRCLE
SPARTANBURG, SC 29307

Orthopaedic Surgery

Phone (864)582-3456
Fax (864)583-3579

William Casey
[REDACTED]

09-20-04 continued...

Page 2

raising is negative for acute nerve root irritation. Reflexes are 2+ and symmetrical at the knee and ankle. He has normal motor strength and normal sensation.

He has had previous x-rays done AP, lateral and spot of the lumbosacral junction. In addition, oblique x-rays were done today which showed some moderate degenerative changes in the facet joints at L4-5 and L5-S1. The disc spaces are fairly well maintained. Likewise, he had an MRI done on 10-31-03 at Mary Black. These films, as well as the radiologist's report, were reviewed. He has some moderate degenerative changes at L4-5 and L5-S1 with some mild bulging. There is no real lateralization, no herniation or direct nerve root compression. Arthritic changes in the facet joints are, again, noted.

IMPRESSION

Degenerative lumbar spine and disc disease.

I don't feel that these are advanced or acute changes, although certainly have the potential of gradual worsening with time. The condition has the potential to be aggravated or accelerated by strenuous and sustained activities, both occupationally and recreationally. In discussing his job at some length with him in the office today it does have strenuous aspects which potentially could be aggravating factors to his back. I don't see any reason why, at this point, he can't return to his regular job, but I feel it would be advisable for him to explore, with the company, different jobs that might become available that would be less demanding as far as his back is concerned. He currently is using nonsteroidal anti-inflammatory agents, is on a regular back exercise program and, at times, uses a back support and he was advised to continue with this program.

Glenn L. Scott, M.D. ,
GLS:km
cc: Patient

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

KING 001971



MICHELIN

MICHELIN TIRE MANUFACTURING
US-3 Facility Personnel
Post Office Box 5049
Spartanburg, SC 29304
864-599-3157, Office
864-599-3222, Fax

ATTENDING PHYSICIAN'S REPORT (FOR EXTENDED LEAVES OF ABSENCE)

Date: SEPT. 27, 2004
Sept 7, 2004

Employee's Name: William Mark Casey

Address: 240 Lightwood Farm Road

Date original medical leave of absence: MAY 28, 2004

Expected date of return to work: APPROXIMATELY 30 DAYS

Physical findings (diagnosis): INITIAL AND TERMINAL SLEEP DISTURBANCES

DEPRESSIVE AFFECT MOST DAY & ATYPICAL CYNICISM, IRRITABILITY WITH LOW FRUSTRATION TOLERANCE, ANXIETY AND RESTLESSNESS, ATYPICAL SOMATIC SYMPTOMS, EXCESSIVE WORRY, EASILY FATIGUED, AND AN INABILITY TO COPE & NORMAL LIFE STRESSORS, AND DECREASED MOTIVATION

Treatment and/or recommendation: FOR ALL ACTIVITIES.

CONTINUED COGNITIVE, INSIGHT ORIENTED PSYCHOTHERAPY,

INCREASE ZOLOFT TO 150MG, QD (OCCURRED 9-23-04), SWITCH TO OR COMBINE CYMBALTA (SEE ACCOMPANYING LETTER TO DR. GORDON), CONSIDER ADDING BUSPIRONE FOR ANXIETY, AND REFER TO PSYCHIATRIST IF NOT SIGNIFICANTLY IMPROVED IN THREE WEEKS.

Dxs. = MAJOR DEPRESSIVE DISORDER,
SINGLE EPISODE (296.2),
POSTTRAUMATIC STRESS
DISORDER - RESOLVING (309.81)
GENERALIZED ANXIETY
DISORDER (300.02)

Address: JOSEPH G. GRACE, III, PH.D.,
OUTPATIENT CENTER - SAHS
SPARTANBURG, SC, 29303
(853 N. CHURCH ST., SUITE 510)
Telephone: (864) 560-1512

NOTE: Michelin employees may receive full or 60% pay during Medical Leave of Absence. Verification of information regarding this request for leave would be greatly appreciated. To assure continuity in the employee's pay, this form must be returned promptly. Your cooperation would be appreciated.

LCE/SP/FORMS/DIRECTLY.DOC

P.1 (864) 486-9131

Mark Casey

KING 001972

NOV-10-2004 12:30 PM

NOV-10-2004 P. 1/1

17804

Casey, William M. 1958
Office/Outpatient Visit
Visit Date: Wed, Nov 10, 2004 04:38 pm
Provider: A: Bennett, LPC, LPC
Location: Piedmont Psychiatric Services

1 of 2

This note has not been signed and may be incomplete. Printed on 11/14/2004 at 5:05 pm.

SUBJECTIVE:

CC:
Mr. Casey is a 46 yo male referred to Jeffery Smith, MD by his psychologist, Jay Grace, Ph.D. for treatment of depression and anxiety.

HPI:
Mr. Casey reports that during spring 2004, he began to experience episodes of chest pain when at work. Over a period of days or weeks, his worry about the pain grew. Eventually in May 2004, at the encouragement of a co-worker, he reported his symptoms to the company RN. He was then transported to the ER and underwent a series of tests. He states that as a result of an incorrect diagnosis, he underwent unnecessary invasive procedures, and suffered severe complications which required care in the ICU for several days. Has been out of work since this incident and worries greatly about his job security. He asserts he is suspicious and distrustful of individuals in his workplace and of healthcare providers given recent events and given the current environment. He plans to litigate.

Additionally, Mr. Casey notes he has been very stressed by family concerns. He states that his kids (18 and 21 yo) have broken his heart, and he feels himself to be a failure over this. He feels they are estranged. His divorce is pending. He states he has adjusted to his marital separation two years ago, citing it was a mutual decision and both had affairs before separating. He experienced significant financial distress following marital separation, and he reported on his intake sheet that he is currently having financial stress.

Symptomatically, Mr. Casey has been suffering with constant worry, rumination and negative thinking. He states that until recent, he had been considered an optimistic person. He states he feels like a failure. He reports sleep disturbance (TA, MNA), loss of energy, loss of motivation, anhedonia, decreased libido, difficulty concentrating, and hopeless feelings. He denies suicidal ideation. He denies previous episodes of depression or anxiety.

Mania is not present and nor is there clear history of hypomania. He denies history of manic/hypomanic episodes although he mildly endorsed some possible symptoms such as racing thoughts, although interview finds these appear better described as worry and rumination. There is no grandiosity. He acknowledges periods of agitation but he states these have only occurred in response to the significant stressors over recent months. He states his only significant period of excessive spending occurred immediately after his divorce. He notes that currently he may overspend at electronic stores, but he has otherwise been restrained with his spending.

Past Medical History / Family History / Social History:

Past Medical History:
Bulging disk, back pain
Chest pain with exertion

Family History:
Denies.

Social History:
Divorce is pending. Separated 2 years. Two children, ages 18, 21. Has worked production job with Michelin for over 20 years. Reports financial problems.

Tobacco/Alcohol/Supplements:
12 pack beer/month.

Substance Abuse History:
Denies.

Mental Health History:
Current counseling with Jay Grace, PhD.

11/16/04
Z

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KING 001973

2 of 2

Current Medications:

OBJECTIVE:

EXAMS:

ASSESSMENT:

PLAN:

Major depression, single episode, moderate

Orders:

cc: Jay Grace, Ph.D.

Nov. 15. 2004 12:36PM

1 of 1

Casey, William M. [REDACTED] 1958

Office/Outpatient Visit

Visit Date: Wed, Nov 10, 2004 06:16 pm

Provider: Jeffrey Smith, MD, M.D. (Supervisor: Jeffrey Smith, MD, M.D.)

Location: Piedmont Psychiatric Services

This note has not been signed and may be incomplete. Printed on 11/10/2004 at 5:44 pm.

SUBJECTIVE:

HPI:

46 yom referred by Dr. Joseph Grace.

See full history by Al Bennett on this same day.

He is Zolof 150 mg qd and Ambien 10 mg one qhs prn insomnia.

He is reluctant to acknowledge depression despite symptoms that suggest this diagnosis. He does have a lot of ruminations.

He thinks Zoloft has helped take the edge of anxiety and has decreased ruminations. More withdrawn than he would like. Poor energy. Poor motivation. Interest and enthusiasm. Some insomnia, unless he takes Ambien. Some overeating. Easily agitated. No s.i. Some hopeless feelings.

No mania or psychosis.

No alcohol or drug abuse.

OBJECTIVE:

ams:

Affect is irritable. No s.i. or h.i. Judgement and insight fair. No psychosis. Gait, dress, speech, and hygiene normal. Sensorium clear. No gross cognitive deficits.

ASSESSMENT:

296.22 Major depression, single episode, moderate

PLAN:

Stop Zoloft.

Add Cymbalta 80 mg one qam with food. # 42 samples.

Cont. Ambien 10 mg one qhs prn insomnia.

Ret. in 3-4 wks.

CC: Joseph Grace, PhD

Major depression, single episode, moderate

Orders:

90862 Pharmacologic management with no more than minimal medical psychotherapy

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KING 001975

PIEDMONT PSYCHIATRIC SERVICES

Tony R. Goodbar, M.D. (Child & Adolescent Psychiatry)
Jeffrey K. Smith, M.D. (Adult Psychiatry)
John P. Taylor, M.D. (Practice closed to New Patients)
Lynn Pucell Wright, M.D. (Practice closed to New Patients)
Wade A. Harris (Adult Psychiatry)

Jim Harbith, MEd, LPC
Michael D. Smith, MA, LPC
Susan Gentry-Wright, LMSW
Mary L. Shutes, MSW
Albert C. Bennett, MA, LPC
Carol R. Mitchell, MSN, LPC

NEW PATIENT REFERRAL FORM

DATE: 10/29/04 ACCOUNT NUMBER _____
PHYSICIAN REQUESTED: Dr. Tony Goodbar APPT DATE: ? TIME: ?
REFERRED BY: Dr. Frank Gonda PHONE NUMBER: 804-578-9735
ADDRESS: 2212 Old Furnace Rd. ^{Billing Spring} SC 29386 FAX: 578-7098 BACK LINE: none
REFERRAL OFFICE CONTACT: Denna MED RECORDS REQUESTED: *YES

PATIENT INFORMATION

NAME: William "Mark" Casey DOB: [REDACTED] SSN: [REDACTED]
Parent Name (if minor): NONE Work Place: Michelin
HOME ADDRESS: 240 Lightwood Farm Road
CITY: Woodruff STATE: SC ZIP: 29388
HOME PHONE: (864) 486 9131
PRIMARY INS: BC/BS SECONDARY INS: _____
CHIEF COMPLAINT: Depression; Anxiety D/O

Precipitants/Stressors:

Current Medications: Wellbutrin 50mg, Zanaflex 4mg, Lorazepam 10/500, Bupropion 20mg
Zolpidem 12mg, Zolpidem 10mg 1/2 tab.

Alcohol/Drug Use:

Prior Treatment: _____ Outpatient _____ Inpatient _____

FAX NUMBER: (864) 676-9432

DATE APPT SCHEDULED: _____

ATTENTION: _____

NEW PT PACKET MAILED: _____

2094 Woodruff Rd. • Greenville, South Carolina 29607 • 864-676-9211 • Fax 864-676-9432

KING 001976

JOSEPH G. GRACE III, PH.D
ASSOCIATE PROFESSOR OF FAMILY MEDICINE
LICENSED COUNSELING PSYCHOLOGIST

Spartanburg Regional Healthcare System
Center for Family Medicine
853 N. Church St., Suite 510
Spartanburg, SC 29303

Phone: (864) 560-1512
Fax: (864) 560-1510
Home: (864) 515-9714
E-Mail: jgrace@srhs.com
www.spartfam.org

KING 001977

APPOINTMENT

For: -Marble-
Thurs, Sept 9 at 11 o'clock

KING 001978

17804

JOSEPH G. GRACE III, PH.D
LICENSED COUNSELING PSYCHOLOGIST
853 N. CHURCH STREET, SUITE 510
SPARTANBURG, SC 29303
(864) 560-1512

September 16, 2004

Frank E. Gonda, MD
2212 Old Furnace Rd.
Spartanburg, SC 29316
Fax #: 578-7098

Re: William Mark Casey
D.O.B. [REDACTED] 58
SS# [REDACTED]

Dear Frank,

I have been following Mark Casey on a weekly basis and saw him most recently on September 16, 2004. He reportedly has been taking Zoloft, 100 mg per day for about eight weeks now as you prescribed. He estimated that he has gained about 50% benefit from Zoloft, but for about the past four weeks he seems to have plateaued and there appears to be no subjective or objective improvements. Thus, the following depressive symptoms persist: initial and terminal sleep disturbances, depressive affect most days with atypical cynicism, irritability with low frustration tolerance, anxiety and restlessness, atypical somatic symptoms, excessive worry, easily fatigued, and an inability to deal with normal life stresses.

On August 9, 2004, I administered to Mark the MMPI-II. The validity scales indicate that his test results are valid and the clinical picture is probably unchanged since that test administration. The clinical scales of his MMPI-II indicate that he is moderately depressed, moderately anxiety, but in good reality contact. He is prone to develop ulcers and other GI disturbances under stress. Also, he is prone to sudden anxiety and panic episodes. Test results confirm that he is overwhelmed with problems, is guilt-ridden, and has feeling of inadequacy and unworthiness. He tends to be quite despondent and is slowed in thought and action. Mark is also inclined to experience obsessional thoughts which trigger compulsive behaviors. His personality profile also indicates that he is angry and resentful, rigid and stubborn. He tends to be suspicious and inclined to question the motives of others. However, when not overwhelmed and depressed, he is likely to be much more adaptable, dependable and responsible. In addition, when not in an emotional crisis, he is probably realistic and practical, and is viewed by others as sociable, friendly and enthusiastic.

Mark has a twenty-plus year history with Michelin and reportedly has been a very productive employee. He indicated, however, that he has been out of work since May 28th and several very recent phone calls from Michelin supervisors indicate that his job

4/20/04

KING 001979

09/11/04 FAX 08:30 FAX 004 000 1000

Mark has a twenty-plus year history with Michelin and reportedly has been a very productive employee. He indicated, however, that he has been out of work since May 28th and several very recent phone calls from Michelin supervisors indicate that his job may be in jeopardy. Thus, it seems only reasonable that we accelerate his treatment in an effort to expedite his return to work. The simplest solution seems to be to increase his Zoloft to 150 mg per day. Another possibility would be to augment the therapeutic benefit of Zoloft with a second anti-depressant such as Cymbalta. Cymbalta would probably be a good choice since it would be combining the serotonergic benefits of Zoloft with the norenergic benefits of Cymbalta. Also, the addition of BuSpar could be helpful in the treatment of Mark's numerous anxiety symptoms.

If you are not comfortable, Frank, with a more complex psychotropic regimen, then either you or I can refer him to one of the Greenville psychiatrists with the recommendation that he be seen at their earliest opening. Michelin is not really satisfied with Mark being out on a three and one-half month leave under the care of a family physician and psychologist for a psychiatric disorder. However, since it could take two to three weeks for Mark to be seen by a psychiatrist, please consider a medication increase/change in the meantime.

Please advise (560-1512).

Sincerely yours,



Jay Grace, Ph.D.
Licensed Counseling Psychologist

KING 001980

SOUTH CAROLINA VOCATIONAL



REHABILITATION DEPARTMENT

Larry C. Bryant, Commissioner

Disability Determination Services • Greenville Regional Office
Post Office Box 3090 • Greenville, SC 29602 • (864) 282-4000 • 1-800-868-1950 • (864) 282-4473 FAX

September 21, 2005

FOOTHILLS FAMILY MEDICINE
2212 OLD FURNACE ROAD
BOILING SPRINGS SC 29316

RE: WILLIAM M CASEY
AKA: MARK CASEY

ADD: 240 LIGHTWOOD FARM RD
WOODRUFF SC 29388

SSN: [REDACTED]
DOB: [REDACTED] 58

FRANCISCO E GONDA MD

Your patient has applied for disability benefits under the Social Security Act. We appreciate your response to our previous request for information. However, we need the additional information requested below to adjudicate the claim. You may annotate your response on this page or, if needed, attach additional pages. If attaching additional pages, please include the patient's name and SSN on each page.

PLEASE SEND A COPY OF TX NOTES THAT HAVE OCCURRED SINCE 1-12-05. THANK YOU FOR THE UPDATED MEDICAL INFORMATION.

Physician's Signature *Francisco E. Gonda MD*

See the attached page for instructions on returning your report to the DDS. We are authorized to pay \$15 for your report. We are not authorized to pay government agencies. If you require payment and do not attach your invoice, sign on the line for "Provider's Signature" on that page. Please include that page as the TOP document with your report with this letter underneath.

Sincerely,

Aimee F. DePetrus

Aimee F. DePetrus, Disability Examiner

PLEASE RETURN THIS LETTER AS THE SECOND PAGE OF YOUR RESPONSE.

ENCLOSURE: Release, Envelope
AFD/461
Claim No: E54200



L2 (6/05)
DMA: Y

KING 001981

CASEY WILLIAM M
240 LIGHTWOOD FARM RD
WOODRUFF SC 29388
C/N [REDACTED]

01 461
RC D18
N

Form Approved
OMB No. 0960-0623

WHOSE Records to be Disclosed

First	Middle	Last
NAME WILLIAM	MARK	CASEY
SSN [REDACTED]	Birthday (mm/dd/yy) [REDACTED] 958	
SSA USE ONLY NUMBER HOLDER (if other than above):		
NAME [REDACTED]		
SSN [REDACTED]		

36-9131
046 005 [REDACTED] 1958

584 DMA E54200

**AUTHORIZATION TO DISCLOSE INFORMATION TO
THE SOCIAL SECURITY ADMINISTRATION (SSA)**

**** PLEASE READ THE ENTIRE FORM, BOTH PAGES, BEFORE SIGNING BELOW ****

I voluntarily authorize and request disclosure (including paper, oral, and electronic interchange):

OF WHAT All my medical records; also education records and other information related to my ability to perform tasks. This includes specific permission to release:

- All records and other information regarding my treatment, hospitalization, and outpatient care for my impairment(s) including, and not limited to:
 - Psychological, psychiatric or other mental impairment(s) (excludes "psychotherapy notes" as defined in 45 CFR 164.501)
 - Drug abuse, alcoholism, or other substance abuse
 - Sickle cell anemia
 - Human immunodeficiency virus (HIV) infection (including acquired immunodeficiency syndrome (AIDS) or tests for HIV or sexually transmitted diseases)
 - Gene related impairments (including genetic test results)
- Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.
- Copies of educational tests or evaluations, including individualized Educational Programs, triennial assessments, psychological and speech evaluations, and any other records that can help evaluate function; also teachers' observations and evaluations.
- Information created within 12 months after the date this authorization is signed, as well as past information.

FROM WHOM

- All medical sources (hospitals, clinics, labs, physicians, psychologists, etc.) including mental health, correctional, addiction treatment and VA health care facilities.
- All educational sources (schools, teachers, records administrators, counselors, etc.)
- Social workers/rehabilitation counselors
- Consulting examiners used by SSA
- Employers
- Others who may know about my condition (family, neighbors, friends, public officials)

THIS BOX TO BE COMPLETED BY SSA/DDS (as needed) Additional information to identify the subject (e.g., other names used), the specific source or the material to be disclosed:

Dothills Family Medicine

TO WHOM

The Social Security Administration and to the State agency authorized to process my case (usually called "disability determination services"), including, contract copy services, and doctors or other professionals consulted during the process. (Also, for international claims, to the U.S. Department of State Foreign Service Post.)

PURPOSE

Determining my eligibility for benefits, including looking at the combined effect of any impairments that by themselves would not meet SSA's definition of disability; and whether I can manage such benefits.

☐ Determining whether I am capable of managing benefits ONLY (check only if applies)

EXPIRES WHEN

This authorization is good for 12 months from the date signed (below my signature).

- I authorize the use of a copy (including electronic copy) of this form for the disclosure of the information described above.
- I understand that there are some circumstances where this information may be redisclosed to other parties (see page 2 for details).
- I may write to SSA and my sources to revoke this authorization at any time (see page 2 for details).
- SSA will give me a copy of this form if I ask; I may ask the source to allow me to inspect or get a copy of the material to be disclosed.
- I have read both pages of this form and agree to the disclosures above from the types of sources listed.

INDIVIDUAL authorizing disclosure

IF not signed by subject of disclosure, specify basis for authority to sign
☐ Parent of minor ☐ Guardian ☐ Other personal representative (explain)

SIGN

William M. Casey

(Parent/guardian sign here if two signatures required by State law)

Date signed

Feb 8, 2015

Street Address

240 LIGHTWOOD FARM RD

Phone Number (with area code)
864 486 9131

City

WOODRUFF

State

SC

Zip

29388

WITNESS

I know the person signing this form or am satisfied of this person's identity:

SIGN

[Signature]

IF needed, second witness sign here (e.g., if signed with an "X" above)

SIGN

Phone Number (or Address)

Phone Number (or Address)

This general and special authorization to disclose was developed to comply with the provisions regarding the disclosure of medical, educational, and other information under P.L. 104-191 ("HIPAA"); 45 CFR parts 160 and 164; 42 U.S. Code section 290dd-2; 42 CFR part 2; 38 U.S. Code section 7332; 38 CFR 1.475; 20 U.S. Code section 1232g ("FERPA"); 34 CFR parts 99 and 300; and State law

**Explanation of Form SSA-827,
"Authorization to disclose Information to the Social Security Administration (SSA)"**

We need your written authorization to help get the information required to process your application for benefits, and to determine your capability of managing benefits. Laws and regulations require that sources of personal information have a signed authorization before releasing it to us. Also, laws require specific authorization for the release of information about certain conditions and from educational sources.

You can provide this authorization by signing a Form SSA-827. Federal law permits sources with information about you to release that information if you sign a single authorization to release all your information from all your possible sources. We will make copies of it for each source. A few States, and some individual sources of information, require that the authorization specifically name the source that you authorize to release personal information. In those cases, we may ask you to sign one authorization for each source and we may contact you again if we need you to sign more authorizations.

You have the right to revoke this authorization at any time, except to the extent a source of information has already relied on it to take an action. To revoke, send a written statement to any Social Security Office. If you do, also send a copy directly to any of your sources that you no longer wish to disclose information about you; SSA can tell you if we identified any sources you didn't tell us about. Information disclosed prior to revocation may be used by SSA to decide your claim.

It is SSA's policy to provide service to people with limited English proficiency in their native language or preferred mode of communication consistent with Executive Order 13166 (August 11, 2000) and the Individuals with Disabilities Education Act. SSA makes every reasonable effort to ensure that the information in the SSA 827 is provided to you in your native or preferred language.

IMPORTANT INFORMATION, INCLUDING NOTICE REQUIRED BY THE PRIVACY ACT

All personal information collected by SSA is protected by the Privacy Act of 1974. Once medical information is disclosed to SSA, it is no longer protected by the health information privacy provisions of 45 CFR part 164 (mandated by the Health Insurance Portability and Accountability Act (HIPAA)). SSA retains personal information in strict adherence to the retention schedules established and maintained in conjunction with the National Archives and Records Administration. At the end of a record's useful life cycle, it is destroyed in accordance with the privacy provisions, as specified in 36 CFR part 1228.

SSA is authorized to collect the information on form SSA-827 by sections 205(a), 223 (d)(5)(A), 1614(a)(3)(H)(i), 1631(d)(1) and 1631(e)(1)(A) of the Social Security Act. We use the information obtained with this form to determine your eligibility for benefits, and your ability to manage any benefits received. This use usually includes review of the information by the State agency processing your case and quality control people in SSA. In some cases, your information may also be reviewed by SSA personnel that process your appeal of a decision, or by investigators to resolve allegations of fraud or abuse, and may be used in any related administrative, civil, or criminal proceedings.

Signing this form is voluntary, but failing to sign it, or revoking it before we receive necessary information, could prevent an accurate or timely decision on your claim, and could result in denial or loss of benefits. Although the information we obtain with this form is almost never used for any purpose other than those stated above, the information may be disclosed by SSA without your consent if authorized by Federal laws such as the Privacy Act and the Social Security Act. For example, SSA may disclose:

1. To enable a third party (e.g., consulting physicians) or other government agency to assist SSA to establish rights to Social Security benefits and/or coverage;
2. Pursuant to law authorizing the release of information from Social Security records (e.g., to the Inspector General, to Federal or State benefit agencies or auditors, or to the Department of Veterans Affairs (VA));
3. For statistical research and audit activities necessary to assure the integrity and improvement of the Social Security programs (e.g., to the Bureau of the Census and private concerns under contract with SSA).

Other than the above limited circumstances, SSA will not redisclose without proper prior written consent information (1) relating to alcohol and/or drug abuse as covered in 42 CFR part 2, or (2) from educational records for a minor obtained under 34 CFR part 99 (Family Educational Rights and Privacy Act (FERPA)), or (3) regarding mental health, developmental disability, AIDS or HIV.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about possible reasons why information you provide us may be used or given out are available upon request from any Social Security Office.

PAPERWORK REDUCTION ACT

This information collection meets the requirements of 44 USC §3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 10 minutes to read the instructions, gather the facts, and answer the questions.

SEND OR BRING IN THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE. The office is listed under U.S. Government agencies in your telephone directory or you may call Social Security at 1-800-772-1213. You may send comments on our time estimate above to: SSA, 1338 Annex Building, Baltimore, MD 21235-0001. Send only comments relating to our time estimate to this address, not the completed form.

Request sent to:

FOOTHILLS FAMILY MEDICINE
2212 OLD FURNACE ROAD
BOILING SPRINGS SC 29316

RE: WILLIAM M CASEY
SSN: 251-02-2977

RETURN RECORDS BY FAX TO SCDDS AT (866) 868-7952

OR

IF RETURNING BY MAIL, FOLLOW DIRECTIONS BELOW:

MAIL INSTRUCTIONS

Insert this page into the window envelope with the address showing.
THIS PAGE MUST BE ON TOP OF YOUR REPORT.

- Mail report to address in box at right.
- If you are sending reports on more than one person in the same envelope, place this page for each individual on top of his/her records.

PAYMENT INSTRUCTIONS

Complete the information below. We can no longer accept personalized invoices.

AUTHORIZATION - RETURN FOR PAYMENT

Please complete identifying information below. **TO ENSURE PAYMENT, THIS FORM MUST BE PLACED ON TOP OF THE MEDICAL EVIDENCE.**

- Enter the payment Amount and Provider Signature.
Complete the "Remit To" section below as listed on file with the IRS if this information is different from the "Request Sent To" section above.

Remit To: Foothills Family Med. Amount: \$ 15.00

2212 Old Furnace Road
Boiling Springs, SC 29316

Telephone No.: 844-518-9735

[Signature]
Provider's Signature

SSA
S87 SC DDS GREENVILLE
P.O. BOX 8706
LONDON, KY 40742-9915

- We cannot honor a bill presented more than 45 days after the close of our fiscal year which ends September 30.

THIS PAGE MUST BE ON TOP OF YOUR REPORT.



ROID: 0037465337E54200 SITE: S87 DR: F
SSN: 251022977 DOCTYPE: 0001 RF: D CS: f500

AFD/461
Claim No.: E54200
XD (8/04)
BMA: Y

TDN: 0037465337

KING 001984

VITAL SIGNS FLOW SHEET

Ht Date				Ht Date				Ht Date				Ht Date		
Date	Pulse	BP	Temp	R	Wt	Date	Pulse	BP	Temp	R	Wt	BP and/or Weight (		
												Date	BP	Wt
1/1/93		138/74	98.9		170 3/4	1/2/05	68	116/84		16	185			
4/93					175 1/2	4/5/05	100	154/80		16	187			
11/1/99	80	120/80			179	4/22/05	68	119/84	—	16	184			
2/1/98	88	120/98			175	9/28/05	100	160/104		16	182			
6/6/98	88	112/80			175	12/20/05	100	134/94		16	181			
1/1/99	68	96/68			184	3/13/06	88	132/80		6	182			
2/1/99	72	125/75			181	6/13/06	80	140/84	—	16	184			
1/1/00	76	110/80			171									
2/1/00	80	130/80			182									
2/1/00	80	130/82			178 1/2									
10/6/01	76	120/90	99		182									
1/1/01	80	130/82			179									
6/02	80	130/90			178									
1/1/02	80	112/78			173									
23/03	80	124/88			180									
23/03	72	131/94		16	172									
27/03	72	122/84		16	171									
2/03	88	134/92		16	177 1/2									
15/03	88	126/94		16	177									
10/04	88	134/94		16	180									
4/04	80	124/80		16	176									
29/04	100	126/94		16	169									
27/04	76	120/76		16	178									
10/04	100	134/94		16	180									
19/04	100	124/88		16	177									

William Casey
#10967

R-2-92

KING 001985

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

[illegible]

KING 001987

103

Date: 9/23/92 Name: Casey, William Chart#: 109107

Color <u>red</u>	Prot <u>1.0</u>	Bld <u>1.0</u>	WBC <u>0-2</u>	Cast	Bact	CC
Char <u>clean</u>	Glc <u>1</u>	Nit <u>1</u>	RBC <u>1-4</u>	Cryst	SXT	Am
S.G. <u>1.020</u>	Ket <u>1</u>	Uro <u>0.2</u>	Epi <u>Rare</u>	Other <u>2+ mucus</u>	Pen	CB
PH <u>6.0</u>	Bill <u>1</u>	Bact <u>Rare</u>			Tet	F/M

Micro Leukocytes - 2

Patient: Mark Casey Coll Time: 9:45 Date: 11/21/98 Tech: DM Req By: EG

APPEA	SG	LEUK	NIT	PH	PRO	GLU	KET	URO	BLI	BLOOD	MICRO ALB	HCG	FOB
CLEAR	1.000-1.030	NEG	NEG	5.0-8.5	NEG	NEG	NEG	NORMAL	NEG	NEG	NEG	NEG	NEG
<u>Clear 1.030</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>6.0</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>0.2</u>	<u>N</u>	<u>12</u>	<u>1/21</u>	<u>1/21</u>	<u>1/21</u>

KOH / WET PREP

BACT: — WBC: 0-2 RBC: Rare EPT: — CAST: 1/21 OTHER: 2+ mucus

FOOTHILLS
FAMILY MEDICINE

KING 001988

Foothills Family Medicine
2212 Old Furnace Rd.
Boiling Springs, SC 29316

William Casey

58

39

m

DH Ordered 5 diff. per Dr. Gonda *RG*

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

F

1/21

KING 001989

MBPG FOOTHILLS FM BOILING SPRINGS
PATIENT FACE SHEET

03/10/2006

Patient Number : 20713
 Name : CASEY, WILLIAM M.
 Address : 240 LIGHTWOOD FARM ROAD
 WOODRUFF, SC 29388
 Acct Type : P
 Chart No : 17804
 Resp Type : 1
 Statement Code : 1
 Message : Y
 Group : A004 MBPG FOOTHILLS FM BOILING SPRINGS
 Class :
 Facility :
 Doctor :
 Dept/AuxDR :

Soc Sec # :
 Home Phone : (864) 486-9873
 Work Phone : (864) 680-5929
 Birthdate : 958
 Age : 47
 Sex : M
 Marital : U
 Category :
 Type :
 Race : CA

<u>Employer</u>	<u>Occupation</u>	<u>Acct#</u>	<u>Student Status</u>	<u>Active</u>	<u>Employment Status</u>
MICHELIN TIRE CORP		7125		YN	Employed full time

PATIENT INSURANCE INFORMATION**DISABILITY**

<u>Insurance</u>	<u>Code</u>	<u>Class</u>	<u>Plan</u>	<u>Policy 1</u>	<u>Policy 2</u>	<u>A</u>
BLUECROSS BLUESHIELD SOUTH	BCSC	BLUE	MGU	MIH251022977		Y
<u>Subscriber Name</u>	<u>Subscriber DOB</u>	<u>Relation to Patient</u>				
CASEY, WILLIAM M	958	1 - Male Subscriber				
<u>PCP Group</u>	<u>PCP Doctor</u>	<u>Effective Dates</u>	<u>Type</u>	<u>Comment</u>		

<u>Responsible</u>	<u>First Name</u>	<u>Type</u>	<u>ID#</u>	<u>Active</u>
CASEY	WILLIAM	1 SELF	20713	Y

<u>Refer By Doctor</u>	<u>Facility</u>	<u>Source</u>	<u>Date</u>	<u>Comment</u>
GONDA MD, FRANK	MBPG FOOTHILLS FM		10/19/2004	
GONDA MD, FRANK	MBPG FOOTHILLS FM		10/26/2004	
GONDA MD, FRANK	MBPG FOOTHILLS FM		10/26/2004	
GONDA MD, FRANK	MBPG FOOTHILLS FM		10/26/2004	
GONDA MD, FRANK	MBPG FOOTHILLS FM		10/26/2004	
GONDA MD, FRANK	MBPG FOOTHILLS FM		04/05/2005	
GONDA MD, FRANK	MBPG FOOTHILLS FM		04/05/2005	
GONDA MD, FRANK	MBPG FOOTHILLS FM		04/05/2005	
GONDA MD, FRANK	MBPG FOOTHILLS FM		04/05/2005	

<u>ID#</u>	<u>Case</u>	<u>First Name</u>	<u>Resp</u>	<u>Acc Date</u>	<u>Type</u>

Name: William M. Casey Chart No.: 210707 Foothills Family Medicine

Problem List			Medication List		
A.	Health Maintenance		#720	Ultram 50mg 2 qid	11/97
B.	For Hx CAD	1/98		~~Lorab 5.0 #20/mo~~	
C.	Nicotine Abuse	8/98		Zanaflex 4mg 2 qhs	4/01
D.	Chronic LBP	8/98	#30	Vicodin 100mg	9/01
E.	Dyslipidemia	8/98		~~Aspirin~~	6/03 8/03
F.	For Hx D.M.	1/98		~~Aspirin 100mg~~	8/03 11/04
G.	Erectile Dysfunction	9/01		~~Proscar 10mg qd~~	8/03 9/03
H.	Depression	4/03		Lorab 10/500 2 bid	9/03
I.	Hypertension			~~Aspirin 20mg~~	9/03
J.	Anxiety disorder			~~Zanaflex 50mg 10mg~~	7/04 9/04
K.	Hyperglycemia			~~Zanaflex 50mg 10mg~~	5/06
				~~Zanaflex 100mg 10/500~~	9/04 11/04
				~~Symmetrel 50mg qd #2~~	11/04 9/05
				Adderall XR 20mg qd	6/05
				Mobic 7.5mg 2 bid	4/05
				Triptan 15mg qhs	5/05
				Remeron (mirtazapine)	9/05
				Ambien 10mg qhs	9/05
				Vitamin 10/40	5/06

HEALTH MAINTENANCE GUIDE																	Allergies
YEAR	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	N/A 9/10
IHA																	
Pap Smear																	
Mammogram																	
Sigmoidoscopy																	
Hemoccult X 3																	
Vaccine																	
Pneumovax																	
Hepatitis																	
DT																	

883-L-1-902

FFM/L-1/cpn

KING 001991

FOOTHILLS FAMILY MEDICINE

NAME: William Mark CaseyAGE: 39/44/46DATE: 6/14/1997

Thank you for helping us keep your medical history up to date. If you feel uncomfortable answering any of these questions, leave it blank. Your nurse will be happy to help you complete this form.

ALLERGIES:

None NEDA 12/3/97

MEDICAL HISTORY:

List your hospitalizations, operations and major illnesses.

1990? Hemorrhoid surgery
2004 hysteroscopy 2002 FIB in lung

MEDICATIONS:

List all the medication you take.

Ultram
Viagra
Aspirin

YOUR FAMILY'S HEALTH:

First Name Only

Age

Health Problems

If deceased list age and cause of death

Check where you or members of your family have had the following problems:

Father	Julian			72 - Heart Attack	A family member has had
Mother	Clara	71	open heart surg, diabetes, cerebral surgery		
Bothers and Sisters	Tom	42			Alcoholism
	Carol	40			Anemia
	Gregg	36			Asthma
Children	Donna	38			Bleeding problems
	Travis	14			Cancer, tumors
	Kristen	11			Chicken pox
					Diabetes
					Drug abuse
					Depression
					Eczema, hives, rashes
					Epilepsy, seizures
					Eye problems
					Glaucoma
					Heart disease
					Hepatitis
					High blood pressure
					Kidney, bladder problems
					Liver disease, jaundice
					Lung disease
					Mental illness
					Mumps measles
					Phlebitis
					Rheumatic fever
					Rubella
					Stroke
					Suicide attempt
					Thyroid disease
					Stomach ulcers
					Tuberculosis
					Venereal disease
					Other

WORK HISTORY:

I am (✓) - Working now () - Unemployed () - Retired

What type of work do you do?

Machine operator - Tire Builder

Are you exposed to any hazards at work? yes

What kind of hazards?

Repetitive motion - working on concrete floor 12 hrs

Current employer:

Michelle

HEALTH HABITS:

Do you smoke? Yes (✓) No ()

How many packs per day? Less than 1/2 pack

Do you chew tobacco or use snuff? Yes () No (✓)

Do you drink alcohol? Yes (✓) No ()

What kind? Beer

How much? 6 pack a month

Do you use Drugs? Yes () No (✓)

Do you exercise regularly? Yes (✓) No ()

Do you use your seat belt? Yes (✓) No ()

IMMUNIZATIONS:

Check the immunizations you have had and the year received.

Tetanus	19
Pneumonia	18
Influenza	19
Rubella	19
Measles	19
Other	19

brother	Stroke	✓
	Suicide attempt	
	Thyroid disease	✓
	Stomach ulcers	
	Tuberculosis	
	Venereal disease	
	Other	

PHOTOCOPY PRINTING
L-7

KING 001993



LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

Phone: 888-200-5439

SPECIMEN TYPE PRIMARY LAB REPORT STATUS
164-536-0150-0 S BN COMPLETE Page #: 1

ADDITIONAL INFORMATION SSN: [REDACTED]

CLINICAL INFORMATION
CD-20236206349

17804 FASTING: Y
PHONE: 864-486-9873 DOB: [REDACTED] 1958
PATIENT NAME SEX AGE(YR/MOS.)
CASEY, WILLIAM M M 47 / 7

PHYSICIAN ID. PATIENT ID.
GONDA F 20713

PT. ADDR: 240 LIGHTWOOD FARM ROAD
WOODRUFF SC 29388-0000

ACCOUNT: Foothills Family Medicine
Drs Durham And Gonda
2212 Old Furnace Rd
Bolling Springs SC 29316-0000

DATE OF COLLECTION TIME DATE RECEIVED DATE REPORTED TIME
6/13/2006 11:06 6/13/2006 6/14/2006 5:41 6785

ACCOUNT NUMBER: 39110130

TEST	RESULT	LIMITS	LAB
Lipid Panel With LDL/HDL Ratio			
Cholesterol, Total	159 mg/dL	100 - 199	BN
Triglycerides	288 H mg/dL	0 - 149	BN
HDL Cholesterol	26 L mg/dL	40 - 59	BN
VLDL Cholesterol Calc	58 H mg/dL	5 - 40	
LDL Cholesterol Calc	75 mg/dL	0 - 99	
LDL/HDL Ratio	2.9 ratio units	0.0 - 3.6	

LDL/HDL
Men Women

1/2 Avg. Risk 1.0 1.5
Avg. Risk 3.6 3.2
2X Avg. Risk 6.3 5.0
3X Avg. Risk 8.0 6.1

ALT (SGPT) 30 IU/L 0 - 55 BN

LAB: BN LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

DIRECTOR: Frank Hancock MD

*Pt notified
6/14/06*

*Trigs not as good
HDL still low
cont meds
work on diet a
wt loss
6/14/06*

Patient Name: CASEY, WILLIAM M

Patient ID: 20713

Spec #: 164-536-0150-0

Seq #: 6785

Results are Flagged in Accordance with Age Dependent Reference Ranges
Last Page of Report

KING 001994



LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

Phone: 888-200-5439

SPECIMEN TYPE PRIMARY LAB REPORT STATUS
102-536-0784-0 S BN COMPLETE Page #: 1

ADDITIONAL INFORMATION

SSN: [REDACTED]

17804

FASTING: Y
PHONE: 864-486-9873 DOB: [REDACTED]/1958

PATIENT NAME SEX AGE(YR/MOS.)
CASEY, WILLIAM M M 47 / 5

PT. ADDR: 240 LIGHTWOOD FARM ROAD

WOODRUFF SC 29388-0000

DATE OF COLLECTION TIME DATE RECEIVED DATE REPORTED TIME
4/12/2006 10:36 4/12/2006 4/13/2006 5:41 6151

CLINICAL INFORMATION

CD-20236205741

PHYSICIAN ID. PATIENT ID.
GONDA F 20713

ACCOUNT: Foothills Family Medicine
Drs Durham And Gonda
2212 Old Furnace Rd
Bolling Springs SC 29316-0000
ACCOUNT NUMBER: 39110130

TEST	RESULT	LIMITS	LAB
Lipid Panel With LDL/HDL Ratio			
Cholesterol, Total	229 135 ✓ mg/dL	100 - 199	BN
Triglycerides	565 193 H mg/dL	0 - 149	BN
HDL Cholesterol	35 26 L mg/dL	40 - 59	BN
VLDL Cholesterol Cal	39 mg/dL	5 - 40	
LDL Cholesterol Calc	70 ✓ mg/dL	0 - 99	
LDL/HDL Ratio	2.7 ratio units	0.0 - 3.6	

LDL/HDL

	Men	Women
1/2 Avg. Risk	1.0	1.5
Avg. Risk	3.6	3.2
2X Avg. Risk	6.3	5.0
3X Avg. Risk	8.0	6.1

ALT (SGPT)

20 ✓ IU/L

LAB: BN LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

DIRECTOR: Frank Hancock MD

#1 LDL
#2 Trig
#3 HDL

4/13/06
Lm PC JH
4/14/06
Rtno JH

Lipids better
HDL still low
can try exercise
& lose weight.

cont Vytorin 10/40
T 9hs #30/t
lab 2 months

CPS
Rdville

Pat Name: CASEY, WILLIAM M

Pat ID: 20713

Spec #: 102-536-0784-0

Seq #: 6151

Results are Flagged in Accordance with Age Dependent Reference Ranges
Last Page of Report

4/13/06 J

KING 001995



LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

Phone: 888-200-5439

SPECIMEN TYPE PRIMARY LAB REPORT STATUS
072-536-0713-0 S BN COMPLETE Page #: 1

ADDITIONAL INFORMATION

SS#: [REDACTED]

17804

FASTING: Y
PHONE: 864-486-9873 DOB: [REDACTED] 958

PATIENT NAME SEX AGE(YR./MOS.)
CASEY, WILLIAM M M 47 / 4
PT. ADDR: 240 LIGHTWOOD FARM ROAD
WOODRUFF SC 29388-0000

DATE OF COLLECTION TIME DATE RECEIVED DATE REPORTED TIME
3/13/2006 11:06 3/13/2006 3/14/2006 5:39 5829

CLINICAL INFORMATION

CD-20236205434

PHYSICIAN ID. PATIENT ID.
GONDA F 20713

ACCOUNT: Foothills Family Medicine
Drs Durham And Gonda
2212 Old Furnace Rd
Boiling Springs SC 29316-0000
ACCOUNT NUMBER: 39110130

TEST	RESULT	LIMITS	LAB
Lipid Panel With LDL/HDL Ratio			
> Cholesterol, Total	229 H mg/dL	100 - 199	BN
> Triglycerides	565 H mg/dL	0 - 149	BN
> HDL Cholesterol	35 L mg/dL	40 - 59	BN
VLDL Cholesterol Cal	mg/dL	5 - 40	
The calculation for the VLDL cholesterol is not valid when triglyceride level is >400 mg/dL.			
LDL Cholesterol Calc	mg/dL	0 - 99	
Triglyceride result indicated is too high for an accurate LDL cholesterol estimation.			
LDL/HDL Ratio	ratio units	0.0 - 3.6	
Unable to calculate result since non-numeric result obtained for component test.			

	LDL/HDL	
	Men	Women
1/2 Avg. Risk	1.0	1.5
Avg. Risk	3.6	3.2
2X Avg. Risk	6.3	5.0
3X Avg. Risk	8.0	6.1

ALT (SGPT) 18 IU/L 0 - 55 BN

LAB: BN LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

DIRECTOR: Frank Hancock MD

3/14/06
PharmD JH

meds not working,
or have we not been
taking them.

cont. Tricor
DL Lipitor
Begin Vytorin 10/40

#28 samples as 4/1/06

Pat Name: CASEY, WILLIAM M

Pat ID: 20713

Spec #: 072-536-0713-0

Seq #: 5829

Results are Flagged in Accordance with Age Dependent Reference Ranges

Last Page of Report

KING 001996



LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

Phone: 888-200-5439

SPECIMEN TYPE PRIMARY LAB REPORT STATUS
354-536-0809-0 S BN COMPLETE Page #: 1

ADDITIONAL INFORMATION SS#:

17804

FASTING: Y
PHONE: 864-486-9873 DOB: 1958

CLINICAL INFORMATION

CD- 20236204724

PATIENT NAME SEX AGE(YR./MOS.)
CASEY, WILLIAM M M 47 / 1

PHYSICIAN ID. PATIENT ID.
GONDA F 20713

PT. ADDR: 240 LIGHTWOOD FARM ROAD
WOODRUFF SC 29388-0000

ACCOUNT: Foothills Family Medicine
Drs Durham And Gonda
2212 Old Furnace Rd
Boiling Springs SC 29316-0000

DATE OF COLLECTION TIME DATE RECEIVED DATE REPORTED TIME
12/20/2005 10:00 12/20/2005 12/21/2005 5:43 5099

ACCOUNT NUMBER: 39110130

TEST	RESULT	LIMITS	LAB
Lipid Panel With LDL/HDL Ratio			
Cholesterol, Total	197 → 171 mg/dL	100 - 199	BN
> Triglycerides	245 → 252 H mg/dL	0 - 149	BN
> HDL Cholesterol	30 → 33 L mg/dL	40 - 59	BN
> VLDL Cholesterol Calc	50 H mg/dL	5 - 40	
LDL Cholesterol Calc	108 → 88 mg/dL	0 - 99	
LDL/HDL Ratio	2.7 ratio units	0.0 - 3.6	

LDL/HDL

Men Women

1/2 Avg. Risk 1.0 1.5

Avg. Risk 3.6 3.2

2X Avg. Risk 6.3 5.0

3X Avg. Risk 8.0 6.1

0 - 55 BN

ALT (SGPT)

19 ✓ IU/L

LAB: BN LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

DIRECTOR: Frank Hancock MD

12/22/05
Lm RC JA
Dr. RC

12/11 #5 better
X trig - 100 pts
cont work, diet
exercise

12/21/05

Pat Name: CASEY, WILLIAM M

Pat ID: 20713

Spec #: 354-536-0809-0

Seq #: 5099

Results are Flagged in Accordance with Age Dependent Reference Ranges

Last Page of Report

KING 001997



LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

Phone: 888-200-5439

SPECIMEN TYPE PRIMARY LAB REPORT STATUS
179-536-0344-0 S BN COMPLETE Page #: 1

ADDITIONAL INFORMATION

17804 FASTING: Y
PHONE: 864-486-9131 DOB: 1958

PATIENT NAME SEX AGE(YR./MOS.)
CASEY, WILLIAM M 46 / 7
PT. ADD:

CLINICAL INFORMATION

CD- 20236203231

PHYSICIAN ID. PATIENT ID.
GONDA F 217804-WC

ACCOUNT: Foothills Family Medicine
Drs Durham And Gonda
2212 Old Furnace Rd
Boiling Springs SC 29316-0000
ACCOUNT NUMBER: 39110130

DATE OF SPECIMEN TIME DATE RECEIVED DATE REPORTED TIME
6/28/2005 9:01 6/28/2005 6/29/2005 5:44 3542

TEST	RESULT	LIMITS	LAB
Lipid Panel With LDL/HDL Ratio			
Cholesterol, Total	184 → 187 ✓ mg/dL	100 - 199	BN
> Triglycerides	507 → 245 H mg/dL	0 - 149	BN
> HDL Cholesterol	29 → 30 L mg/dL	40 - 59	BN
> VLDL Cholesterol Cal	49 H mg/dL	5 - 40	
> LDL Cholesterol Calc	3 → 108 H mg/dL	0 - 99	
Comment			BN

If initial LDL-cholesterol result is >100 mg/dL, assess for risk factors and refer to the ATP-III table below.

Risk Category LDL Goal LDL Level (mg/dL) LDL Level (mg/dL)
mg/dL at which to initiate at which to
Therapeutic Lifestyle consider Drug
Changes (TLC) Therapy

CHD <100 >100 >or=130
2+ Risk Factors <130 >or=130 >or=130
0-1 Risk Factors <160 >or=160 >or=190
LDL/HDL Ratio 3.6 ratio units 0.0 - 3.6

LDL/HDL

Men Women

1/2 Avg. Risk 1.0 1.5

Avg. Risk 3.6 3.2

2X Avg. Risk 6.3 5.0

3X Avg. Risk 8.0 6.1

ALT (SGPT)

18 IU/L

0 - 55 BN

Please note reference interval change

LAB: BN LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

DIRECTOR: Frank Hancock MD

6/29/05

Phone Disc 2H

17-505

pt not for

Lipids improved
with Lipitor &
Tricore

Flu 3mths

6/29/05

Pat Name: CASEY, WILLIAM Pat ID: 217804-WC Spec #: 179-536-0344-0 Seq #: 3542

Results are Flagged in Accordance with Age Dependent Reference Ranges

Last Page of Report

KING 001998



LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

Phone: 888-200-5439

SPECIMEN TYPE PRIMARY LAB REPORT STATUS
131-536-0502-0 S BN COMPLETE Page #: 1

ADDITIONAL INFORMATION

17804 FASTING: Y
PHONE: 864-486-9131 DOB: 1958

PATIENT NAME SEX AGE(YR./MOS.)
CASEY, WILLIAM M 46 / 6
PT. ADD:

CLINICAL INFORMATION

CD- 20236202829

PHYSICIAN ID. PATIENT ID.
GONDA F 217804-WC

ACCOUNT: Foothills Family Medicine
Drs Durham And Gonda
2212 Old Furnace Rd
Boiling Springs SC 29316-0000
ACCOUNT NUMBER: 39110130

DATE OF SPECIMEN TIME DATE RECEIVED DATE REPORTED TIME
5/11/2005 8:40 5/11/2005 5/12/2005 5:43 3125

TEST	RESULT	LIMITS	LAB
Lipid Panel With LDL/HDL Ratio			
Cholesterol, Total	184 mg/dL	100 - 199	BN
> Triglycerides	507 H mg/dL	0 - 149	BN
> HDL Cholesterol	29 L mg/dL	40 - 59	BN
VLDL Cholesterol Cal	mg/dL	5 - 40	
The calculation for the VLDL cholesterol is not valid when triglyceride level is >400 mg/dL.			
LDL Cholesterol Calc	mg/dL	0 - 99	
Triglyceride result indicated is too high for an accurate LDL cholesterol estimation.			
LDL/HDL Ratio	ratio units	0.0 - 3.6	
Unable to calculate result since non-numeric result obtained for component test.			

	LDL/HDL	
	Men	Women
1/2 Avg. Risk	1.0	1.5
Avg. Risk	3.6	3.2
2X Avg. Risk	6.3	5.0
3X Avg. Risk	8.0	6.1
	0 - 40	BN

ALT (SGPT)

23 IU/L

LAB: BN LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

DIRECTOR: Frank Hancock MD

5/13/05
Lm to Case Book
5/16/05
pt. no. 100
JA

No improvement in
Trigs & HDL.
Got to diet + exercise.
Lost 10 lbs but 40 mg
1/2 3d.
Rld Trigone 145mg 8pm
#28 samples
Lab in 4 hrs
5/13/05. I

Pat Name: CASEY, WILLIAM

Pat ID: 217804-WC

Spec #: 131-536-0502-0

Seq #: 3125

Results are Flagged in Accordance with Age Dependent Reference Ranges
Last Page of Report

KING 001999

Laboratory Corporation of America

SPECIMEN TYPE PRIMARY LAB REPORT STATUS
293-536-0800-0 S BN COMPLETE Page #: 1

ADDITIONAL INFORMATION

FASTING: Y
PHONE: 864-486-9131 DOB: [REDACTED] 1958

PATIENT NAME SEX AGE(YR/MOS.)
CASEY, WILLIAM M 45 / 11
PT. ADDR:

CLINICAL INFORMATION

CD- 20236202221

PHYSICIAN ID. PATIENT ID.
GONDA F 217804-WC

ACCOUNT: FOOTHILLS FAMILY MEDICINE
DRS DURHAM AND GONDA
2212 Old Furnace Rd
Boiling Springs SC 29316-0000
ACCOUNT NUMBER: 39110130

DATE OF SPECIMEN TIME DATE RECEIVED DATE REPORTED TIME
10/19/2004 9:55 10/19/2004 10/20/2004 5:45 1276

TEST	RESULT	LIMITS	LAB
Lipid Panel With LDL/HDL Ratio			
Cholesterol, Total	214 → 189 ✓ mg/dL	100 - 199	BN
> Triglycerides	314 → 347 H mg/dL	0 - 149	BN
> HDL Cholesterol	29 → 41 → 30 L mg/dL	40 - 59	BN
> VLDL Cholesterol Cal	69 H mg/dL	5 - 40	
LDL Cholesterol Calc	100 → 90 ✓ mg/dL	0 - 99	
LDL/HDL Ratio	3.0 ratio units	0.0 - 3.6	
LDL/HDL			
Men Women			
1/2 Avg. Risk 1.0 1.5			
Avg. Risk 3.6 3.2			
2X Avg. Risk 6.3 5.0			
3X Avg. Risk 8.0 6.1			
ALT (SGPT)	34 ✓ IU/L	0 - 40	BN

LAB: BN LabCorp Burlington
1447 York Court, Burlington, NC 27215-2230

DIRECTOR: Frank Hancock MD

10-25-04
[Signature]

T.C & LDL good
↑ trig + ↓ HDL
might work on diet +
some exercise
cont lipids
10/22/04 F

Results are Flagged in Accordance with Age Dependent Reference Ranges
Last Page of Report

KING 002000

28Jul 2004 18:41 FROM:LABCORP
TO: DR.GONDA ATTN:JANICE/LA

PG

TO:18645787898

CORP
Foothills Family Medicine

PAGE 001

Specimen		Type	Priority	Result	LabCorp	
209-536-0398-0		R	BN	Final	Pg 1	
Time 0942		DOE		DOB: [REDACTED]/58	Fasting: Y	
CD- 20236201421		GONDA		217804-WC		
Patient Name		Age	Sex	Address	City/State/Zip	
CASEY, WILLIAM		M		045/08/24	Foothills Family Medicine 39110130	
Ref. No.		Mrs Durham And Gonda 2212 Old Furnace Rd Boiling Springs, SC 29316 864-578-9735 UPIN: D17701				
Date Recd	Date Recd	Date Recd	Date Recd	0425		
07/27/04	07/27/04	07/28/04	0425			
TESTS	RESULT	FLAG	UNITS	REFERENCE INTERVAL	LAB	
Lipid Panel With LDL/HDL Ratio						
Cholesterol, Total	238 →	204	H mg/dL	100 - 199	BN	
Triglycerides	438 →	314	H mg/dL	0 - 149	BN	
HDL Cholesterol	29 →	41	mg/dL	40 - 59	BN	
LDL Cholesterol Calc	3 →	63	H mg/dL	5 - 40	BN	
LDL Cholesterol Calc	3 →	100	H mg/dL	0 - 99	BN	
Comment						
If initial LDL-cholesterol result is >100 mg/dL, assess for risk factors and refer to the ATP-III table below.						
Risk Category	LDL Goal	LDL Level (mg/dL)	LDL Level (mg/dL)	at which to		
	mg/dL	at which to	Therapeutic Lifestyle	consider Drug		
		Changes (TLC)		Therapy		
CHD	<100	>100	>or=130	0.0 - 3.6		
2+ Risk Factors	<130	>or=130	>or=130	LDL/HDL		
0-1 Risk Factors	<160	>or=160	>or=190	Men Women		
LDL/HDL Ratio	2.4	ratio units	0.0 - 3.6			
			LDL/HDL			
			Men Women			
			1/2 Avg. Risk	1.0	1.5	
			Avg. Risk	3.6	3.2	
			2X Avg. Risk	6.3	5.0	
			3X Avg. Risk	8.0	6.1	
ALT (SGPT)	23 ✓	IU/L	0 - 40	BN		

Lab: BN LabCorp Burlington Director: Frank Hancock, MD
1447 York Court Burlington, NC 27215-2230For inquiries, the physician may contact: Branch: 800-762-4344 Lab: 888-200-5439
Last Page of Report8/2/04 - notified pt
- called in Lipitor
#3092
Tqd ✓Lipids improved
cont. Lipitor 20mg E/N
work on diet
Flu 3-mthsC/S
7/28/04 F

This document contains private and confidential health information protected by state and federal law. If you have received this document in error, please call 800-762-4344

CASEY, WILLIAM

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Report Date: 07/28/04 Report Time: 10:20 ET All Rights Reserved

KING 002001

07070894

854-578-9735

GONDA, FRANK
FOOTHILLS FAMILY MEDICINE
2212 OLD FURNACE RD.
KING SPRINGS SC 29316-0000



LABORATORY REPORT

Patient Name: CASEY, WILLIAM Patient ID/Hospital ID: 217804-WC Room No.: Age: 45 Sex: M Physician: GONDA, FRANK
 Ref: Requisition No.: 1 Accession No.: 0865716 Lab Ref No.: 0865716 Collection Date & Time: 05/04/2004 09:33 Log-in Date: 05/04/2004 Report Date & Time: 05/05/2004 07:00
 Rpt: PASTING

SS#: [REDACTED]

Report Status	Test	Result In Range Out of Range	Units	Reference Range	Site Code
FINAL	PATIENT DATE OF BIRTH:	[REDACTED] 1958			
	LIPID PANEL				
	TRIGLYCERIDES	408 H	MG/DL	<150	AT
	CHOLESTEROL, TOTAL	238 H	MG/DL	<200	AT
	HDL CHOLESTEROL	29 L	MG/DL	> OR = 40	AT
	LDL-CHOLESTEROL		MG/DL (CALC)	<130	AT
	LDL CHOLESTEROL NOT CALCULATED. TRIGLYCERIDE LEVELS GREATER THAN 400 MG/DL INVALIDATE LDL RESULTS.				
	CHOL/HDLRATIO	8.2 H	(CALC)	<5.0	AT
		14	U/L	2-60	AT

'AT' Indicates testing site: QUEST DIAGNOSTICS-ATLANTA
 1777 MONTREAL CIRCLE
 TUCKER GA 30084
 (770) 934-9205
 WILLIAM M MILLER, MD

>> END OF REPORT <<

Lipids terrible
Begin Lipitor 20mg
5 AM # 28 samples
Lab w/ dunks
5/5/04

5/5/04
at 10:00 AM
MD

KING 002002

07070894

864-578-9735

GONDA, FRANK
FOOTHILLS FAMILY MEDICINE
2212 OLD FURNACE RD.
KING SPRINGS SC 29316-0000



LABORATORY REPORT

Patient Name: CASEY, WILLIAM Patient ID/Hospital ID: 217804-WC Room No.: Age: 45 Sex: M Physician: GONDA, FRANK
Page: 1 Requisition No.: 0865088 Accession No.: AT115967U Lab Ref No.: 0865088 Collection Date & Time: 02/10/2004 10:19 Log-in Date: 02/10/2004 Report Date & Time: 02/11/2004 06:00
Remarks: NONFASTING

SS#: [REDACTED]

Report Status	Test	Result	Units	Reference Range	Site Code
FINAL		In Range Out of Range			
PATIENT DATE OF BIRTH: [REDACTED] /1958					
LIPID PANEL					
	TRIGLYCERIDES	511 H	MG/DL	<150	AT
	CHOLESTEROL, TOTAL	242 H	MG/DL	<200	AT
	HDL CHOLESTEROL	26 L	MG/DL	> OR = 40	AT
	LDL-CHOLESTEROL		MG/DL (CALC)	<130	AT
LDL CHOLESTEROL NOT CALCULATED. TRIGLYCERIDE LEVELS GREATER THAN 400 MG/DL INVALIDATE LDL RESULTS.					
	CHOL/HDL C RATIO	9.3 H	(CALC)	<5.0	AT
		20 ✓	U/L	2-60	AT

AT Indicates testing site: QUEST DIAGNOSTICS-ATLANTA
1777 MONTREAL CIRCLE
TUCKER GA 30084
(770) 934-9205
WILLIAM M MILLER, MD

>> END OF REPORT <<

2/12/04
AT 12 to 21c
Dinner

2-18-04
pt. notified

Info
mailed

Lipids terrible esp
↑ trig & ↓ HDL
low fat diet
↑ exercise - 3x per wk.
can do this if can play
golf.
↓ 15 26

Repeat 3-6 months
2/11/04

KING 002003

Spectrum #	Type	Primary LA	Rt	Lot	
53-492-10827	BN	FINA	PG		
Account Information					
DOB: 58					
FASTING N					
864-476-9100					
ASEY, WILLIAM M					
M 042/10					
Address 714 TREE WOOD LN					
BOONVILLE, SC 29308					
No. Cores					
Date Entered					
Date Reported					
5/27/01	09/10/01	09/13/01	0438		
TESTS	RESULT	FLAG	UNITS	REFERENCE INTERVAL	LAB
STOSTERONE, FREE AND TOTAL					
Testosterone, Serum	248	LOW	ng/dL	241 - 827	BN
Male					
1-5 mons.	1 - 177			1 - 5	
6-11 mons.	2 - 7			2 - 5	
1-5 yrs.	0 - 10			0 - 10	
6-7 yrs.	0 - 20			0 - 10	
8-10 yrs.	0 - 25			0 - 30	
11-12 yrs.	0 - 350			0 - 50	
13-15 yrs.	15 - 500			0 - 50	
Adult	241 - 827			14 - 75	
Free Testosterone (Direct)	14.8	LOW	pg/mL	6.8 - 21.5	BN
LAB: BN LABCORP BURLINGTON. DIRECTOR: FRANK HANCOCK, MD					
1447 YORK COURT BURLINGTON, NC 27215-2230					
IF YOU HAVE ANY QUESTIONS CONTACT - BRANCH: 864-232-0636 LAB: 888-200-5439					
LAST PAGE OF REPORT					

11/4/01
Open to 1/c
@ 12:20 PM not

9/14/01
Phosfue
PH not

low total test. level
+ 5 Viagra tabs, can
try hormone replacement
9/13/01

REPORT

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KING 002004

00070894 03-578-9735
 GOMDA, FRANK
 2212 OLD FURNACE RD
 SPARTANBURG SC 29303

SB SmithKline Beecham
 Clinical Laboratories

LABORATORY REPORT

Patient Name CASEY, WILLIAM	Client ID/Hospital ID 110967-WC	Room No.	Age 39	Sex M	Physician GOMDA, FRANK
Page 1	Registration No. 0849513	Accession No. AT841799X	Lab Ref No. 0849513	Collection Date & Time 01/21/98 10:05	Report Date & Time 01/22/98 08:00

Remarks

Test	Result	Units	Reference Range	Site Code
	In Range	Out of Range		
PROFILE 26385				
CHEM 3	✓ 92			AT
GLUCOSE			70-115	
TRIGLYCERIDES	299 H		<200	
CHOLESTEROL, TOTAL	239 H		<200	
HDL-CHOLESTEROL	22 L		> 34	AT
LDL PROFILE WITH RATIO				AT
LDL-CHOLESTEROL	152 H		MG/DL (CALC) 0-130	
CHOL/HDL RATIO	10.86 H		(CALC) <4.98	
CORONARY RISK FACTOR	2.09 X AVG RISK			

'AT' refers to site: SMITHKLINE BEECHAM CLINICAL LABORATORIES
 1777 MONTREAL CIRCLE
 TUCKER GA 30084
 770-934-9200
 W. M. MILLER, MD

>> END OF REPORT <<

1/26/98 - pt. notified
 to p/u OTC vitamin D

Profile is Abnormal
 ↑ Triglyc.
 ↑ Total Cholest
 ↓ HDL
 means ↑ Risk of CAD
 Begin OTC vitamin
 Pick up hand out

1/23/98

KING 002005

00070894 578-9735
 GONDA, FRANK
 2212 OLD FURNACE RD.
 SPARTANBURG, SC 29303

SB SmithKline Beecham
 Clinical Laboratories

LABORATORY REPORT

Patient Name CAREY, WILLIAM	Patient ID/Hospital ID 210967-NC	Room No. 39	Age 39	Sex M	Physician GONDA, FRANK
Phone 864-576-8269	Accession No. AT884821W	Lab File No. 0849194	Collection Date & Time 11/14/97 12:46	Log-in Date 11/14/97	Report Date & Time 11/15/97 16:00

Remarks

11/17/97 Left Massages per - conducted pt per

Report Status	Test	Result In Range Out of Range	Units	Reference Range	Scale
FINAL					
PROFILE 5498					
	URIC ACID	5.7 ✓	MG/DL	4.0-8.5	AT
	SED RATE BY MODIFIED WESTERNGREN	7 ✓	MM/HR	< OR = 15	AT
	ANTINUCLEAR ANTIBODIES	<1:40 ✓	TITER		AT
REFERENCE RANGE:					
<1:40 NEGATIVE					
1:40 - 1:80 LOW ANTIBODY LEVEL					
>1:80 ELEVATED ANTIBODY LEVEL					
	RUMATOID FACTOR	<25 ✓	IU/ML		AT
REFERENCE RANGE:					
0 - 39 NEGATIVE					
40 - 79 WEAKLY REACTIVE					
> OR = 80 POSITIVE					
'AT' refers to site: SMITHKLINE BEECHAM CLINICAL LABORATORIES 1777 MONTREAL CIRCLE TUCKER GA 30084 770-934-9200 W. M. MILLER, MD >> END OF REPORT << 11/17/97 All Labs OK can't ultra proceed w/ x-rays 11/17 F					

KING 002006

268-251-0004-0 ADDITIONAL INFORMATION		FINAL PG 1	
1118ST		DOB: [REDACTED] 58	
TEST NAME CASEY, WILLIAM		SEX M	AGE (YR-MOS) 033/10
DATE OF SPECIMEN 08/13/92	DATE ENTERED 08/13/92	DATE REPORTED 08/13/92	
TEST		RESULT	

03 01 CLINICAL INFORMATION	
PHYSICIAN NO. GONDA	PATIENT NO. 10967
ACCOUNT FOOTHILLS FAMILY MEDICINE 391070 DRS HAMES AND GONDA 34 2212 FURNACE ROAD 34 SPARTANBURG, SC 29303- 803-578-2735 SCG	
LIMITS	

P-42721 MC+THY A+CBC/DF
T. CHOL/HDL RATIO

8.9

RATIO UNITS

*T. CHOL/HDL RATIO

IDENTIFY		NAME
MEN	WOMEN	
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
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11	11	11
12	12	12
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94	94	94
95	95	95
96	96	96
97	97	97
98	98	98
99	99	99
100	100	100

	MEN	WOMEN
1 / 2 AVERAGE RISK:	3.4	3.3

1/2 AVERAGE RISK	5.7	
AVERAGE RISK	5.0	4.4

AVERAGE RISK	9.6	7.1
2X AVERAGE RISK	9.6	7.1

2X AVERAGE RISK	51.2	
3X AVERAGE RISK	23.4	11.0

3X AVERAGE RISK EST.
TIMES AVERAGE

*ESTIMATED CHD RISK

1.7

TIMES AVERAGE

1.7 TIMES AVERAGE
NOTE: OTHER FACTORS AFFECT CHD RISK SUCH AS HYPERTENSION,
SMOKING, DIABETES, SEVERE OBESITY, AND FAMILY
HISTORY OF PREMATURE CHD.

LDL/HDL RATIO

L/HDL RATIO
CALCULATION NOT PERFORMED DUE TO NON-NUMERIC VALUE ENTERED FOR NEEDED TEST LDL/HDL

	MEN	WOMEN
1. <u>Age</u>		
2. <u>Marital Status</u>		
3. <u>Education</u>		
4. <u>Occupation</u>		
5. <u>Income</u>		
6. <u>Religion</u>		
7. <u>Political Party</u>		
8. <u>Other</u>		

	1978	1979
AVERAGE RISK	1.00	1.47

172 AVERAGE RISK	1.55	
AVERAGE RISK	3.55	3.22

AVERAGE RISK	6.25	5.03
2X AVERAGE RISK	6.25	5.03

2X AVERAGE RISK	7.99	6.14
3X AVERAGE RISK		

OSMOLALITY (CALCULATED)

231

HDL CHOLESTEROL:

26 LD MG/DL

LDL CHOLESTEROL (CALCULATED)

THE CALCULATION FOR THE VLDL CHOLESTEROL IS NOT VALID WHEN TRIGLYCERIDE LEVEL IS GREATER THAN 400 MG/DL.

TRIGLYCERIDE LEVEL IS ONE
LDL CHOLESTEROL (CALCULATED)

0 - 129

CHOLESTEROL (CALCULATED)
TRIGLYCERIDE RESULT INDICATED IS TOO HIGH FOR AN ACCURATE BETA
CHOLESTEROL ESTIMATION.

BUN/CREATININE RATIO

15

“Fud”

PATIENT NAME										PATIENT ID.		SPEC NO.		SPEC DATE	
BONE			ELECTROLYTES			HEART			LIVER			LIPIDS			
Calcium mg/dl (8.5-10.5)	Phosphorus mg/dl (2.5-4.5)	Sodium mEq/L (135-145)	Potassium mEq/L (3.5-5.5)	Chloride mEq/L (94-106)	LDH R/L (100-250)	AST (SGOT) R/L (0-40)	ALT (SGPT) R/L (0-40)	GGT (GAL) IU/L (0-60)	ALP (ALP) R/L (0-120)	As. Phos R/L (140-150)	Cholesterol mg/dl < 200	Triglycerides mg/dl (10-250)			
					KIDNEY					THYROID			MISCELLANEOUS		
T. Protein g/dl (6.5-8.5)	Globulin g/dl (1.5-4.5)	Albumin g/dl (3.5-5.5)	A/G Ratio (1.1-2.5)	BUN mg/dl (7-20)	Creatinine mg/dl (0.5-1.5)	T ₄ μg/dl (4.5-12.5)	T ₃ uptake % (30-45)	Free T ₄ Index (1.5-5.0)	TSH μIU/ml (0.30-5.00)	Uric Acid mg/dl (4M: 2.5-8.0) (F: 2.5-7.7)	Glucose mg/dl < 100 mg. (80-110)	Iron μg/dl (40-180)			
HEMATOLOGY															
WBC × 10 ³ /mm ³ (4-11) (F: 3.5-6.5)	HGB g/dl (12.0-18.0) (F: 12.0-16.0)	HCT % (36-46) (F: 36-44)	MCV μm ³ (80-100)	MCH pg (26-34)	MCHC % (31-37)	Platelets × 10 ³ /mm ³ (140-440)	WBC × 10 ³ /mm ³ (4.0-10.5)	Polys (45-75%) (1.5-6.0)	Bands (0-5%)	Monos (0-5%)	Lymphs (20-45%) (0.5-3.2)	Neutros (40-75%) (0.0-0.5)	EOS (0-5%) (0-0.5)	BASO (0-5%) (0-0.1)	

RESULTS ARE FLAGGED IN ACCORDANCE WITH AGE DEPENDENT REFERENCE RANGES WHICH ARE SUMMARIZED ON THE BACK OF THIS REPORT. REPORT

KING 002007

SPECIMEN #	TYPE	PRIMARY LAB	REPORT STATUS	03 01	CLINICAL INFORMATION	
268-251-0004-0	9		FINAL PG 2			
ADDITIONAL INFORMATION						
1L18ST.				DOB:	58	
NAME				PHYSICIAN ID	PATIENT ID.	
CASEY, WILLIAM				GONDA	10967	
SEX				ACCOUNT		
M				FOOTHILLS FAMILY MEDICINE	3910701	
AGE (YR/MO/D)				DRS HAMES AND GONDA	34	
033/10				2212 FURNACE ROAD	34	
DATE OF SPECIMEN				SPARTANBURG, SC	29303-	
09/23/92				803-578-9735	SCG	
DATE ENTERED						
09/24/92						
DATE REPORTED						
09/25/92						
5600						
TEST				RESULT		LIMITS
						TEST SITE ON BACK

DIRECTOR: DOUGLAS C HUBER MD
 IF YOU HAVE ANY QUESTIONS CONTACT - BRANCH: 803-232-0636 LAB: 404-939-4811
 LAST PAGE OF REPORT.

PATIENT NAME	CASEY, WILLIAM	PATIENT ID.	10967	SPEC. NO.	2682510004	DATE	09 23 92
BONE							
Calcium mg/dl	Phosphorus mg/dl	Sodium mEq/L	Potassium mEq/L	Chloride mEq/L	LDH U/L	AST (SGOT) U/L	T. Bil mg/dl
9.6	4.0	141	4.6	105	138	18	0.3
LIVER							
ALT (SGPT) U/L	Alk. Phos U/L	Cholesterol mg/dl	Triglycerides mg/dl				
22	17	54	233	44			
LIPIDS							
HIGH HIGH							
PROTEIN							
T. Protein g/dl	Glucuron g/dl	Albumin g/dl	AVG Redcs	RDW	Drainage mg/dl	T ₄ µg/dl	T ₃ µg/dl
7.7	3.0	4.7	1.5	15	1.0	9.9	30
KIDNEY							
Free T ₄ Index	TSH µU/ml	Uric Acid mg/dl	Glucose mg/dl	Iron µg/dl			
2.9		4.9	85	6			
THYROID							
MISCELLANEOUS							
LOW							
HEMATOLOGY							
RBC x10 ¹² /mm ³	HGB g/dl	HCT %	MCV fL	MCH pg	MCHC %	Plasma x10 ¹² /mm ³	WBC x10 ⁹ /mm ³
5.09	15.8	46.8	92	31.2	34.0	338	8.6
Platelets x10 ⁹ /mm ³							
60							
Bands							
Lymphs							
Monos							
EOS							
BASO							
5.2							
2.4							
0.6							
0.3							
0.1							

RESULTS ARE FLAGGED IN ACCORDANCE WITH AGE DEPENDENT REFERENCE RANGES WHICH ARE SUMMARIZED ON THE BACK OF THIS REPORT.
 * A comment applied to this test has been printed in the body of the Report.

REPORT

KING 002008



MARY BLACK
HEALTH SYSTEM

RADIOLOGY OUTPATIENT TEST REQUEST FORM

Phone (864) 573-3861 Fax (864) 573-3160

PATIENT NAME: William Mark Casey SS # [REDACTED] DOB [REDACTED] 58
HOME TELEPHONE NUMBER: 486-9131 WORK TELEPHONE NUMBER: _____
APPOINTMENT DATE: 11/6/03 APPOINTMENT TIME: 12³⁰

PLEASE REPORT TO RADIOLOGY REGISTRATION AREA

SPECIAL INSTRUCTIONS: Test: epidural injection
Dx: 2 bulging discs

*Check the box next to each test requested. Identify signs and symptoms for each exam.

TEST	SIGNS/SYMPTOMS	TEST	SIGNS/SYMPTOMS
CT		MRI	
☐ Brain	_____	☐ Brain	_____
☐ Chest	_____	☐ Lumbar	_____
☐ Pelvis	_____	☐ Cervical Spine	_____
☐ Lumbar Spine	_____	☐ Knee _____ R _____ L	_____
☐ Other: _____	_____	☐ Shoulder _____ R _____ L	_____
NUCLEAR MEDICINE		☐ Hip _____ R _____ L	_____
☐ Myocardial Perfusion	_____	☐ Other: _____	_____
☐ Thyroid Scan with Uptake	_____	ULTRASOUND	
☐ Bone Scan	_____	☐ Abdomen	_____
☐ Hepato-biliary with Ejection Fraction	_____	☐ Gall Bladder	_____
☐ Lung Scan (Ventilation and Perfusion)	_____	☐ Pelvic	_____
☐ Other: _____	_____	☐ Retroperitoneum	_____
DIAGNOSTIC RADIOLOGY		☐ Renal	_____
☐ Chest	_____	☐ Breast	_____
☐ Abdomen	_____	☐ Fetal Age	_____
☐ IVP	_____	☐ Other: _____	_____
☐ Cervical Spine with Obliques	_____	MAMMOGRAPHY	
☐ Lumbar Spine	_____	☐ Screening	_____
☐ Upper GI	_____	☐ Diagnostic	_____
☐ Barium Enema	_____	☐ Other: _____	_____
☐ Extremity _____ R _____ L	_____		
☐ Other: _____	_____		

Physician's Signature: Frank E. Henderson Date: 11/4/03 Time: _____

It is the policy of Medicare, Medicaid and other federal health care programs that claims for payment for radiology testing services are to be submitted only for services that are "reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 U.S.C. § 1395y (a) (1). While the radiology department does not treat patients or make medical necessity determinations, you should be aware that Medicare may deny payment for radiology services requested by you and performed by the radiology department if the requested test does not meet this definition of medical necessity. Additionally, tests should be ordered individually unless each test in a panel is deemed medically necessary.

OF REGISTRATION USE ONLY

Form 1000 Rev. 10/01

KING 002009



MARY BLACK
HEALTH SYSTEM

RADIOLOGY OUTPATIENT TEST REQUEST FORM

Phone (864) 573-3861 Fax (864) 573-3160

PATIENT NAME: William Casey SS # [REDACTED] DOB [REDACTED] 58
HOME TELEPHONE NUMBER: 486-9131 WORK TELEPHONE NUMBER: _____
APPOINTMENT DATE: 10/24/03 APPOINTMENT TIME: 8:15

PLEASE REPORT TO RADIOLOGY REGISTRATION AREA

SPECIAL INSTRUCTIONS: _____

*Check the box next to each test requested. Identify signs and symptoms for each exam.

TEST	SIGNS/SYMPOMS	TEST	SIGNS/SYMPOMS
CT		MRI	
☐ Brain	_____	☐ Brain	_____
☐ Chest	_____	☐ Lumbar	_____
☐ Pelvis	_____	☐ Cervical Spine	_____
☐ Lumbar Spine	_____	☐ Knee <u> R L </u>	_____
☐ Other: _____	_____	☐ Shoulder <u> R L </u>	_____
NUCLEAR MEDICINE		☐ Hip <u> R L </u>	_____
☐ Myocardial Perfusion	_____	☒ Other: <u>LS Spine</u>	<u>Chronic LBP</u>
☐ Thyroid Scan with Uptake	_____		<u>numbness in foot</u>
☐ Bone Scan	_____	ULTRASOUND	
☐ Hepato-biliary with Ejection Fraction	_____	☐ Abdomen	_____
☐ Lung Scan (Ventilation and Perfusion)	_____	☐ Gall Bladder	_____
☐ Other: _____	_____	☐ Pelvic	_____
DIAGNOSTIC RADIOLOGY		☐ Retroperitoneum	_____
☐ Chest	_____	☐ Renal	_____
☐ Abdomen	_____	☐ Breast	_____
☐ IVP	_____	☐ Fetal Age	_____
☐ Cervical Spine with Obliques	_____	☐ Other: _____	_____
☐ Lumbar Spine	_____	MAMMOGRAPHY	
☐ Upper GI	_____	☐ Screening	_____
☐ Barium Enema	_____	☐ Diagnostic	_____
☐ Extremity <u> R L </u>	_____	☐ Other: _____	_____
☒ Other: <u>LS Spine</u>	_____		

Physician's Signature: Frank E. Jorde

Date: 10/20/03

Time: _____

It is the policy of Medicare, Medicaid and other federal health care programs that claims for payment for radiology testing services are to be submitted only for services that are "reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 U.S.C. § 1395y (a) (1). While the radiology department does not treat patients or make medical necessity determinations, you should be aware that Medicare may deny payment for radiology services requested by you and performed by the radiology department if the requested test does not meet this definition of medical necessity. Additionally, tests should be ordered individually unless each test in a panel is deemed medically necessary.

REGISTRATION USE ONLY

Alpert Printing Co., Inc.

KING 002010



SPARTANBURG
Regional Healthcare System

☐ SHMC ☐ SHRC ☐ BJW

PHYSICIAN OUTPATIENT ORDER FORM

SRHS ACCOUNT NUMBER (if applicable)

MD AUTHORIZATION

FRANK E. GONDE

Date 10/26/00

Patient Name	Last Name	First	MI	Race	Sex	Age	Special Security #
Address: (Receive Mail At)		City		State	Zip Code	Telephone #	
714 Wood Lane		Spartanburg		SC	29382	476-9100	

Notification to Physicians and Other Persons Legally Authorized to Order Tests for Which Government Payment Reimbursement Will Be Sought. Medicare will pay only for tests that meet the Medicare coverage criteria and are reasonable and necessary to treat or diagnose an individual patient. Medicare does not pay for tests for which documentation, including the patient record, does not support that the tests were reasonable and necessary. Medicare generally does not cover routine screening tests even if the physician or other authorized test orderer considers the tests appropriate for the patient. Please provide an ICD-9 code or narrative diagnostic information for each test.

Services Request

Service Requested	Diagnosis Description or ICD-9	Service Requested	Diagnosis Description or ICD-9
Subs. Nov. 94 @ 90%		Subs. mci	
Jx: LBP			

Laboratory Services Request -

NOTE * Requires ICD-9 Code (Narrative not acceptable)

Diagnosis	Diagnosis	Diagnosis	Diagnosis
☐ Basic Metabolic Panel 80049	☐ A/C* 83038	☐ Phenobarbital 80184	☐ Diagnosis
☐ Glucose 82847	☐ Albumin 82040	☐ Phosphorus 84100	☐ Potassium* 84132
☐ Creatinine 82585	☐ Alk Phos 84075	☐ Preg (Serum) 84703	☐ Preg (Urine) 81025
☐ BUN 84520	☐ Amylase 82150	☐ PSA* 84153	☐ Progesterone 84144
☐ Sodium 84132	☐ AST 84450	☐ Prolactin 84148	☐ Protein Elect 84165
☐ Potassium 82435	☐ BCP* 85027	☐ PT 85810	☐ PTT 85730
☐ Chloride 82435	☐ Bil, Direct 82248	☐ Retic* 85044	☐ RPH* 85592
☐ CO ₂ 82374	☐ Bil, Total 82247	☐ If pos, liter 85781	☐ If pos, micro 81001
☐ Bilirubin Profile 82251	☐ B12 82607	☐ Hgbeta 85652	☐ Sodium 84295
☐ Direct Bilirubin 82249	☐ CA125* 86318	☐ Tazetrol 80158	☐ Testosterone 85048
☐ Total Bilirubin 82247	☐ Calcium 82310	☐ Theophylline 80188	☐ Total Protein 84155
☐ Comprehensive Metabolic Panel 80054	☐ CBC* 85025	☐ Transferrin* 84456	☐ Triglycerides* 84478
☐ Albumin 82040	☐ CEA 82378	☐ TSH 84443	☐ Valproic Acid 80164
☐ Bilirubin, Total 82550	☐ Chloride 82435	☐ Urinalysis*macro 81003	☐ WBC* 85048
☐ Calcium 82310	☐ Cholesterol* 82465	☐ Other	
☐ Creatinine 82585	☐ CO ₂ 82374		
☐ Glucose 82847	☐ CPK 82550		
☐ Alk Phosphatase 84075	☐ Creatinine 82585		
☐ Potassium 84132	☐ D-lactin 80185		
☐ Sodium 84295	☐ Digoxin* 80162		
☐ AST 84450	☐ ECG 83005		
☐ BUN 84520	☐ Estradiol 82572		
	☐ Folic Acid 82746		
	☐ Ferritin* 82728		
	☐ FSH 83001		
	☐ GGT 82977		
	☐ Glucose* 82847		
	☐ Fasting* 82947		
	☐ Random* 82947		
	☐ 2 Hr OGTT* 82985		
	☐ Glycated Protein* 86709		
	☐ HAV 86318		
	☐ HbcAb 86706		
	☐ HbsAb 87340		
	☐ HbsAg 86803		
	☐ HCV 84702		
	☐ HCG, quantitative 83718		
	☐ HDL 85018		
	☐ Hemoglobin* 83540		
	☐ Iron* 83550		
	☐ Iron Binding Cap* 82784		
	☐ IgG 82784		
	☐ IgM 83515		
	☐ LDH 80178		
	☐ Lithium 83690		
	☐ Lpase 83002		
	☐ LH 83735		
	☐ Magnesium* 83735		

FOR SPECIMEN SUBMISSION - INFORMATION ON BACK MUST BE COMPLETED

DATE / TIME COLLECTED:

COLLECTED BY:

AGENCY:

ADDRESSOGRAPH

FRANK E. GONDE MD

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

KING 002011

COPY

THE DIAGNOSTIC CENTER
MARY BLACK HEALTH SYSTEM
P.O. BOX 3217
1700 SKYLYN DRIVE
SPARTANBURG, S.C. 29304
PHONE (864) 573-3861 FAX (864) 573-3160

NAME: CASEY, WILLIAM MARK SSN: [REDACTED]
AGE: 44Y DOB: [REDACTED] 1958 SEX: M ACCOUNT: 1383815
ADDRESS: 240 LIGHTWOOD FARM RD WOODRUFF, SC 29388
PHONE: 864-486-9131 ROOM: MR

ORDER: 2616657 ADDITIONAL ORDERS: 2616658
MRI LUMBAR SPINE - 72148
LUMBOSACRAL SPINE - 72100

ORDER DATE: 10/31/2003

fx: FRANK E. GONDA, MD (11419)

>

MRI OF THE LUMBAR SPINE AND PLAIN FILM LUMBAR SPINE: OCTOBER 31, 2003

HISTORY: Chronic low back pain.

There is some minimal hypertrophic spurring in the vertebral bodies on the left side at L3 and 4. Disk spaces are well maintained.

IMPRESSION: Minimal osteoarthritic changes.

MRI OF THE LUMBAR: On the T2 sequence there is decreased signal in the disk spaces of L4-5 and L5-S1. This is consistent with some desiccation of the disk.

At L4-5 there is some mild diffuse bulging of disk, but no evidence of focal protrusion or extrusion of the disk is seen. The spinal canal and neural foramen appear adequate.

At L5-S1 there is diffuse bulging of the disk without evidence of focal protrusion or extrusion of the disk. Spinal canal and neural foramen appear adequate at this level.

There is some mild degenerative changes in the articulating facets and lower lumbar spine.

IMPRESSION: No acute process identified.

JAMES L. DUNCAN JR., MD

This document has been electronically reviewed and approved
by JAMES L. DUNCAN JR., MD 11/03/2003.

\: lba /: 19 JOB: 04979 ID: 000309097
DD: 10/31/2003 DT: 10/31/2003 2304
TD: 1740

MRI REPORT

*the bulging disc in 3 levels
... osteoarthritic changes.
Refer for Epidural steroid
injections. 1
11/3/03*

*Appt 11/6/03 @ 12:30
-notified pt - JLC*

KING 002012

Westside Diagnostic
Center
FAX 587-3039

RADIOLOGY SERVICES
2995 Reidville Road
Suite 150
Spartanburg, S.C. 29301
(864) 587-3020

Womens
Radiology
FAX 597-0258

CONSULTATION REPORT

Films From: FOOTHILLS FAMILY MEDICINE (DR. GONDA)

REGARDING: WILLIAM CASEY

I.D.#: 10967

Date of Exam: 8-28-00

OVER READ:

LEFT WRIST

History: c/o pain in left wrist x 2 mo, has boney tender prominence of distal ulna.

Comparison: None

The study is limited to an AP, lateral and oblique view. From the three views, the bony trabecular pattern appears within normal limits.

IMPRESSION: No definite acute bone injury or disease suggested.

8-29-00
nj

Robert J. Caswell, II, M.D.
Radiologist

John A. Patterson, MD
Larry K. Totten, MD
James L. Duncan, Jr., MD
John G. Thornburg, MD

Robert J. Caswell, II, MD
Penny Galbraith Keuper, MD
J. R. Graham, MD
R. M. Antley, Jr., MD

9/5/00 Z

KING 002013

OVER READ X-RAY INTERPRETATION

Patient Information:		
Name: <u>Wm. Clay</u>	Date of Service: <u>8/28/00</u>	
<u>714 Tree Wood Lane</u>		
Street Address		
<u>Woodruff</u>	<u>SC</u>	<u>29388</u>
City	State	Zip Code
<u>476-9100</u>	<u>58</u>	
Phone	Birthdate	Social Security #
Clinical Information:		
Referring Provider: <u>DR. [Signature]</u>		
History / Reason for exam <u>4-6 pain in wrist x</u>		
<u>2 mths. Has bony tender prominence</u>		
<u>of distal ulna</u>		
<u>Wrist</u>		
CPT Code	ICD9 Code	Exam Performed
Primary Physician's Interpretation		
<u>over wrist</u>		
<u>[Signature]</u>		
Call Report ☐		

KING 002014

16947

MARY BLACK MEMORIAL HOSPITAL
Radiology Report

Page: 1 of 1

Patient Information:

Name: CASEY, WILLIAM MARK
Adrs: P O BOX 799
City: ROEBUCK, SC
Zip: 29376

DOB: [REDACTED] 58
Age: 039Y
Ph.#: 576-8269
Sex: M

SSN: [REDACTED]
Room: XR
Acct: 0778195

Order#	CDM #	Description	CPT-4
1018317	3960039	LUMBOSACRAL SPINE	72100

Dr. Gonda

DATE OF EXAM: 11-19-97

LUMBOSACRAL SPINE:

AP and lateral views of the lumbar spine show the lumbar vertebrae to be normal. The pedicles and neural arches are intact. The intervertebral disc spaces are maintained. The alignment of the vertebrae and the curvature of the spine are normal. The sacroiliac joints are normal.

IMPRESSION: Normal lumbar spine.

*left message db
11/25/97*

*Normal X-rays
w/ E medicine*

Received 11/24/97

11/25

Signature: *[Signature]*

Transcriptionist: CP

Interpreting Physician

John A. Patterson, MD

MARY BLACK MEMORIAL HOSPITAL
1700 SKYLYN DRIVE SPARTANBURG, SC 29307
(803) 573-3000

KING 002015

10967
RADIOL
Radiology Report

Patient Information:

Name: CASEY, WILLIAM MARK
Address: P.O. BOX 799
City: ROEBUCK, SC
Zip: 29376

DOB: [REDACTED] 58
Age: 033Y
Ph.#: 576-8269
Sex: M

SSN: [REDACTED]
Room: 0
Acct: 0349704
Date: 09/30/92

CDM #
3190004

Description
CT BRAIN W & WO CON

CPT-4
70470

Dr. Gonda

CT OF THE BRAIN, WITH AND WITHOUT CONTRAST:

CONTRAST MEDIUM: 100 cc. of Omnipaque 300.

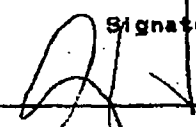
Unenhanced and enhanced sections show the brain parenchyma to be normal in density. The ventricles are small. No abnormal vascularity or mass effect is evident.

IMPRESSION: Normal CT of the brain with and without contrast.

Transcriptionist: CP

233620937
Physicians SSN

Signature:


Larry K. Totten, MD
Interpreting Physician

KING 002016

FOOTHILLS FAMILY MEDICINE

FOR: MARTIN CASEY DATE: 6/28/00

ADDRESS: _____

Rx1 Relafen 500 mg

#60

RF i 2 po qd for wrist

Rx2 pain

RF _____

Rx3 _____

RF _____

Called to @ WG

Danny K-mat

ER 8/21/00

_____, M.D. Zeigler, M.D.

Dispense As Written Substitution Permitted

PLEASE LABEL . Printed Blue On White Background See Reverse Side For Physicians

KING 002017

PATIENT RENEWAL REQUEST:**"New prescription needed... there are no refills remaining on my existing prescription"**Your patient has no refills remaining for this prescription with the Medco Health Home Delivery Pharmacy Service.SM Please follow the three simple steps below to ensure continuation of therapy. If you have any questions, please call us at 1 888 327-9791.

34510

**Step 1 • Review** Please review the following information and make any necessary changes.**Prescriber**

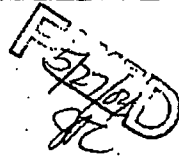
Name FRANK GONDA
 Address 2212 OLD FURNACE RD
 BOILING SPRINGS SC 29316-5760
 Phone (864) 578-9735
 Fax (864) 578-7098

Patient

Name MARK CASEY
 Address 240 LIGHTWOOD FARM RD
 WOODRUFF SC 29388-0000
 Phone (864) 486-9131
 Date of Birth 1958

☐ ONLY check here if this fax number is NOT SECURE to receive confidential patient information. If checked, please provide secure fax number above.**Step 2 • Complete** Please UPDATE as needed, sign and DATE below.**Prescription**

Patient MARK CASEY
 Medication TIZANIDINE HCL TABS
 Strength 4MG
 Quantity 180
 Refills 1



Directions TAKE 2 TABLETS AT BEDTIME FOR
 MUSCLE SPASM AS DIRECTED

Required

Frank Gonda
 Substitution Permissible - Prescriber Signature
 (We cannot accept Signature Stamps)

Required Date 5/27/04

Dispense as Written - Prescriber Signature
 (We cannot accept Signature Stamps)

Step 3 • Fax To ensure continuation of your patient's therapy, please fax completed form to:**1 800 837-0959**

Please do not fax with cover sheet. For verification purposes, please fax directly from your office.

Your fax machine receipt is confirmation that we have received your fax.

☐ Check here if you do NOT authorize this prescription request.

Reason:



00148988344
 Case Item #

0414720966
 Rx #

03
 Location

251022977
 Member Number



Confidentiality Notice: This telecopy transmission contains confidential information belonging to the sender that is legally privileged. This information is intended only for the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to any other party. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or action taken in reliance on the contents of this document is strictly prohibited. If you have received this telecopy in error, please notify the sender immediately to arrange for the return of this document.

medcohealth
 live life well

KING 002018

No refills available after April 14, 2001 Renew by fax



41011

ULTRAM TABS, 50MG

TAKE 2 TABLETS FOUR TIMES A DAY FOR BACK PAIN

Rx number 0031300424-03
Original quantity 720
Quantity
Original refills 1
Refills
Member ID 0251022977
Group PD1 MICHELN
Patient WILLIAM CASEY
714 THREE WOOD LN
WOODRUFF SC 29388
Phone (864) 476-9100
Shipping address if different

To be completed by the prescriber

Dr. FRANK GONDA
2312 OLD FURNACE RD
BOILING SPRINGS, SC 29330-0000

PHONE (864) 578-9735

FAX (864) 578-7098

See renewal instructions on the back.

X *[Signature]* 4/19/01

Substitution Permissible Date
Prescriber signature (We cannot accept signature stamps)

X
Dispense as Written Date
Prescriber signature (We cannot accept signature stamps)

If you intend to continue prescribing this medication, verify, sign, and date this form and fax it to 1-800-837-0959.
Fax this form in the direction of the arrow, so this side will be transmitted top edge first.



Phone () - -



See instructions on back of form.

TEAR HERE
[Signature]
4/19/01

TEAR HERE

Please print NAME, DOB, and address

KING 002019

Instructions for the patient

If it is appropriate to renew your prescription, you may:

Renew your prescription(s) online at www.merckmedco.com after 04-14-2001. Our simple point-and-click ordering makes renewing prescriptions easy.

Take this renewal form to your prescriber and have your prescriber fax it directly to your mail service pharmacy after 04-14-2001.

If your prescriber prefers not to renew this medication by fax, but gives you a new prescription, use the Order New Medications by Mail form. **Do not mail us this Renewal form.**

Instructions for the prescriber

If you intend to continue prescribing this medication, please:

- 1 Review and verify medication information and make any necessary changes.
- 2 Sign and date this form on the reverse side, and fax it to 1-800-837-0959 after 04-14-2001.

Fax this form in the direction of the arrow, so the opposite side will be transmitted top edge first.



If you prefer to write a new prescription, you may fax it directly to our pharmacy after 04-14-2001. Please call 1-888-EasyRx1 (1-888-327-9791) for instructions and to receive a fax form. Or you may provide your patient with a new prescription to be mailed in after 04-14-2001.

Patient
Member ID
Group number

WILLIAM CASEY
0251022977
PD1 MICHELN

Prescriber

Dr. FRANK GONDA
2312 OLD FURNACE RD.
BOILING SPRINGS, SC 29330-0000

DAY (864) 578-9735

FAX () - -



0031300424-03

Please DO NOT MAIL this form

KING 002020

Mary Black Physician System
Request For Use And Disclosure of Protected Health Information

Patient IdentificationPrinted Name William Casey Date of Birth [REDACTED]/58Address [REDACTED]Social Security # [REDACTED] Telephone [REDACTED]**Information To Be Released To/From**Date(s) of Service 7/05 To (date) 9/05From (date) [REDACTED] To (date) [REDACTED]From (date) [REDACTED] To (date) [REDACTED]**Please check type of information to be released:**

☐ Entire Medical Record	☐ Pathology Report	☐ Discharge Summary
☐ History and Physical Exam	☐ Consultation Reports	☐ Progress Notes
☐ Laboratory Test Results/Reports	☐ X-ray Reports	☐ X-ray Films/Images
☐ Operative Report	☐ Emergency Room Record	☐ Itemized Bill
☒ Other (specify) <u>UGI Report</u>		

Purpose of Request

☒ Treatment or Consultation	☐ At the Request of the Patient	☐ Billing or Claims Payment
☐ Other (specify) <u>[REDACTED]</u>		

Person Authorized to Receive InformationName Foothills Family MedicineAddress 2212 Old Furnace Rd.Bolling Springs, SC 29316**Drug and/or Alcohol Abuse, and/or Psychiatric, and/or HIV/AIDS Records Release**

I understand that if my medical or billing record contains information in reference to drug and/or alcohol abuse, psychiatric care, sexually transmitted disease, Hepatitis B or C testing, and/or other sensitive information, I agree to its release.

Check One: ☒ Yes ☐ No WMC Initials

I understand that if my medical or billing record contains information in reference to HIV/AIDS (Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome) testing and/or treatment, I agree to its release.

Check One: ☒ Yes ☐ No WMC Initials

FAKED
 [Signature]

Time Limit & Right to Revoke Authorization

Except to the extent that action has already been taken in reliance on this authorization, at any time I can revoke this authorization by submitting a notice in writing to the facility Privacy Officer at: 138 Dillon Drive, Suite A, Spartanburg, South Carolina 29307. Unless revoked, this authorization will expire on the following date or event: [REDACTED]

Re-disclosure

I understand the information disclosed by this authorization may be subject to re-disclosure by the recipient and will no longer be protected by the Health Insurance Portability and Accountability Act of 1996. The facility, its employees, officers and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized herein.

Signature of Patient or Personal Representative Who May Request Disclosure

I understand that Mary Black Physician Group may not condition my treatment on whether I sign this authorization form unless specified above under Purpose of Request. I can inspect or copy the protected health information to be used or disclosed. I authorize Mary Black Physician Group to use and disclose the protected health information specified above.

Signature William Mark Casey Date Sept 28, 2005Authority to Sign if not patient [REDACTED]Identity of Requestor Verified via: ☐ Photo ID ☐ Matching Signature ☐ Other, specify [REDACTED]

105-PH-001-038

KING 002021

AUTHORIZATION TO RELEASE INFORMATION**Patient Identification**

Patient Name: WILLIAM MARK CASEY Date of Birth: ██████/██/58
 Address: 240 Lightwood Farm Road, Woodruff, SC 29388
 Social Security #: ██████████ Telephone: 486-9131

Covering Dates of Health Care

From: 1992 To: Present Date

Information To Be Released

Any and all medical records, medical bills, etc., requested by my attorneys
who are representing me in regard to a possible medical malpractice claim.

Purpose of Request

Litigation and/or Settlement

Facility Authorized to Receive Information

RAY E. THOMPSON, JR., ESQ.

The Burns Law Firm

P.O. Box 3408

Spartanburg, SC 29304

PHONE: (864) 585-8166

FAX: (864) 585-6927

Time Limit & Right to Revoke Authorization

Except to the extent that action has already been taken in reliance on this authorization, at any time I can revoke this authorization by submitting a notice in writing to the above-named facility. Unless revoked, this authorization will expire sixty (60) days from signature date.

Re-disclosure

I understand the information disclosed by this authorization may be subject to re-disclosure by the recipient and will no longer be protected by the Health Insurance Portability and Accountability Act of 1996. The facility, its employees, officers and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized herein.

Signature of Patient or Personal Representative Requesting Disclosure

I authorize: Dr. Frank Gonda to use and disclose the protected health information specified above to the authorized facility listed above.

Signature: William Mark Casey Date: January 10, 2006
 Relation If Not Patient: _____
 Identity of Requester Verified by Matching Signature or Photo ID.
 Verified by: [Signature]

KING 002022

17807

medco

Medco Health Solutions, Inc.
4865 Dixie Highway
Fairfield, Ohio 45014

tel 800 477 1072
www.medco.com

Date: 04/19/05

Dr. FRANK GONDA
2212 OLD FURNACE RD
BOILING SPRINGS, SC 29316

Re: MARK CASEY
240 LIGHTWOOD FARM RD
WOODRUFF, SC 29388

Dear Dr. GONDA:

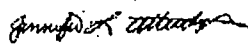
This letter will confirm that BASED ON A FAXED COMMUNICATION on APRIL 18, 2005 with your office a new prescription was issued to replace your patient's original prescription for BEXTRA TABS 20MG. The new prescription is for MOBIC TABS 7.5MG manufactured by BOEHRINGER INGELHEIM.

The prescription will be dispensed as:

- a quantity of 90
- TAKE 1 TABLET DAILY
- with 1 refills

You may wish to file this confirmation with your patient's records. If you have any questions you may contact a Member Services pharmacist at 1 800 455-5950.

Sincerely,



JENNIFER UTTERDYKE, RPh
Registered Pharmacist

Control Number: 2004D-00510212923

4/29/05
7

Medco manages your patient's pharmacy benefit at the request of your patient's plan sponsor.

KING 002023

1704

medco**Medco Health Request for Prescription Clarification | FA**

Your patient's prescription for the medication listed below needs clarification. Please review and clarify the information requested and fax it back to us at within 24 hours to minimize possible delays in patient drug therapy and follow-up calls to your office. **INCOMPLETE FORMS CANNOT BE PROCESSED.** To save you time and money, please **DO NOT** include a cover sheet when you fax back.

E398

Step 1: Please review the following information:

PRESCRIBER

Name: Dr. FRANK GONDA
Address: 2212 OLD FURNACE RD
ROLLING SPRINGS, SC 29316
DEA: BG1279529
Phone: (864) 578-9733
Fax: (864) 578-7098
☐ This fax number is no longer secure to receive patient confidential information. If box is checked, please provide secure fax number ()

PATIENT

Name: MARK CASEY
Address: 240 LIGHTWOOD FARM RD
WOODRUFF, SC 29388-0000
Phone: (864) 486-9131
Birth Date: 1958
Sex: M
Member#: 553108339007

PRESCRIPTION INFORMATION

Medication / Strength: BEXTRA TABS / 20MG
Quantity: 0090
Directions: TAKE 1 TABLET EVERY MORNING FOR PAIN
Refills: 0001
Issue Date: 04/05/2005

Step 2: Before we can fill your patient's prescription, please provide clarification for the following:
Note: Most benefit plans cover up to a 90 day supply plus four refills.

4/15/05

All strengths of Bextra have been withdrawn from the market. Would the Doctor like to prescribe another medication?

mobile ? Surg

i po 5d

#90/H

Frank Gonda

FAXED
4/15/05

Step 3: Date: 4/18/05

Signature: *[Signature]*
(We Cannot Accept Signature Stamps)

Please fax completed form to: 1 800 952-3239 within 24 hours (Please do not fax with cover page)

033640278 17 0510212923 17

Our Telephone No.: 1-800-548-1649

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TOTAL P.01

KING 002024

MAR-31-05 11:50 PM FAMILY DENTAL CARE



17804
KIRK E. HOUSTON, DMD
FAMILY DENTAL CARE
12313 GREENVILLE HIGHWAY
LYMAN, SC 29365
(864) 439-3322

DATE: March 30, 2005
TO: Dr. Frank Gonda
ADDRESS: _____

I HEREBY AUTHORIZE YOU TO RELEASE MY DENTAL /
MEDICAL RECORDS TO KIRK E. HOUSTON, DMD C/O FAMILY
DENTAL CARE.

PATIENT: William Mark Casey
ADDRESS: 240 Lightward Farm Road
Windsor SC 29388

SOCIAL SECURITY: _____

PLEASE RELEASE: Info regarding MEDS, we need to prescribe pain
med. Pt does not know what meds he is
currently prescribed

I UNDERSTAND THAT I MAY REVOKE THIS AUTHORIZATION
AT ANY TIME BY NOTIFYING FAMILY DENTAL CARE IN
WRITING. HOWEVER, IF I CHOOSE TO DO SO, I UNDERSTAND
THAT MY REVOCATION WILL NOT AFFECT ANY ACTIONS
TAKEN BY FAMILY DENTAL CARE BEFORE RECEIVING MY
REVOCATION.

PATIENTS SIGNATURE: Mark Casey
NOTE: THIS FORM IS VALID FOR SIX MONTHS FROM DATE
OF SIGNATURE.

*Do not send records
per pt. - Fitzgerald
4/5/05*

KING 002025