THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

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SC Court of Appeals

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

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 II

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Mary Black Physician Group
Request for Access to Protected Health Information

Patient: William M. Casey request access to my protected health information contained in the medical records or billing records maintained by Mary Black Physician Group to review the contents and obtain copies.

Or

Patient's Personal Representative:
I _____ request access to the protected health information of _____ contained in the medical records or billing records maintained by Mary Black Physician Group to review the contents and obtain copies.

I have the right to inspect and request copies of whatever portions or the entirety of the health records as well as to request a summary explanation of these records. I understand this request will require the collection of these records and that Mary Black Physician Group will arrange a convenient time and place for me to conduct my review of this protected health information. I request access and/or copies/summaries of the following information:

From (date) All to (date) _____

From (date) _____ to (date) _____

Please check type of information to be accessed/copied:

☐ 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) Psychiatric tx/mental illness tx- records

I would like the protected health information to be provided in *(check one)*:
☑ Photocopy format
☐ Summary explanation format

MAIL/BILL → Parham, Smith & Dodson, LLC
501 River Street
Greenville, SC 29601

And provided to me by the following *method (check one)*:
☐ Personal pick-up
☑ US Postal Service to (Address) Parham, Smith & Dodson, LLC
501 River St., Greenville, SC 29601
☐ Other, specify: _____

Signature William M Casey Date: 3/15/05

Printed Name William M. Casey

Relationship if not Patient _____

Patient's Date of Birth: [redacted]58 Patient's SS#: [redacted]

Patient's Address: 240 Lightwood Farm Rd.
Williamston, SC 29388

For Facility Use Only:
Identity of Requestor Verified via: ☐ Photo ID ☐ Matching Signature ☐ Other, specify Witness

Verified by: LTSC SDS 3/16/05

863-RAPHI-803

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Request sent to: FOOTHILLS FAMILY MEDICINE
2212 OLD FURNACE ROAD
BOILING SPRINGS SC 29316

RE:WILLIAM M CASEY
SSN [redacted]

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.**

SSA
S87 SC DDS GREENVILLE
P.O. BOX 8706
LONDON, KY 40742-9915

Mail/Bill

PAYMENT INSTRUCTIONS
Complete information below or attach your invoice underneath the second page.

AUTHORIZATION – RETURN FOR PAYMENT
Please complete identifying information below. TO ENSURE PAYMENT, THIS FORM MUST BE PLACED ON TOP OF THE MEDICAL EVIDENCE.

Complete the "Remit To" section below with the provider name and address as listed on file with the IRS.
Enter the payment Amount and Provider Signature.

Remit To: _____ Amount: $ _____

_____

_____

_____

Telephone No.: _____ _____
Provider's Signature

- 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.

SDS 2/23/05

RQID: 0034168408D91109 SITE: S87 DR: F
SSN: [redacted] DOCTYPE: 0001 RF: D CS: 4718

KMM/473
Claim No.: D91109
FAXD (8/04)
MA: Y

TDN: 0034168408

KING 002027

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17804

SOUTH CAROLINA VOCATIONAL REHABILITATION DEPARTMENT

SCVRD

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

February 15, 2005

FOOTHILLS FAMILY MEDICINE
2212 OLD FURNACE ROAD
BOILING SPRINGS SC 29316

FRANCISCO E GONDA MD

RE: WILLIAM M CASEY
AKA:
ADD: 240 LIGHTWOOD FARM RD
WOODRUFF SC 29388
SSN: [redacted]
DOB: [redacted]58

Your patient has applied for disability benefits under the Social Security Act. We need the following information:

Treatment Records: 05/28/04 TO PRESENT

PLEASE SEND US COPIES OF YOUR RECORDS OR A NARRATIVE prepared in your office. In a narrative please describe the HISTORY, OBJECTIVE FINDINGS, SEVERITY, ONSET, AND DURATION of impairment. For adults note the individual's ability to perform work-related physical and mental activities. For children note the child's functional abilities in learning, motor functioning, communicating and socializing, performing self-care activities, and attending and completing tasks, and include the cumulative effects of treatment and therapy.

We pay S.C. physicians $15.00 for a copy of treatment records, for a narrative submitted through our teledictation system or for a narrative prepared in a physician's office. Out of state physicians are paid according to the fee schedule effective in that state.

Is your patient capable of handling monthly benefits in his/her own best interest? _____ *YES* _____ *NO*

Physician's Signature _____

If a consultative examination is necessary, are you willing to perform the examination (including history, examination, and written report)? Yes ____ *No* ____

See the attached page for instructions on returning your report to the DDS. **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,

Robert W. Heaton

Robert W. Heaton, Disability Examiner

PLEASE INCLUDE THIS LETTER AS PAGE 2 OF YOUR REPORT

ENC: Release, Envelope
KMM/473

Claim No: D91109
LI (1/04)
DMA: Y

0034168408
TDN: 0034168408

KING 002028

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OMB No. 0960-0623

WHOSE Records to be disclosed

	First	Middle	Last
NAME	WILLIAM	MARK	CASEY

SSN [redacted] Birthday (mm/dd/yy) [redacted]1958

SSA USE ONLY NUMBER HOLDER (if other than above)

NAME

SSN

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:

1. 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 CFR164.501)
   - 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)
2. Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.
3. 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.
4. 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 known 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:

Foothills Family Medicine
5-28-04 to present

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

SIGN ▶ ✓William M. Casey

IF not signed by subject of disclosure, specify basis for authority to sign
☐ Parent of minor ☐ Guardian ☐ Other personal representative (explain)

(Parent/guardian sign here if two signatures required by State law) ▶ ✓

Date signed	Street Address		
✓Feb 8, 2005	240 LIGHTWOOD FARM RD		
Phone Number (with area code) 864 485 9131	City WOODRUFF	State SC	Zip 29388

WITNESS *I know the person signing this form or am satisfied of this person's identity:*

SIGN ▶ ✓

Phone Number (or Address)

IF needed, second witness sign here (e.g., if signed with an "X" above)
SIGN ▶

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

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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.*

AUTHORIZATION TO RELEASE RECORDS AND FILES

I hereby authorize and request Dr Frank Gonda. (Organization to release information) to furnish my attorneys, **PARHAM, SMITH & DODSON, LLC**, 501 River Street, Greenville, South Carolina 29601, regarding: William Mark Casey (Patient Name) [redacted] (DOB) [redacted] (Social Security Number) 240 Hightwood Farm Rd (Address at time of treatment) Woodruff, SC

All medical information of every kind and nature, including information received from other health care providers, correspondence, consultations, lab results, and any and all material concerning any history, examination, treatment, evaluation and/or hospitalizations for the periods from All treatment notes and records along with an itemized statement for services (Date(s) of Service)

I have been fully advised of my rights under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and I intend for this authorization to satisfy the requirements of "HIPAA" and the rules and regulations thereof. In that regard, I certify that I consent to the release of my records to my Attorneys, that the purpose of this request is for my Attorneys to assist me in a legal claim, and that the release of my entire medical record is the minimum disclosure authorized by this request.

I, William Mark Casey, have read the above and do authorize and consent for Dr Frank Gonda to disclose the said information. I understand that this consent may be withdrawn by me at any time except to the extent that action has been taken in reliance upon it or as otherwise specified by law. No individual has coerced me into signing this authorization and I am providing this authorization on my own free will. I understand that once this information is received by the authorized individual/organization, then this information may be subject to redisclosure, and may no longer be protected by federal privacy laws. I acknowledge that I have the right to revoke this authorization in writing by contacting the above named health care provider.

12/17/04 (Date)

William Mark Casey (Signature of Patient or legal representative)

Kay McCracken (Witness)

Unless otherwise revoked, this authorization will expire on the following date, event or condition: _____. If no date is specified, this authorization will expire in six months from the date of signature.

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PARHAM SMITH & DODSON, L.L.C.

Attorneys At Law

MICHAEL PARHAM
S. BLAKELY SMITH
WILLIAM L. DODSON, JR.

MACKENZIE G. ARCHENHOLD

501 RIVER STREET
SMITH BARNEY BUILDING - SECOND FLOOR
POST OFFICE BOX 2800
GREENVILLE, SOUTH CAROLINA 29602
(864) 242-9008
FACSIMILE (864) 271-6155

BARNEY O. SMITH, JR.
(1952-1996)

December 20, 2004

Dr. Frank Gouda
2212 Old Furnace Rd.
Spartanburg, SC 29316

578-9735

ATTN: Melissa
Fax 578-7098

Re: Name: William Mark Casey
SS No: [redacted]
DOB: [redacted]58
Information Requested: all treatment notes and records along with an itemized statement for services

Dear Sir/Madam:

Please take this letter as notice of our representation of the client above named. In order for us to fully represent our client, it is necessary for us to receive certified, stamped copies as kept in the normal course of business for Dr. Frank Gouda, of all documents, including, but not limited to medical records, bills, correspondence, consult notes and any and all other materials which mentioned our client which are maintained in your office. We are, therefore, enclosing a properly executed medical authorization, which satisfies all requirements of HIPAA regulations. This release authorizes our firm to obtain both current and future information which is received in your office with reference to our client. Please forward to us ALL information maintained in your office which refers to this client. Since time is of the essence in the pursuit of legal matters, your prompt attention and response in this matter will be greatly appreciated.

THIS AUTHORIZATION REVOKES ALL PRIOR AUTHORIZATIONS OF MY CLIENT ON FILE WITH YOUR OFFICE. THEREFORE, DO NOT RELEASE FURTHER INFORMATION WITH REFERENCE TO THIS CLIENT TO ANY PERSON OR ENTITY WITHOUT THE WRITTEN CONSENT OF OUR CLIENT.

As attorneys for the client whose name is listed above we direct you to refrain from engaging in oral communications with any person concerning our client without specific written consent in accord with HIPAA regulations. Any disclosure of information to persons other than the client and this office is strictly prohibited.

We appreciate your prompt attention to this matter, and I remain

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Sincerely,

Kaye McCracken

Kaye McCracken
Paralegal

KM:sch

encl.

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SMART CORPORATION Health Information Services

Patient Name: William Mark Casey

Date: 12/29/04

RECEIVED
DEC 30 2004
PARHAM & SMITH

Dear Requestor:

Smart Corporation is under agreement with the medical facility to release all authorized copies of medical records. Federal and other law protects the confidentiality of the records.

Therefore, Smart employees will not forward confidential records without the proper authorization. We have checked the patient's file and regret that we cannot respond to your request for records at this time due to the following:

☐ A **Death Certificate or "Letter of Administration/Testament"** must accompany the request for records for a deceased individual.

☐ **Inadequate Authorization.** A signed authorization from the patient or their agent must accompany the request or be on file.

☐ **Inadequate Authorization.** Legal documents must be provided to confirm the legitimacy of the patient's agent and their relationship to the patient if the authorization is not signed by the patient themselves. This would apply to the legal guardian of a minor unless the parent and the power of attorney.

☐ **HIPAA-compliant authorization.** Patient authorization must contain statements of notification to the patient. One or more of the following statements is missing from your authorization.

- ☐ Individual's right to revoke authorization
- ☐ Description of how to revoke it
- ☐ Ability or inability to condition their treatment, payment, enrollment or eligibility for benefits
- ☐ Potential for disclosed information to be re-disclosed by recipient

☐ **HIPAA-compliant request for medical records.** Request for medical records must include all the information below. One or more of the following core elements is missing from your request.

- ☐ Name of patient
- ☐ Date of birth or social security number to identify patient
- ☐ Description of the information to be disclosed
- ☐ Name of person/company authorized to make use of disclosure
- ☐ Description of each purpose for the disclosure
- ☐ Expiration date or event for which the request will expire

☒ **Special Authorization Required.** Chart contains sensitive information. Release must specify that permission is given to disclose such information. Please resend with auth.

☐ The date of service for the records you have requested is not available or is not part of the patient's medical record.

☐ Other _____

KING 002034

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CONFIDENTIAL

Parham Smith & Dodson, LLC
Attorneys at Law

P.O. Box 2800
Greenville, SC 29602
864-242-9008
Fax #864-271-6155

To:	Melissa
Re:	Wm. Mark Casey - Records
Fax #:	578-7098
Date:	1/20/05
Time:	11:50

Sender:

___ Mike Parham
___ Brooke Archenhold
___ Camille Klein
___ Paula Duffell
___ Brandon Ellison
___ Blake Smith
___ Herb Parham
___ Van Clanton
___ Shannon Hotek
___ Bill Dodson
✓ Kaye McCracken
___ Joyce Banks
___ Allison Williams

Comments: _____

You should receive 5 page(s) including this cover sheet.
If you do not receive all the pages, please call 864-242-9008.

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17804

MAIL/Bill

AETNA
P.O. BOX 14554
LEXINGTON, KY 40512-4554

FACSIMILE TRANSMITTAL SHEET

TO: Dr. Frank Gonda Attention: Medical Records Representative	FROM: Debi Harrison
COMPANY:	DATE: 04-18-05
FAX NUMBER: 864-578-7098	TOTAL NO. OF PAGES INCLUDING COVER: 5
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: William Casey DOB: [redacted]58	YOUR REFERENCE NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT X PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:
We have received a disability claim for the above named patient, but need further medical information before we can make a claim determination.

We ask that you please fax all medical records for your patient William Casey covering the period of May 2004 through the present. Please also fully complete the enclosed Attending Physician Behavioral Health Statement. Please fax this information to the below fax number.

Thank you for your cooperation. Please call us at 1-800-726-7777 if you have any questions or concerns regarding this request. Our business hours are Monday through Friday 8:00am to 5:00pm EST.

Sincerely,

Debi Harrison
Return Fax: 1-800-333-8309

SDS 4/27/05

8/17/05 retained Aetna ✆ rec. ATC (see note)

DOS 5-4-06 1-12-05
6-29-04 4-5-05
7-27-04
9-10-04
10-19-04

KING 002036

age 1 of 2)

Aetna

Authorization For Aetna To Request Protected Health Information Necessary To Process A Disability Claim

0517209600265

Please Read The Following Carefully Before Completing Your Authorization. You May Refuse To Sign This Authorization (See Section 6).

1. Member Information (Information About Person For Whom This Authorization Is Requested.)

Last Name	First Name	Middle Initial
CASEY	William	W
Member I.D. Number / Social Security Number	Birthdate (MM/DD/YYYY)	Daytime Telephone Number (Include Area Code)
[redacted]	[redacted]1953	864 486-9131
Street Address	City, State and Zip	
240 Lightwood Farm Rd	Woodruff SC 29388	

2. This form requests a Member's unconditioned authorization for Aetna to ask another person or organization to disclose Member's Protected Health Information ("PHI") to Aetna for the purpose of processing my disability claim.

3. The specific PHI we are asking you to authorize Aetna to request is (This section completed by Aetna):

Any and all medical information including but not limited to information which relates to psychiatric or mental health, drug, substance abuse, and/or HIV infection, including AIDS and related illnesses, concerning health care, and the past treatment (including but not limited to, treatment notes).

4. By signing this form, you will authorize Aetna to request PHI described above from the following person or organizations (or classes of persons or organizations):

Providers, including but not limited, to physicians, therapists, medical practitioners, health care professionals, diagnostic facilities, hospitals, clinics (including individuals or facilities which provide rehabilitation services or treatment).

5. Expiration of this Authorization (Select one):

When the following event occurs:
This Authorization is valid throughout the processing and any term of your disability claim.

Please review and complete important information on the reverse of this form.

ME
CA-6794D-3 (1-04)

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6. Important! Your signature below means that you understand and agree to the following:

- You authorize Aetna to request from the persons or organizations named above, the PHI described above, for the purposes stated above.
- The information to be disclosed may be protected by law. Information disclosed under this authorization may be redisclosed and no longer protected by federal privacy regulations
- Failure to complete this form may prevent Aetna from receiving information necessary for the processing of your disability claim, which may result in a disability claim denial. Failure to complete this form will not however impact your receipt of medical services from providers.
- You may revoke this Authorization at any time by notifying Aetna in writing, but please note that it will be Aetna's policy to honor your revocation only to the extent that action has not already been taken before we receive it. Your revocation will not affect any action taken in reliance on this authorization.
- You may receive a copy of this form if you request it in writing from the address listed below.

7. Expiration of this Authorization (Select one):

Signature of Member or Legal Representative: William M Cabey — Date: April 11, 2017

Print Name: William M Cabey

If not the Member, describe your relationship to the Member:

- ☐ Caregiver
- ☐ Legal Representative
- ☐ Other: _____

If Member's legal representative is signing this authorization, attach documentation of authority to act on behalf of the Member (such as power of attorney or court order).

Return this completed form to: Attn:
Aetna Life Insurance Company
P.O. Box 14554
Lexington, Kentucky 40512-4554

Telephone Number: 877-465-0424
Fax Number: 866-888-2308

AME
CR-6579-17 (1-04)

Page 2 of 2 R-POD

KING 002038

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Aetna Attending Physician Statement

Complete and sign the form using BLUE or BLACK ink.

1. Patient Instructions – The Physician will complete Sections 2 through 9.
The Patient will complete Section 1. The Patient should also fill in their name at the top of Page 2.

The ***Patient*** is responsible for completing this section, and for ensuring that their Attending Physician completes the remainder of this statement. The Patient is responsible for paying any fees that may be charged for completion of this form by their physician. If you have any questions, please call (877) 465-0424.

(a) Control Number 607472

(b) Casey William M [redacted] [redacted] 1958 15'8" 175
Patient Name (Last, First, Middle Initial) Social Security Number Birth Date (MM/DD/YYYY) Height Weight(lb)

(c) Patient Gender ☑ Male ☐ Female

(d) 240 Lightwood Farm Road Woodruff SC 29388
Patient Home Address – Required (Current No., St., Town, State, Zip – no PO boxes) ☐ Check If New

(e) Mailing Address, if different from Home address —

(f) Patient Employer Name/City/State Michelin Tire Corp Spartanburg SC

(g) Patient Telephone Number 864 486-9131 ☐ Check If New

(h) Job Title/Occupation PAPP/BMS operator - MP2

(i) Type of Claim: ☐ Short Term Disability ☐ Long Term Disability ☐ Waiver of Premium ☐ Long Term / Permanent Total Disability

2. Physician Instructions

The ***Attending Physician*** should complete the items below, based upon a recent examination. Attach additional documentation as needed. If you have any questions, please call (877) 465-0424.

Please complete form in its entirety and fax to (866) 888-2308. Page 2 MUST be completed before faxing.

3. Impairing Diagnosis & Treatment

(a) Primary Diagnosis Chronic LBP — Primary ICD Code —
Secondary Diagnosis Degen. Arthritis — Secondary ICD Code —
Other Diagnoses Depression — Other ICD Codes —

(b) Height — Weight 177 lb — Date Measured (MM/DD/YYYY) 10/19/04

(c) If Pregnancy related, delivery or expected date n/a MM — DD — YYYY — Delivery Type: ☐ Vaginal ☐ Cesarean

(d) Primary Procedure n/a — Primary CPT Code —
Secondary Procedure — Secondary CPT Code —
Other Procedures — Other CPT Codes —

(e) Medication(s)/Dose/Frequency Ultram 50mg 2qid, Baclofen 4mg 2½hs, Lortab 10/500 bid Bextra 20mg qd, Zoloft 100mg 1½ qd

Impairment from medication effects —

(f) Is patient still under your care for this condition? ☑ Yes ☐ No, date service terminated — (MM/DD/YYYY)

(g) Treatment summary EKGm, X-rays, MRI, ortho consult, medication, psych consult

(h) Office visit dates: First 11/14/97 (MM/DD/YYYY) Last 10/19/04 (MM/DD/YYYY) Next 3 (MM/DD/YYYY) Frequency of appointments q 3 mths

(i) Was patient recently hospitalized? ☑ No ☐ Yes Date hospitalized: Admit — (MM/DD/YYYY) Discharge — (MM/DD/YYYY)

(j) Hospital Name/City/State —

4. History

(a) Symptoms: Chronic back pain made worse w/ strenuous activity
Depression & Anxiety

(b) Date symptoms first appeared or accident happened ..... MM 11 DD 14 YYYY 1997

(c) Has patient ever had same or similar condition? ☐ No ☐ Yes, state when and describe.

(e) Is condition due to injury or sickness arising out of patient's employment? ☑ No ☐ Yes ☐ Unknown

(f) Other Treating Physicians
Name Glenn Scott Specialty ortho City Spartanburg State SC
Name Eugene Mironer Specialty Chiropractic City Spartanburg State SC

AP DT 01-001 ME
GC-1486-1 (6-03)

FAXED 10/22/04 (per pt request)

KING 002039

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Patient Name *(Last, First Middle Initial)* Required

5. Abilities/Limitations

(a) **Patient is: Place remarks in item (d) below, if applicable.**

- Competent to endorse checks and direct the use of proceeds thereof — ☑ Yes ☐ No ☐ Other/describe in (d)
- Able to work with others — ☑ Yes ☐ No ☐ Other/describe in (d)
- Able to give supervision — ☑ Yes ☐ No ☐ Other/describe in (d)
- Able to work cooperatively with others in group setting — ☑ Yes ☐ No ☐ Other/describe in (d)
- Able to do? **Select one: Place remarks in item (d) below, if applicable.**
  - ☐ **Heavy work activity.** No limitations of functional capacity.
  - ☐ **Medium work activity.** Exerting 20-50 pounds of force occasionally, and/or 10-25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly
  - ☑ **Light work activity.** Exerting up to 20 pounds of force occasionally and/or up to 10 pounds of force frequently
  - ☑ **Sedentary work activity** – moderate limitation of functional capacity. Exerting up to 10 pounds of force occasionally. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time
  - ☐ **No ability to work.** Severe limitation of functional capacity; incapable of minimal activity
  - ☐ **Other.** Place remarks in item (d) below.

(b) **What medical restrictions/limitations are you placing on patient?** *(Activities of Daily Living, Driving, Lifting, Pulling, Pushing, and Amounts, etc.)* No bending, squatting, lifting greater than 20 lbs prolonged standing >1/2 hrs

- Number of Hours patient is capable of working in a day: ☐ 12 ☐ 10 ☐ 8 ☐ 6 ☐ 4 ☑ 2 ☐ 1 Hour/Day
- Number of Days per week patient is able to work: ☐ 1 ☐ 2 ☒ 3 ☐ 4 ☑ 5 ☐ 6 ☐ 7 Days/Week
- Date you prescribed restriction on work activities ..... Month _____ Day _____ Year _____
- How long are these restrictions/limitations in effect? _____ (Days) _____ (Weeks) 3 (Months) ☐ No Longer
- Estimated return to work date? 1/20/05 (MM/DD/YYYY) modified duty ? (MM/DD/YYYY) full duty

(c) **Objective findings that substantiate impairment** *(current laboratory, physical and/or mental status examination, and other testing)* X-rays of R/L show degenerative arthritis

(d) Other/Comments _____

6. Current Status

(a) Patient has ..... ☐ Improved ☑ Stabilized ☐ Regressed ☐ Not Applicable

(b) Is there a medical contraindication for patient to participate in Vocational Rehabilitation (job training) programs?
☑ No ☐ Yes, please explain _____

(c) In your opinion, is your patient motivated to return to work? maybe

7. Regulation Notice

It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to claim was provided by the applicant.

California Residents: For your protection, California law requires notice of the following: Any person who knowingly and with intent to defraud or deceive any insurance company files a statement of claim containing any materially false, incomplete or misleading information is guilty of a crime and may be subject to fines, confinement in a state prison and substantial civil penalties.

Colorado Residents: An insurer or agent who knowingly provides false or misleading information to defraud a claimant regarding insurance proceeds must be reported to the Insurance Division.

Pennsylvania Residents: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

8. Physician Certification

Attending Physician's Name *(Print)*	Degree	Specialty
Frank E Gordon	MD	F. P.
Address *(No. Street, City, State, Zip Code)*	**Telephone Number**	**Fax Number**
2212 Old Furnace Rd Boiling Spgs SC	864-578-4755	864-578-7098

9. Physician Signature

Signature	Date *(MM/DD/YYYY)*
F E Gordon MD	10/21/04

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Universal Request Form
Fax Request to MedSolutions at (888) 693-3210

Patient Name William Casey DOB [redacted]58 Member ID# [redacted]01
HealthPlan & State Cigna PPO PCP Dr. Elonda MD Requesting Exam Dr. Frank Elonda
Tel # Requesting MD Office (864) 578-9735 FAX # Requesting MD Office (864) 578-7098
Office Contact Person Jaime Calvert Date Request Submitted 10/20/03
Specialist Referral # _____ Specialty of Referring MD family practice
Requested Facility for Procedure Mary Black Hospital MVA ☐ Workers Comp ☐

Working Diagnosis/ICD9 code low back pain

υ **This form must be accompanied by medical notes/previous imaging reports that support the medical necessity for the study requested.**

Please check the procedure(s) being requested:

- ☐ CT Head
- ☐ CT Orbit, Sella, Ear
- ☐ CT Maxillofacial
- ☐ CT Coronal Sinus
- ☐ CT Soft-tissue Neck
- ☐ CT Chest
- CT Chest Limited for Interstitial Disease
- ☐ CT Abdomen
- ☐ CT Screen for Appendicitis
- ☐ CT Pelvis
- ☐ CT Urogram
- ☐ CT Limited Abdomen Followup
- ☐ CT Upper Extremity
- ☐ CT Lower Extremity
- ☐ CT C-Spine
- ☐ CT Myelogram C-Spine
- ☐ CT T-Spine
- ☐ CT Myelogram T-Spine
- ☐ CT L-Spine
- ☐ CT Myelogram L-Spine
- ☐ CT Angiogram
- ☐ CT Guidance for Steriotactic Localization
- ☐ CT Guidance for Needle Biopsy
- ☐ CT Guidance for Cyst Aspiration
- ☐ PET scan – body/cardiac

FAXED 10/20/03 JC

- ☐ MRI Brain
- ☐ MRI Temporomandibular Joint
- ☐ MRI Orbit, Face, Neck
- ☐ MRI Chest
- ☐ MRI Abdomen
- ☐ MRI Pelvis
- ☐ MRI C-Spine
- ☐ MRI T-Spine
- ☒ MRI ~~L-Spine~~ LS spine
- ☐ MRI Upper Extremity other than Joint
- ☐ MRI Upper Extremity Joint
- ☐ MRI Lower Extremity other than Joint
- ☐ MRI Lower Extremity Joint
- ☐ MRI Breast Unilateral
- ☐ MRI Breast Bilateral
- ☐ MRA Head
- ☐ MRA Neck
- ☐ MRA Chest (non cardiac)
- ☐ MRA Abdomen
- ☐ MRA Pelvis
- ☐ MRA Upper Extremity
- ☐ MRA Lower Extremity
- ☐ Nuclear Myocardial Perfusion Imaging
- ☐ Nuclear Cardiac Blood Pool Imaging
- ☐ PET scan - brain

Revised 9/24/01 dm

KING 002041

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Mar 11, 2002

CIGNA

Attn: Dr. Gonda
2212 Old Terrace Rd
Bouley Springs, SC 29316

Member Name:	William Casey
Physician Name:	Dr. Gonda
Member ID#:	250376304-02
Requested Drug:	Viagra

Dear Dr. Gonda,

We have reviewed your request to cover the drug shown above. Because medical necessity for this drug has not been established, we have denied the request.

Consideration for this drug is based on the following criteria:

* Patient is a male
* Patient has been diagnosed with Organic Impotence (disease or surgically induced) per documented medical history (must not be the result of concomitant drug therapy). 607.84

AND

The following lab values are normal.
(Note: The patient must first be treated to correct the abnormal value, once corrected and the patient has no nocturnal erections, then he is considered to have organic impotence)

* Normal androgen level (testosterone). If low, the patient is treated with testosterone (patches, injections, etc.)
* Normal prolactin level. If high, the patient is treated with bromocriptine
* Normal thyroid function. If hypothyroidism, the member is treated with Synthroid or some other type of thyroid medication.

OR

* Patient is a diabetic with confirmation of Insulin or hypoglycemic use on the patients medication profile
* Patient has a neurological impairment (I.e. spinal cord injury, Multiple Sclerosis, Pituitary microadenoma with Hyperprolactinemia or Cardiovascular Accident)
* Patient has vascular disturbances (i.e. aortic aneurysm, atherosclerosis or Leriche's syndrome)
* Patient has had a radical prostatectomy (surgically induced impotence).
(Note: Trans Urethral Prostatectomy (TURP) should not cause impotence and therefore the patient would need to be evaluated for organic impotence.)

Based on the information given, your patient did not meet the following criteria:

No documented medical history of Organic Impotence

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Failure to list all required la[redacted] vels

Your patient's benefits provide coverage for medically necessary prescription drugs listed on the CIGNA HealthCare formulary. Our Pharmacy & Therapeutics Committee (primarily composed of practicing physicians and pharmacists) develops the formulary based on peer-reviewed literature, FDA approved product labeling, and information from outside experts.

If you feel this deserves further consideration, you or the patient may appeal this decision. An explanation of your appeal rights is enclosed.

If the physician would like to discuss this decision with our pharmacist or physician, please call our toll-free number, 800.832.3211.

If the patient should have any questions regarding this matter or any of their CIGNA HealthCare benefits, please have them call Member Services at the number listed on their CIGNA ID card.

Sincerely,

Debora Scavone

Debora Scavone
CIGNA HealthCare Pharmacy Services

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CIGNA HealthCare

Important Information about your CIGNA HealthCare Appeal Rights

If you feel this deserves further consideration, you or the patient may appeal this decision. Be sure to include additional information (not previously submitted) which will support your request. This will assist us in our review. Please send your request to PACES Unit, CIGNA HealthCare, 2202 North West Shore Blvd, Suite 400, Tampa, FL 33607.

We process appeals within 30 calendar days, unless otherwise required by state law(s). However, you or the patient may file an expedited appeal (processed within 72 hours), if your patient's life, health, or ability to regain maximum function could be seriously harmed by waiting up to 30 calendar days. Keep in mind if your patient's specific situation does not meet these guidelines, it will be considered under our standard appeal process. To file an expedited appeal, it is important that you call us at 800.832.3211.

If you would like to discuss this decision with our pharmacist or physician, please call our toll-free number, 800.832.3211.

If the patient should have any questions regarding this matter or any if their CIGNA HealthCare benefits, please have them call Member Services at the number listed on their CIGNA ID card.

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10967 03/11/02 15:42

CIGNA HealthCare

Pharmacy Services

Exception Request Notification

From: Debora Scavone — ***Mar. 11, 2002***
CIGNA HealthCare
CIGNA HealthCare Pharmacy Services
Fax: 800.896.3032 Phone: 800.832.3211

To: Dr. Gonda
2212 Old Terrace Rd
Bouley Springs, SC 29316
Fax: (864) 578-7098 Phone: (864) 578-9735

Patient:	William Casey
Patient ID#:	250376304-02
Requested Drug:	Viagra
Decision:	Your request for Viagra has been denied.
Reason:	Criteria for this medication has not been met.

We encourage you to immediately notify your patient of this decision. We will mail you a formal letter with specific details of the decision within five days, and a copy will be sent to the patient.

If you feel this deserves further consideration, you may appeal this decision. Be sure to include additional information (not previously submitted) which will support your request. This will assist us in our review. Please send your request to: PACES Unit, CIGNA HealthCare, 2202 North West Shore Blvd, Suite 400, Tampa, FL 33607.

We process appeals within 30 calendar days, unless otherwise required by state law(s). However, you or the patient may file an expedited appeal (processed within 72 hours), if your patient's life, health, or ability to regain maximum function could be seriously harmed by waiting up to 30 calendar days.

Keep in mind if your patient's specific situation does not meet these guidelines, it will be considered under our standard appeal process. To file an expedited appeal, it is important that you call us at 800.832.3211.

You denied this Rx, you Notify him
for Immediately & have him curse @ you!!
T E Gonda MD

ID: 25037630402 Mbr: William Casey 03/11/2002 PL70 Doc 133784 AZ RT
5/13/02

KING 002045

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CIGNA HealthCare Prescription Authorization Form- Viagra

View our formulary online at http://www.cigna.com

Notice: Failure to complete this form in its entirety may result in delayed processing or a denial for insufficient information

Our standard turnaround time for prescription authorization requests is 2-4 business days.
If your request is urgent, it is important that you call Pharmacy Services at 800.622.5579 to expedite the request.

Name: Dr. [redacted] Gonda
☐ PCP ☐ Specialist
Office contact: Emily
Facsimile #: ( ) 864-578-7028
Phone #: (864) 578-9735
Address: 2212 Old Furnace Rd.
Belly Spring, SC 29316

Name (last, first): Causey, William
CIGNA HealthCare ID #: 250376304-02
Client code (for CIGNA use):
Birth date: [redacted]58
Address: 719 Three Mile Dam Road
Woodruff, SC 29388
Phone #: 864 476-9400

Drug: ☐ Viagra 25mg ☐ Viagra 50mg ☑ Viagra 100mg 1 tab

Diagnosis: Erectile Dysfunction

Origin of the patient's impotence: Smoking

Date diagnosis was made: 9/7/01

Required Labs *(Lab levels are only required for a diagnosis related to hormone deficiency ED or ED of unknown origin)*:
Testosterone level: 10/01 325 free 14.8 Prolactin level: 5 Thyroid level: 0

Is this patient currently being treated with any form of nitrates? ☐ yes ☑ no
Is this patient currently being treated with a drug that may cause impotence? ☐ yes ☑ no

Additional remarks:

Date: 02/28/2002

Physician Signature: Frank E. Gonda MD

Date: 3/6/02

CSR RECOMMENDATION:	PSA RECOMMENDATION:	RPH/ MD DECISION:
☐ CRITERIA MET Duration of authorization:	☐ CRITERIA MET Duration of authorization:	☐ APPROVED Duration of authorization:
☐ PENDED- CRITERIA NOT MET	☐ CRITERIA NOT MET Letter #:	☐ DENIED Letter #:
Request taken by: Date/ Time: 02/28/2002 12:01 PM	PSA Reviewer: Date/ Time:	Reviewed by: Date/ Time:

Comments to be inserted into letter:

RPh/ MD Comments:

DATABASE RECORD #:	FUNDING TYPE (ASO, COMMERCIAL, ETC):	PRODUCT TYPE (2 TIER OR 3 TIER):

CIGNA Pharmacy Services phone: 800.622.5579
Attention CSAs: Email completed telephone requests to your department's clinical review area

FAX form to: 800.442.9047

Faxed (ER) 3/7/02

KING 002046

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

REQUEST FOR SPINE IMAGING

Fax to MedSolutions at (888) 693-3210

Patient Name William Casey DOB _____ Member ID# [redacted]

[redacted] Plan Cigna Healthcare PCP Frank E. Gaede MD Requesting Exam Frank E. Gaede

Tel # Requesting MD Office (864) 578-4735 FAX # Requesting MD Office (864) 578-2098

Office Contact Person Emily Date Request Submitted 10/26/10

Specialist Referral # _____ Specialty of Referring MD _____

Requested Facility for Procedure Spartanburg Regional Health System MVA ☐ Workers Comp ☐

Procedure: MRI Cervical Spine (CPT 72141) ____	***CT Cervical Spine (CPT 72125)*** ____	***with Myelogram*** ____
MRI Thoracic Spine (CPT 72146) ____	***CT Thoracic Spine (CPT 72128)*** ____	***with Myelogram*** ____
MRI Lumbar Spine (CPT 72148) ✓	***CT Lumbar Spine (CPT 72131)*** ____	***with Myelogram*** ____

- ***Advanced imaging for suspected herniated disc should be reserved for those patients whose symptoms are persistent or worse despite 4-6 weeks of conservative Rx which should include limitation of activity and/or physical therapy.***
- ***Generally either MRI or CT Myelography, but not both should be considered to evaluate persistent radiculopathy.***
- ***Bone Scan is recommended in patients with known cancer, pain and no neuro findings.***
- ***Plain films should be considered prior to advanced imaging in elderly patients with symptoms suggesting compression fracture.***
- ***Emergent neurosurgical/orthopedic or neurological consultation is recommended for patients with progressive motor loss, incontinence, loss of anal sphincter tone.***
- ***Initial MRI for MS should be requested by a neurologist following evaluation. Follow-up MRI is usually unnecessary to evaluate progression/remission of MS once diagnosis has been made.***

Working Diagnosis: Chronic Low Back Pain

ns: Pain ✓ Radiculopathy ____

Loss of Motor Function/Weakness ____ What Level? ____

Loss of Sensation ____ What Level? ____

Loss of reflexes ____ Where? ____

Loss of Bowel/Bladder Function ____ Fever ____

Elevated WBC ____ Elevated sed rate ____

Duration of Symptoms ____

Is there a history of trauma? Yes ____

Conservative Rx Interval (***4-6 weeks min***):

Home exercise ____ Dates ____ Limited Activity ____ Dates ____

PT ____ Dates ____ NSAIDS ____ Dates ____

Steroid Injections ____ Dates ____ Medrol Dosepak ____ Dates ____

Known cancer diagnosis? (***submit office notes***) Yes ____ Location(s) ____

Does the patient have known metastatic disease? Yes ____ Location(s) ____

Has patient had previous surgery in the region of current symptoms? Yes ____

Is surgery being considered for this patient? Yes ____

Previous Imaging Procedures (***submit reports***): Plain Films ____ CT ____ MRI ____ Myelogram ____

CT Myelogram: What additional information will be obtained from this procedure not obtained from previous MRI? ____

9/22/99

KING 002047

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17804

THE WARD LAW FIRM, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 3168
SPARTANBURG, SOUTH CAROLINA 29304
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233 SOUTH PINE STREET
SPARTANBURG, S.C. 29302

FAX. NO. (864) 583-8961
E-mail: sking@wardfirm.com

Direct No. 864-591-2364

June 16, 2006

Frank Gonda, MD
Medical Records Custodian
2212 Old Furnace Road
Spartanburg, SC 29316

Re: William Mark Casey v. Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung and Critical Care Specialists, PC, and Devendra Shanma, 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, or 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

SDS 6/13/06

KING 002049

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

[redacted]iam Mark Casey,
Plaintiff,

v.

C.A. No. 2006-CP-42-1728

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

Defendants.

TO: **Medical Records Custodian, Frank E. Gonda, M.D., 2212 Old Furnace Road, Spartanburg, SC 29316.**

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

Place of Testimony -	**Courtroom:**
	Date and Time:

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

Place of Deposition:	Date and Time:

[X] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objec in your possession, custody or control at the place, date and time below:

A complete copy of your records of treatment at any time **pertaining to William Mark Casey, SSN: 251-02-2977, DOB: 11-3-58.**

A complete copy of your billing records for treatment at any time **pertaining to William Mark Casey, SSN: 251-0 2977, DOB: 11-3-58.**

IN LIEU OF PERSONALLY APPEARING, THESE RECORDS MAY BE MAILED TO DONNA C. HILL,C.L.A., THE WARD LAW FIRM, P.A., PO BOX 3188, SPARTANBURG, SC 29304.

Place:**233 South Pine Street, Spartanburg, SC 29302**	Date and Time: **3:00 pm on July 31, 2006**

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

Premises	Date and Time

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

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER H. Spencer King, Esq., The Ward Law Firm, P.A., 233 South Pine Street PO Box 3188, Spartanburg, SC 29304-3188 (864/582-4365)	

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

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE: June 16, 2006

Attorney for Defendants Gregory J. Feldman, MD, Joseph A. Boscia, MD, and Upstate Lung and Critical Care Specialists, PC

SCCA FORM 254 (7/93) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse

KING 002050

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Casey v. Feldman
26-0266
Lung & Chest Medical Summary

Medical Records from Lung and Chest Medical Associates received in answer to subpoena.

DOB: [redacted]58
DOI: May 28, 2004

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Page	Date	Provider	Summary
Lung & Chest 1-2	7/14/04	Lung & Chest Medical Associates	Referring Physician: Self-referred. Hx: Mr. Casey is a 45 y/o male who presents for evaluation of chest difficulties that began in May of this year when he presented to the emergency room at Spartanburg Regional Medical Center with a complaint of chest pain. A PA chest X-ray taken at that time suggested the possibility of a foreign body. He works for Michelin Tire Company. He underwent a bronchoscopy, which was felt to be abnormal but no foreign body was identified. A subsequent CT scan done th same day did not confirm any abnormality. However it does mention that there is left anterior descending coronary calcifications. In 2000 he had a stress test and catheterization which was normal. Following this underwent a rigid bronchoscopy in attempt to identify foreign body and remove it. During that procedure he had a peroration of the bronchial wall by a laser which resulted in pneumomediastinum and respiratory distress. He required intubation and heavy sedation and was able to be extubated the following day. Since that time he notes fatigue during the day. He continues to have dyspnea and chest pain with exertion. He has become very anxious. His sister accompanying him for the interview notes that he seems to have experienced a change in his ability to tolerate stress and appears much more anxious and restless than she has known him to be in the past. He is a previous smoker for about 12 years but has not smoked in the past three weeks. He does snore but feels he sleeps well. He denies any hemoptysis, chronic cough or weight loss. He still has the chest pain. PAST MEDICAL HISTORY: Previous hemorrhoid surgery in 1994 and a hospitalization for evaluation of chest pain

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Page	Date	Provider	Summary
Lung & Chest 1-2	7/14/04	Lung & Chest Medical Associates	SOCIAL HISTORY: He is divorced. He completed on year of college. He drinks occasional alcohol. He likes to play golf. He has been unable to play since his injury. REVIEW OF SYSTEMS: Shows some arthritis which he manages with the Bextra. He has an elevated cholesterol for which he is on the Lipitor. He had an episode of rectal bleeding 10 years ago. He notes that he gets up three to four times during the night for micturition. He has disk problems and arthritis in his lower back... **LABORATORY DATA: Pulmonary function studies show normal vital capacity and flow rates with a vital capacity of 4.7 liters, which is 99% of predicted and forced expiratory volume that is 98% of predicted. There was no change with bronchodilator. Flow volume loop showed no evidence of upper airway obstruction. Maximum voluntary ventilation was reduced at about 70 to 77% of predicted.** IMPRESSION: 1. His pulmonary function is normal and chest X-ray does not show any evidence of sequelae of his bronchial perforation. The patient did not bring a recent follow up film. Pulmonary function studies are normal. I do not find any evidence for airway obstruction that would account for his problems. But I wonder if he suffers from a posttraumatic stress disorder related to his injury and intensive care unit experience. I would like to refer him to a psychologist for further evaluation. On his return we will get a follow up chest X-ray and a diffusion capacity and in view of his CT scan suggesting left anterior descending coronary artery calcification I believe a repeat stress test might be in order. - Wilson P. Smith, Jr., MD

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Page	Date	Provider	Summary
Lung & Chest 17	7/22/04	Lung & Chest Dr. Wilson Smith	Telephone Call From Mr. Casey: "Pt. started trying to do some things this morning "to build stamina" and started having some chest pain after about 1 hr., 15 minutes. Pt. talked for several minutes re: his inability to tolerate increased activity - not eve lifting heavy objects - pt. says with his chronic back pain and now pain I upper body. He's just upset - afraid he's going to do some damage to the injured lung." Refer to pulmonary rehab.
Lung and Chest 20	7/29/04	Lung & Chest Dr.Wilson Smith	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 Cardiolite stress test and consideration of pulmonary rehabilitation. EKG today is within normal limits and shows no acute changes.
Lung & Chest 21	7/29/04	Lung & Chest Dr. Wilson Smith	X-ray: PA & lateral of chest. Chest X-ray shows normal heart size and clear lung fields. IMPRESSION: Normal chest.
Lung & Chest 29	8/3/04	Lung & Chest Dr. Wilson Smith	Telephone Call From Mark Casey: Re: when is his appointment with Dr. Grace?
Lung & Chest 31	8/12/04	Lung & Chest Dr. Wilson Smith	+Present Illness: Still gets tired with exertion...Dx: Chest pain; Plan: Neg stress.
Lung & Chest 35	11/10/04	Lung & Chest Dr. Wilson Smith	4-5 cigs/day; Chest pain only with exertion; no dyspnea; when in yard working or walking up steps and _____ is _____. Dr. Grace does not feel ready to work; does not want to go..._____; Dx: Post traumatic stress; costrochondritis as cause of chest pain;...
Lung & Chest 36	2/15/05	Lung & Chest	SC Voc Rehab request for information;

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Page	Date	Provider	Summary
Lung & Chest 37-42	7/19/05	Lung & Chest Dr. Wilson Smith	Doesn't want to see Feldman; vomiting x 1 week; chest sore - tight; vomiting; dry heaves now; saw Dr. Fogarty with ____ several years ago - sister ____; pt. no longer smoking ...Dx: Nausea/vomiting; ?___...unreadable..

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Page	Date	Provider	Summary
Lung & Chest 43-45	7/21/05	Lung & Chest Dr. Wilson Smith	Office note: CHIEF COMPLAINT: William Casey return 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 rigid bronchoscopy within hours of his presentation. The bronchoscoy did not show a foreign body, but rather an area of erythema, and hew as scheduled for 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 pneumomediastinu, 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... 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

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Page	Date	Provider	Summary
Lung & Chest 43-45	7/21/05	Lung &Chest Dr. Wilson Smith	CONTINUED: 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. Comment: With reference to the patient's GI symptoms they do seem improved since discontinuing with Strattera and this really did not heap with his staying focused anyway. However, he may still have some underlying pathology such as cholelithiasis or peptic ulcer disease and ultrasoudn of the gallbladder appears warranted. If symptoms persist we may consider an upper GI. With reference to the patient's squeezing pain, he does have risk factors for coronary artery disease in termso fhis hyperlipidemia, family history, previous smoking and incidentally noted coronary calcification on SRMC 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 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. Although he is fortunate not to have any gross motor deficit, he may well have a permanent

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Page	Date	Provider	Summary
Lung & Chest 43-47	7/21/05	Lung &Chest Dr. Charles Fogarty	CONTINUED: 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 via phone with reference to his coronary calcium score and his gallbladder ultrasound. Further evaluation will proceed pending the results of above. Separately, we will review the patient's chart for him since he has many questions about the hospital admission for his chest pain, and try to put into lay language a summary of what happened during the hospital admission. He is to check back with Dr. Grace regarding the persistence of his neurological impairment.

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Page	Date	Provider	Summary
Lung & Chest 48 - 50	7/28/05	Lung & Chest	SRMC US Gallbladder Report: Hx: Epigastric pain with nausea. Findings: Gallbladder is fluid filled. No stones are seen. Common duct is 5 mm which is normal. Pancreas and liver are unremarkable. Conclusion: Negative sonogram of the gallbladder. SRMC Double-contrast upper GI: Indication: Several week hx 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 millimeteres 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 fo the duodenum there are 2 diverticula adjacent to one another. One is relatively prominent in size, equal to that of the duodenal bulb. No retrained 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. portion of the duodenum, one

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Page	Date	Provider	Summary
Lung & Chest 48-50	7/28/05	Lung & Chest	CONTINUED: 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. 3. 2 duodenal diverticula in the third portion of the duodenum, one of these is a giant diverticulum equal in size to the duodenal bulb. They otherwise appear unremarkable on this exam and are not likely of clinical significance.
Lung & Chest 52-53	8/4/05	Lung & Chest Dr. Charles Fogarty	Office Note: Chief Complaint: William Casey returns for follow up on his previous visit. Since we saw him he has had coronary calcium score and upper abdominal ultrasound. Current Conditions: 1. Chest pain. 2. Nausea and vomiting. **3. Persistent difficulty concentrating staying focused status post pneumomediastinum/pneumothorax complicating laser therapy in attempt for laser therapy for metallic artifact, which ultimately proved to outside of chest...**Neurological: The patient had some readily apparent difficulty staying focused with answers to questions and had difficulties repeating numbers backward on a simple cognitive screen... Impression/Discsusion/Plan: The patient has been instructed in optimal use of aerosol therapy. The patient was instructed on diet with attention at maintaining muscle mass and achieving an ideal body weight. The patient is instructed in exercise to promote mucous clearance, maintain balance and muscle mass. The patient was given our cell phone number to call any time any interval problems develop before the next visit. The patient is to continue his current regimen. He will check back with us this fall.

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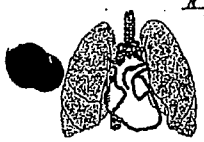
Page	Date	Provider	Summary
Lung & Chest 58-61	2/16/06	Lung & Chest Dr. Charles Fogarty	Office Note: Chief Complaint: William Casey continues to have difficulty concentrating/multitasking. He has not had any further problems with nausea and vomiting since cutting back on his medication. He is followed by Dr. Gonda who increased the Lipitor to 20 mg daily and added Tricor. He continues to need 203 Lortab 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.... Social Hx: The patient has been unable to work since his laser surgery and is applying for disability...Neurological: Difficulty staying focused and concentrating on our conversation evident. Laboratory Data: The vital capacity is 4.17, 88% of predicted. FEV^1 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/perform 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.

Page	Date	Provider	Summary
Lung & Chest 63-67	7/7/06	Lung & Chest	...Dx: Neurocognitive impairment; chest wall pain..

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Lung and Chest Medical Associates



Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. Elm, F.N.P.

Wilson P. Smith, Jr., M.D.
E. Bert Knight, III, M.D.
Mary Lou Applebaum, M.D.
Beth V. Edwards, PA-C
Cindy Edwards, F.N.P.

Fax: (864) 585 - 2102

Fax: (864) 582-3750

WILLIAM CASEY
77168
07-14-04

dob: [redacted]58
SS#: [redacted]

HISTORY AND PHYSICAL

REFERRING PHYSICIAN: Self-referred.

History Mr. Casey is a 45-year-old male who presents for evaluation of chest difficulties that began in May of this year when he presented to the emergency room at Spartanburg Regional Medical Center with a complaint of chest pain. A PA chest x-ray taken at that time suggested the possibility of a foreign body. He works for Michelin Tire Company. He underwent a bronchoscopy, which was felt to be abnormal but no foreign body was identified. A subsequent CT scan done the same day did not confirm any abnormality. However it does mention that there is left anterior descending coronary artery calcifications. In 2000 he had a stress test and catheterization which was normal. Following this underwent a rigid bronchoscopy in attempt to identify foreign body and remove it. During that procedure he had a perforation of the bronchial wall by a laser which resulted in pneumomediastinum and respiratory distress. He required intubation and heavy sedation and was able to be extubated the following day. Since that time he notes fatigue during the day. He continues to have dyspnea and chest pain with exertion. He has become very anxious. His sister accompanying him for the interview notes that he seems to have experienced a change in his ability to tolerate stress and appears much more anxious and restless than she has known him to be in the past. He is a previous smoker for about 12 years but has not smoked in the past three weeks. He does snore but feels he sleeps well. He denies any hemoptysis, chronic cough or weight loss. He still has the chest pain.

Past Medical History Previous hemorrhoid surgery in 1994 and a hospitalization for evaluation of chest pain in 2000 for which he underwent cardiac catheterization.

Current Medications

1. Lipitor 20 mgs a day.
2. Bextra 20 mgs daily.
3. Tramadol 50 mgs two tablets four times a day for pain.
4. Advair twice daily.
5. Combivent four times a day.

Allergies: No known drug allergies.

Family History His father died of a heart attack. He has a sibling who died of cancer.

Social History He is divorced. He completed one year of college. He drinks occasional alcohol. He likes to play golf. He has been unable to play since his injury.

(Continued to next page)

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Review of Systems Shows some arthritis which he manages with the Bextra. He has an elevated cholesterol for which he is on the Lipitor. He had an episode of rectal bleeding 10 years ago. He notes that he gets up three to four times during the night for micturition. He has disk problems and arthritis in his lower back.

Physical Examination
General: Middle-aged white male.
Vital Signs: BP 136/87, HR 100, Wt. 171, and SaO_2 is 95% on room air.
HEENT: Unremarkable. There is no jugular venous distention, cervical or supraclavicular adenopathy. The throat is clear.
Chest: Clear to auscultation.
Cardiac: Regular rate and rhythm without murmur or gallop.
Abdomen: Soft and nontender.
Extremities: No clubbing, cyanosis or edema.
Neurological: Motor strength appears 5/5 in all extremities. Cranial II through XII nerves are intact.

Laboratory Data

Pulmonary function studies show normal vital capacity and flow rates with a vital capacity of 4.7 liters, which is 99% of predicted and forced expiratory volume that is 98% of predicted. There was no change with bronchodilator. Flow volume loop showed no evidence of upper airway obstruction. Maximum voluntary ventilation was reduced at about 70 to 77% of predicted.

Impression

1. His pulmonary function is normal and chest x-ray does not show any evidence of sequelae of his bronchial perforation. The patient brought his outside films and he did not bring a recent follow up film. Pulmonary function studies are normal. I do not find any evidence for airway obstruction that would account for his problems. But I wonder if he suffers from a posttraumatic stress disorder related to his injury and intensive care unit experience. I would like to refer him to a psychologist for further evaluation. On his return we will get a follow up chest x-ray and a diffusion capacity and in view of his CT scan suggesting left anterior descending coronary artery calcification I believe a repeat stress test might be in order.

Wilson P. Smith Jr., MD
WPSjr/ns

cc: Dr. Joseph Grace

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WPS NAME ALERT

#77108

NG & CHEST MEDICAL ASSOCIA[illegible]

PATIENT NAME William M Casey DATE 7/14/09

PHYSICAL EXAM:

TEMP BP 136/87 Pulse 103 RESP HT WT 171 ½ O2SAT OXIMETER 95 %

HEENT:	WNL
SKIN:	
NECK:	
LUNGS:	Clear
HEART:	RRR
BREASTS:	
ABDOMEN:	Soft
EXTREMITIES:	WNL
NEUROLOGICAL	Motor 5/5

LAB DATA:

X-RAYS: DATE _____ PFT'S: DATE _____ ABG'S: DATE _____

VALUE _____ VALUE _____

OTHER LABS: _____

IMPRESSION/DIAGNOSIS:

1.	
2.	HTN post traumatic stress
3.	Dictator coronary calcification
4.	
5.	

PLAN:

1.	Refer to Psychiatrist
2.	F/U as needed
3.	
4.	
5.	

DOCTOR

NEWPT EXAM 8/19/97 Lung & Chest-3

KING 002105

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Lung and Chest Medical Associates
Multi Spiro B

I[redacted]7168 Casey, William
Ethnic: CAUCASIAN Height: 68.0 in. Sex: MALE Age: 45 Weight: 171.0 lb

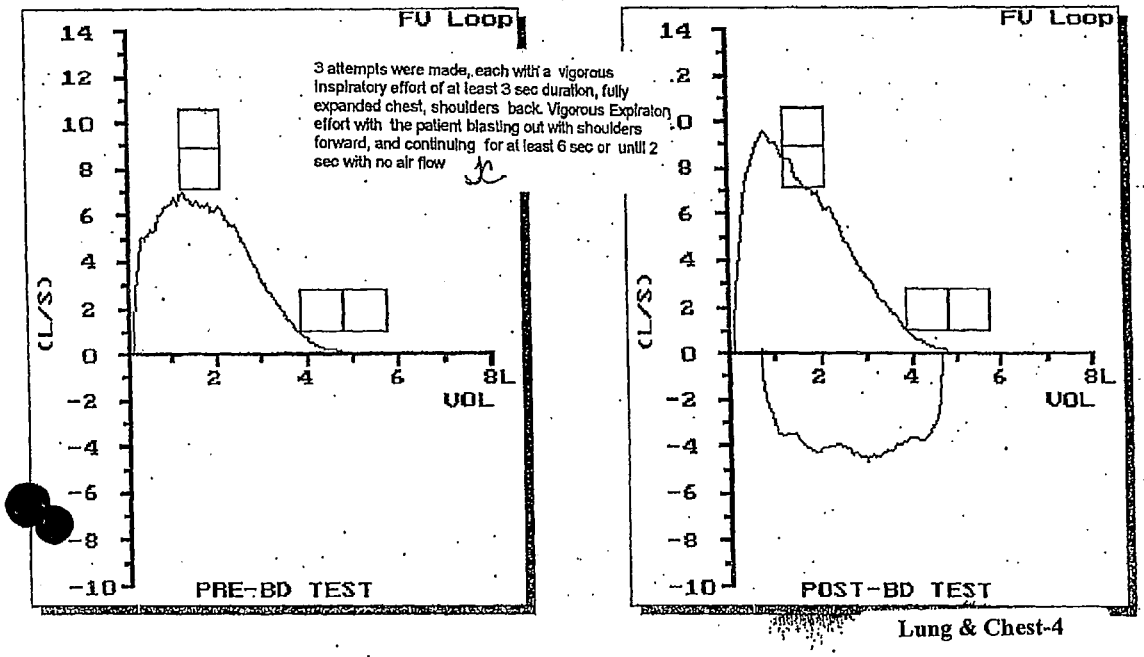
COMMENTS:
PRE-BD COMMENTS:

LAST CALIBRATED: Wed Jul 14,2004 7:53:26 am

Type	Test Date and Time	Exp.Time	Normals	Test#
Pre-BD:	Wed Jul 14,2004 10:33:01 am	7.7 secs	KNUDSON/IMTS	1
Post-BD:	Wed Jul 14,2004 10:45:34 am	6.0 secs	KNUDSON/IMTS	5

INTERPRETATION Pre: NORMAL Post: NORMAL
Dilator: albuterol Modifier: Not Clearly Improved

Expire	Pre-Medication Actual	% Pred	Post-Medication Actual	% Pred	Pre-Post Change Actual	% Chg	Pred Value
FVC	4.72 L	99.31%	4.74 L	99.79%	0.02 L	0.48%	4.75 L
FEV 0.5	2.93 L	95.93%	3.08 L	100.90%	0.15 L	5.18%	3.05 L
FEV 1.0	3.78 L	97.77%	3.85 L	99.59%	0.07 L	1.87%	3.87 L
FEV 3.0	4.41 L	97.71%	4.48 L	99.40%	0.08 L	1.73%	4.51 L
FEV0.5/FVC	62.08%	96.60%	64.98%	101.11%	2.90%	0.99%	64.27%
FEV1.0/FVC	80.11%	98.44%	81.22%	99.80%	1.11%	0.29%	81.38%
FEV3.0/FVC	93.40%	98.39%	94.57%	99.61%	1.16%	0.26%	94.94%
PEF	6.88 L/S	79.33%	9.46 L/S	109.14%	2.58 L/S	37.57%	8.67 L/S
FEF 25-75%	3.86 L/S	97.89%	3.92 L/S	99.41%	0.06 L/S	1.55%	3.95 L/S
FEF 75-85%	0.83 L/S	78.50%	0.90 L/S	84.56%	0.06 L/S	7.71%	1.06 L/S
FEF 25	6.88 L/S	86.29%	8.26 L/S	103.61%	1.38 L/S	20.08%	7.97 L/S
[redacted]50	5.40 L/S	116.87%	5.31 L/S	114.90%	-0.09 L/S	-1.69%	4.62 L/S
[redacted]75	1.37 L/S	74.79%	1.51 L/S	82.30%	0.14 L/S	10.03%	1.83 L/S
FEF .2-1.2	5.82 L/S	79.61%	8.48 L/S	116.03%	2.66 L/S	45.75%	7.31 L/S



Lung & Chest-4

KING 002106

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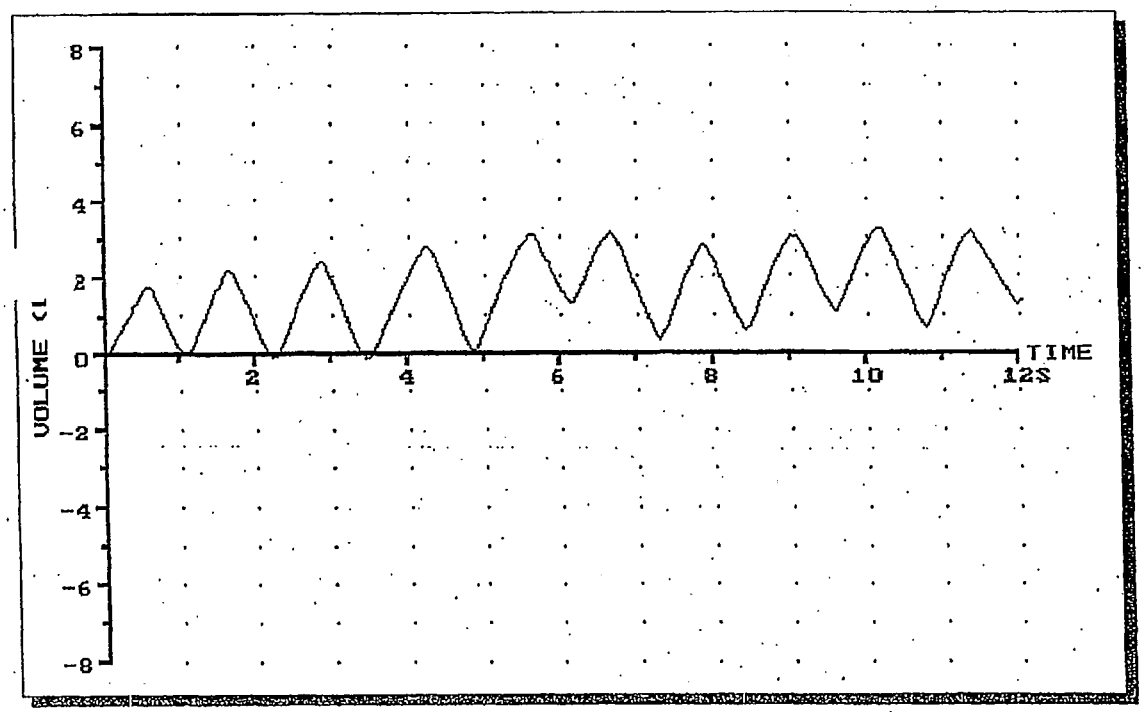
Lung and Chest Medical Associates
Multi Spiro B

[redacted]77168 Casey, William
[redacted]c: CAUCASIAN Height: 68.0 in. Sex: MALE Weight: 171.0 lb
Age: 45 Maximal Voluntary Ventilation Wed Jul 14,2004

TYPE	Test Date and Time	Exp.Time	Normals
Current:	Wed Jul 14,2004 10:34:08 am	12.0 secs	KNUDSON/IMTS

Result	Rate	Total
Breaths	48.25 B/M	9.65 Breaths
MVV	117.79 L/M	4.74 L

Predicted MVV = 153.34 L/M
Percent of Predicted = 76.8 %



[redacted]

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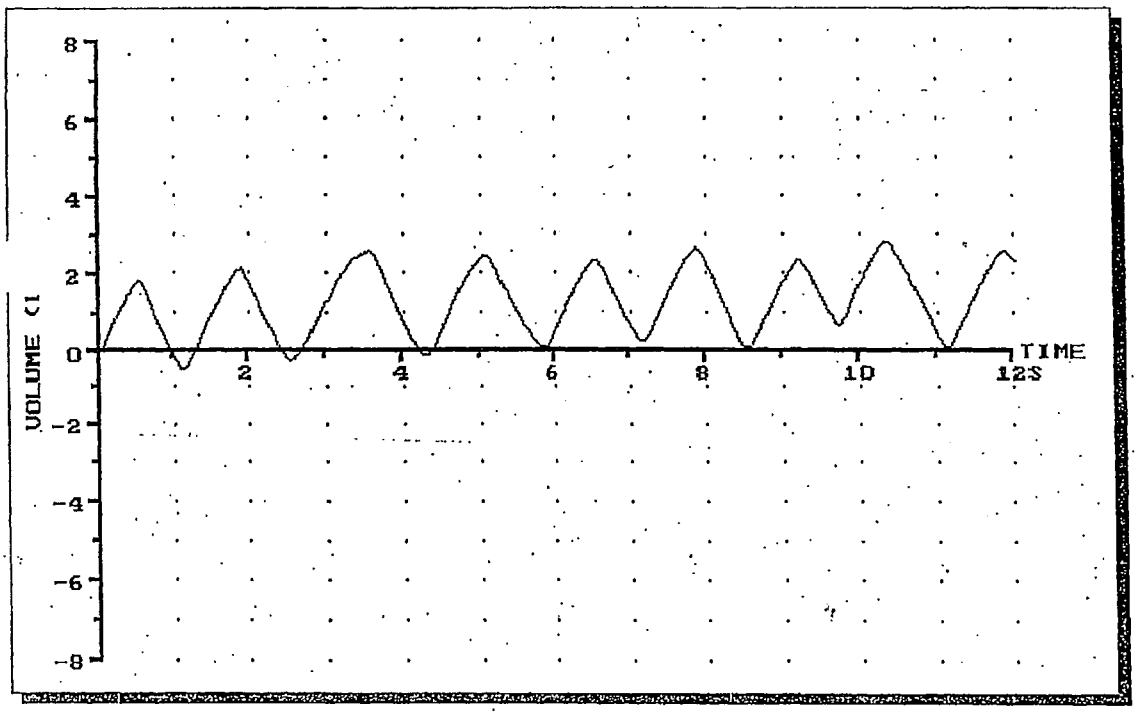
Lung and Chest Medical Associates
Multi Spiro B

77168 Casey, William
c: CAUCASIAN Height: 68.0 in. Sex: MALE Weight: 171.0 lb
Age: 45 Maximal Voluntary Ventilation Wed Jul 14,2004

TYPE	Test Date and Time	Exp.Time	Normals
Current:	Wed Jul 14,2004 10:46:34 am	12.0 secs	KNUDSON/IMTS

Result	Rate	Total
Breaths	41.53 B/M	8.31 Breaths
MVV	107.47 L/M	4.91 L

Predicted MVV = 153.34 L/M
Percent of Predicted = 70.1 %



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Lung and Chest Medical Associates
MEDICAL HISTORY INFORMATION SHEET

CHART# 77168 DATE: July 14, 2004

Patient's Name William Mark Casey Age 45 Sex m

How did you hear about us? _____

Who referred you to our office? _____

Who is your family doctor? Dr Frank Gonda

I. Present Illness

1. What Health Problem has brought you to our office? not happy with current care provider - post operation for chest pain
2. How long have you had this problem? month intermittent
3. Does anything you do make the problem better or worse? exertion Bleguell
4. Have you lost weight recently? no How much? _____ Were you trying to lose? _____

Fatigue

II. Medicines and Inhalers (MD See Blue Sheet)

1. Patient, bring all your medicines with you when you come to our office (include any inhalers and over-the-counter medicines)
2. Are you ALLERGIC to any medications or food? no Please list: _____

Michelle 3pm shift very pleasant girl

3. Check the space and enter date last received: PPD ___ Date _____, Tetnus ___ Date _____
   Pneumonia vaccine ___ Date _____, Flu vaccine ___ Date _____.

Blood type

III. Lung History

1. Are you a smoker? no How many packs per day? ____ How many years ____
2. If you have quit smoking, how many years did you smoke? 12 How many packs per day? ____
   How long ago did you quit? 7 weeks
3. Do you have a chronic cough? no How long? ____ Do you cough anything up? ____
   If so what color? _____
4. Have you ever coughed up blood? no
5. Do you get short of breath if you walk or climb steps? no
6. Are you short of breath while you are resting? no
7. Do you ever notice yourself wheezing? ____ What seems to make the wheezing worse?
   _____
8. Do you wake up tired? yes
9. Do you snore? yes
10. Do you have night sweats? some Fevers? _____
11. When was your last chest x-ray? June Where? Dr Feldmans
12. Potential Exposures:
    a. Does anyone else in your home smoke? no
    b. Have you ever had a skin test for TB (tuberculosis)? no When? _____
    c. What were the results of the skin test, if you know? _____
    d. Have you ever been exposed to TB? _____ When? _____

2000 Heart & Chest CT with contrast

LC111 – 12-23-03

Lung & Chest-7

KING 002109

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e. If you have been exposed to TB, have you had a skin test since then? _____

f. Do you have indoor pets? _____ What kind? _____

g. Have you been, or are you exposed to dust or fumes? ___ What kinds? _____

h. Have you traveled out of the upstate area? _____

IV. Work History

1. What type of work do you do? production - 8 + 12 hr shifts (swing)
2. Have you done other types of work? yes Please list: paint shop - Restaurant
3. Have you ever served in the military? no Where? _____

V. Past Medical History (Hospitalizations)

Have you ever been admitted to a hospital for an operation or illness? (Use Back of Page if necessary)

Name of Hospital	When	Reason
Mary Black	1994?	hemorrhoid surgery
Regional	2000	chest pain

VI. Family History (Use back of page if necessary)

1. Mother's Age? ___ Living? ___ Or died of _____
2. Father's Age? ___ Living? ___ Or died of Heart attack
3. Brother or Sister's Age? 44 Living? ___ Or died of cancer
4. Brother or Sister's Age? 47 Living? ✓ Or died of _____
5. Brother or Sister's Age? 42 Living? ✓ Or died of _____

VII. Social History

1. Are you married? No Widowed? ___ Single? ___ Divorced? ✓
2. What was the highest grade you finished in school? 1 yr college
3. Do you drink alcoholic beverages (beer, wine, liquor)? yes How much? occasional
4. Have you ever used cocaine, marijuana or other street drugs? No How long has it been since you last used? _____
5. Have you ever received a blood transfusion? ___ When? _____
6. Do you have any hobbies (raising pigeons, woodwork shop, etc)? golf

VIII. Review of Systems

1. Do you wear glasses? yes
2. Do you have trouble hearing? no
3. Do you wear dentures? no
4. Do you have chest pain if you are just resting? ___ walking? ___ climbing steps? ___
5. What area of your chest hurts? _____
6. Have you ever been treated for heart trouble? _____
7. Have you ever been treated for high blood pressure? no
8. Do you have diabetes? no
9. Do you have a problem with nausea? ___ Vomiting? ___ Diarrhea? ___ Constipation? ___ Heartburn? ___
10. Have you ever vomited bright red blood? no

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11. Have you ever had rectal bleeding? yes When? 10 yrs Ago
12. Have you ever has a "stomach x-ray"? _____ When? _____
13. Have you ever had a change in your appetite? NO More? _____ Less? _____
14. Have you ever had stomach ulcers? NO
15. Do you have any pain when you urinate? NO
16. Female patients: When was your last menstrual period? _____ Pap smear? _____
    Who is your gynecologist? _____
18. Male patients: When was your last prostate exam? Never
    Do you have trouble starting your stream when you urinate? NO
    How many times do you usually get up at night to urinate? 3 or 4
19. Do you have any numbness or tingling in your arms or legs? NO
20. Do you ever have swelling in your feet or legs? yes - feet sometimes

PLEASE COMPLETE THE FOLLOWING INFORMATION REGARDING PAST OR PRESENT CONDITIONS: Have you ever had or presently have any of the following:

MEDICAL CONDITION	NO	YES	WHEN DID YOU HAVE THIS	WHAT TREATMENT ARE YOU RECEIVING
ATHRITIS		✓	current	Aleve
ASTHMA	✓			
BLADDER INFECTION	✓			
BLOOD CLOTS IN LEGS	✓			
BLOOD CLOTS IN LUNGS	✓			
CANCER	✓			
CATARACTS	✓			
CHOLESTEROL (HIGH)		✓	current	Lipitor
CIRRHOSIS OF LIVER	✓			
COLON PROBLEMS	✓			
EMPHYSEMA	✓			
GLAUCOMA	✓			
HAY FEVER	✓			
HEPATITIS (YELLOW JAUNDICE)	✓			
KIDNEY FAILURE	✓			
KIDNEY STONES	✓			
PHLEBITIS	✓			
PNEUMONIA	✓			
PROSTATE PROBLEMS	✓			
RHEUMATIC FEVER	✓			
SEIZURES	✓			
SHINGLES	✓			
SINUS INFECTION	✓			
SKIN DISEASE	✓			
STROKE	✓			

Is there anything else you feel that the doctor needs to be aware of? (Use back of this page if necessary)

Have disc problems & arthritis in lower back

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Lung and Chest Medical Associates

Authorization of Use and Disclosure of Protected Health Information

Appointment Reminders. Lung and Chest Medical Associates, Dr. Charles M. Fogarty, Dr. Wilson P. Smith, Dr. Mary Lou Applebaum, Dr. E. Bert Knight, Dr. J. Douglas Clark and/or Dr. Rico V. I. Mendoza may use your information to remind you about upcoming appointments. Typically, appointment reminders are made by a brief phone call, or non-specific message may be left on your answering machine. We may also use "appointment cards" to remind you about upcoming appointments. If you don't approve of these methods and would like alternative reminder methods (i.e. mail or e-mail) please indicate those methods in the space provided (samples of appointment reminders are available upon request):

How would you like to be contacted regarding appointments, treatment and/or other information pertinent to your healthcare and/or payment for your healthcare provided at Lung and Chest Medical Associates (Check all that apply)

✓ Regular Mail ✓ Home Telephone #864 486-9131 ✓ Work Telephone #864 680-5929

___ Appointment Cards ___ Email _____

Other: _____

If you have an answering machine, may we leave messages regarding appointments, treatment and/or other information pertinent to your healthcare and/or payment for your healthcare provided at Lung and Chest Medical Associates? (Check one)

✓ YES ___ NO ___ No Answering Machine Available

If "NO", how else may we contact you regarding this information?

_____

- **Are you interested in being made aware of the opportunity to participate in a research study that may apply to your case?** ✓ Yes ___ No
- **Do you give your permission for your medical chart to be reviewed for consideration in research studies that apply to your case?** ✓ Yes ___ No
- **Do you give your permission for your chart to be reviewed by staff from Spartanburg Pharmaceutical Research, Dr. Charles M. Fogarty, for consideration in research studies that apply to your case?** ✓ Yes ___ No

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Authorization of Use and Disclosure of Protected Health Information

Persons Authorized to Receive Information:
Health Information Lung and Chest Medical Associates collects or receives about you may be disclosed to the following persons:

680-9648 476-5222
Carole Lynne Casey (sister) Gregg Casey (brother)
Name of Relatives

Dr. Frank Gonda
Name of Physicians

C.V.S
Name of Pharmacy Other

Use and Disclosure of Information:

✓ I authorize the person(s) listed above to receive all health information about appointments, treatment and/or other information pertinent to my healthcare and/or payment for my healthcare provided at Lung and Chest Medical Associates

____ I do not authorize the following information to be disclosed to any other parties except to me as the patient (Please specify):

_____

Other Uses and Disclosures. Disclosure of your health information or its use for any purpose other than those listed in the "Notice of Privacy Policies and Practices" brochure and / or consent require your specific written authorization. If you change your mind after authorizing a use or disclosure of your information you may submit a written revocation of the authorization. However, your decision to revoke the authorization will not affect or undo any use or disclosure of information that occurred before you notified us of your decision. You have the right to request restrictions on use and disclosure of your health information.

____I would like the following restrictions regarding the use and disclosure of my health information:

_____

_____

Expiration Date of Authorization
This authorization is effective through unlimited unless revoked or terminated by the patient or patient's personal representative. You should contact the **PRIVACY OFFICER** or other authorized representative to terminate this authorization.

Potential for Re-disclosure
The person or organization to which health information is sent may repeatedly disclose health information that is identified by this authorization. The privacy of this information may not be protected under the federal privacy regulations.

Signature
William Mark Casey July 14 2004 William Mark Casey
Signature of Patient Date Name of Patient (Print or Type)

_____ _____
Signature of Patient Representative Date Relationship to Patient

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

LUNG AND CHEST MEDICAL ASSOCIATES

Dr. Charles M. Fogarty, Dr. Wilson P. Smith, Jr., Dr. Mary Lou Applebaum, Dr. E. Bert Knight, III, Dr. J. Douglas Clark, Dr. Rico Mendoza

ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF PRIVACY PRACTICES

I have received a copy of the Notice of Privacy Practices. The Notice describes how my health information may be used or disclosed. I understand that I should read it carefully. I am aware that the Notice may be changed at any time. I may obtain a revised copy of the Notice by calling 864-582-6858, on Lung and Chest's website at lungandchest.com, or by requesting one at the Lung and Chest offices.

July 14, 2004
(Date)

William Mark Casey
(Signature*)

William Mark Casey
(Print or Type Name)

* As the representative of the above individual, I acknowledge receipt of the Notice on his or her behalf:

Carole Lynne Casey
(Signature)

Sister
(Relationship)

July 14, 2004
(Date)

****

The patient _____ was provided with a Notice and Written Acknowledgment form by _____, who explained that signing the form merely indicates the patient's acknowledgment that he or she received the Notice, but the patient nonetheless refused to sign.

_____ _____
Staff signature Date

12/11/03

Lung & Chest-12

KING 002114

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

PATIENT INFORMATION

NAME William Mark Casey CHART # 77168WPS

[redacted]ng Address 240

Street Address 240 Lightwood Farm Road Woodruff SC 29388
(City) (State) (Zip)

Date of Birth [redacted]-1958 Age 45 Sex M Race W Marital Status Divorced

Social security # [redacted] Tel. Home(864) 486-9131 Business (864) 680-5929

Your Employer/School Michelin Tire Corp Address

E-Mail address: MARKMARKKC@aol.com

Spouse's/Parent's Name _____ Spouse's/Parent's Employer _____

Are you, the patient, covered by spouse's/ parent's insurance? _____ Spouse's/Parent's Date of Birth ____-____-____

If yes, spouse's/parent's Social Security # ____-____-____

Family Physician Dr Frank Gowda

Referring Physician (if different) _____

Emergency Contact Carole Lynne Casey (Relationship) Sister (Phone) 864 680-74[illegible]

MICHELIN PPO

www.SouthCarolinaBlues.com 380

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.SouthCarolinaBlues.com.

Mental Health/Substance Abuse precertification and claims contact CompPsych at 1-800-537-5221

Personnel Service Center (PSC): 1-877-435-7868

BCBSSC Customer Service: 1-800-775-3659

First Advice Nurse Line: 1-888-521-2583 (anytime)

Members: For information regarding PPO Network Providers, call 1-800-810-2583 (anytime).

Hospital/Physician: Submit all claims to your local plan following standard procedure.

Employer submitted claims, including dental, should be filed to: BlueCross and BlueShield, Piedmont Service Center, P.O. Box 6000 Greenville, SC 29606-6000

Plan (or Licensed Controlled Affiliate) 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

GK

LONG TERM INSURANCE AUTHORIZATION

I request payment of authorized benefits be made on my behalf to Charles M. Fogarty, MD, PA, Wilson P. Smith, MD, PA, E. Bert Knight, MD, PC, Mary Lou Applebaum, MD, PC, J. Douglas Clark, MD, PC and/or Rico Vicente I. Mendoza, MD, PA for any healthcare services rendered to me by that physician. I authorize any holder of medical information about me to release to Health Care Financing Administration and/or my other insurance companies any information needed to determine benefits payable. I understand I am responsible for any amounts approved but not covered by my insurance.

William Mark Casey
(Patient's Signature)

July 14, 2004
(Date)

CASEY,WILLIAM MARK
240 LIGHTWOOD FARM RD
WOODRUFF SC 293887600

DL#: [redacted]
Expires: [redacted]

Class: D Hgt: 5-08 Wgt: 165
Sex: M DOB: [redacted]1958
Issued: 10-15-2003 42079 R 4



Restrictions: A Governor

A:\LC102 New Pt. Ins Form- pink.doc 01/05/2004

Lung & Chest-13

KING 002115

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

[redacted] of

NEW PATIENT APPOINTMENTS
LUNG AND CHEST MEDICAL ASSOCIATES
2030 NORTH CHURCH PLACE
SPARTANBURG SC 29303

CMF RVM JDC
WPS MLA EBK

APPT DATE 7/14
APPT TIME 10

DATE July 7, 2004

PT NAME William M. Casey
DOB: [redacted] 1/58 SS # [redacted]

REFERRING DOCTOR SLH
CONTACT _____ PH# _____

HOME # 486-9131 WK# _____

MAILING ADDRESS 240 Lightwood Farm RD 29388

REASON FOR VISIT Chest Min (not Cardiac)
Want to ER - Feldman, Sean - Cancer Lapine
FAMILY PHSICIAN _____

INSURANCE BCBS REFERAL Y N

MEDICAL RECORDS _____
CHEST XRAY OR CT SCANS _____
COMMENTS: _____

QUESTIONAIRE MAILED _____ BY _____
RECEIVED LOGGED _____ BY _____

Lung & Chest-14

KING 002116

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Account : 77168
CASEY, WILLIAM M
240 LIGHTWOOD FARM RD

RUFF SC 29388
: (864) 486-9131
Work: (864) 680-5929
Empl: E MICHELIN TIRE CORP

E-Mail : markmarkkc@aol.com
Soc Sec # : [redacted]
Patient ID : ''MARK''
Patient ID2:

D.O.B. : [redacted]1958 46yr Sex : M
Accnt Date : 07/08/04 Status : 72
DOL Visit : 07/14/04 Marital : D
Bill Type : 11 Race : C
Ref Dr : 267 0 SELF REFERRAL
Doctor : 2 WILSON P SMITH, MD, PA
Last Diags : (1) 780.52 (2) 786.05
insomnia, other

Discount : 0 % Class:
Budget Pmt : 0.00 WP ID: wp77168.0
Collection : 0 days Priority : 0

Patient #: 77168.0 GUARANTOR INSURANCE COVERAGE [CASEY,WILLIAM]

Policyholder: WILLIAM M CASEY
Carrier : BCBS BCBS SSN : [redacted]
Plan # : 1455 BCBS PPC Policy # : MIH261022977
Dates-From: To : Managed Plan

Attn : PPC Deductible : 0.00
Phone : Visit Copay : 0.00 [35]
Fax : Group : MICHELIN
Elig : Insured: WILLIAM M CASEY
Auth : User Note : PRI

Plan#	Plan Name	Effective Dates	Assign	Note
1455.0	BCBS PPC	-	MY	PRI

Lung & Chest-15

KING 002117

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743



MICHELIN TIRE MANUFACTURING
US.3 Facility Personnel
Post Office Box 5049
Spartanburg, SC 29304
864-~~599-3157~~, Office ~~[illegible]~~ 599-3157
864-~~599-3222~~, Fax ~~[illegible]~~ 599-3222

ATTENDING PHYSICIAN'S REPORT
(FOR EXTENDED LEAVES OF ABSENCE)

Date: 7/14/04

Employee's Name: William Casey

Address: 240 Lightwood Pavil Rd Woodruff SC 29388

Date original medical leave of absence: 5/28/04

Expected date of return to work: August 17, 2004

Physical findings (diagnosis):

post traumatic stress disorder after
51. be Flu early illness

Treatment and/or recommendation:

Refer to Psychologist to Evaluate

W. L. Lloyd M.D.

Address: 2030 N Church Place
Spartanburg SC 29303

Telephone: 864-582-6855

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.

Lung & Chest-16

KING 002118

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

TELEPHONE CALL BACK - LUNG & CHEST MEDICAL ASSOCIATES

Date 7/23/04 Call Time 11:17 am/pm VM r'cvd time: 11:50 By: KB

Chart #: 7168 Chart pull time : _____ Chart del. Time: _____ Callback time: _____

Caller: ☑ PATIENT ☐ PT. FAMILY ☐ PHARMACY ☐ HOME HEALTH ☐ HOSPICE ☐ INS. CO. ☐ DME CO. ☐ SPR

"William"	Mark Casey	486-9131	
Caller Name	Patient Name	Phone No.	Fax No.

Pt. of: CMF (WPS) EBK MLA JDC RVM Last Appt. 7/14/04 Next Appt. 7/29/04

Pt. Address (Proximity to office): _____

#1: DRUG REFILL ☐ Yes- patient stable/routine medicine ☐ No – see #2 below

Pharmacy: _____ Phone #: _____ Fax #: _____

CHARLES M. FOGARTY, MD 08691 • WILSON R SMITH, MD 10510 • E. BERT KNIGHT III, MD 08397
MARY LOU APPLEBAUM, MD 12969 • J. DOUGLAS CLARK, MD 19596 • RICO VI. MENDOZA, MD 23156
BRENDA SPRINKLE, PA-C A144 • CHARLENE McCRAW, A.C.N.P-C AC68077 • BETH V. EDWARDS, PA-C A465
2030 North Church Place, Spartanburg, SC 29303 Telephone 582-6858
FAX: Side A 582-3750 FAX: Side B: 585-2102

Rx

NAME: DOB: DATE:

ADDRESS:

LABEL DRUG NAME, STRENGTH & QUANTITY ☐ YES ☐ NO

		STRENGTH	QUANTITY	REFILL
1	Rx			
	SIG			

M.D. _____ Refer MD. Substitution Permitted

Dispense as written DEA: _____ DEA: _____

#2: PROBLEM ☐ COUGH ☐ SOB ☐ CHEST PAIN ☐ FEVER ☐ QUESTIONS ABOUT MEDS. ☐ NON-ROUTINE RX

Comment/Response: pt started trying to do some things this morning "to build stamina" and started having some chest pain after ~ 1hr 15 min – pt talked for several minutes re: his inability to tolerate activity – not even lifting heavy objects – pt says with his chronic back pain and hair pain in upper body, he's just upset – afraid he's going to do some damage to the injured lung.

Appt. Made 9 / 1 w/L&C ☐ Call 911 ☐ Go to ER ☐ L&C MD on call notified ☐ Call Family Physician

Instructions accepted?: ✓ yes ___ no

GF (Staff) _____ (Doctor) 7/23/04 4:15 AM/PM (Date)

Lung & Chest-17

KING 002119

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

TRANSMISSION VERIFICATION REPORT

TIME : 07/23/2004 15:06
NAME : LUNG&CHEST MEDICAL
FAX : 8645823750
TEL : 8645826858
SER.# : BROJ2N537248

DATE,TIME	07/23 15:05
FAX NO./NAME	5604245
DURATION	00:00:28
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

faxed to pal. rehab

Lung & Chest-18

KING 002120

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SPARTANBURG
Regional Healthcare System

PULMONARY REHABILITATION PROGRAM
PHYSICIAN REFERRAL

This patient is referred to the Spartanburg Regional Healthcare System Pulmonary Rehabilitation Program:

Name: William Merl Casey Referral Date: 7-23-04

Address: 240 Lightwood Farm Rd, Woodruff, SC 29388

Home phone: 486-9131 Work phone: 680-5929 Date of Birth [redacted]-58

Diagnosis: Shortness of breath & chest pain MRN: _____

Cardiac Clearance: (To be completed by physician prior to beginning pulmonary rehab).

- ☐ Perform cardiopulmonary exercise stress test. Your patient will be scheduled to begin pulmonary rehab after receiving results of the exercise stress test.
- ☐ Do not perform cardiopulmonary exercise stress test. Attach documentation to support cardiac clearance.

Comments: _____

CONSULTS:

Physical Therapy
Reason for referral: Evaluation/Treatment of postural deficits, thoracic mobility deficits, musculoskeletal dysfunction and/or pain, gait deficits.
Evaluation/instruction in: proper body mechanics for ADL's and lifting, postural correction and strengthening techniques, therapeutic exercise, stretching, and osteoporosis education.

Occupational Therapy
Reason for referral: Evaluation of activities of daily living, functional training in self care and home management, training in energy conservation, work simplification, and adaptive techniques for daily living.

Respiratory Therapy
Reason for referral: Evaluation of Home and Exercise Oxygen System Requirements.
Evaluation/Instruction in: Breathing retraining, Airway Clearance Techniques, Proper use inhaled medications.

Education/Classes:
Anatomy & Physiology of COPD; Pursed Lip/Diaphragmatic breathing techniques; Respiratory medications; Infection control techniques; Effective coughing techniques; Panic control/relaxation techniques; Nutrition assessment.

DURATION/FREQUENCY: 3 Days per week for 6 Weeks

PROGRESS DOCUMENTATION/OUTCOME MEASURES:

- Pre and post program sub-maximal treadmill test, 6 minute walk, Dyspnea Index, Pulmonary Functional Status Scale (PFSS), Tennetti Assessment Tool.
- Monitoring: Pulse oximetry, blood pressure, heart rate, respiratory rate, Borg RPE, Pain scale, weight.
- Discharge summary with report to referring physician

POTENTIAL FOR REHABILITATION? (Please circle): Excellent Good Fair

ATTENDING PHYSICIAN: (print or type): Dr. William Smith

PHYSICIAN'S SIGNATURE Wm Smith DATE: 7/23/04

RETURN TO: Jack Robinson, RRT
Jenny Crocker, RRT
299 E. Pearl Street
Spartanburg, SC 29303

PHONE: (864) 560-4250
FAX: (864) 560-4245
email: jrobinson@srhs.com

Lung & Chest-19

KING 002121

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. 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
Cindy Edwards, F.N.P.

Fax: (864) 582-3750

WILLIAM CASEY.
7-29-04
77168

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 Cardiolite stress test and consideration of pulmonary rehabilitation. EKG today is within normal limits and shows no acute changes.

WPS

Wilson P. Smith, Jr., M.D.
WPSjr/ns
cc: Dr. Gonda

8-2-04

2030 North Church Place, Spartanburg, South Carolina 29303 (864) 582-6858

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

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Fax: (864) 585 - 2102

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Mary Lou Applebaum, M.D.
Beth V. Edwards, PA-C
Cindy Edwards, F.N.P.

Fax: (864) 582-3750

WILLIAM CASEY
77168
07-29-04.

X-RAY: PA & lateral of chest. Chest x-ray shows normal heart size and clear lung fields.

IMPRESSION: Normal chest.

Wilson P. Smith, Jr., M.D.
WPSjr/ns

2030 North Church Place, Spartanburg, South Carolina 29303 (864) 582-6858

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

CMF WPS MLA EBK JDC RVM Beth Darla Lab

ung and Chest Medical Associates

Name: Wm Casey "Mark" Chart#: 77168 Date: 7/29/04

Wt 175.4 Ht B/P 139/86 H/R 93 RR Temp 02Sat 95% FiO2 .21

Present Illness + reason for visit:

- Cough
- Sputum
- Dyspnea
- Wheeze
- Edema
- Palpitations
- Oriented
- New Allergies
- Smoking
- Nausea
- Vomiting
- Diarrhea
- Chest Pain Chest tightness on exertion
- Pain
- ETOH
- Fever/chills

When was your last DEXA Bone Densometry Testing done?

Seeing new doctors? For:

Hospitalizations or major life changes since last visit:

Meds. Review based on: in bottle on list from memory

PHYSICAL EXAM: WNL/NEG ABN/POS

*General Appearance
*Skin Turgor
*ENT
*Mouth
*Sinus
*Neck
*Chest/Lungs: Breath Sounds
Wheezes
Rales
Effort
Symmetry
*Heart: Rhythm
Murmurs
Gallop
Tones
*Abdomen
*Extremities
*Mobility: Gait
Reflexes
Aides
*Mental Status

PAL CXR

LAB ORDER: Spirometry EKG Sinus CBC Glu PT INR O2Sat Rest
Lung Vol DLCO U/A CXR ABG's Bun Cre K+ Theo O2Sat Exercise

Office Treatment:

Education: Does pt want to quit smoking? Yes/No Other: Pt does not smoke. quit 4 week

Materials/counseling given:

Diagnosis: Plan

- Abn CXR(lung fluid),793.1
- Anticoagulant Circulating,28615
- COPD,496
- Cough,786.2
- Dyspnea,786.09
- Fatigue(general),780.79
- Fever,780.6
- ILD,515
- Monitoring(drug name_____),V48.6
- Rhinitis,477.9
- Sleep Apnea/Disorders (nec), 780.53

chest pain → stress pain dep cardiolite

Prescriptions:

Next appt: Weeks Months W/ CMF WPS EBK MLA JDC RVM PA NP Signature WM Staff AP

Next Visit: Spiro L/V DLCO PA PAL Sinus DEXA BLDWK Other

03/26/04 Lung & Chest-22

KING 002124

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SPARTANBURG REGIONAL MEDICAL CENTER DEPARTMENT OF LABORATORY MEDICINE
101 E. WOOD STREET, SPARTANBURG, SOUTH CAROLINA 29303-3072/864-560-6212
DRS. DAVIS, LOWRY, WREN, NELSON, RAINER, LAPHAM, MIMS, CALDWELL & BURKS

CASEY WILLIAM
45 YRS MALE
Dr. SMITH WILSON P
Location: - . PRIVATE OUT PT VISIT ANEMIA NOS

NR#: (0002)00014-62-20 Fin.No.:04Z1101061
DOB: [redacted]1958
INTERIM

Admitted: 29JUL04
Page: 1
Printed: 04AUG04
0204

CHEMISTRY

----------REFERENCE LAB TESTS----------

Procedure:	TIBC @	IRON @	% SATURATION @	
Units:	ug/dL	ug/dL	%	
29JUL04 1340	434 Hf	87 f	20 f	
TIBC.....				Reference Range: 250-400
IRON.....				Reference Range: 40-180
% SATURATION..				Reference Range: 15-50

TIBC should be ordered with iron for optimal utility.

8/2/04

Symbols:
H = High, f = Footnote
@ = TIBC, IRON, % SATURATION Performed at QUEST DIAGNOSTIC LAB - 33608 ORTEGA HIGHWAY, SAN JUAN CAPRISTRANO, CA. 92690

Patient Name:CASEY WILLIAM Location: PRIVATE OUT PT VISIT END OF CHART.

Send to: WILSON P SMITH MD
LUNG & CHEST
2030 NORTH CHURCH PLACE
SPARTANBURG SC 293030000

Fax to: 864-582-3750

REVIEWED BY_____DATE_____
(DO NOT FILE IF NOT COMPLETE)

Lung & Chest-23

KING 002125

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP420743



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: July 29, 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: Aug 14, 2004

Physical findings (diagnosis): Chest pain w. dyspnea
Cor Scan Cath shows coronary artery
calcification

Treatment and/or recommendation:
Stress test
Absence from work until Aug 16, 2004

M.D.

Address:

Telephone:

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.

LCF/SP/FORMS/DLEXTLV.DOC

Lung & Chest-24

KING 002126

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

LUNG AND CHEST MEDICAL ASSOCIATES
2030 North Church Place
Spartanburg, South Carolina 29303
Telephone: (864) 582-6858
Fax (864) 542-9043

Charles M. Fogarty MD
E. Bert Knight, III MD
Mary Lou Applebaum, MD
Wilson P. Smith, Jr., MD
J. Douglas Clark, MD
Rico V.I. Mendoza, MD

SCHEDULED PROCEDURES

DATE: 7/29/04

PATIENT NAME: Mark Casey

REFERRING DOCTOR: Wilson Smith

TYPE OF PROCEDURE: Cardiolite stress

HOSPITAL/AGENCY: Cardiology Consultants 583-8647

DATE OF APPOINTMENT: Mon. Aug 2, 2004 10:15

DOCTOR TO DO PROCEDURE _____

TIME TO BE AT HOSPITAL/AGENCY _____ AM/PM

TIME OF PROCEDURE Aug 2 10:15 (AM)/PM

INSTRUCTIONS No meds morning of stress. Nothing to eat or drink past midnight the night before.

ANY QUESTIONS REGARDING THIS, PLEASE CALL OUR OFFICE (864) 582-6858.

SIGNED _____

FORMS/SCHEDULED PROCEDURES 4/03

LC-1

Lung & Chest-25

KING 002127

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

CHARLES M. FOGARTY, MD 086917 WILSON P. SMITH, MD 10516 · E. BERT KNIGHT III, MD 8397
MARY LOU APPLEBAUM, MD 12969 J. DOUGLAS CLARK, MD 19596
BRENDA SPRINKLE, PA-C A144 CHARLES MASON, PA-C A566
CHARLENE McCRAW, A.C.N.P.-C AC68077
2030 North Church Place, Spartanburg, SC 29303 Telephone 582-8858

NAME William Cozey DATE 7/29/04

ADDRESS

LABEL DRUG NAME, STRENGTH & QUANTITY ☐ YES ☐ NO

		STRENGTH	QUANTITY	REFILL
1	Rx Please continue Mv SIG			
2	Rx Cozey Sun Nightcare with Advil 16 SIG	STRENGTH	QUANTITY	REFILL
3	Rx Advil SIG Chest pain	STRENGTH	QUANTITY	REFILL

M.D., Dispense as Written
DEA
M.D. Substitution Permitted
DEA

LC-105

Lung & Chest-26

KING 002128

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

LUNG AND CHEST MEDICAL

[redacted] N.CHURCH,ST CMF WPS EBK RVM SPARTANBURG,SC,29303 MLA JDC BE 864:562-6858

Sample ID # 77168 Date: 07-29-04

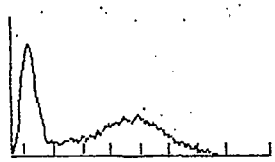
Patient Name: William Casey Time: 13:43 WPS

DOB: __/__/__ AGE:____ SEX:____ OPR ID: OB

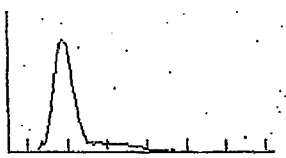
			Range #1				Range #1				Range #1
WBC	7.8	x10^3/uL	4.5- 11.0	RBC	4.54	x10^6/uL	3.90- 5.10	Plt	473. H	x10^3/uL	130.-400.
LY%	36.2	%	20.5-51.1	Hgb	14.2	g/dL	12.0-15.6	MPV	5.9 L	fL	7.4-10.4
MO%	4.2	%	1.7- 9.3	Hct	43.2	%	36.0-46.0				
GR%	59.6	%	42.2-75.2	MCV	95.2	fL	85.0- 98.0				
LY#	2.8	x10^3/uL	0.7- 4.9	MCH	31.2	pg	28.0-33.0				
MO#	0.3	x10^3/uL	0.1- 0.9	MCHC	32.8	g/dL	32.5-36.0				
GR#	4.6	x10^3/uL	1.5- 7.2	RDW	12.2	%	11.5-14.5				

7/30/04 WM

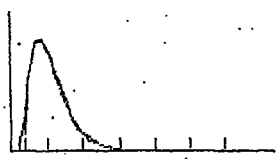
Sample ID # 77168 Analyzed Date & Time: 07-29-04 13:43



WBC HISTOGRAM



RBC HISTOGRAM



PLT HISTOGRAM

Sample ID # 77168 Analyzed Date & Time: 07-29-04 13:43

Microscopic Examination

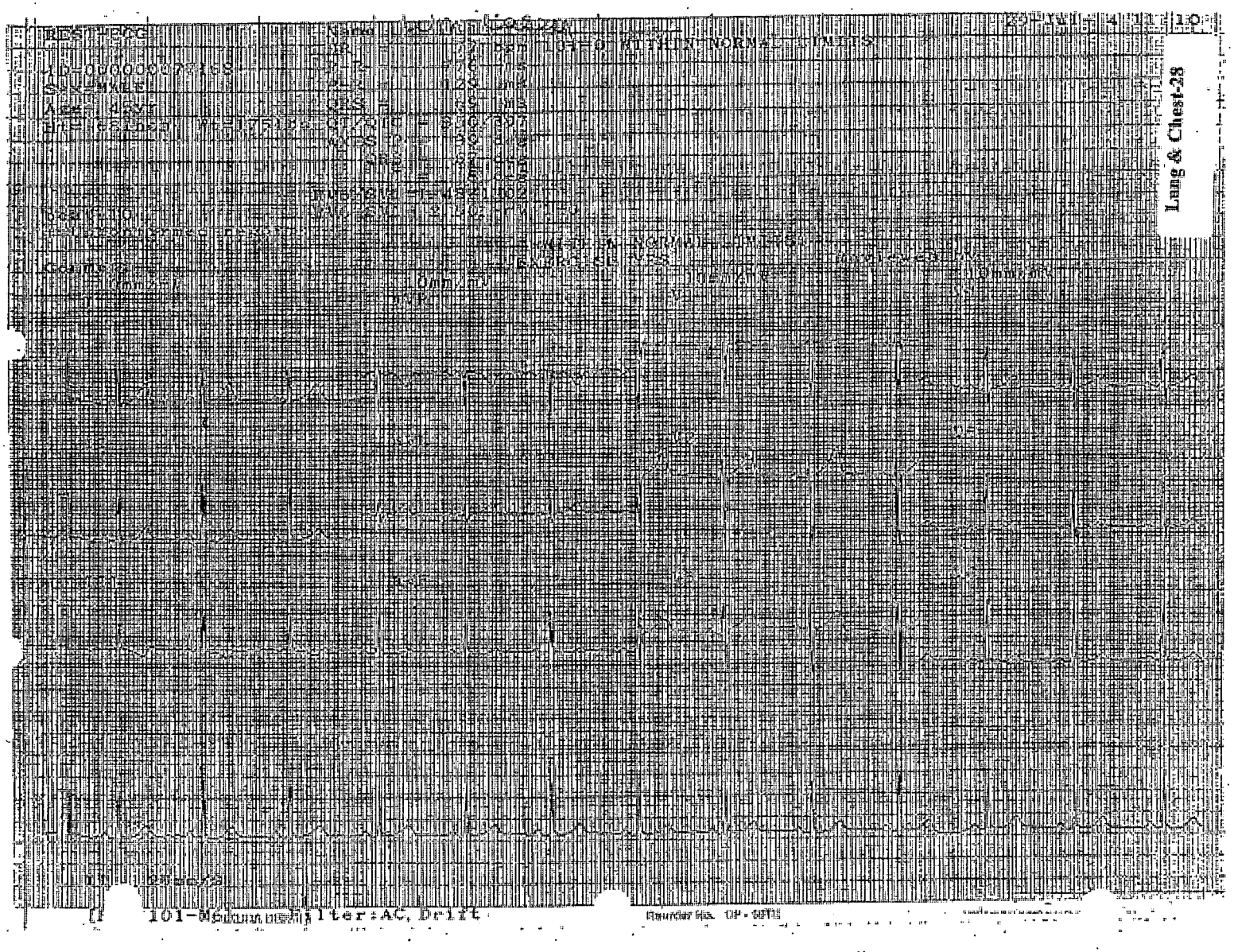
Neutrophil	____	Metamyelocyte	____	Anisocytosis	____	Retics	____
Band	____	Myelocyte	____	Hypochromia	____	Sedimentation Rate	____
Lymphocyte	____	Promyelocyte	____	Polychromasia	____		
Monocyte	____	Blast	____	Poikilocytosis	____		
Eosinophil	____	Atypical Lymphocyte	____	Macrocytosis	____		
Basophil	____	NRBCs	____	Microcytosis	____		

Comments: _____

Requested by:_____
Reviewed by:_____
date:_____

Lung & Chest-27

KING 002129


Lang & Chest-28
101-Medium Filter:AC, Drift

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

TELEPHONE CALL BACK - LUNG & CHEST MEDICAL ASSOCIATES

Date 8.13.04 Call Time 2:41 am/pm VM r'cvd time: 3:15 By: KB

Chart #: _____ Chart pull time : _____ Chart del. Time: _____ Callback time: _____

Caller: ☑ PATIENT ☐ PT. FAMILY ☐ PHARMACY ☐ HOME HEALTH ☐ HOSPICE ☐ INS. CO. ☐ DME CO. ☐ SPR

William → Mark Caseif 486-9131 _____

Caller Name Patient Name Phone No. Fax No.

560-1512

Pt. of: CMF WPS EBK MLA JDC RVM Last Appt. __/__/__ Next Appt. __/__/__

Pt. Address (Proximity to office): _____

#1: DRUG REFILL ☐ Yes- patient stable/routine medicine ☐ No – see #2 below

Pharmacy: _____ Phone #: _____ Fax #: _____

CHARLES M. FOGARTY, MD 08691• WILSON R SMITH, MD 10510• E. BERT KNIGHT III, MD 08397
MARY LOU APPLEBAUM, MD 12969 • J. DOUGLAS CLARK, MD 19596• RICO VI. MENDOZA, MD 23156
BRENDA SPRINKLE, PA-C A144 • CHARLENE McCRAW, A.C.N.P-C AC68077• BETH V. EDWARDS, PA-C A465
2030 North Church Place, Spartanburg, SC 29303 Telephone 582-6858
FAX: Side A 582-3750 FAX: Side B: 585-2102

Rx

NAME: DOB: [redacted]58 DATE:

ADDRESS:

LABEL DRUG NAME, STRENGTH & QUANTITY ☐ YES ☐ NO

1 Rx _____ STRENGTH QUANTITY REFILL

SIG

M.D._____ M.D._____
Dispense as written Substitution Permitted
DEA:_____ DEA:_____

#2: PROBLEM ☐ COUGH ☐ SOB ☐ CHEST PAIN ☐ FEVER ☐ QUESTIONS ABOUT MEDS. ☐ NON-ROUTINE RX

Comment/Response: When is his appt w/ Dr. Grace

LMAM for pt to R/S

KB WV

Appt. Made __/__/__ w/L&C ☐ Call 911 ☐ Go to ER ☐ L&C MD on call notified ☐ Call Family Physician

Instructions accepted?: ___ yes ___ no

KB _____ __/__/__ AM/PM
(Staff) (Doctor) (Date)

Lung & Chest-29

KING 002131

Office Visit Confirmation Sheet

!!! Please fill out all blanks each time you visit our office.

Patient Name William Mark Casey Today's Date Aug 12 04

Doctor Smith Appt. Time 11:45 Arrival Time 11:40

Reason for visit:(check one) ___Having problems ✓Regular follow-up

Please confirm your personal information for our records:

Address 240 Lightwood Farm Rd

Home phone # 486-9131 Work Phone # 680-5929 Other Phone # -

Emergency contact name: Carole Casey Phone # 680-9648

Type of Insurance: 1. B/C B/S 2. 3.

E-mail address:

Lung & Chest-30

KING 002132

567

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

CMF (WPS) MLA EBK JDC RVM Beth Darla Lab

Lung and Chest Medical Associates

me: Wm. Casey Chart#: 77168 Date: 8/12/04

Wt 175 Ht ___ B/P 126/90 H/R 82 RR ___ Temp ___ 02Sat 96% FiO2 .21

Cough / Smoking
Sputum / Nausea
Dyspnea / Vomiting
Wheeze / Diarrhea
Edema / Chest Pain
Palpitations / Pain back
Oriented / ETOH
New Allergies / Fever/chills

Present Illness + reason for visit: Still gets tired
Exertion
No fluid, but gets
When was your last DEXA Bone Densometry Testing done? Times we'll look that
Seeing new doctors? ___ For: he remains
Hospitalizations or major life changes since last visit: ___
Meds. Review based on: ___ in bottle ___ on list 1609/hs from memory

PHYSICAL EXAM: WNL/NEG ABN/POS

*General Appearance___
*Skin Turgor___
*ENT___
*Mouth___
*Sinus___
*Neck___
*Chest/Lungs: Breath Sounds___
Wheezes___
Rales___
Effort___
Symmetry___
*Heart: Rhythm___
Murmurs___
Gallop___
Tones___
*Abdomen___
*Extremities___
*Mobility: Gait___
Reflexes___
Aides___
*Mental Status___

LAB ORDER: Spirometry___ EKG___ Sinus___ CBC___ Glu___ PT___ INR___ O2Sat Rest___
Lung Vol___ DLCO___ U/A___ CXR___ ABG's___ Bun___ Cre___ K+___ Theo___ 02Sat Exercise___

Office Treatment: ___
Education: Does pt want to quit smoking? Yes/No Other: ___
Materials/counseling given: ___
Diagnosis: ___ Plan ___

___Abn CXR(lung fluid),793.1
___Anticoagulant Circulating,28615
___COPD,496
___Cough,786.2
___Dyspnea,786.09
___Fatigue(general),780.79
___Fever,780.6
___ILD,515
___Monitoring(drug name_____),V48.6
___Rhinitis,477.9
___Sleep Apnea/Disorders (nec), 780.53

Prescriptions: ___

Next appt: ___Weeks___Months W/ CMF WPS EBK MLA JDC RVM PA NP Signature WM Staff

Next Visit: Spiro L/V DLCO PA PAL Sinus DEXA BLDWK___ Other___

03/26/04 Lung & Chest-31

KING 002133

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. Elm, P.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
Cindy Edwards, P.N.P.

Fax: (864) 582-3750

Feldman 573-6323

560-6013 6270

Patient Authorization to Release Medical Information

I hereby authorize employees, Medical Staff Members or other agents of (name of organization) Upstate Lung & Critical Care and Spartanburg Regional to use or disclose the following information about me: _____

For the following purposes:
✓ At the request of the undersigned individual
_____ Other (describe) _____

The health information described above may be used or released to: Lung & Chest Medical & fax to 542-9043

This Authorization expires:
✓ On the following date: 12/31/2049 unless otherwise revoked by the patient, which is their right.
_____ When the following event occurs: _____
_____ No expiration (permitted only for authorizations used to create or maintain research databases or repositories)

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.

X William Mark Casey	X 10-22-2004	X [redacted]-1958	X [redacted]
Patient Signature	Date	Date of Birth	Social Security Number

William Mark Casey	Maria J. Kimbrell
Patient printed name	Witness Signature

****

The above individual is unable to consent because:
_____ Minor
_____ Incompetent
_____ Other (explain): _____

I therefore consent on behalf of the individual named above.

_____	_____
Signature	Relationship
_____	_____
Witness Signature	Date

Upstate Lung
H+P, last office notes, any diagnostics

Spartanburg Regional
ER, Admission, Discharge, Diagnostic Info, Bronch Report, Cytology

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

TRANSMISSION VERIFICATION REPORT

TIME : 10/22/2004 13:32
NAME : LUNG&CHEST MEDICAL
FAX : 8645823750
TEL : 8646826858
SER.# : BROJ2N537248

DATE,TIME	10/22 13:32
FAX NO./NAME	5736323
DURATION	00:00:21
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

Faxed medical record release to Dr. Feldman's - re: William Mark Casey

Maria Kimbrell

Lung & Chest-33

KING 002135

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

HP OfficeJet
Personal Printer/Fax/Copier

Fax Log Report

Oct-29-04 02:56 PM

Identification	Result	Pages	Type	Date	Time	Duration	Diagnostic
srmc med rec	OK	01	Sent	Oct-29	02:56P	00:00:36	0024c2030022

13.0 2.0

Faxed medical record release to SRMC
re: William Mark Cary
Maria Kinbrell CMA
10/29/04

Lung & Chest-34

KING 002136

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

CMF (WPS) MLA EBK JDC RVM Beth Darla Lab

Lung and Chest Medical Associates

Name: Wm. Casey Chart#: 7168 Date: 11/10/04

Wt 180.6 Ht ___ B/P 132/97 H/R 92 RR 18 Temp ___ 02Sat 95 FiO2 .21

Cough	Smoking	Present Illness + reason for visit: "4-5 cigs/day"
Sputum	Nausea	
DOE Dyspnea	Vomiting	
Wheeze	Diarrhea	
Edema	Chest Pain	only exertion No dyspnea
Palpitations	Pain	
Oriented	ETOH Some	When you working on
New Allergies	Fever/chills	

When was your last DEXA Bone Densometry Testing done? walk stress test is scheduled.

Seeing new doctors? 0 For:

Hospitalizations or major life changes since last visit: 0

Meds. Review based on: ___ in bottle ___ on list from memory

PHYSICAL EXAM: WNL/NEG ABN/POS

*General Appearance___ Dr Grace does not
*Skin Turgor___ feel need to do
*ENT___ walk to work
*Mouth___ not ready to return
*Sinus___ to
*Neck___ work
*Chest/Lungs: Breath Sounds___ does not want to go.
Wheezes___
Rales___
Effort___
Symmetry___
*Heart: Rhythm___ Pos negative after
Murmurs___ work 2-27-04
Gallop___ Ten day steroid taper
Tones___
*Abdomen___
*Extremities___
*Mobility: Gait___
Reflexes___
Aides___
*Mental Status___

LAB ORDER: Spirometry___ EKG___ Sinus___ CBC___ Glu___ PT___ INR___ O2Sat Rest___
Lung Vol___ DLCO___ U/A___ CXR___ ABG's___ Bun___ Cre___ K+___ Theo___ 02Sat Exercise___

Office Treatment:

Education: Does pt want to quit smoking? Yes/No Other:

Materials/counseling given:

Diagnosis: Dx transmitted Plan Zoloft 150 qD

___Abn CXR(lung fluid),793.1 Please
___Anticoagulant Circulating,28615 Continue Ventolin
___COPD,496 Chlorpheniramine
___Cough,786.2 as needed
___Dyspnea,786.09
___Fatigue(general),780.79
___Fever,780.6
___ILD,515
___Monitoring(drug name_____),V48.6
___Rhinitis,477.9
___Sleep Apnea/Disorders (nec), 780.53

Prescriptions:

Next appt: ___Weeks___Months W/ CMF WPS EBK MLA JDC RVM PA NP Signature WPS Staff JC

Next Visit: Spiro L/V DLCO PA PAL Sinus DEXA BLDWK ___ Other ___

09/29/04 Lung & Chest-35

KING 002137

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SOUTH CAROLINA VOCATIONAL REHABILITATION DEPARTMENT

SCVRD

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

February 15, 2005

LUNG & CHEST MEDICAL ASSOCS
2030 NORTH CHURCH PLACE
SPARTANBURG SC 29303

ATTN: MEDICAL RECORDS

RE: WILLIAM M CASEY
AKA:
ADD: 240 LIGHTWOOD FARM RD
WOODRUFF SC 29388
SSN: [redacted]
DOB: [redacted]/58

Your patient has applied for disability benefits under the Social Security Act. We need the following information:

Treatment Records: 05/28/04 TO PRESENT

PLEASE SEND US COPIES OF YOUR RECORDS OR A NARRATIVE prepared in your office. In a narrative please describe the HISTORY, OBJECTIVE FINDINGS, SEVERITY, ONSET, AND DURATION of impairment. For adults note the individual's ability to perform work-related physical and mental activities. For children note the child's functional abilities in learning, motor functioning, communicating and socializing, performing self-care activities, and attending and completing tasks, and include the cumulative effects of treatment and therapy.

We pay S.C. physicians $15.00 for a copy of treatment records, for a narrative submitted through our teledictation system or for a narrative prepared in a physician's office. Out of state physicians are paid according to the fee schedule effective in that state.

Is your patient capable of handling monthly benefits in his/her own best interest? ✓ *YES* _____ *NO*

Physician's Signature _____

If a consultative examination is necessary, are you willing to perform the examination (including history, examination, and written report)? Yes ____ *No* ____

RECEIVED FEB 17 2005 BY

See the attached page for instructions on returning your report to the DDS. **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,

Robert W. Heaton

Robert W. Heaton, Disability Examiner

PLEASE INCLUDE THIS LETTER AS PAGE 2 OF YOUR REPORT

ENC: Release, Envelope
KMM/473

Claim No: D91109
L1 (1/04)
DMA: Y

0034168432
TDN: 0034168432

OK per Dr._____
Date_____
Fax ✓ Mail
Date 2 Lung & Chest-36
By M

KING 002138

CBC, K+, BUN, Creat, Glu, Chest x-ray, PFT, Spiro

CMF WPS MLA (EBK) JDC (RVM) Beth Darla Lab

Lung and Chest Medical Associates

Name: William Casell Chart#: 77168 Date: 7-19-05

Wt 174.9 Ht — B/P 129/89 H/R 85 RR 16 Temp 98.1 02Sat 93 FiO2 —

○ Cough	○ Smoking	Present Illness + reason for visit:
○ Sputum	✓ Nausea	
✓ Dyspnea	✓ Vomiting	Doesn't want to see Goldman
○ Wheeze	○ Diarrhea	
✓ Edema	○ Chest Pain	Vomiting x 1 week - Chest sore - right
○ Palpitations	○ Pain	Dry Heaves now
○ Oriented	○ ETOH	
○ New Allergies	✓ Fever/chills	Saw Dr Ryan at visit several years ago Sister

When was your last DEXA Bone Densometry Testing done? Sister gets them

Seeing new doctors? no For:

Hospitalizations or major life changes since last visit: yes 6-05 - sinus

Meds. Review based on: ___ in bottle ___ on list ___ from memory

PHYSICAL EXAM: WNL/NEG ABN/POS

*General Appearance — dyspnea w/ walk and vomit
*Skin Turgor — can't take cough down
*ENT — chest wall
*Mouth — No Rhonchi some expiration
*Sinus — Pain
*Neck
*Chest/Lungs: Breath Sounds — Crackles Rhonchi Lower Ulrain Lobe
Wheezes
Rales
Effort
Symmetry
*Heart: Rhythm
Murmurs
Gallop
Tones
*Abdomen
*Extremities
*Mobility: Gait
Reflexes
Aides
*Mental Status

LAB ORDER: Spirometry 3.90 EKG Sinus CBC Glu 121 PT INR O2Sat Rest 93%
Lung Vol DLCO U/A CXR ABG's Bun 29 Cr 1.1 K+ 4.2 Theo O2Sat Exercise
Office Treatment: extra gold
Education: Does pt want to quit smoking? Yes/No Other: PT no Augh smoke
Materials/counseling given:

Diagnosis:	Plan
	Nausea/Vomiting — ✓ UGIS RX Phenergan/Reglan
Abn CXR(lung fluid),793.1	? Stratus/Combivent site Chest — ✓ UA's
Anticoagulant Circulating,28615	
COPD,496	PRN Hydrobric — Ice in one cavity
Cough,786.2	
Dyspnea,786.09	— Stop Stratus/Combivent
Fatigue(general),780.79	
Fever,780.6	
ILD,515	
Monitoring(drug name_____),V48.6	
Rhinitis,477.9	
Sleep Apnea/Disorders (nec), 780.53	

Prescriptions:

Next appt: ___Weeks___Months W/ CMF WPS EBK MLA JDC RVM PA NP Signature _____ Staff LH
Next Visit: Spiro L/V DLCO PA PAL Sinus DEXA BLDWK_____ Other

Lung & Chest-37

KING 002139

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

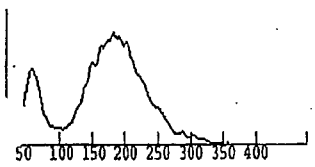
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LUNG AND CHEST MED ASSOCIATES
2030 N CHURCH PLACE
SPARTANBURG SC 29303 JDC RVM BE
864-582-6858 CMF WPS EBK MLA

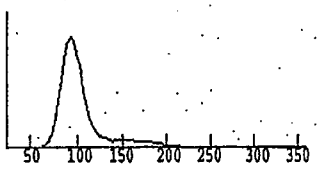
William Casey

ID: 77168 07-19-05
CVWB 09:58

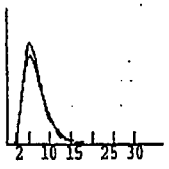
				Patient Limits 1	
WBC	13.7	H	x10^3/uL	4.5	11.0
LY	17.5	*L	%	20.5	51.1
MO	5.9	*	%	1.7	9.3
GR	76.6	*H	%	42.2	75.2
LY#	2.4	*	x10^3/uL	1.2	3.4
MO#	0.8	*H	x10^3/uL	0.1	0.6
GR#	10.5	*H	x10^3/uL	1.4	6.5
RBC	4.68		x10^6/uL	3.90	5.10
Hgb	14.8		g/dL	12.0	15.6
Hct	43.5		%	36.0	46.0
MCV	93.0		fL	85.0	98.0
MCH	31.7		pg	28.0	33.0
MCHC	34.0		g/dL	32.5	36.0
RDW	12.1		%	11.6	13.7
Plt	677.	H	x10^3/uL	130.	400.
MPV	7.1	L	fL	7.8	11.0



WBC HISTOGRAM



RBC HISTOGRAM



PLT HISTOGRAM

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LUNG AND CHEST MEDICAL ASSOCIATES

2030 North Church Place, Spartanburg, SC 29303

CMF WPS EBK MLA JDC RVM BE

LAB REQUISITION

PATIENT NAME William Casey CHART # 77168 DATE 7-19-05

DIAGNOSIS _____ SEX M F RACE C B A H O

	DESCRIPTION	RESULTS	NORMAL VALUE	REPEATED VERIFIED RESULTS	INITIALS
	Theophylline		10-20 Mcg/dl		
	Glucose	121	70-110 Mg/dl		
	BUN	29	5-25 Mg/dl		
	Creatinine	0.7	0.5-1.4 Mg/dl		
	K+	4.2	3.5-5.1 Meq/dl		
	PT		14-18 sec		
	INR		2.0-3.0 Coumadin therapy		
			2.5-3.5 Prostatic Heart Valves		
	CBC				
	UA				
	HgbA1C	%	<7 %		
	Arterial Puncture				
	ABG's – Fi02				
	ABG's – PH		7.35-7.45		
	ABG's – PC02		35-45 mmHg		
	AGG's – P02		80-100 mmHg		
	AGG's - 02 Sat		95-98%		

URINALYSIS – MACROSCOPIC			
COLOR		Ph	
APPEARANCE		PROTEIN	
GLUCOSE		UROBILINOGEN	
BILIRUBIN		NITRITE	
KETONES		LEUKOCYTES	
SP. GR.			

Rapid Strep Positive Negative

Z-Stat Flu Positive Negative

CMF _____ WPS _____ EBK _____ MLA _____ JDC _____ RVM _____ BE _____ Staff _____

Lab Requisition, 12-23-03 Lung & Chest-39

KING 002141

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Lung and Chest Medical Associates Spiro A

ID: 77168 Casey, William Mark

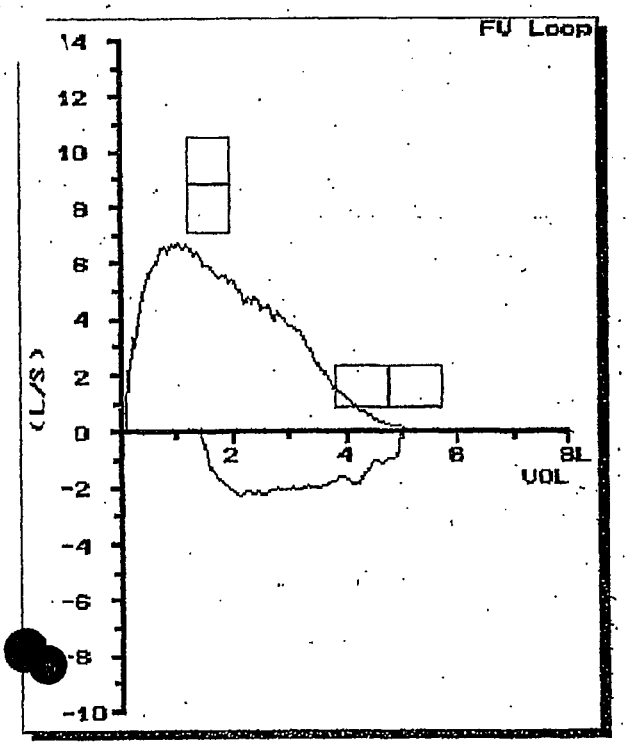
Ethnic: CAUCASIAN Height: 68.0 in. Sex: MALE Age: 46 Weight: 174.0 lb

MENTS:

-BD COMMENTS:

LAST CALIBRATED: Tue Jul 19,2005 7:34:36 am

TYPE	Test Date and Time		Exp.Time	Normals	Test#
Pre-BD:	Tue Jul 19,2005 11:57:55 am		6.3 secs	KNUDSON/IMTS	2
Expiratory	Actual	Predicted	% of pred	Inspiratory	Actual
FVC	5.02 L	4.73 L	106.19 %	IVC	3.61 L
FEV 0.5	2.75 L	3.04 L	90.50 %	FIV1	1.35 L
FEV 1.0	3.90 L	3.84 L	101.52 %	PIF	2.46 L/S
FEV 3.0	4.73 L	4.48 L	105.50 %	FIF50	2.20 L/S
				FEF50/FIF50	193.85 %
FEV 0.5/FVC	54.75 %	64.24 %	85.23 %		
FEV 1.0/FVC	77.66 %	81.23 %	95.61 %	Interpretation:	
FEV 3.0/FVC	94.18 %	94.79 %	99.35 %	NORMAL	
PEF	6.61 L/S	8.64 L/S	76.59 %		
FEF 25-75%	3.61 L/S	3.91 L/S	92.38 %	MAX FVC = 5.02L TEST # 2	
FEF 75-85%	0.90 L/S	1.04 L/S	87.31 %	MAX FEV-1 = 3.90L TEST # 2	
FEF 25	6.15 L/S	7.95 L/S	77.37 %		
FEF 50	4.26 L/S	4.59 L/S	92.85 %		
FEF 75	1.40 L/S	1.81 L/S	77.15 %		
FEF .2-1.2	5.82 L/S	7.26 L/S	80.13 %		



Legend

Pre-BD Test

Good effort OB

Lung & Chest-40

KING 002142

SPARTANBURG REGIONAL MEDICAL CENTER DEPARTMENT OF LABORATORY MEDICINE
101 E. WOOD STREET, SPARTANBURG, SOUTH CAROLINA 29303-3072/864-560-6212
DRS. DAVIS, LOWRY, WREN, NELSON, RAINER, LAPHAM, MIMS, CALDWELL, BURNS & KIM

CASEY WILLIAM MR#: (0002)00014-62-20 Fin.No.:0520001651 Admitted: 19JUL05
46 YRS MALE DOB: [redacted]1958 Page: 1
Dr. MENDOZA RICO INTERIM Printed: 21JUL05
Location: - PRIVATE OUT PT VISIT ABDMNAL PAIN UNSPCF SITE 0558

CHEMISTRY

--------- HEPATIC PROFILES ----------

Procedure:	TOT PROT	ALBUMIN	AST	ALT	ALK PHOS	BILI TOTAL	BILI DIR	BILI INDIR
Ref Range:	(6.1-8.0)	(3.5-4.9)	(12-33)	(6-39)	(36-108)	(.0-1.5)	(.0-.2)	(.2-1.4)
Units:	GM/DL	G/DL	IU/L	IU/L	IU/L	MG/DL	MG/DL	MG/DL
19JUL05 1600	6.9	4.4	14	18	80	.6	.1	.5

Patient Name:CASEY WILLIAM Location: PRIVATE OUT PT VISIT END OF CHART.

Send to: DR RICO MENDOZA Fax to: 864-585-2102
2030 NORTH CHURCH AVE
SPARTANBURG SC 29303.

Lung & Chest-41

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

William Casey
#71168
updated
7-19-05
JA

MICHELIN PPO

SouthCarolinaBlues.com

380

WILLIAM M CASEY

ID:MIH852484753663

OV $20/$45

ROUTINE $20

Important: Pre-authorization required for all hospital inpatient admissions or we may reduce benefits. Providers submit via SouthCarolinaBlues.com or call 1-866-334-7267.

[redacted]

For Online Service: Log into My Insurance Manager on SouthCarolinaBlues.com.
Mental Health & Substance Abuse Precertification/Claims: call ComPsych at 1-800-537-6221

Providers: Report emergency admissions within 24 hours. Submit claims to your local plan.

Members: Personnel Service Center: 1-877-436-7868
BlueCross Customer Service: 1-888-775-3658
PPO Network Provider Information: 1-800-810-2583
First Advice Nurse Line: 1-866-521-2583 (anytime)
File all claims to: BlueCross BlueShield of South Carolina, Piedmont Service Center, P.O. Box 6000, Greenville, S.C. 29606-6000.

BlueCross BlueShield of South Carolina, an Independent licensee of the Blue Cross and Blue Shield Association, provides administrative claims services only and does not assume any financial risk or obligation with respect to claims. GL

Lung & Chest-42

KING 002144

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. Elm, F.N.P.

Wilson P. Smith, Jr., M.D.
E. Bert Knight, III, M.D.
Mary Lou Applebaum, M.D.
Beth V. Edwards, PA-C

Fax: (864) 585 - 2102

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 rigid 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. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab 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...

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

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 SaO_2 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...

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Comment

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 squeezing 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 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. 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.

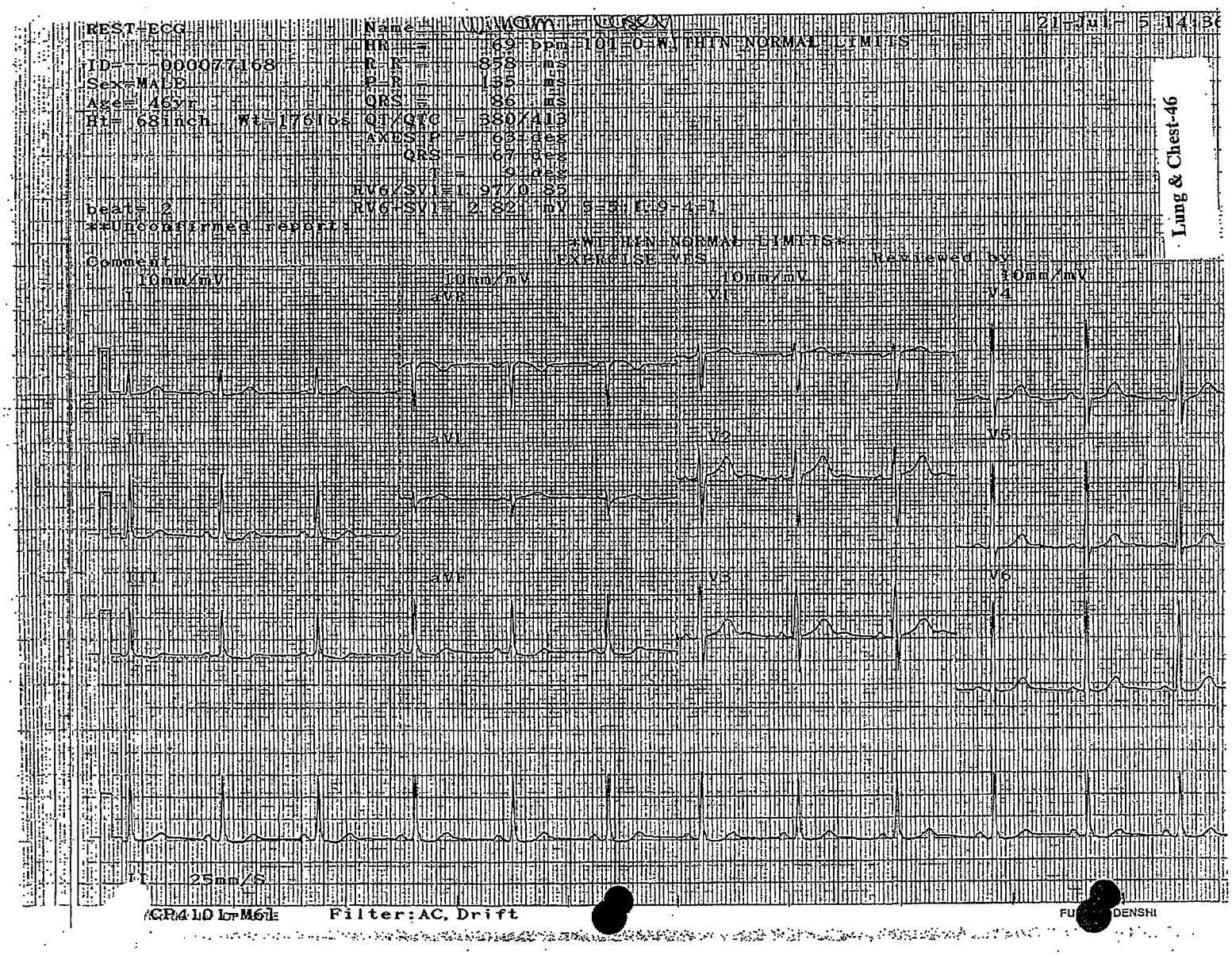
Plan

We will check back with the patient via phone with reference to his coronary calcium score and his gallbladder ultrasound. Further evaluation will proceed pending the results of above.

Separately, we will review the patient's chart for him since he has many questions about the hospital admission for his chest pain, and try to put into lay language a summary of what happened during the hospital admission.

He is to check back with Dr. Grace regarding the persistence of his neurological impairment.

Charles M. Fogarty, MD
CMF/ns
cc: Dr. Gonda


REST-ECG
Name=
21-Jul-
ID=
00007168
Sex=MALE
Age=
46yr
Ht=
68inch
Wt=
176lbs
HR=
69 bpm
PR=
135 ms
QRS=
86 ms
QT/QTC=
380/413
AXES P=
63 deg
QRS=
67 deg
T=
9 deg
RV6/SV1=1.977/0.82
RV6+SV1=
2.82 mV
beat= 2
Unconfirmed report
Comment
10mm/mV
aVR
V1
V4
I
aVL
V2
V5
II
aVF
V3
V6
25mm/S
Filter:AC, Drift
Lung & Chest-46
KING 002148
583

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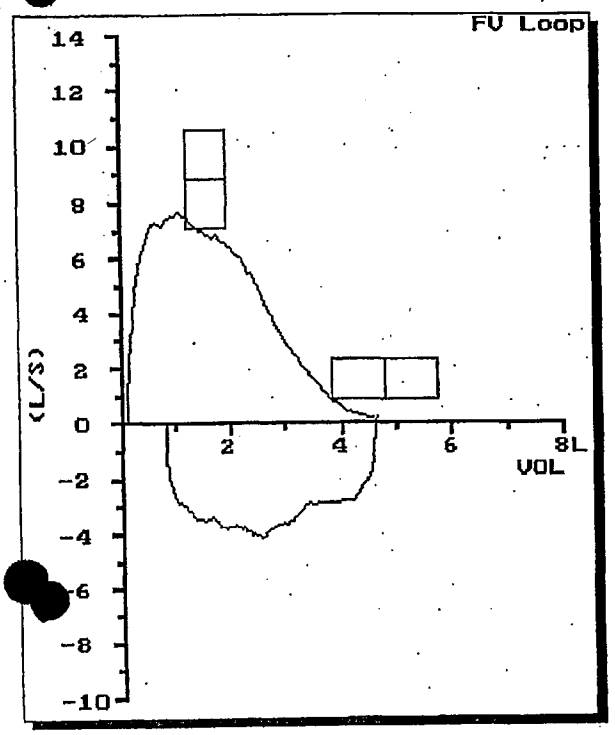
Lung and Chest Medical Associates
Multi Spiro B

77168 Casey, William
Eth: CAUCASIAN Height: 68.0 in. Sex: MALE Age: 46 Weight: 171.0 lb

COMMENTS:
PRE-BD COMMENTS:

LAST CALIBRATED: Thu Jul 21,2005 7:36:40 am

TYPE	Test Date and Time		Exp.Time	Normals	Test#
Pre-BD:	Thu Jul 21,2005 3:52:12 pm		5.9 secs	KNUDSON/IMTS	1
Expiratory	Actual	Predicted	% of pred	Inspiratory	Actual
FVC	4.65 L	4.75 L	97.88 %	IVC	3.86 L
FEV 0.5	2.96 L	3.05 L	97.12 %	FIV1	2.95 L
FEV 1.0	3.76 L	3.87 L	97.21 %	PIF	4.26 L/S
FEV 3.0	4.40 L	4.51 L	97.51 %	FIF50	3.97 L/S
				FEF50/FIF50	135.01 %
FEV 0.5/FVC	63.77 %	64.27 %	99.22 %		
FEV 1.0/FVC	80.82 %	81.38 %	99.31 %	Interpretation:	
FEV 3.0/FVC	94.58 %	94.94 %	99.62 %		
				NORMAL	
PEF	7.56 L/S	8.67 L/S	87.17 %		
FEF 25-75%	3.91 L/S	3.95 L/S	99.06 %	MAX FVC = 4.65L TEST # 1	
FEF 75-85%	0.86 L/S	1.06 L/S	81.57 %	MAX FEV-1 = 3.76L TEST # 1	
FEF 25	7.45 L/S	7.97 L/S	93.49 %		
FEF 50	5.37 L/S	4.62 L/S	116.05 %		
FEF 75	1.47 L/S	1.83 L/S	79.90 %		
FEF .2-1.2	7.00 L/S	7.31 L/S	95.75 %		



Legend
——— Pre-BD Test

Good Effort NB

Lung & Chest-47

KING 002149

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

#7768
DOLV
7-21-05
no Appt

SPARTANBURG REGIONAL HEALTHCARE SYSTEM
SPARTANBURG REGIONAL MEDICAL CENTER
Radiology Report
ACR Accredited Facility for Ultrasound

NAME: CASEY,WILLIAM UNIT #: 000146220
ORDERING PHYSICIAN: FOGARTY,CHARLES M CI#: 1480525
LOC: OPT DOB: [redacted]/58 AN#:S0520101451
Pt. Type:OPT

Exam
80073 US GALLBLADDER Date: 07/28/05 0812
76705 Ord Diag: 787.03-VOMITING ALONE

Sonogram of the gallbladder. 7/28/2005.

History: Epigastric pain with nausea.

Findings: Gallbladder is fluid filled. No stones are seen. Common duct is 5 mm which is normal. Pancreas and liver are unremarkable.

Conclusion: Negative sonogram of the gallbladder.

Read By: John HarrillMD
Released By: John HarrillMD

PL

FINAL

KING 002150

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SPARTANBURG REGIONAL MEDICAL CENTER
Radiology Report

NAME: CASEY,WILLIAM
ORDERING PHYSICIAN: FOGARTY,CHARLES M
LOC: OPT
Pat. Type:OPT
DOB: [redacted]/58

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

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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

n

FINAL

Page 2

Lung & Chest-50

KING 002152

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

TELEPHONE CALL BACK LUNG & CHEST MEDICAL ASSOCIATES

Date 7.1.05 Call Time 10:32 am/pm VM r'cvd time: 10:25 By: AB

Chart #: 17168 Chart pull time : _____ Chart del. Time: _____ Callback time: _____

Caller: ☐ PATIENT ☐ PT. FAMILY ☐ PHARMACY ☐ HOME HEALTH ☐ HOSPICE ☐ INS. CO. ☐ DME CO. ☐ SPR

VM — Caller Name | Wm. Mark Cosey — Patient Name | 6805929 — Phone No. | Fax No.

Pt. of: CMF WPS EBK MLA JDC RVM Last Appt. 7.19.05 Next Appt. TO

Pt. Address (Proximity to office): 7-21-05 cmt

#1: [redacted] ☐ Yes- patient stable/routine medicine ☐ No – see #2 below

Pharmacy: _____ Phone #: _____ Fax #: _____

CHARLES M. FOGARTY, MD 08691 • WILSON R SMITH, MD 10510 • E. BERT KNIGHT III, MD 08397
MARY LOU APPLEBAUM, MD 12969 • J. DOUGLAS CLARK, MD 19596 • RICO VL MENDOZA, MD 23156
BRENDA SPRINKLE, PA-C A144 • CHARLENE McCRAW, A.C.N.P-C AC68077 • BETH V. EDWARDS, PA-C A465
2030 North Church Place, Spartanburg, SC 29303 Telephone 582-6858
FAX: Side A 582-3750 FAX: Side B: 585-2102

Rx

NAME: DOB: [redacted]58 DATE:

ADDRESS:

LABEL DRUG NAME, STRENGTH & QUANTITY ☐ YES ☐ NO

	STRENGTH	QUANTITY	REFILL
1 Rx			
SIG			

M.D. _____ Dispense as written DEA: _____

M.D. _____ Substitution Permitted DEA: _____

#2: [redacted] ☐ COUGH ☐ SOB ☐ CHEST PAIN ☐ FEVER ☐ QUESTIONS ABOUT MEDS. ☐ NON-ROUTINE RX

Comment/Response: calling for test results – test last Thursday

copy of repats attached.

Made apptfor Aug 4, 2005 11 am w/Beth to discuss test results per Teresa CD. 8/2/05

PFT referral needed

Appt. Made ___/___/___ w/L&C ☐ Call 911 ☐ Go to ER ☐ L&C MD on call notified ☐ Call Family Physician

Instructions accepted?: ___ yes ___ no

(Staff) (Doctor) ___/___/___ (Date) Lung & Chest-51

KING 002153

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. 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
77168
08-04-05

OFFICE NOTE

Chief Complaint

William Casey returns for follow up on his previous visit. Since we saw him he has had coronary calcium score and upper abdominal ultrasound.

Current Conditions

1. Chest pain.
2. Nausea and vomiting.
3. Persistent difficulty concentrating staying focused status post pneumomediastinum/pneumothorax complicating laser therapy in attempt for laser therapy for metallic artifact, which ultimately proved to be outside of chest.

Current Medicines

1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab four times daily as needed.

Social History

No tobacco or alcohol.

Review of Systems

No additional findings on cardiorespiratory, GI or GU review.

Physical Examination
Vital Signs: Wt. 178, BP 120/74, HR 75, RR 22 and SaO_2 is 98% on room air.
General: No acute distress.
Skin: Normal turgor.
HEENT: Pupils symmetric.
Neck: No jugular venous distention.
(Continued to next page)

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Physical Examination (Continued)
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. Bowel sounds present.
Extremities: No edema or clubbing.
Neurological: The patient had some readily apparent difficulty staying focused with answers to questions and had difficulties repeating numbers backward on a simple cognitive screen.

Laboratory Data

The ultrasound showed no pathological findings.

Impression/Discussion/Plan

The patient has been instructed in optimal use of aerosol therapy. The patient was instructed on diet with attention at maintaining muscle mass and achieving an ideal body weight. The patient is instructed in exercise to promote mucous clearance, maintain balance and muscle mass. The patient was given our cell phone number to call any time any interval problems develop before the next visit.

The patient is to continue his current regimen. He will check back with us this fall.

Charles M. Fogarty, MD
CMF/ns

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BURTS, TURNER, RHODES & THOMPSON
ATTORNEYS AT LAW
260 NORTH CHURCH STREET
SPARTANBURG, S.C. 29306

SAM BURTS (1907 - 1982)
NOEL TURNER
RICHARD H. RHODES
RAY E. THOMPSON, JR.
M. NOEL TURNER, III

MAILING ADDRESS
P.O. BOX 3405 29304
PHONE: 864-585-8166
FAX: 864-582-6027

August 8, 2005

VIA FAX ONLY
542-9043

Ms. Maria Kimbrell
Lungs and Chest Medical Associates
Office 2030 N. Church Pl
Spartanburg, SC 29304

RE: William Mark Casey vs. Donna Lynn Haulbrook Casey
C.A. No.: 2004-DR-42-3758

Dear Maria:

Enclosed please find a Medical Authorization signed by Mark Casey. I would appreciate your forwarding me his updated medical records.

With kind regards,

Sincerely,

BURTS, TURNER, RHODES & THOMPSON

By: Chuck Thompson
RAY E. THOMPSON, JR

RET'ar
Encl.

8/9/05 - faxed
Maria
requested 5/28/04

Lung & Chest-54

KING 002156

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

AUTHORIZATION TO RELEASE INFORMATION

Patient Identification

Patient Name: WILLIAM MARK CASEY Date of Birth: [redacted]/58

Address: 240 Lightwood Farm Road, Woodruff, SC 29388

Social Security #: [redacted] Telephone: 486-9131

Covering Dates of Health Care

From: May 28, 2004 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 Burts Law Firm *PHONE: (864) 585-8166*
P.O. Box 3408
Spartanburg, SC 29304 *FAX: (864) 583-6927*

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 Lung and Chest Medical Associates to use and disclose the protected health information specified above to the authorized facility listed above.

Signature: William Mark Casey Date: 08/08/05
Relation If Not Patient:
Identity of Requestor Verified by Matching Signature of Photo ID.
Verified by:

Lung & Chest-55

KING 002157

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Thomason & French

George H. Thomason
Robert S. French

ATTORNEYS AT LAW
184 OAKLAND AVENUE
SPARTANBURG, SOUTH CAROLINA
TELEPHONE (864) 582-5857
FAX (864) 582-5853

MAILING ADDRESS:
POST OFFICE BOX 772
SPARTANBURG, SOUTH CAROLINA 29304

RECEIVED
SEP 9 2005
By

September 6, 2005

Dr. Wilson Smith
Lung & Chest Medical Associates
2030 N. Church Place
Spartanburg, S. C. 29303

Subject: William M. Casey
240 Lightwood Farm Road
Woodruff, S. C. 29388
SSN 251-02-2977

Dear Dr. Smith:

We represent Mr. Casey on a Social Security disability claim. He may be eligible for Social Security payments until, hopefully, he is able to return to work. Social Security has asked that we obtain updated information from your office. We have no information on Mr. Casey after March 15, 2005. Thank you for providing us with copies of records for any visits after that date.

If you require prepayment, give us call. If not, please send a bill with the records and we will promptly pay it. We can also handle prepayment by credit card over the phone if that makes it easier for processing this request. An authorization and return envelope are enclosed.

With kindest regards, I am

Very truly yours,

George H. Thomason
GHT/gl
ENCLOSURE: Authorization; Return envelope

cc: William M. Casey

OK per Dr. [signature]
Date
Fax ✓ Mail
Date 9/9/05
Lung & Chest-56

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Thomason & French

Attorneys at Law
PO Box 772 - 164 Oakland Avenue
Spartanburg, South Carolina 29304
Telephone 864/582-5857
FAX 864/582-5853

George H. Thomason
Robert S. French

HIPAA AUTHORIZATION AND MEDICAL RELEASE FORM

Claimant William Mark Casey SS # [redacted]

I hereby authorize use or disclosure of protected health information about me as described below:

1. The following specific person or class of persons or facility is authorized to make the requested use or disclosure: Dr. Wilson Smith
Lung & Chest Medical Associates
2030 N. Church Place
Spartanburg, SC 29303

2. The following person or class of persons may receive disclosure of protected health information about me:

George H. Thomason and/or Robert S. French
THOMASON & FRENCH
PO Box 772
Spartanburg, SC 29304 864/582-5857

3. The specific information that should be disclosed is:
All medical records for after March 15, 2005 to the present.

4. I understand that the information used or disclosed may be subject to re-disclosure by the person or class of persons of facility receiving it, and would then no longer be protected by federal privacy regulations.

5. I understand that the information used or disclosed may contain private information such as drug or alcohol use, hepatitis, HIV or AIDS, mental illness, sexual abuse, physical abuse, etc., and I specifically authorize the release of this private and sensitive information.

6. I may revoke this authorization by notifying Thomason & French in writing of my desire to revoke it. However, I understand that any action taken in reliance on this authorization cannot be reversed, and my revocation will not affect those actions. I understand that the medical provider to whom this authorization is furnished may not condition its treatment of me on whether or not I sign the authorization.

6. This authorization expires on 9/6/06 or upon occurrence of the following event that relates to me or to the purpose of the intended use or disclosure of information about me: **None applicable**

THIS FORM MUST BE FULLY COMPLETED BEFORE SIGNING

William Mark Casey 9/6/05; DOB: [redacted]58
Signature of individual, date signed, date of birth or Social Security number

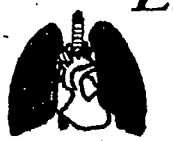
or, if applicable

Lung & Chest-57

Legal Guardian or person authorized to sign for claimant

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Lung and Chest Medical Associates



Charles M. Fogarty, M.D.
Wilson P. 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.P.
Cindy A. Edwards, F.N.P.

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 136/72, HR 96, RR 20 and SaO_2 is 95% on room air.
General: No acute distress.
Skin: Normal turgor.
HEENT: Pupils symmetric.
Neck: No jugular venous distention.
(Continued to next page)

2030 North Church Place
Spartanburg, South Carolina 29303
Phone: (864) 582-6858 · Fax:(864) 542-9043

2755 South H
Greer,
Phone: (864) 849-950C

Lung & Chest-58

849-9501

KING 002160

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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. FEV_1 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/perform 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
CMF/ns
cc: Dr. Frank Gonda via fax 578-7098 **(No hard copy will be sent)**

KING 002161

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates
Multi Spiro B

77168 Casey, William
Ethnic: CAUCASIAN Height: 68.0 in. Sex: MALE Age: 47 Weight: 171.0 lb

COMMENTS:
PRE-BD COMMENTS:

LAST CALIBRATED: Thu Feb 16,2006 7:29:47 am

TYPE	Test Date and Time	Exp.Time	Normals	Test#
Pre-BD:	Thu Feb 16,2006 4:29:11 pm	4.9 secs	KNUDSON/IMTS	1

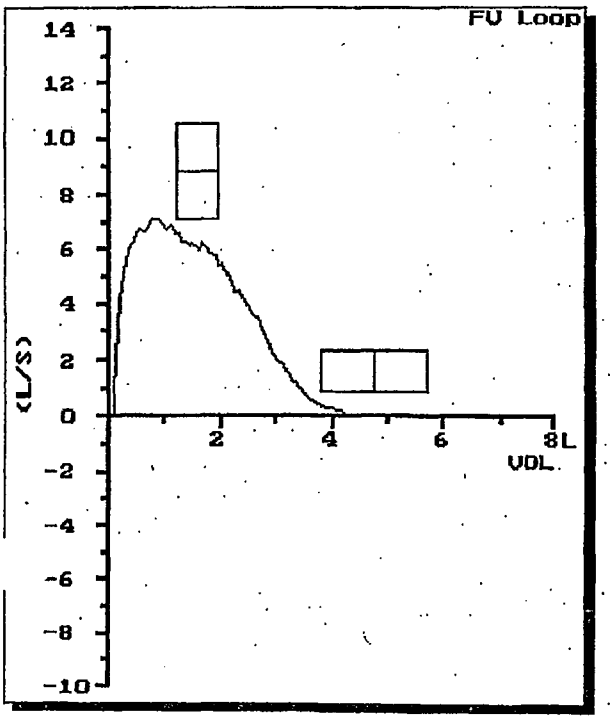
Expiratory	Actual	Predicted	% of pred
FVC	4.17 L	4.73 L	88.18 %
FEV 0.5	2.73 L	3.04 L	89.76 %
FEV 1.0	3.46 L	3.84 L	89.95 %
FEV 3.0	4.02 L	4.48 L	89.71 %
FEV 0.5/FVC	65.38 %	64.24 %	101.78 %
FEV 1.0/FVC	82.86 %	81.23 %	102.00 %
FEV 3.0/FVC	96.43 %	94.79 %	101.73 %
PEF	7.00 L/S	8.64 L/S	81.01 %
FEF 25-75%	3.86 L/S	3.91 L/S	98.71 %
FEF 75-85%	0.94 L/S	1.04 L/S	90.83 %
FEF 25	6.78 L/S	7.95 L/S	85.26 %
FEF 50	4.79 L/S	4.59 L/S	104.45 %
FEF 75	1.54 L/S	1.81 L/S	84.77 %
[illegible] .2-1.2	6.54 L/S	7.26 L/S	90.15 %

Inspiratory	Actual
IVC	0.00 L
FIV1	0.00 L
PIF	0.00 L/S
FIF50	0.00 L/S
FEF50/FIF50	0.00 %

Interpretation:

NORMAL

MAX FVC = 4.17L TEST # 1
MAX FEV-1 = 3.46L TEST # 1



Legend
——— Pre-BD Test

good effort TC

Lung & Chest-60

KING 002162

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Lung & Chest Medical Associates

2030 N. Church Place, Spartanburg, SC 29303
(864) 582-6858

2755 S. Hwy. 14 Suite 2300 Greer, SC 29650
(864) 849-9500

Charles M. Fogarty, MD PA
[redacted] P. Smith, Jr., MD PA
[redacted] (Insurance) 585-0999

Mary Lou Applebaum, MD PC
E. Bert Knight, III, MD PC
J. Douglas Clark, MD PC

Rico V. Mendoza, MD PC
Beth V. Edwards, PA-C

CMF WPS EBK MLA JDC BE RVM

Acct #	Voucher #	SSN #	DOB	AGE	Dr.	Appt Date & Time
77168	282505	[redacted]	[redacted]/58	47	FOGARTY	02/09/06 1:45

Patient
WILLIAM M CASEY
240 LIGHTWOOD FARM RD
WOODRUFF SC 29388

NEXT APPT _____ WKS MONTHS OTHER _____

PROCEDURES AT NEXT APPT:

Prev Dx Code	Description of Diagnosis Code	Insurance	Referring Dr.
786.09	DYSPNEA -RESPIRATORY !!! GET DIAGNOSIS FR !!! GET DIAGNOSIS FR	BCBS PPC	PRI 0 SELF REFERRAL SEC COPAY: .00 CO-PAY $45
		Balance on Account 45.00	Dr.'s Signature

Description	CPT	Description	CPT	Description	CPT (HCPCS)
LAB		**OFFICE VISITS**		**OFFICE SURGERY** Use 25 Mod	
Routine Venipuncture	36415	**Consult, New, Estab.**		Ear wax removal	69210
Theophylline Level	80198	Problem Focused	99241	Laryngoscopy	31575
Glucose	82947	Expanded	99242	Thoracentesis - simple	32000
HBG A1C	83036	Detailed	99243	w/ catheter	32002
BUN	84520	Moderate Comprehensive	99244	**INJECTIONS - 90782 Units**	
Creatinine	82540	High Comprehensive	99245	Kefzol	J0690
K+	84132	**New Patient**		Gentamicin	J1580
HBG's	85018	Problem Focused	99201	Insulin, Reg	J1820
HCT	85014	Expanded	99202	Vitamin B12	J3420
	81002	Detailed	99203	Benadryl	J1200
	85610	Moderate Comprehensive	99204	Brethine	J3105
CBC-Automated	85025	High Comprehensive	99205	Decadron	J1100
ABG's, simultaneous	82803	IME non-treating	99456	Depo Medrol	J1030
Arterial Puncture	36600	IME non-treating, 2 areas	99457	Epinephrine	J0170
Blood Occult Stool	82270	**Established Patient**		Lasix	J1940
Rapid Strep	87081	Nurse Visit	99211	Phenergan	J2550
Z Stat Rapid Flu	87449QW	Problem Focused	99212	Cortisol Stimul.	J0835
		Expanded	99213	Triamin/Amist, 5mg	J3302
PFT's - 25 MODIFIER IN OFFICE		Detailed	99214	Rocephin	J0696
Pulse Oximetry	94760	Comprehensive	99215	Xolair, 5mg	J2357
Pulse Oximetry, multiple	94761	Prolonged Attendance	99354/55		
Spirometry	94010	IME est. pt.	99455		
Bronchospasm	94060	**CARDIOLOGY**		**MISCELLANEOUS**	
Broncho Challenge	94070	EKG w/ Interpretation	93000	SUPPLIES & MATERIALS	
Lung Volumes:		Pulse Ox during exercise	94761	Surgical tray	(A4550)
Thoracic Gas Vol.	94260	Exercise w/ treadmill	93015	Duoderm	99070 (A4204)
Airway Resistance	94360	6 minute walk test	94620	Tegaderm	99070 (A4205)
DLCO	94720			Medical Testimony	99075
X RAYS				Medical Conference	99155
Sinus – 1-3 views	70210				
Chest – PA	71010			~~Smoke Tobacco Counseling 3-10 min. greater than 10~~	~~G0375 G0376~~
PA & Lateral	71020	**OFFICE THERAPY/IMMUNIZATIONS**			
Chest Lateral-Decubitus	71035	Aerosol Instruction Init.	94664		
Rib – 2 Projections	71100	Nebulizer Tx. Init & sub.	94640		
Thoracic Spine-2 views	72070	Pneumo Vac 90471/G0009	90732		
Lumbar – Spine	72100	Flu Vac 90472/G0008	90658		
		PPD	86580	**SNF HOSPICE**	
		Tetanus Toxoid	90703		
[redacted]					
		Allergy Shots - Single Ant.	95115		
		Allergy Shot - Multiple Ant.	95117	Yes ___	Yes ___ No ___
		UNITS			
		Prolastin, 10mg	J0256	No ___	DR. ___
		IV Infusion - to 1 HR.	90780		

Lung & Chest-61

KING 002163

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

C. McCraw

CMF WPS MLA EBK JDC RVM ~~Beth~~ Darla Lab

Lung and Chest Medical Associates Sptbg. ✓ Greer ____

Name: Wm M. Casey Chart#: 77168 Date: 7/7/06

Wt____ Ht____ B/P____ H/R____ RR____ Temp____ 02Sat____ FiO2____

___Cough	___Smoking	Present illness + reason for visit: Moving furniture to new house
___Sputum	___Nausea	Continues c chest wall pain and
___Dyspnea	___Vomiting	wants to take edge off pain and
___Wheeze	___Diarrhea	allow PT help active - to house
___Edema	___Chest Pain	hold clothes.
___Palpitations	___Pain	Still having difficult c planning day —
___Oriented	___ETOH	writes daily notes to self
___New Allergies	___Fever/chills	continues to forget what he knows

When was your last DEXA
Bone Densometry Testing done?
Seeing new doctors? ____
Hospitalizations or major life changes since last visit: ____
Meds. Review based on: ____ in bottle ____ on list ____ from memory

PHYSICAL EXAM:	WNL/NEG	ABN/POS
*General Appearance		frustrated. Working c Cons Vibe -
*Skin Turgor		games to help me stay functional
*ENT		appears positive - try to reinforce this
*Mouth		
*Sinus		
*Neck		
*Chest/Lungs: Breath Sounds		
Wheezes		
Rales	Clear	
Effort		
Symmetry		
*Heart: Rhythm		
Murmurs		
Gallop	NSS3	
Tones		
*Abdomen		
*Extremities		
*Mobility: Gait		pain on bending forward
Reflexes		Coordination, Endurance also R + L
Aides		pectoral
*Mental Status		asked some questions over x 2

LAB ORDER: Spirometry____ EKG____ Sinus____ CBC____ Glu____ PT____ INR____ O2Sat Rest____
Lung Vol____ DLCO____ U/A____ CXR____ ABG's____ Bun____ Cre____ K+____ Theo____ 02Sat Exercise____

Office Treatment: ____
Education: Does pt want to quit smoking? Yes/No Other: ____
Materials/counseling given: ____

Diagnosis: Neuro Cognitive Impairment
___Abn CXR(lung field),793.1
___Anticoagulant Counseling,28615
___COPD,496
___Cough,786.2
___Dyspnea,786.09
___Fatigue(general),780.79
___Fever,780.6
___ILD,515
___Monitoring(drug name_____),V58.1
___Rhinitis,477.9
___Sleep Apnea/Disorders (nec), 780.53

Next Visit Pain
Rx 2 Zolta 10 (Pt does not feel she needs medication)
120 q D

Prescriptions: ____

Next appt: ___Weeks___Months W/ CMF WPS EBK MLA JDC RVM PA NP Signature ____ Staff____
Next Visit: Spiro L/V DLCO PA PAL Sinus DEXA BLDWK____ Other____ Lung & Chest-63

KING 002165

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CMP
7/16/08
7/7/06

BlueCross® BlueShield®

MICHELIN PPO

SouthCarolinaBlues.com

WILLIAM M CASEY 380

ID: MIH052A84753663

OV $20/$45

ROUTINE $20

Important: Pre-authorization required for all hospital inpatient admissions or we may reduce benefits. Providers submit via SouthCarolinaBlues.com or call 1-800-334-7297.

[redacted]

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Mental Health & Substance Abuse Precertification/Claims: call ComPsych at 1-800-637-1221

Providers: Report emergency admissions within 24 hours. Submit claims to your local plan.

Members: Personnel Service Center: 1-877-436-7868
BlueCross Customer Service: 1-866-773-3458
PPO Network Provider Information: 1-800-810-2583
First Advice Nurse Line: 1-866-521-2583 (anytime)
File all claims to: BlueCross BlueShield of South Carolina, Piedmont Service Center, P.O. Box 6000, Greenville, S.C. 29606-6000.

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[redacted]

Lung & Chest-64

KING 002166

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***** ALLOW 2 LINES FOR PREDNISONE

LUNG & CHEST MEDICAL ASSOCIATES
2030 North Church Place, Spartanburg South Carolina

NAME William Casey CHART # 77168

ALLERGIES NKDA

ROUTINE MEDICATION LIST:

MEDICATION	Dose & Freqency Ordered by MD	Dosee & Freqency Taken by Patient	Start Date	Stop Date
Lipitor	20mg qd			
Bextra	20mg qd			
Tramadol	50mg (2) qid			
Advair 250/50	1 p bid	not using 8/12/04.		
Combivent	1 p 3-4 x day			

Date Reviewed and Updated/ By Whom

8/12/04 KP	/	/	/	/
/	/	/	/	/
/	/	/	/	/
/	/	/	/	/

Lung & Chest-65

KING 002167

PROCEDURES-ADMISSIONS-REFERR. FLOW SHEET/ PRECERTIFICATIONS File

PATIENT NAME William Casey CHART # 77168

INSURANCE CO: BC BS PPO /TEL # 800327-3238 PRIMARY CARE MD

DATE AND INITIAL	O NAME OF PROCEDURE O ADMISSION O IN-PATIENT O REFERRAL O OUT-PATIENT	PRECERT AUTH #	AUTHORIZED BY	WHERE (BE SPECIFIC)	WHEN DATE/ TIME	D/C SUMMARY/ RESULTS TO CHART DATE/INT
7/14/04	Referrel (recalled FAXed 560-1510)			Sylvia @ 560-1512 Dr. Joseph Grace	8-3-04	10:00am
ab 7.19.05	Upper GI Series vomiting r/o			SRMC th	7.28.05	8:30am
order faxed & sent w/ pt.				npo afternight		
7.21.05 ab	Cardiac scoring			Piedmont costs $99.00	7.25.05	8.30am
7.20.05	US Gallbladder 787.03			SRMC	8am	7.28

Lung & Chest-66

PARFLOW.DOC

602

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THE WARD LAW FIRM, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 3188
SPARTANBURG, SOUTH CAROLINA 29304
(864) 582-4365

JAMES W. HUDGENS
GENE ADAMS
H. SPENCER KING
EDWARD R. COLE
CATHY HOEFER MCCABE
ROBERT E. DAVIS*
JASON M. IMHOFF

*ALSO MEMBER NORTH CAROLINA BAR

RUFUS M. WARD (1908-1988)
L. PAUL BARNES (1931-1988)

233 SOUTH PINE STREET
SPARTANBURG, S.C. 29302

FAX. NO. (864) 583-8981
E-mail: sking@wardfirm.com

Direct No. 864-591-2364

June 16, 2006

Donna,
Invoice faxed 8-14-06.
Thanks,
Maria Kimbrell CMA

Lung and Chest Medical Associates
Medical Records Custodian
2030 North Church Place
Spartanburg, SC 29303

582-6703
ext. 502

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, or 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

Lung & Chest-67

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EXHIBIT

6

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Sanford threatens special session

BY AARON GOULD SHEININ
AND JOHN O'CONNOR

Gov. Mark Sanford's threatening for lawmakers to return to Columbia next week to vote on his many expected budget vetoes.

Upset that legislators would consider waiting until after the June 13 primary, Sanford called vowed to use his power to force the General Assembly back to work next week. Whenever the House and Senate give final approval to the state budget this week, it is doubtful Sanford would be able to finish his review of the bill before lawmakers are required to adjourn at 5 p.m. Thursday. Vetoes from Sanford would stand unless the Legislature votes to override them. But if Sanford issues his vetoes after 5 p.m. Thursday — and he's promised to have them ready by Monday — the General Assembly has few options.

Lawmakers can agree to come back at a certain date for a limited amount of time to take up the governor's vetoes. Or they can opt to let Sanford's vetoes — and any new program funding — remain on hold until January. It's important Sanford said that voters in the June 13 primary know whether their House member voted with the governor or with the Legisla-



ALAN MARLER/AP

Bikers pedal their way up a stretch of the Blue Ridge Parkway near Little Switzerland, N.C. Parkway officials are stressing a share-the-road mentality for the 469-mile scenic drive.

Blue Ridge Parkway rangers stress driver-cyclist safety

Associated Press

ASHEVILLE, N.C. — The Blue Ridge Parkway may be a great way to get from place to place, but it is first and foremost a national park — devoted to recreation and relaxation.

That's the message rangers hope to impress this summer on drivers who may find themselves fuming as they come upon a slow-moving cyclist or a bulky recreational vehicle on America's Favorite Drive.

"Parkway etiquette" is a term he'd like to see used, district Ranger Dan Frances said, "were looking at [a] share the road idea ... etiquette between bicyclists, pedestrians and motor vehicle users.

"We're trying to promote a share and be nice to each other type of environment. A lot of people feel the parkway is there for them and for nobody else."

Rangers from the National Park Service, which rules the 469-mile road from Cherokee, N.C., to Waynesboro, Va., were trying to impress that attitude on parkway users at the start of the busy season on a road that sees 20 million visitors annually.

Chief Ranger John Garrison rangers would be looking in particular for drunken driving and speeding — but would also have an eye out for rule-breaking cyclists.

That means those who flout the laws than require them to stay to the right and ride single file at all times. Cyclists also must have reflective clothing and use lights in low-light conditions, such as in tunnels.

"Bicycle use is up on the parkway — it's something we like to see," Garrison said.

F 0409

Man sues lung specialists; claims surgery was botched

BY RACHELL LEONARD
Staff Writer

A 47-year-old Spartanburg County man says physicians at Upstate Surgical and Critical Care Specialists carried out a botched, unnecessary procedure in 2004 that left him with permanent brain damage.

Spartanburg attorney Chuck Thompson, who represents William Mark Casey, said the plaintiff is now disabled and can no longer work. According to the lawsuit, a procedure in June 2004 caused Casey to suffer a perforated bronchial wall, allowing air bubbles to escape from his lung into blood vessels and into his brain.

The lawsuit names Spartanburg physicians Gregg Feldman, Joseph Boscia and anesthesiologist Devendra Shantha. All of the doctors declined to comment on the litigation.

Thompson said the incidents alleged in the lawsuit occurred after Casey's employer sent him to Spartanburg Regional Medical Center to be evaluated.

Casey was having some chest pain with exertion and as a precautionary measure, they sent him to the emergency room, Thompson said.

Under the belief that Casey had inhaled a metallic object, Boscia performed a flexible bronchoscopy on the man on May 28, 2004, the lawsuit states.

On June 3 of that year, Feldman performed a rigid bron-

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EXHIBIT

7

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

COPY

****

DEPOSITION OF
H. SPENCER KING, III, ESQUIRE

****

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of H. SPENCER KING, III, ESQUIRE was taken on the 28th day of March, 2017, commencing at the hour of 10:31 a.m. in the offices of The Ward 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

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client. Correct?

A. Correct.

Q. And you did that with Drs. Feldman and Boscia?

A. My memory is yes, but I can't really -- I have a general memory of it. I can't tell you specifics or any details.

Q. Do you recall meeting with Dr. Feldman specifically about this case after it was filed?

A. I remember meeting with Dr. Feldman numerous times after the case was filed, but I can't tell you that I met with him before the answer was filed. My guess is that I did, but I can't -- I can't tell you that.

Q. Do you recall sending out subpoenas for medical records for Mr. Casey before your answer was filed?

A. I'm sure I did, but I don't recall. You said before the answer was filed?

Q. Yes.

A. I don't -- I can't answer that. It could have been before. It could have been after.

(Deposition Exhibit Numbers 99 and 100 marked)

EXAMINATION RESUMED BY MS. CHEEK:

Q. Mr. King, I'm going to hand you what's been marked as Exhibits 99 and 100.

A. Okay.

Q. Do you agree that Exhibit 99 is a cover letter sent by

your office on June 16, 2006 to Lung and Chest Medical Associates?

A. Yes.

Q. And do you agree that that's enclosing a subpoena or the cover letter states it's enclosing a subpoena?

A. Yes.

Q. And the subpoena is for medical records with respect to Mark Casey. Correct?

A. Correct.

Q. If you could look at Exhibit 100, please.

A. Okay.

Q. Would you agree that that's a cover letter from your office also dated June 16 for Casey's medical records, subpoena to Frank Gonda?

A. Yes.

Q. And you agree these letters were sent out before the date of your answer in the MMA?

A. Yes.

Q. I know it has been a long time. Do you recall receiving the records in response to those subpoenas?

A. No, I don't recall. I'm looking at the one to Lung and Chest, and it says -- there's a note, "Donna," which would have been Donna Hill, "invoice faxed 8/14/06, Thanks, Maria Kimbrell." So I would say that we did not get records from Lung and Chest until August, but,

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MR. MANN:

Let the record reflect I'm over here nodding inappropriately. So, anyway, I apologize.

MS. CHEEK:

Well, what was her name?

MR. MANN:

It was Marietta Howard, and she did pass and she is sorely missed.

EXAMINATION RESUMED BY MS. CHEEK:

Q. When you met with Dr. Feldman about the medical malpractice suit, he had an opinion very strongly about the legitimacy of that lawsuit, didn't he?

A. Yes.

Q. And what was that opinion?

A. That it was without merit.

Q. What were the bases of that opinion that he relayed to you?

A. I can't really tell you that. I don't really recall.

Q. As Dr. Feldman's assigned counsel you received multiple communications from Dr. Feldman during the medical malpractice action. Correct?

A. Yes.

Q. And that occurred from the very early stages of the lawsuit. Is that correct?

A. Yes.

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Q. And Dr. Feldman e-mailed you prolifically during that lawsuit, didn't he?

A. Yes.

Q. Did Dr. Feldman also telephone you or did he mainly correspond to you via e-mail?

A. Dr. Feldman and I had numerous telephone conversations throughout the conversation, but I think Dr. Feldman's primary means of communication was an e-mail. My primary means of communication is the telephone. So I think that I probably originated phone calls more often than he did. He orchestrated e-mails more often than I did. That's just my memory.

Q. Dr. Feldman also communicated to you very early on in the medical malpractice action his belief that Dr. Fogarty was somehow involved in that case. Correct?

A. I don't remember that. Obviously at some point in time that occurred, but I can't tell you when I became aware of Dr. Feldman's feeling that Dr. Fogarty was involved.

Q. Despite the date that you can't remember, Dr. Feldman ultimately did convey to you his belief that Dr. Fogarty was somehow behind the medical malpractice action. Correct?

A. Yes, at some point.

Q. What do you recall Dr. Feldman telling you about that belief?

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A. Ellen, I have to go back. When I got the case, my assessment was that the issue was whether or not this was an unnecessary surgical procedure that resulted in a pneumothorax. That was -- that was my capsule assessment of what the case was about. When the case turned into the plaintiff's allegation that it resulted, that the procedure conducted by Dr. Feldman of a rigid bronchoscopy resulted in a brain embolism, that changed the case in my perception. That's my first memory of Dr. Fogarty's involvement in the case and Dr. Feldman's comments about Dr. Fogarty.

Q. Now, the basis of the medical malpractice action was always the allegation that Mr. Casey had suffered an air embolism causing brain damage. Correct?

A. That was included as allegations in the complaint. I mean, I did not assess that that was the focus of the case initially.

Q. Okay. Let's just turn back to Exhibit 1, if you would, for just a minute, which, I'm sorry, should be in your exhibit notebook right there.

A. Paragraph seven?

Q. This is the complaint in the medical malpractice action.

A. Right.

Q. And would you agree with me that paragraph seven in

this complaint alleges that Mr. Casey suffered perforation of the lung that caused air embolism --

A. Yes.

Q. -- resulting loss of blood circulation --

A. Yes. Yes.

Q. -- causing permanent brain damage?

A. Yes.

Q. And so when the complaint came in, you saw that one of the allegations was the plaintiff was allegedly permanently brain injured?

A. Yes.

Q. And when you received the Lung and Chest records in your office, you were able to pair up that the air embolism theory was one contained in an office note of Dr. Fogarty. Correct?

A. That I can't tell you. My memory is that following Mr. Casey's discharge from the hospital he was released to return to work, contended that he wasn't able to do so, somehow apparently became dissatisfied with Dr. Feldman and Dr. Boscia, I think primarily Dr. Feldman, and then Dr. Fogarty started treating him. Now, where the -- where the air embolism gets involved, I can't tell you, whether it was early on as the -- again, it's alleged in the complaint, but whether or not when I first saw Dr. Fogarty's records whether it was included in that,

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I can't tell you. It well may be. Factually, I think at some point in time in my mind the case changed from a pneumothorax to an air embolism.

Q. But we'll agree that the allegation of the air embolism and brain damage is in the complaint?

A. In the complaint, yes.

Q. And we've looked this morning at July 21, 2005 office notes of Dr. Fogarty in which an air embolism theory of injury causing brain damage is contained in those notes.

A. Yes.

Q. Would you agree?

A. Yes.

Q. So when Dr. Fogarty's records are in your possession, you could have looked through them and seen that --

A. Correct.

Q. -- he was espousing this theory of damage?

A. Correct. Correct.

Q. We talked a little bit earlier about the e-mails that Dr. Feldman would send you during the medical malpractice action. Those included medical research he had performed on the underlying issues. Correct?

A. Correct.

Q. Those included his theories on Dr. Fogarty's involvement in the case. Correct?

A. Correct.
Q. Those included his idea that Dr. Fogarty was also behind a newspaper article publicizing the medical malpractice action. Correct?
A. Correct.
Q. And it was Dr. Feldman's belief that Dr. Fogarty had somehow leaked news of the medical malpractice action to the Spartanburg Herald-Journal. Correct?
A. That I can't remember.
Q. Could you please turn to tab or Exhibit 28 in your exhibit notebook?
A. Okay.
Q. This is a Spartanburg Herald-Journal article dated May 31, 2006.
A. Correct.
Q. Do you recall seeing this article before?
A. I remember it. I remember Dr. Feldman showing it to me.
Q. And Dr. Feldman also conveyed to you his belief that Dr. Fogarty had leaked this. Correct?
A. That I don't recall. I can't recall that. I remember that he was -- Dr. Feldman was quite upset as to why the Herald-Journal picked up the lawsuit, because the Herald-Journal generally doesn't pick up medical malpractice lawsuits. Again, I probably told him that,

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that, again, I didn't know why. And I cannot tell you what investigation was made calling the Herald-Journal, if there was one. I have no memory of that. Again, if we called them, they probably said, you know, newspaper is confidential and didn't tell us. So I -- you know, I go back to I don't remember any follow-up other than Dr. Feldman was quite upset about this article.

Q. And you do recall, whether you discussed it at that point, Dr. Feldman ultimately did share with you his opinion that Dr. Fogarty was behind that newspaper article, don't you?

A. I don't deny that.

Q. We had looked at the date of the filing of the medical malpractice action being --

A. 2005.

Q. -- May 2005, and then the date of this newspaper article is that same month.

A. Correct.

Q. Would you agree?

A. Yes.

Q. Is your legal assistant the same one now as you had back in --

A. No.

Q. -- when this suit---

A. No.

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believe there were e-mails that were found by Beowulf on your system?

A. That I -- that I can't tell you. I remember asking them is there likely going to be anything here since we've changed systems, and they -- my impression was they said yes, but I never had a communication with them, yes, we recovered e-mails, no, we didn't recover e-mails. I don't know. Again, whatever they -- whatever they found. What we asked them to produce was everything in -- that was in the system, in our computer related to this lawsuit.

Q. Is there a particular contact at Beowulf with whom your firm deals, or is it just the company?

A. You would have to -- I'd have to ask Suzanne Byers, who is our office manager, who -- who our primary contact is with Beowulf. I don't deal with that. When I have an issue I call Suzanne.

Q. What's Suzanne's position here?

A. She's the office manager.

Q. Was she the person who would have -- strike that. Could you flip, please, to Exhibit 50 in your notebook?

A. Okay.

Q. You agree this is an October 10, 2007 letter --

A. Yes.

Q. -- from you to Judy Wilbanks --

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A. Yes.
Q. -- at the JUA? Could you read the body of that e-mail?
A. This is to Judy Wilbanks, Claims Specialist with JUA, dated October 10, 2007. "Just for your information, I am copying you on some, but not all of the e-mails that Dr. Feldman has sent me attempting to direct this litigation, most of which deal with ancillary issues and minutiae such as the article in the Herald-Journal, lawsuits against competitors, et cetera, et cetera. I have directed him to seek legal advice of others, parentheses, he has his own attorney, end parens, 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 to leave you this information."
Q. The first line of this references e-mails that Dr. Feldman has sent you. Do you know whether those would have been a hard copy attachment to Judy or via e-mail? Do you have any idea?
A. My guess is that those -- that those were hard copies. Well, it says I am copying -- well, I am copying you on some. That to me says that we -- we hard-copied them from the computer.
Q. And the substance of these e-mails or the chosen few, I guess, you would agree that you had been discussing, let's see, Dr. Feldman's attempts to direct this

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litigation. What are you referencing there? What behavior by Dr. Feldman are you describing to Judy?

A. Dr. Feldman felt that counterclaims against or suits against Chuck Thompson, against Dr. Fogarty, and, I'm not sure, others were warranted. I didn't agree. I mean, it is not unusual at all that the first time I meet with a physician he tells me he wants to sue, he wants to sue the lawyer, he wants to sue, sue the plaintiff, he wants to sue everybody in sight, and I say, look, we got to get done with this lawsuit, till this lawsuit is over you can't sue anybody. And then I at some point in time if somebody pursues it, I say, I'm a defense lawyer. I mean, I don't -- I don't sue. I seldom sue anybody. So, you know, if you -- if you want to bring a lawsuit after this case is over, you will need to get somebody other than me, and that's -- and that's what I'm saying here I think Dr. Feldman wanted, thought that I should pursue claims against others, that there were other issues, and my focus on this case was to defend the suit by Mark Casey.

Q. It also references Dr. Feldman e-mailing you regarding minutiae such as the article in the Herald-Journal. That was the article that we had looked at previously. Correct?

A. Right.

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Q. And it was also Dr. Feldman's belief that Dr. Fogarty had leaked that to the media. Correct?

A. That I -- that I can't tell you.

Q. And then you reference lawsuits against competitors, et cetera, et cetera. What did the -- well, October 10, 2007. This is quite some time since the medical malpractice action was initially filed.

A. Right.

Q. And Dr. Feldman is persisting to you that he wants to sue Mr. Thompson and Dr. Fogarty. Correct?

A. Correct.

Q. And that not only started early, but it persisted during the entire medical malpractice suit, didn't it?

A. From time to time.

Q. And you had mentioned that generally speaking you would tell doctors who are defendants and feel wronged and want to sue that they have to wait until after the medical malpractice action is concluded before they do. Is that correct?

A. Or they can also -- if they disagree with that advice, they can seek somebody else's opinion, but that's not my role.

Q. And what is your opinion that they have to wait till the medical malpractice action suit is completed before pursuing that additional lawsuit?

A. Well, I don't know how you could make a claim for a suit being wrongfully filed against you until you have prevailed in that lawsuit.

Q. Does the JUA have a similar policy or opinion or even insurance provision that relates to the filing of countersuits against or in relation to pending malpractice actions? That's a bad question.

A. I can't -- I can't tell you they do. I mean, to my -- to my knowledge, it's never been discussed. I mean, I have never discussed it. This letter to Ms. Wilbanks is probably -- is probably -- I can't remember -- I can't remember another case that there has been an issue where it has been raised by the client more than on one occasion. And when I generally say that's for another day, I don't hear about it again.

Q. And, again, that was not the case with Dr. Feldman?

A. No.

Q. If you could flip back one exhibit to Number 49, please. You'll see this is a September 4, 2007 report from you to Judy Wilbanks --

A. Right.

Q. -- in the underlying medical malpractice action?

A. Yes.

Q. If I could refer you to the second page of that letter.

A. Yes.

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Q. I'm looking at the fifth full paragraph on that page, please, beginning with, "He and his sister."

A. "When he and his sister did not get satisfactory answer from the insurers they visited the competitive pulmonary group, Lung and Chest. Dr. Fogarty of Lung and Chest and your insured Dr. Feldman are bitter rivals that have been involved in litigation. Apparently both believe that every problem in their lives stem from some action of the other. Dr. Fogarty -- Dr. Feldman in this action believes Dr. Fogarty supported Casey in this litigation."

Q. That accurately summarizes Dr. Feldman's beliefs as he conveyed them to you. Correct?

A. Correct.

Q. What causes of action did Dr. Feldman believe he possessed against Dr. Fogarty and Mr. Thompson?

A. I have no idea.

Q. Did he ever discuss with you his belief that he had a conspiracy claim against them?

A. Again, you'd have to -- you'd have to show me a document. Ellen, that wasn't my focus. I mean, again, my focus is defend lawsuits, and -- and I'm not -- again, I'm not -- I don't do plaintiff work, and so if he said conspiracy to me or bad faith or made any characteristics of a cause of action, it would not --

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it would not affect what I did. And any advice I gave him would be you would have to talk to somebody other than me.

Q. During the medical malpractice action Dr. Feldman did have personal counsel. Correct?

A. He did, yes.

Q. And that was Mr. Mann. Correct?

A. Yes.

Q. Did Attorney Mann represent Dr. Feldman as his personal counsel from the beginning of the medical malpractice action?

A. My memory is yes.

Q. Did Attorney Mann ever speak to you about Dr. Feldman's desire to file lawsuits against Dr. Fogarty and Mr. Thompson?

A. I'm sure he did.

Q. Do you recall the substance of any of those conversations?

A. Not really.

Q. Why are you sure that you had those conversations with Mr. Mann?

A. I just do. I mean, I remember. I remember the -- I just remember that that issue was included in conversation from time to time that we had during the course of this litigation.

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Q. You made it clear to Dr. Feldman and Attorney Mann that your opinion was that any lawsuit against Dr. Fogarty and Mr. Thompson would have to be pursued after the end of the medical malpractice action. Correct?

A. Correct.

Q. And Dr. Feldman ultimately did just that. Correct? He waited until after the medical malpractice action was concluded before filing this lawsuit?

A. Yes.

Q. During the medical malpractice action, Dr. Feldman through Attorney Mann sued one of Mr. Casey's expert witnesses. Do you recall that?

A. Not that I recall. I don't think so.

Q. Do you recall a lawsuit being filed by Attorney Mann in Florida against a Dr. Jantz?

A. Vaguely.

Q. Do you recall the JUA's displeasure at that lawsuit being filed?

A. No, I don't, because I didn't even remember -- I have a vague memory that that case may have been filed. Again, I wasn't involved in it. I didn't do anything involved in it. I wouldn't even know that JUA knew.

Q. Do you recall, although I think I know the answer to this question, do you recall Billy Gunn's and your securing from Attorney Mann an agreement to withdraw

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Q. In your notebook, 23.
A. All right.
Q. If you can flip to -- and let's just use those reverse Bates stamp numbers, the 1440 at Thompson 32163.
A. Okay, I'm confused.
Q. I'm sorry for being confusing. Let's set this 95 aside.
A. Okay.
Q. Let's look at Exhibit 23.
A. Okay.
Q. If you will flip to page Thompson 32163?
A. Okay.
Q. Do you agree that the Thompson 32163 through 32165 is an office note dated July 21, 2005?
A. Yes.
Q. This is one that you were looking at earlier with Attorney Mann?
A. Yes.
Q. And is the one on which Dr. Fogarty was deposed?
A. Okay.
Q. Do you agree? Or do you want to look back at the one that's marked for his deposition, Dr. Fogarty's, to confirm?
A. Yeah, let me look again. Let me see -- let's see the one that was marked in Dr. Fogarty's deposition.

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Q. The easy way to do that is to look at---
A. Let me look back in Dr. Fogarty's deposition. What is this in Fogarty? In his deposition, what is that?
Q. Number 20 to it?
MR. MANN:
It's 20 to that deposition, but hold on and I can give you the Bates number. That should be Thompson 18211.
MS. CHEEK:
Thank you.
EXAMINATION RESUMED BY MS. CHEEK:
A. Okay. It appears to be the same, yeah.
Q. And if I represent to you that medical records that were Bates stamped manually in reverse order were produced by Mr. Thompson during the medical malpractice action, would you agree that the July 21 note that's included in your Exhibit Number 23 and on which Dr. Fogarty was deposed is that note?
A. Yes.
Q. Thank you. Let's turn to Exhibit 95 again, please. I know we have gone over this with Attorney Mann at length today, but if you could turn, the first or second page of this exhibit is a document entitled Lung and Chest Medical Summary. If you could look at that, please.

A. Yes.
Q. Is that medical summary that follows that first page --
A. Yes.
Q. -- one that somebody in your office prepared?
A. Yes.
Q. Looking at the page that says Lung and Chest Medical Summary, it says, "Medical records from Lung and Chest Medical Associates received in answer to subpoena." Do you see that?
A. Yes.
Q. We had looked earlier at Exhibit 99 at a subpoena that you issued to Lung and Chest Medical Associates.
A. Okay.
Q. Can I infer that these are the records, this is a summary based on the records you received in response to that subpoena?
A. It appears that it is. The only thing I'm concerned about that I can't answer is because it starts off as Wilson Smith is the provider and switches over to Charlie Fogarty, and I went back and looked at this when I got the documents, and I don't understand that.
Q. Do you recall Dr. Smith's having seen Mr. Casey initially when Casey went to Lung and Chest and then Dr. Fogarty's taking over his care?
A. I can't answer that. I don't know.

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MR. MANN:

Spencer, can we go off the record one second?

MS. CHEEK:

Okay.

(Off the Record; 2:54 -- 2:58 p.m.)

MS. CHEEK:

The parties are going to stipulate on the record that the documents that are Exhibit 23 Bates labeled Thompson 32157 through 32232 are documents that Chuck Thompson delivered to Mr. Gunn on or about June 20, 2006 and are documents that were also delivered to Mr. King in the medical malpractice action on or before July 7, 2006.

MR. MANN:

That is so stipulated.

MS. CHEEK:

I appreciate that.

MR. MANN:

Mr. King, for your benefit, we're just trying to make this easier.

WITNESS:

Thank you.

MR. MANN:

As opposed to you having to call Ms. Higgins or Ms. Hill or anyone else to verify when or if records

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hit your file, because we all feel that that is when those records hit the various files. And so we've agreed upon that just to make it easier for everyone involved.

WITNESS:

Fine with me.

MR. MANN:

Okay. Thank you, Mr. King.

EXAMINATION RESUMED BY MS. CHEEK:

Q. So that is with respect to Exhibit 23, and we were looking at Exhibit 95.

A. We're back in which number?

Q. 95 would be today. Let's go back off the record for a second.

MR. MANN:

Yeah, off the record.

(Off the Record; 3:01 -- 3:04 p.m.)

MS. CHEEK:

We have two more stipulations as to documents. The first or actually the second stipulation of the day is that the documents that have been marked as Exhibit 95, 95 includes a summary of documents, but the documents themselves which are Bates labeled Lung and Chest 1 through Lung and Chest 67 appears Kings 2103 to 2169. The stipulation of the parties is that these are

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records that Mr. King received pursuant to subpoena issued to Lung and Chest dated June 16, 2006, and that subpoena is marked as Exhibit 99 to this litigation. The stipulation is further that these documents were received by Attorney King on or before August 14, 2006.

MR. MANN:

So stipulated.

MR. HENRIKSON:

What's the date, the date of stipulated receipt?

MR. MANN:

8/14.

MS. CHEEK:

August 14, 2006. The third---

MR. MANN:

Matt, that's good with your stipulation, too?

MR. HENRIKSON:

Yes, I agree with that.

MR. MANN:

Thank you, sir.

MS. CHEEK:

The third stipulation is that -- we need to mark this.

(Deposition Exhibit Number 102 marked)

MS. CHEEK:

The medical records contained within Exhibit 102,

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which exhibit begins again with a medical summary and contains behind it medical records Bates labeled King 1876 to King 2050 are medical records that Attorney King received in response to a subpoena dated June 16, 2006 in the underlying lawsuit, Exhibit 100 in this suit, and that the date by which those records were received is no later than July 3, 2006.

MR. MANN:

So stipulated.

MR. HENRIKSON:

So stipulated.

MR. MANN:

And off the record.

(Off the Record; 3:07 -- 3:07 p.m.)

EXAMINATION RESUMED BY MS. CHEEK:

Q. I think finally we are going to return to Exhibit 95. You and I were discussing before that stipulation break---

A. I got away from that. Are we talking about---

Q. We're talking about --

A. Exhibit 83?

Q. -- Exhibit 95. This is your Lung and Chest.

A. Okay.

Q. And I'd asked whether you recalled whether -- let me stipulate to you that when Mr. Casey first began

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treating at Lung and Chest after leaving the Upstate Lung practice that he was seen by Wilson Smith.

A. Okay.

Q. That later his treating physician was changed to Dr. Fogarty. And my question to you was whether in Exhibit 95, the Lung and Chest Medical Summary, that we see in King 2091 through 2102 is something your office or your assistant prepared based on the records that you received from Lung and Chest in response to your subpoena.

A. That appears to be correct.

Q. Could you please turn to King 2145?

A. Okay.

Q. This is the July 21, 2005 office note that you were discussing earlier today with Attorney Mann?

A. Right.

Q. The paragraph on the third page of that note having language that includes air emboli have been reported as a common complication when there's laser perforation. Do you remember discussing that?

A. Right.

Q. Based on the parties' stipulation, you will agree that these records, including that note, were ones that your law firm had received and had in its possession no later than August 14, 2006. Correct?

A. Correct, yes.
Q. If I could ask you to pick up Exhibit 102, please.
A. Okay.
Q. The first number of pages in this exhibit appear to be a medical summary that your office prepared based on records received in response to your subpoena to Dr. Gonda. Correct?
A. Correct.
Q. If I could get you to flip to King 1945, please.
A. Okay.
Q. I'm sorry. I had my page wrong, Mr. King. I'd actually like to refer you to King 1947. It's a few pages back.
A. Okay.
Q. Do you see that's a July 21, 2005 --
A. Yes.
Q. -- office note?
A. Yes.
Q. You'll see on the third page of this that the paragraph you had looked at earlier with Attorney Mann is the one that says air emboli have been reported as a complication of laser bronchoscopy even without perforation of the endotracheal tree?
A. Yes.
Q. So based on your review of this and the parties'

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stipulation, you would agree that this version of the July 21 note was one that you had in your possession no later than July 3, 2006?

A. Based upon your stipulation, yes.

Q. I see in the King 1947 through page 1949 there's actually a highlighted bracket around the paragraph that we've been looking at. Do you see that?

A. On King 1949?

Q. Yes.

A. No, I don't.

Q. You see it's in yellow here to the side?

A. Oh. Oh. Oh, yes.

Q. And I'm just going to refer back to your -- I don't know how we filed these records in this original. Do you have any reason to think that this highlighting was not reflected in your original copy of this?

A. No.

MR. MANN:

Let's just stipulate. We'll stipulate that it was there.

MS. CHEEK:

We're just going to stipulate it's there?

MR. MANN:

Yeah. I'm sure it was, because I asked the copy service to copy anything in color that had color.

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EXAMINATION RESUMED BY MS. CHEEK:

Q. Mr. King, earlier today you had talked with Attorney Mann about differences between and among the three notes that we've been discussing. Correct?

A. Yes. Yes.

Q. And you picked up those differences and stated what they were based on your having read the documents. Correct?

A. Correct.

Q. Since the documents were in your possession in the medical malpractice case, you could have engaged in that same exercise during the medical malpractice action. Correct?

A. I think I saw three versions. I think I identified two versions, the one that is marked as an exhibit in Dr. Feldman's deposition, then the one that we're just now looking at, which I said I don't -- I don't recall why I didn't question, that obviously I had -- the records showed that I had this version, and I don't recall why I didn't -- I don't believe that I questioned Dr. Fogarty on the difference between those two documents. I don't think I did. The third one he showed me I don't think I -- I said I didn't think I had seen that one, and I haven't seen it again.

Q. Okay. We have -- and I realize this was disjointed and

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interrupted by some station breaks, but all three documents that we've looked at, we've established that there's one contained in Exhibit 23 that has the undoubtedly language, it's unsigned, that these were ones that Chuck Thompson had provided to Mr. Gunn --

A. Right.

Q. -- and you during the litigation.

A. Yes.

Q. That's the one that ended up being in Dr. Fogarty's deposition. We've then established that in Exhibit 95, which records you received by the summer of 2006, that the second version of the note was contained in those records?

A. Correct.

Q. And now we've established that in Exhibit 102, that the third version of the note that we have looked at this morning is contained in the medical records that you had received from Dr. Gonda by, again, the summer of 2006?

A. I haven't looked at Dr. Gonda's records. So I don't know that that's in there.

Q. Okay.

A. I mean, if you tell me it is, it is.

Q. Well, let's look at Exhibit 102 then and take a look at Dr. Gonda's records. Exhibit 102 is preceded by the

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medical summary that your office did of the records received from Dr. Gonda's office?

A. Right.

Q. And then at King 1947 through 1949 appears the third note?

A. Okay. Okay. That's the one I said I did not have any memory of seeing. Again, it's in my -- it's Bated as being one that was in Dr. Gonda's records, and I don't deny that.

Q. And so if by the summer of 2006 you had in your file all three of the note versions we've discussed today, you would have been able to engage in an exercise to compare them. Correct?

A. Yes.

Q. And you also would have been able to question Dr. Fogarty on any discrepancies or differences by the time he was deposed in December 2008. Correct?

A. True.

Q. When Dr. Fogarty was deposed and brought his records into this room that you recall, were the records in their entirety attached to and made an exhibit to his deposition?

A. I would have to look. I don't -- I don't recall. I don't -- I don't recall. I mean, we can look at -- we can look at his deposition and it would tell us.

Q. Gosh, I hate to make you read his whole deposition.
A. Well, it would be -- the court reporter should have marked it.
Q. I don't think she's described---
A. I mean, she -- Thompson 17689 is a list of exhibits.
Q. So let me ask for your recollection. Do you remember without going through each one of these exhibits that looks like there's 21 defendant exhibits, four plaintiff exhibits---
A. Well, they're all attached. So no, they show that the entire file was not marked.
Q. So Dr. Fogarty -- and just to make sure I'm clear -- brought documents to his deposition that weren't made an exhibit to his deposition?
A. That's what appears, yes. I'm looking and this appears to be -- I'm looking at the court reporter's list, and she shows that there were -- as you said, there were 21 defendant's exhibits, there are 21 exhibits attached to this deposition, and there are four plaintiff exhibits. So I think -- so I think the answer is that the entire file was not marked as an exhibit.
Q. Do you recall having reviewed either before or during Dr. Fogarty's deposition in that medical malpractice action the entirety of the file that he brought with him?

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A. No.
Q. Is it possible then that there are documents that could have been in Dr. Fogarty's file that he brought to the deposition that are not attached as exhibits to the deposition?
A. Yes.
MR. HENRIKSON:
It said they went off the record to look at all the records that were brought in. Then they went back on the record and asked questions.
EXAMINATION RESUMED BY MS. CHEEK:
Q. Okay. I appreciate Attorney Henrikson's help. You've got Dr. Fogarty's deposition in front of you. If I can refer you to page 24 of the actual deposition. I'll let you read that to yourself.
A. Okay.
Q. And see if that refreshes your recollection according to what---
A. It looks like that we took a -- we went off the record at 10:45 to go through the box, which was a box of records that Dr. Fogarty produced, and then we came back on the record at 11:02.
Q. Can I ask you -- are you finished with your answer?
A. Yeah.
Q. Let me ask you to turn to Exhibit 9 in your materials,

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9 in your exhibit notebook, please. I'm going to ask you to read this e-mail to yourself. It's from Greg Feldman dated February 16, 2008.

A. Right.

Q. To you and Attorney Mann.

A. Right. "Air embolism -- air emboli have been reported as a common complication of laser bronchoscopy even without perforation of the endotracheal tree with resultant leakage of air into extra pleural, vascular and mediastinal space. Although he is fortunate not to have such gross mental deficit, he may well have permanent neurological deficit, which indicates taking medications such as Strattera. Spencer, above you have quoted from Dr. Fogarty's record. I cannot find this in Lung and Chest records your paralegals provided. We are meeting on Tuesday, and I have a series of astonishing statements but not this one. Did you give me all Dr. Fogarty's records? Please locate source of the above statement."

Q. Do you recall receiving this e-mail from Dr. Feldman?

A. I do. And I can't -- I can't remember what was done, but I remember -- I remember this e-mail.

Q. Do you recall other e-mails from Dr. Feldman during the medical malpractice action where he's noting differences among Dr. Fogarty's July 21 notes?

A. I do not.
Q. Do you have a refreshed recollection after reading this e-mail of what records it was that Dr. Feldman was contending Dr. Fogarty was hiding during the medical malpractice case?
A. I do not. I think this -- I think this refers to this letter that we've been -- we've been talking about this morning, but I can't -- I can't remember what I did, and I can't remember that that was an issue. Again, I'm looking at the date. I think this was after Dr. Fogarty's deposition, wasn't it?
Q. This was a February 16, 2008 e-mail. Dr. Fogarty was deposed in December of 2008.
A. Okay. So I had -- yeah, I had this before. I can't -- I can't explain that. So I can't explain the three copies. I can't explain why I didn't question Dr. Fogarty about the three copies.
Q. Were you ever asked by Dr. Feldman or Attorney Mann to refrain from asking Dr. Fogarty those questions?
A. No.
Q. Do you recall a defense strategy that included not asking Dr. Fogarty --
A. No.
Q. -- those questions? Did Dr. Feldman ever tell you that he believed the medical malpractice action was related

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to a business lawsuit that he was maintaining against Dr. Fogarty?

A. No.

Q. If I could get you to turn to Exhibit 35 in your exhibit notebook, please. Would you agree this is in the Casey lawsuit?

A. It is.

Q. Plaintiff's Supplemental Responses to Interrogatories Served on Defendants and that the date it was served was August 31, 2007

A. Yes.

Q. If you can look on the second page, would you agree that within these discovery responses Dr. Fogarty is identified as an expert?

A. Yes.

MS. CHEEK:

Let's take a break for just a minute, please.

MR. MANN:

Sure.

(Off the Record; 3:29 -- 3:36 p.m.)

EXAMINATION RESUMED BY MS. CHEEK:

Q. Mr. King, we are drawing toward the end here. The medical records that your office collected and obtained during the medical malpractice action, did you provide copies of those to Dr. Feldman?

A. Obviously I provided some to him. The intent was to provide him with all medical records we procured. I can't say that that was accomplished.

Q. And Dr. Feldman had a great interest in the litigation. Correct?

A. Yes. Yes.

Q. And I've seen it said that he went through medical records and deposition testimony with a fine-toothed comb. Would you agree or disagree with that?

A. I would basically agree.

MR. MANN:

Ellen, we can stipulate to that. We can go three or four steps beyond that if we need to on the stipulation.

MS. CHEEK:

I understand.

EXAMINATION RESUMED BY MS. CHEEK:

Q. Your assessment of the medical malpractice case liability-wise was reported at length in your reports to the JUA. Would you agree?

A. Yes.

Q. And the reports that I've seen that you made to Ms. Wilbanks beginning early on in the medical malpractice case was that you believed the case had legal and medical merit. Would you agree with that?

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CERTIFICATE OF REPORTER

I, ROSALIND POOLE WALTERS, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 113 pages represents a true and accurate transcript of the deposition of H. SPENCER KING, III, ESQUIRE, which was taken by me on the 28th day of March, 2017.

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: 4/29/26

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EXHIBIT

8

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STATE OF FLORIDA	)	IN THE CIRCUIT COURT OF THE EIGHT JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA
GREGORY J. FELDMAN, M.D.; JOSEPH A. BOSCIA III, M.D.; AND UPSTATE LUNG & CRITICAL SPECIALISTS, P.C.,	)	
Plaintiffs,	)	**COMPLAINT (Jury Trial Demanded)**
v.	)	
MICHAEL A. JANTZ, M.D.,	)	
Defendant.	)	

Now comes the Plaintiffs complaining of Defendant and allege:

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

2. Defendant is, upon information and belief, a citizen of County of Alachua, State of Florida.

3. Venue and jurisdiction are vested in the Circuit Court of the Eight Judicial Circuit in and for Alachua County, Florida.

DAMAGES AS A RESULT OF PERJURY

4. That defendant, Michael A. Jantz, M.D., during this time and hereafter mentioned was, and still is, a physician in the County of Alachua, State of Florida.

5. That plaintiff, Gregory J. Feldman, M.D. during this time and hereafter mentioned was, and still is, a physician in the County of Spartanburg, State of South Carolina.

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6. That plaintiff, Joseph A. Boscia, III, M.D. during this time and hereafter mentioned was, and still is, a physician in the County of Spartanburg, State of South Carolina.

7. That plaintiff, Upstate Lung & Critical Care Specialists, P.C. during this time and hereafter mentioned was, and still is, a Professional Corporation duly organized within, State of South Carolina and provides medical services.

8. This cause of action arises from facts and circumstances involving a medical malpractice lawsuit pending within the Court of Common Pleas for the Seventh Judicial Circuit in the State of South Carolina, County of Spartanburg, captioned William Mark Casey, Plaintiff vs. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., and Upstate Lung and Critical Care Specialists, PC., C.A. No.: 2006-CP-42-1728.

9. The defendant is a testifying expert witness on behalf of the plaintiff in the South Carolina medical malpractice case.

10. On January 8, 2009, the defendant's videotaped deposition (hereinafter "the deposition.") in the South Carolina medical malpractice lawsuit was taken at the University of Florida Medical Center, 1600 SW Archer Road, Room M-452, Gainesville, Florida.

11. This deposition was recorded by Patijo Brown, CSR, RPR, FPR, before who the defendant appeared and was sworn under oath. Attached as Exhibit A is the Certificate of Oath.

12. Patijo Brown is a Certified Shorthand Reporter, a Registered Professional Reporter, a Florida Professional Reporter and Notary Public for the State of Florida. Attached as Exhibit B is the Certification.

13. During the deposition, the defendant was asked if he was board certified in pulmonary medicine. Attached as Exhibit C is an excerpt from the deposition.

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14. The defendant represented that he was board certified in pulmonary medicine.

15. Additionally, during the deposition, the defendant was asked if his CV was current and up to date. See Exhibit C.

16. The defendant represented that his CV was current and up to date. Attached as Exhibit D is an excerpt from Defendant's CV.

17. Following the deposition, investigation revealed that the defendant was not board certified in pulmonary medicine at the time of the deposition.

18. The defendant's response respecting his board certification in pulmonary medicine was under oath and in an official proceeding.

19. The defendant's response respecting his board certification was a false statement.

20. The defendant knew his response respecting his board certification was not true.

21. The defendant's response respecting his CV was under oath and in an official proceeding.

22. The defendant's response respecting his CV was a false statement.

23. The defendant knew his response respecting his CV was not true.

24. That defendant, contriving and intending to injure the plaintiffs, by making material false statements about defendant's qualifications as an expert witness, resulting in damages to the plaintiffs through additional litigation expenses, prejudice to their defense in the South Carolina medical malpractice lawsuit and further damages to be ascertained during this lawsuit.

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WHEREFORE, plaintiff prays that this court enter judgment:

a. Against the defendant for actual and compensatory damages in an amount to be determined by the jury;

b. Requiring defendant to halt relaying materially false and untrue statements concerning his qualifications; 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.

By:_____

F. Milton Mann, Jr. (FL Bar #0114014)
Attorney for Plaintiffs
1089 Boiling Springs Rd.
Spartanburg, South Carolina 29303
(864) 208-0359 - Telephone
(864) 208-0233 - Telefax

October 5, 2009.
Spartanburg, South Carolina

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Donna Laughridge

From: Spencer King <sking@wardfirm.com>
Sent: Monday, September 27, 2010 10:13 AM
To: Billy Gunn
Subject: RE: CASEY v FELDMAN- order denying plaintiffs Motion for New Trial

Please check to make sure my additions as to Feldman included

---

From: Billy Gunn [mailto:BGunn@holcombebomar.com]
Sent: Monday, September 27, 2010 10:07 AM
To: Donna Hill; Donna Laughridge
Cc: Spencer King
Subject: RE: CASEY v FELDMAN- order denying plaintiffs Motion for New Trial

Donna, Donna Laughridge is taking care of it. Thanks however
BG

William U Gunn
HOLCOMBE BOMAR PA
Attorneys at Law
PO Box 1897
Spartanburg SC 29304
864.594.5301 (direct)
864.316.6255 (mobile)
864.585.3844 (fax)
bgunn@holcombebomar.com

From: Donna Hill [mailto:dhill@wardfirm.com]
Sent: Monday, September 27, 2010 10:05 AM
To: Billy Gunn; Donna Laughridge
Cc: Spencer King
Subject: RE: CASEY v FELDMAN- order denying plaintiffs Motion for New Trial

Yes. I'll copy you on my e-mail to him

From: Billy Gunn [mailto:BGunn@holcombebomar.com]
Sent: Monday, September 27, 2010 10:02 AM
To: Donna Laughridge
Cc: Donna Hill; Spencer King
Subject: CASEY v FELDMAN- order denying plaintiffs Motion for New Trial

Donna, this am I returned a call to Reed who is now Judge Couch's law clerk. Reed says that several days ago Judge Couch signed our proposed order but in the filing process the clerks office lost it. The judge doesn't want us to wait any longer on an order so he is going to sign

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Donna Laughridge

From:	Billy Gunn
Sent:	Friday, October 9, 2009 11:33 AM
To:	Andrew Lindemann
Cc:	Spencer King
Subject:	RE: CASEY v FELDMAN-tel con with M Mann

I think at this point you need not call Milton although if you think you should it will not hurt. Milton expressed that he would put the brakes on the Fla litigation immediately. We reaffirmed Spencer's agreement with Milton from yesterday that there will be no filings for sanctions, contempt etc in the underlying lawsuit without our agreement and acquiescence thereto.

The issue remains as to whether or not Dr Feldman will communicate in a reasonable fashion going forward and will do his best to be stoic and behave in a professional manner in the presence of the Court and a jury during trial. It will be a challenge for him given his personality.

If the Fla lawsuit is halted, it takes the urgency out of things and Judy can make a reasonable decision as to whether it ought be settled and if so for how much. Calming DR Feldman down and keeping Dr Feldman under control will permit Spencer and I to focus on the issue at hand which is doing our best at defending the medical malpractice suit in deference to the rights of both JUA and its insureds. Thats what we want to do and where our desires rest.

Thanks so much for your help and wise counsel Andrew.

BG

From: Andrew Lindemann [mailto:alindemann@DML-LAW.com]
Sent: Friday, October 09, 2009 11:19 AM
To: Billy Gunn
Cc: Spencer King
Subject: RE: CASEY v FELDMAN-tel con with M Mann

Billy:

I spoke to Judy this morning. I could not get Tom. She is looking to get additional authority to try to resolve the case. I hope to speak with Tom or Tim later today.

I was about to call Milton and express my two cents about how unwise or more appropriately stupid this Florida lawsuit is. I assume from your email that that is not necessary at this point. If I am incorrect, let me know.

Andrew

From: Billy Gunn [mailto:BGunn@holcombebomar.com]
Sent: Friday, October 09, 2009 11:06 AM
To: Andrew Lindemann
Cc: Spencer King; dhill@wardfirm.com
Subject: CASEY v FELDMAN-tel con with M Mann

Andrew,
Spencer and I just had a long and brutally honest discussion with Milton. He is putting the brakes on the Fla lawsuit and has pledged cooperation. Issues probably remain but perhaps the Fla thing will be minimized.
Billy

William U Gunn
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Spartanburg SC 29307
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bgunn@holcombebomar.com

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Donna Laughridge

From:	Billy Gunn
Sent:	Friday, April 30, 2010 10:28 AM
To:	Donna Laughridge
Cc:	'dhill@wardfirm.com'
Subject:	CASEY

Donna, I have forwarded you a passel of emails from Greg Feldman, some of which are useful. He has been through the testimony endlessly and with a fine tooth comb so I want to separate the stuff out to see what we can really use.
Please print them out if you would. Then categorize them as best you can as follows, in stacks:
Dr Fogarty
Dr Jantz
Both Fogarty and Jantz
Cerebral embolism theory
Miscellaneous
Ethics-Chuck
I think that will just about cover it...on any which don't fit into a category, put them in miscellaneous and we'll do the best we can with them...when we finish we will make a copy for Spencer and one for Milton
Thanks
BG

William U Gunn
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Attorneys at Law
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864.316.6255 (mobile)
864.585.3844 (fax)
bgunn@holcombebomar.com

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EXHIBIT

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE
SEVENTH JUDICIAL CIRCUIT

S. Carolina Pharmaceutical Research, Inc.,

Plaintiff,

v.

Charles M. Fogarty, M.D.;

Defendant.

SUMMONS

2005-CP-42- 1085

2005 APR 12 PM 1:30
MARC KITCHENS

TO: CHARLES M. FOGARTY, M.D.:

YOU ARE HEREBY SUMMONED and required to answer the Complaint, Plaintiff's Initial Interrogatories, Plaintiff's Initial Request for Production of Documents, in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their office at P. O. Box 1655, 200 Library Street, Spartanburg, South Carolina 29304, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

PERRIN, MANN, PATTERSON, PRESSLEY & MANN, L.L.P.

By: _____
E. Milton Mann, Jr. (SC Bar #68250)
Attorneys for Plaintiff
Post Office Box 1655
Spartanburg, South Carolina 29304
(864) 582-5461 - Telephone
(864) 583-5235 - Telefax

DEFENDANT'S EXHIBIT 24 Feldman

April 12, 2005.

05/05/2005 10:35 HOLCOMBE, BOMAR, GUNN, & BRADFORD → 95964710 NO. 882 P.02

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

MAY 5 2005

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
S. Carolina Pharmaceutical Research, Inc., Plaintiff, v. Charles M. Fogarty, M.D., Defendant.	**COMPLAINT** **(Jury Trial Demanded)** 2005-CP-42-1085

2005 APR 12 PM 1:30
MARC KITCHENS

Now comes the Plaintiff complaining of Defendant and alleges:

1. That Plaintiff is a corporation duly organized and existing under the laws of the State of South Carolina, which does business in the County of Spartanburg, State of South Carolina.

2. That the Defendant is, upon information and belief, a citizen of the County of Spartanburg, State of South Carolina.

3. Venue and jurisdiction are vested in the Court of Common Pleas in and for Spartanburg County, South Carolina.

COUNT I: INTENTIONAL INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS

4. Since September 1, 2004, plaintiff has done business as a pharmaceutical research company under a various contracts whereby plaintiff would conduct research for certain pharmaceutical companies and whereby plaintiff is entitled to share in the profits to be received on account of contracts.

5. On or about March 23, 2005, the defendant, Charles M. Fogarty, M.D., acting on his own behalf, well knowing that plaintiff was entitled to share in the profit

05/05/2005 10:35 HOLCOME, BOMAR, GUNN, & BRADFORD - 8596471 NO. 885 P021

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

MAY 5 2005

to be received by them on account of any contract with certain pharmaceutical companies, stated to certain pharmaceutical companies material misrepresentations and had admitted the impossibility of performing according to its terms the contract between defendant and certain pharmaceutical companies, and wherein defendant purported to cancel the contract with said pharmaceutical companies. The defendant intended to persuade certain pharmaceutical companies that plaintiff, by material misrepresentations and by admitting the impossibility of performance of the contract between certain pharmaceutical companies and defendant, to cancel forthcoming contracts.

6. These spoken statements by the defendant were without legal justification and malicious, and defendant knew that the statements were not true, or, if in any respect true, were not a sufficient cause for cancellation of the contract for pharmaceutical research and not a sufficient cause for procuring certain pharmaceutical companies to break their contract with plaintiff.

7. As a result of the conduct of the defendant, plaintiff has lost certain contracts with said pharmaceutical companies.

WHEREFORE, on Count I, plaintiff prays that this Court enter judgment:

a. Requiring defendant to halt in any interference with pharmaceutical companies contracts with plaintiff; and

b. Against the defendant for actual and compensatory 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.

05/05/2005 10:35 HOLCOME, BOMAR, GUNN, & BRADFORD → 9596471@ NO.882 P022

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MAY 5 2005

COUNT II: DEFAMATION/SLANDER/LIBEL

8. The defendant, Charles M. Fogarty, M.D., during this time and hereafter mentioned was, and still is, a physician in the County of Spartanburg, State of South Carolina.

9. The plaintiff was, and still is, a pharmaceutical research company, and has been since September 1, 2004, and until the commission of the grievances hereinafter set forth, was not suspected of conduct, practices, or prejudice towards his constituents clients and/or patients.

10. The defendant has made false statements concerning the plaintiff, its employees and shareholders.

11. The defendant, contriving and intending to injure plaintiff and deprive the corporation of the respect, confidence and esteem peculiarly essential to plaintiff's profession and office, and contriving and intending to deprive plaintiff of their good name, reputation and the esteem of his constituents and clients, and to bring him into disastrous scandal, ridicule, and professional disrepute, before his constituents, clients, professional associates, friends, neighbors, acquaintances, and the public in general, and to hold plaintiff up to public scorn, contempt, ridicule and disgrace, did heretofore, on or about the 11th day of March, 2005, falsely and wrongfully accused plaintiff of dishonesty, theft and unprofessional conduct to local hospitals and pharmaceutical companies.

WHEREFORE, on Count II, plaintiff prays that this Court enter judgment:

a. Against the defendant for actual and compensatory damages in an amount to be determined by the jury;

05/5/2005 10:35 HOLCOME, BOMAR, GUNN, E BRADFORD - 9596471O NO.886 P023

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

MAY 5 2005

b. Requiring defendant to halt relaying materially false and untrue statements concerning the plaintiff; 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.

PERRIN, MANN, PATTERSON, PRESSLEY & MANN, L.L.P.

By: _____
F. Milton Mann, Jr. (SC Bar #68250)
Attorneys for Plaintiff
Post Office Box 1655
Spartanburg, South Carolina 29304
(864) 582-5461 - Telephone
(864) 583-5235 - Telefax

April 11, 2005

Spartanburg, South Carolina

2005 APR 12 PM 1:31
MARC KITCHENS

P:\Matters\21302\Complaint.wpd

05/05/2005 10:35 HOLCOME, BOMAR, GLENN, & BRADFORD → 9596471@ NO. 882 D02

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APR-08-05 FRI 03:18 PM FAX NO.
RECEIVED
MAY 5 2005

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

VERIFICATION

PERSONALLY appeared before me GREGORY FELDMAN, President of S. Carolina Pharmaceutical Research , Inc. ("Company") who, after first being duly sworn, says: that the is the Plaintiff in the foregoing action; that he, in his capacity as President has read the foregoing Complaint; that the statements contained therein are true to the best of his knowledge except as to those stated to be based upon information and belief, as to which, he believes such matters to be true.

Greg Feldman (SEAL)
GREGORY FELDMAN, PRESIDENT

SWORN to and subscribed
before me this 11 day
of April, 2005.

Kathy R. Mabus (SEAL)
Notary Public for South Carolina
My Commission expires: 09/08/2012

2005 APR 12 PM 1:31
MARC KITCHENS

05/05/2005 10:35 HOLCOME, BOMAR, GUNN, & BRADFORD - 9596471@ NO.882 P025

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)
Served 4/12/05
S. CAROLINA PHARMACEUTICAL RESEARCH, INC.)
Plaintiff(s)) CIVIL ACTION COVERSHEET
vs.)
2005 - CP - 42 - 1085
CHARLES M. FOGARTY, M.D.)
Defendant(s))

(Please Print)
Submitted By: Milton Mann
Address: P.O. Box 1655
Spartanburg, SC 29304

SC Bar #: 68250
Telephone #: 864-582-5461
Fax #: 864-583-5235
Other:
E-mail: milton@ppmplaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

2005 APR 12 PM 1:33 HARRIET THOMAS

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Other (299)

Torts - Personal Injury
- ☒ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☒ Other (399)

Tortious Interference with Potential Business Contract

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Sexual Predator (510)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture (840)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Other (699)

Submitting Party Signature: [signature] Date: 4/11/2005

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

05/05/2005 10:35 HOLCOME, BOMAR, GLUNN, & BRADFORD - 9596471 NO. 882 D019

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EXHIBIT
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BURTS, TURNER, RHODES & THOMPSON
ATTORNEYS AT LAW
260 NORTH CHURCH STREET
SPARTANBURG, S.C. 29306

SAM BURTS (1907 - 1982)
NOEL TURNER
RICHARD H. RHODES
RAY E. THOMPSON, JR.
M. NOEL TURNER, III

MAILING ADDRESS
P.O. BOX 3408 29304
PHONE: 864-585-8166
FAX: 864-583-6927

Contract for Representation

I, **WILLIAM MARK CASEY,** hereby retain the law firms of **BURTS, TURNER, RHODES & THOMPSON** and **THE ANTHONY LAW FIRM, P.A.** to represent me in a potential medical negligence claim against such defendant or defendants that my attorneys, in their discretion, believe should be named as a party to any lawsuit (including but not limited to Dr. Greg Feldman). Under this contingency contract, it is agreed that my attorneys are to receive Forty (40%) Percent of the gross amount of these proceeds due to settlement or trial plus any out-of-pocket expenses my attorney have incurred (such as filing fees, service costs, evaluation of medical records by physicians, discovery, costs associated with expert witnesses, etc.). In the event that the case is not resolved in my favor, I will not have any obligation to pay a fee to my attorneys or to reimburse them for their out-of-pocket expenses. This is a contingency contract.

If after the initial investigation, it is determined by my attorneys that the case is not viable and/or cannot successfully be pursued, then my attorneys will have the right to discontinue their representation and I will be allowed to obtain substitute representation at that time if I so desire.

Dated: Aug 24, 2005
Spartanburg, South Carolina

William Mark Casey
WILLIAM MARK CASEY, Client

THE ANTHONY LAW FIRM, P.A.

By: [signature] - w/permission
KENNETH C. ANTHONY, JR., Attorney

BURTS TURNER RHODES & THOMPSON

By: [signature]
RAY E. THOMPSON, JR., Attorney

THOMPSON 000864

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SHEET 1 PAGE 1

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG C. A. NO. 2006-CP-42-1728

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.

Deposition of WILSON P. SMITH, M.D.

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 2nd day of September 2009, commencing at approximately 3:18 p.m. attended by counsel as follows:

PAGE 2

Appearances:
RAY E. (CHUCK) THOMPSON, JR. AND NOEL TURNER
Burts, Turner, Rhodes and Thompson
260 North Church Street
Spartanburg, South Carolina 29306
Attorneys for Plaintiff, William Casey,

H. SPENCER KING, III, Esquire
Ward Law Firm
233 South Pine Street
Spartanburg, South Carolina 29304
and

F. MILTON MANN, JR., Esquire
Law Office of F. Milton Mann, Jr.
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
Attorneys for Defendants, Drs. Feldman & Boscia and Upstate Critical Care Specialists,

WILLIAM U. GUNN, Esquire
Holcombe, Bomar, P.A,
100 Dunbar Street, Suite 200
Spartanburg, South Carolina 29306
Attorney for Defendant, Dr. Devendra Shantha.

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Direct Examination by Mr. King	4
Examination by Mr. Gunn	59
Cross Examination by Mr. Thompson	66
Certificate of Notary Public	83
Exhibits: (Attached to deposition)	
Defendants' Exhibit No. 1 Marked	17
Plaintiff's Exhibit No. 1 Marked	68
Plaintiff's Exhibits Nos. 2 and 3 Marked	79

PAGE 4

Pursuant to notice and/or agreement to take depositions, the within deposition was taken by the above reporter, a notary public, as required under the code of laws of South Carolina, 1976, section 19-17-10, and circuit court rule 30, et al., by consent of all parties at the Ward Law Firm, 233 South Pine Street, Spartanburg, South Carolina.

WAIVER:

Counsel and the deponent DID NOT agree that both the reading over of and signing of the deposition are hereby dispensed with and waived.

** ** **

The deponent was duly sworn to tell the truth, the whole truth, and nothing but the truth of his own knowledge concerning the matter herein.

WILSON SMITH, M.D., being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KING:

Q. Give us your full name, please.
A. Wilson Pedrick Smith, Jr.
Q. And you are medical doctor practicing in Spartanburg?
A. That is correct.
Q. And what is your medical specialty?
A. I am in pulmonary disease, critical care and sleep

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SHEET 2 PAGE 5

medicine.
Q. Doctor, I have met you previously on other occasions, I believe?
A. Yes, sir.
Q. My name is Spencer King. I'm an attorney here in Spartanburg, and I am defending Dr. Greg Feldman, Dr. Joseph Boscia and their practice group, Upstate Lung and Critical Care Specialists in a lawsuit that's been brought by William Mark Casey claiming medical negligence. Milton Mann, who's seated next to me, also a lawyer, also is my co-counsel in this case. Billy Gunn, who is seated at the end of the table represents Dr. Shantha, who is an anesthesiologist. He's also a defendant. Mr. Thompson and Mr. Turner who are seated next to you represent Mr. Casey.
A. Okay.
Q. And in this deposition -- you have previously been deposed before? Let me ask that first. You've given previous depositions?
A. Yes, sir.
Q. So you know basically the rules?
A. Yes, sir.
Q. The purpose of this deposition is an information gathering session. It is my understanding that you

PAGE 6

have seen and treated Mr. Casey at times?
A. Yes.
Q. And thus I'd like to discuss with you your care and treatment of Mr. Casey, discuss with you your knowledge about this case and whether or not you intend to render any opinions regarding standard of care by Dr. Feldman and Dr. Boscia in this case. If anytime I ask you a question that you do not understand my question, tell me you don't understand it and I will rephrase it. It is not a closed book test. That's why we ask you to bring your chart. You are certainly free to refer to your records. Memories sometimes fade, and I think we're talking about four or five years ago. And so certainly if you wish to look back in your chart, you are certainly free to do that.
A. Okay.
Q. Doctor, tell me about your practice?
A. Well, I'm in private practice. I have -- in a group called Lung and Chest Medical and we have four other pulmonary, critical care physicians in that group, and we share call and share expenses and share responsibilities.
Q. And in 2004 were the same physicians in that group?
A. No, at that time there were other -- a different

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mix of physicians at that time.
Q. Who were the physicians in 2004?
A. It would have been -- that are not there now?
Q. Well, just name who's there ---
A. Oh, okay.
Q. --- and then we can change them?
A. All right. Well, in 2004 there would have been Dr. Bert Knight, Dr. Mary Lou Applebaum, Dr. Charles Fogarty, and Dr. Doug Clark and myself.
Q. And Dr. Knight is no longer there?
A. That is correct. Nor is Dr. Applebaum.
Q. And has anyone else joined you?
A. Dr. Rico Mendoza and Dr. Raul Cruez.
Q. And do you have physician assistants?
A. We do.
Q. Do you know a Beth Edwards?
A. I do.
Q. What was Ms. Edwards?
A. She was a nurse practitioner that worked with us during that time.
Q. Is she still employed?
A. She is not.
Q. When did she leave, if you know?
A. I want to think she would have left in 2005.
Q. And do you know where she is now?

PAGE 8

A. I do not.
Q. Doctor, would you give us kind of a capsule of your educational and medical training?
A. I went to college at Villanova University in Philadelphia. I went to medical school at West Virginia University in Morgantown. I went -- I did an internal medicine internship and residency at the University of Alabama in Birmingham, and I did a pulmonary fellowship at Duke University.
Q. And when did you complete your pulmonary fellowship?
A. I completed that in 1981.
Q. Now, you told me that you also, if I understood for -- had a designation in critical care?
A. Yes, sir.
Q. Okay, and sleep medicine?
A. That is correct.
Q. Did that require additional training and education?
A. It does, but those boards were not available at the time that I completed my training, so I did that additional training and examinations after my formal training was completed.
Q. When did you do your critical care training?
A. Well, critical care is a part of pulmonary, so I qualified to be able to take those boards based on

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SHEET 3 PAGE 9

my pulmonary specialty and passing the board.
Q. Okay, without having any additional training?
A. Without having any additional training.
Q. And is pulmonology not also a subspecialty of internal medicine?
A. That is correct. You have to do your internal medicine to be able to qualify to do that additional training.
Q. Help me with this, is sleep medicine a sub specialty, or are they both sub specialties of internal medicine?
A. Well, no. Sleep -- sleep medicine actually has -- at least at that point had several different roads in; neurologists, psychiatrists, internists, pulmonary physicians, all had the opportunity to do additional training and take the board examination in that.
Q. But you have since -- when did you become board certified in internal medicine? 1979
A. Golly, probably '80 or '81.
Q. And when did you become board certified in critical care?
A. The first time would have been 1989.
Q. In pulmonology?
A. In critical care, you asked.

PAGE 11

Q. So you will have to take that board again?
A. I have to take that board again.
Q. Now, the other two boards covered by The American Board of Internal Medicine, i.e. the Pulmonary Disease Board and the Internal Medicine Board, you're quote "grandfathered in." You're certified in those fields indefinitely?
A. Well, not grandfathered in. I'm -- I'm free from having to recertify in those.
Q. Because you did take a test?
A. Well, the contract with you at that time was the board was yours for life. They subsequently changed that. And you can see when they started the Critical Care Boards, they didn't allow that possibility. You had to recertify every ten years.
Q. And board certification, Doctor, is something over and above attendance at medical school, internship, residency and fellowship; is it not?
A. Well, there's -- yes, there's usually additional testing that's undertaken to be able to have those qualifications.
Q. Is there both an oral and a written test?
A. No, there's only a written exam.
Q. And so you would have taken a written exam for pulmonary disease sometime prior to November 9 of

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Q. I did. And in pulmonology? 1982
A. In pulmonology would have been, I believe, in '81.
Q. And is the organization that you are boarded in The American Board of Internal Medicine?
A. That is correct in everything but sleep. Sleep had its own board up until this time, at which time they've come under The American Board of Internal Medicine.
Q. Doctor, I looked you up on their website. Does that appear to be accurate?
A. Oh, okay, well you -- yes. So I was mistaken about the date for -- for my internal medicine and pulmonary, if you'll correct those to '79 for internal medicine, and '82 for pulmonary disease.
Q. This is accurate?
A. Yes, sir.
Q. Now, ---
A. I don't -- just a second. And -- and understand the sleep doesn't fall under this board. It's a separate board.
Q. You told me that, okay. And your critical care medicine board is valid through December 31st, 2009?
A. That's correct. I'm in the process of redoing all that.

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1982.
A. Yes.
Q. And the critical care you would have taken it sometime prior to ---
A. I assume they probably date you to when you took -- the date of the exam. Having passed the exam qualifies you for the board.
Q. And in critical care you've had to have been certified ---
A. I'm now going ---
Q. --- by the board ---
A. --- for my second ---
Q. Second time?
A. --- second recertification. I certified, recertified, and now this is my second recertification.
Q. Okay, but to be boarded requires an extra effort by the physician?
A. It does.
Q. And why do you need to be boarded?
A. Well, it just -- it is a reflection of you having completed that specialty area of training that you are particularly interested in -- in setting yourself forth as an expert in that area.
Q. To maintain your boards do you have to complete any

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continuing education?
A. Yes, you do.
Q. In that field?
A. Right, and to maintain your license in South Carolina you have to have a certain amount of ---
Q. And do you actually have to practice in that area? Do you have to have patient encounters or case loads within that field of medicine?
A. To maintain your hospital privileges you do. Now, I'm not sure that you do to maintain your board eligibility, but your board eligibility now requires some clinical evidence of proficiency, so to some extent you do have to have some practice to be able to continue to take your boards.
Q. You're on staff at the Spartanburg Regional Medical Care Center?
A. That's correct.
Q. Any other hospitals?
A. Yes, at Spartanburg Hospital for Restorative Care, the Village Hospital in Greer, and Mary Black Hospital.
Q. And are you actually the medical director at Restorative Care?
A. I am.
Q. Is there any requirement to be on staff at

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Spartanburg Regional Medical Center that you be boarded?
A. Yes, if you are going to be in a specialty then you have to have board certification in that specialty.
Q. Now, doctor, do you have any neurological training past basic training in med school?
A. Well, again, just those areas that would pertain to my board certification. Sleep involves some neurologic training. For instance, I can read EEGs, which is not something that a pulmonary physician would be able to do. There is, of course, certain parts of critical care that tend to neurologic problems. So I have some additional training though I certainly wouldn't put myself forth as a neurologist or neurosurgeon.
Q. Or a neurosurgeon, okay. But you do not treat diseases or disorders of the nervous system?
A. For the most part, no.
Q. Now, you ---
A. By myself, no.
Q. But I do understand that your work in sleep disturbances may play into it?
A. Right, and again, in critical care we may participate in the care of someone with neurologic problems, but we would always, for the most part,

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do that with the assistance of a specialist in that area.
Q. Such as either a neurologist or a neurosurgeon?
A. Neurosurgeon; right.
Q. And I asked you -- I knew, and you confirmed that you are the medical director at Restorative Care?
A. Right.
Q. How does Restorative Care differ from an acute care hospital such as Spartanburg Regional, and differ from a skill care nursing home? How do those three facilities -- what's the difference between them?
A. Okay, well, a long-term acute care hospital was established by the government to take care of those patients who were going to require at least 25 days of hospitalization, on average, and who have an acute condition that still requires hospitalization. Therefore that's where they differ from a nursing home where the patients in a nursing home do not require acute hospitalization. It differs from the acute care hospital in that the patients, on average, who are Medicare patients have to maintain an average length of stay, you know, of greater than three weeks. So we generally take patients who have chronic conditions on transfer from acute care hospitals who are

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anticipated to need prolonged hospital care.
Q. And how long may a patient stay at Restorative Care?
A. As long as they need. I mean, we've had patients for two years, three years.
Q. You would have patients at Restorative Care that have neurological issues ---
A. We do.
Q. --- and need neurological treatment; correct?
A. Yes, sir. Yes.
Q. And you would involve in their care if they did not already have a physician, a neurologist or a neurosurgeon?
A. Yes, we would -- we would get a, for the most part a neurologist and psychiatrist to help us with managing those issues.
Q. Doctor, according to our records you have seen and treated Mark Casey?
A. That's correct.
Q. And we asked you to bring your chart with you today. Did you do that?
A. I did.
Q. Would you let me look at that, please, sir?
A. Yes, sir.
Q. And this is the chart maintained by Lung and Chest

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Medical Associates on Mr. Casey?
A. Yes, sir.
Q. Do you know of any other records that Lung and Chest Medical Associates has on Mr. Casey?
A. We had gone to an electronic medical record, and I glanced in there last night and I didn't see any office visits there, but it is possible there's something in that electronic record, but I do not think there is.
Q. When did you go to electronic records?
A. Well, I looked at that yesterday.
Q. But, are there any ---
A. I can make a phone call and just answer that question if you'd like?
Q. That's fine. While he's doing this I'm going to mark this as Defendant's Exhibit number 1.
A. But I have myself not seen him since we've gone to the electronic record.
Q. Okay.
(COURT REPORTER MARKS ENTIRE FILE OF DR. SMITH AS DEFENDANTS' EXHIBIT NO. 1; ATTACHED TO DEPOSITION).
BY MR. KING:
And what we're going to do, we agreed we will copy this, substitute the copy ---
BY MR. THOMPSON:

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Yes.
BY MR. KING:
--- for the exhibit and give ---
BY MR. THOMPSON:
Dr. Smith back his records.
BY THE WITNESS:
Hey, Crystal, this is Dr. Smith. Can you do me a favor? Would you look up and see if we have any electronic medical record on William Mark Casey. He's about 50 years old.
BY MR. GUNN:
11/03/58.
BY THE WITNESS:
Birth date's 11/3/58. We do. How many visits? All right, do you want me to have them make a physical copy of those?
BY MR. KING:
First question, what are the dates -- the span of those visits?
BY THE WITNESS: Electronic 7-7-06 → 12-8-08
What's the span of the dates of those visits, the first to the last? July 7th 2006. December the 8th of '08. And can you see if any -- were any of those mine, or are they all somebody else's? None of them were mine.

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BY MR. KING:
If she could reproduce those.
BY THE WITNESS:
Would you make a physical copy of all those for me? We'll deliver those to you tomorrow?
BY MR. KING:
That's fine.
BY THE WITNESS:
Thanks. Appreciate it, Crystal. Bye.
BY MR. KING:
Was that on the record?
BY COURT REPORTER:
Yes.
BY MR. KING:
So on the record we have that there are some electronic records from the span of July 7, 2006 to December 8, 2008. Dr. Smith's going to get us copies of those, but none of those were visits where Dr. Smith was involved in the care; is that a fair statement?
BY THE WITNESS:
That's correct.
DIRECT EXAMINATION RESUMED BY MR. KING:
Q. Doctor, the first visit that I have that I believe that you recorded when you saw Mr. Casey first

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time, July 14, 2004?
A. Yes.
Q. And was he referred to you by anyone at that time?
A. No, he was a self-referral.
Q. And you take self-referrals?
A. Yes.
Q. In the chart there is a medical history. It says, "Medical History Information Sheet." Do you see that?
A. Yes, sir.
Q. And in 2004 was that a form that your practice used for new patients?
A. Yes, it was.
Q. And the information, is that recorded in the patient's handwriting? Do you ask the patient to complete that?
A. Yes, though I had made notes as well in the -- to the side. 7-14-04
Q. Doctor, would you talk me through your notes?
A. Okay. "Sleep well, fatigue, Michelin, swing shift, very physical job for several years, 2000 had a stress test and a cath which was normal." And follows over there in the ---
Q. And are these notes that you made during your first visit with him?

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A. Right, during -- during my discussion with him.
Q. Okay, and what were his complaints when he first saw you? 7-14-04 (cont.)
A. In his writing, "Not happy with current care provider, post operation for chest pain." And I should amend that there is additional writing from me. There was "anxious, haven't slept well," instead of "slept well."
Q. Okay, so interpret that for me? So he is anxious and hasn't slept well; is that what you recorded?
A. Right, yes.
Q. All right, go ahead. And you said he "wasn't happy with his current position"?
A. Right.
Q. Continue on with his reason for seeing you.
A. That he had "had this problem for a month." And those were the main things that he had given as his reason for being there.
Q. And your first visit is a -- I believe a two-page typed report?
A. Yes, sir.
Q. Okay, do you have that in front of you?
A. I do.
Q. And if you would, kind of summarize for us the history that you were given on that visit?

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anxious and restless than she has known him to be in the past. ~~He is a previous smoker for about 12 years, but has not smoked in the past three weeks. He does snore, but feels he sleeps well.~~ He denies any hemoptysis, chronic cough or weight loss. He still has the chest pain."
Q. Okay, and there's a list of medications that you asked him to give; is that correct?
A. That's correct.
Q. Are there any opiates listed there?
A. No.
Q. Doctor, we have in discovery procured drug records on Mr. Casey for some time before and after the 2004 events. Let me ask you to take a look at this, Doctor.
A. (Witness review document). Okay.
Q. And looking back prior to late June of 2004, do you see where he was taking opiates?
A. Yes, it looks like at one point he was taking Hydrocodone.
Q. Which is Loratab?
A. Yes.
Q. And that's Dr. Gonda that prescribed that?
A. That is correct.
Q. Did you know that Dr. Gonda was his primary care

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A. Okay, well, at that time he was 45 years of age. He complained of some chest difficulties that had begun in May "when he presented to the emergency room at Spartanburg Regional with a complaint of chest pain. A PA chest x-ray at that time suggested the possibility of a foreign body. He underwent a bronchoscopy which was felt to be abnormal, but no foreign body was identified. A subsequent CT scan done the same day did not confirm any abnormality. However it does mention there is a left anterior descending coronary artery calcifications. In 2000 he had a stress test and catheterization was normal. He underwent a rigid bronchoscopy in attempt to identify foreign body and remove it during that procedure. He had a perforation of the bronchial wall by a laser, which resulted in a pneumomediastinum and respiratory distress. He required intubation and heavy sedation and was able to be extubated the following day. Since that time, he notes fatigue during the day. He continues to have dyspnea and chest pain with exertion. He has become very anxious. His sister accompanying him for the interview notes that he seemed to experience a change in his ability to tolerate stress and appears much more

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physician?
A. I don't know whether I knew that or not. I don't think we had a place to list that on our sheet, so I -- oh, no. Yes, "Who's your family doctor? Frank Gonda."
Q. And so, if you look at the records, Dr. Gonda was prior to May/June of 2004 giving him Loratab; correct?
A. That is correct.
Q. Did you ever learn that, during the time that you were treating Mr. Casey, that he took opiates?
A. I don't believe so.
Q. And you assume the accuracy of the information that Mr. Casey gave you so far as his history?
A. Pardon?
Q. You depend upon the accuracy and the honesty ---
A. Sure.
Q. --- that your patient had given you an accurate history?
A. Sure.
Q. And you conducted an examination? physical exam (normal)
A. I did.
Q. And what did you find in your physical examination?
A. His physical examination was basically normal.
Q. And you also did some diagnostic studies?

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A. I did.
Q. What diagnostic studies did you do?
A. I did pulmonary function tests and those -- those were normal.
Q. And what would a normal pulmonary function test tell you, a pulmonologist?
A. What would a normal -- well, just that the resting parameters of pulmonary function appeared to be normal.
Q. And you've told me that in the history that you were given ---
A. Uh-huh (affirmative response).
Q. --- Mr. Casey underwent, and I believe that Dr. Feldman performed a rigid bronchoscopy which resulted in a pneumothorax; did I understand you to say there was a perforation of the bronchial wall at that point?
A. Yes.
Q. Now, finding that his pulmonary function studies are normal, and no evidence of airway obstruction, do you conclude that he has no permanent injury to his lung?
A. I did.
Q. So there was no injury as a result of the procedure or the complication?

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A. No injury to the lung.
Q. To the lung?
A. Right.
Q. As a result of that procedure?
A. Yes, sir.
Q. You told us that his sister, Carol, accompanied him to the visit?
A. She did.
Q. Is Carol a patient of yours?
A. No.
Q. Do you know her?
A. Yes, I do. She worked in the cafeteria for a long time at Spartanburg Regional.
Q. And is that a bit unusual for a 45-year-old man to have his sister accompany him to a visit with his physician?
A. No, I mean, we allow the patient to bring family members as he would like into the exam room with him. So it's not uncommon for me to see a patient with other family members.
Q. And he gave you a history that he was having difficulty sleeping?
A. Right.
Q. Did he complain about being moody, frustrated?
A. I don't have a specific mention of that. Like I

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said, what I wrote down was that he was anxious, he wasn't sleeping well, and that she said, you know, he -- he seemed to have changed somewhat in terms of being more anxious and restless since -- since he'd been hospitalized.
Q. Let me ask you to look at a note. And these come from Dr. Gonda's records, June 23rd, 2003. Let me ask you to read that, please, sir. You don't have to read it aloud, but just review that.
A. And the note I want to read is the 6/23/03?
Q. That's correct.
A. (Witness reviews document). Okay.
Q. Are those similar complaints with complaints that were being expressed to you on your initial visit?
A. They are.
Q. Now, both on your physical examination and your diagnostic examination, you did not find any pulmonary function injury?
A. Any what?
Q. Any limitation in pulmonary function, and you did not find any pulmonary injury to the lung; is that correct?
A. Correct.
Q. He gave you a history that he was a smoker, I believe, for like 12 years, but had quit in recent

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weeks?
A. Yes.
Q. From a pulmonary standpoint smoking is of significant concern; is it not?
A. It is.
Q. And what was your conclusion of the basis of Mr. Casey's complaint?
A. Well, it was not that -- I didn't feel that his chest pain at that point had been explained since he still had that complaint, and there was not any pulmonary abnormality to explain that. And the CT scan which had been done, they incidentally noted that he had calcification in his left interior descending artery, which is an important coronary artery. And so I felt that further evaluation to exclude a possible cardiac condition was warranted.
Q. And did you do that?
A. We did.
Q. And what were the -- with -- through diagnostic studies?
A. Yes, he had a -- another stress test, which did not show any changes suggestive of cardiac ischemia.
Q. And did he have an EKG?
A. Yes, he did.
Q. And was that also normal?

THOMPSON 002898

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A. Yes, it was normal. EKG (normal)
Q. Did he have a chest x-ray?
A. I'm not sure he had had -- that he had another chest x-ray, but I had the recent CT scan which was completely norm.
Q. So, did you conclude the likely cause of the chest pain?
A. Well, again, as I said, I was concerned -- are you speaking of at my initial visit or after further ---
Q. No, after you did these diagnostic studies, did you conclude what the cause of the chest pain likely was?
A. Well, I thought it most likely is chest wall pain.
Q. Muscular?
A. Muscular, skeletal pain.
Q. Okay. And that would be treated by -- how?
A. Pain medications or, you know, trying to identify a specific area that was abnormal.
Q. Did Mr. Casey give you any history or complaints of back pain?
A. Well, he had mentioned that he had some arthritis and that he used -- sometimes used Bextra, an anti-inflammatory drug for that. And he mentioned some disc problems and arthritis in his lower back.

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Q. Now, what other conclusions did you reach with regard to Mr. Casey at that initial visit?
A. Well, that he had some psychiatric issues at that point that I felt needed further investigation beyond my abilities.
Q. You're not a psychiatrist and don't treat psychiatric issues?
A. That is correct.
Q. What psychiatric issues did you think that he might be suffering?
Well, again, they talked about his anxiety, his difficulty sleeping, his restlessness, so I thought that a referral to a psychologist or psychiatrist would be appropriate, and so I referred him to Dr. Jay Grace.
Q. He is a psychologist?
A. He's a clinical psychologist that works over at the Regional.
Q. And in your impression -- I'm going to read this, "But I wonder if he suffers from post traumatic stress disorder related to his injury in intensive care unit experience." Did I read that correctly?
A. Yes.
Q. And what is the basis for you to put in there, "I wonder if he suffers from post traumatic stress

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disorder related to his injury in intensive care unit experience?" What was ---
A. Well, just, again his complaint that those -- from his sister and he that he felt that he was worse since he had been in the hospital.
Q. Are you making that as a definitive diagnosis?
A. No, sir.
Q. Okay.
A. No, sir. Again, like I said, I identified that that was something that I was not qualified to help him with and that I tried then to send him on to somebody that I felt that was; that could do a proper evaluation of that and treatment.
Q. And so you would be deferring to someone other than a pulmonologist or critical specialist for that diagnosis?
A. That's correct.
Q. When did you next see Mr. Casey?
A. I guess he came back for a follow-up visit on the 29th.
Q. And at that visit did you discuss -- July 29th?
A. Yes.
Q. And at that visit did you discuss with him the result of the diagnostic studies, the stress and the ---

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7-29-04

A. I think that it was at that point we sent him up to go have the Cardiolite stress. And I did some additional things. I think I did do a chest x-ray that day, again just wanting to be sure because he still was having the chest tightness that he described. leave d/c'd until 8-16-04
Q. And on that visit, Dr. Smith, you gave him a leave of absence from work through August 16th of 2004?
A. Yes, I did.
Q. Doctor, looking through your chart I cannot find any other leaves of absence that you authored, nor can I find any statements of disability to any third party that you authored? Would you like to look through your chart and see if that is a true statement? 11-10-04
A. Right here -- well, he had two subsequent visits with me. He had one in August, and that was where we actually talked about the results of the stress test being negative. But at that time he said the chest pain had resolved. And then I saw him once more in November of 2004. November 10th of 2004. And at that time he had been to see Dr. Grace, who at that point did not feel he was ready to return to work. And so I assume at that point, any further work-related releases would have come from

ref to Dr. Grace after 11-10-04 visit → Grace who then gets out of work, etc.

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him.
Q. So my statement was correct, other than the statement we referred to of July 29th. That is the only statement where you took him out of work?
A. Yes.
Q. And I do not see any statements there where you authored that he was disabled.
A. Again, from a pulmonary standpoint, you know, there was no evidence of pulmonary disability.
Q. But from any other standpoint, you would not have authored a disability statement.
A. Correct.
Q. On the visit of July 29, 2004, ---
A. Uh-huh (affirmative response).
Q. --- in the upper left corner there are a series of conditions that are marked or checked. Can you look at those, please?
A. Yes, sir.
Q. And I take it that if there's a marking there, which looks to be like a circle with a stripe through it?
A. That means that that question was negative.
Q. That he did not have that?
A. Did not have that complaint.
Q. And on this one he was not coughing; correct?

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A. Correct.
Q. Can you help me with the next one? What's it -- is that --- 7-29-04
A. He was having some shortness of breath on exertion, just, you know, on exertion.
Q. Okay. No wheezing? Is that edema?
A. No wheezing, no edema, no new allergies, no fever or chills, no nausea, vomiting or diarrhea.
Q. Okay.
A. He was smoking four to five cigarettes a day. And said that he did consume some alcohol.
Q. And he was oriented?
A. And he was oriented.
Q. And down at the bottom, Doctor, could you help me with what's recorded there?
A. Well, I just said that he had post traumatic stress, and that there was costochondritis, was what I concluded was ---
Q Chest -- was chest wall?
A. Right.
Q. And the statement post traumatic stress; is that a diagnosis that you were making or is someone else making that diagnosis?
A. At -- like I said, at that point he's seeing Dr. Grace. I have written him at that point for some

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Zoloft, and I can't remember whether that was at the request of Dr. Grace or not. Do you happen to have records from him?
Q. I have no records in your chart. We have records from Dr. Grace, but we do not have any records in your chart from Dr. Grace. We do not see any communication other than the -- and I was going to ask you what the nature of that communication -- you told me ---
A. I may have spoken with him, but I have to say I didn't record that.
Q. You told me a minute or two ago that there was a communication of some type from Dr. Grace to someone that he did not feel that he was ready to return to work; that being on November 10th, 2004?
A. Right.
Q. And your memory is that you may have spoken ---
A. I may have spoken to Dr. Grace about that, because it's also possible that he, as a psychologist can't write prescriptions. So I think that I would have written that at his request, perhaps.
Q. And so Zoloft is a prescription that you perhaps wrote?
A. Well, I know I wrote it.
Q. Okay. But you may have ---

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A. The question would be whether it might have been at the request of Dr. Grace, who wouldn't be able to write for medications as a psychologist, but usually would work with a physician to write those medications.
Q. And what is Zoloft?
A. It's an antidepressant.
Q. And the dosage?
A. Is 150 milligram.
Q. And that would have been how many per day?
A. One a day.
Q. That is not a pulmonology medicine?
A. No.
Q. And the next visit; when is that, Doctor?
A. The visit that I'm telling you about? That's 11/10/04.
Q. And that's the last visit that you had with him?
A. I believe that is the last time that I saw him in the office.
Q. Doctor, there's a period that looks like about eight or nine months from August 12th of 2000 -- I'm sorry, excuse me. I'm showing a visit of July 19th, 2005; is that yours?
A. What's that?
Q. Visit of July 19th, 2005. That is not yours?

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Mendoza 7-29-05

A. No, that's -- it looks like that's Dr. Mendoza's signature and writing.
Q. Let's see, your last visit again? I'm sorry I confused that, because I thought that was ---
A. Was 11/10/04.
Q. And that is your handwriting?
A. 11/10/04; yes, sir. All except the handwriting up in the corner that the nurses do that little checklist and anything there up in that left-hand corner.
Q. And do you know who that nurse would be?
A. Joan Floyd.
Q. Joan Floyd?
A. Joan Floyd.
Q. Is she still with you?
A. She is.
Q. Could you read for me the verbiage that is kind of on the right side?
A. Okay. "No dyspnea in the -- in the yard working or walking. Walking stops and pain is relieved." I think that refers to the chest -- the chest pain is only with exertion, so I've added to there, "There's no shortness, dyspnea when in yard working or walking. He stops and the pain is relieved. Dr. Grace does not feel ready to return to work.

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Not ready to return to work. Does not want to go. Pain begins after working two to two and a half hours. He's tender along the sternum margin."
Q. And would these notes have been made contemporaneous with the visit?
A. Yes.
Q. And do you know what time the visit was?
A. What time of day?
Q. Yes, what time of day?
A. No, sir.
Q. How would we find out what time of day it was?
A. Well, I guess we could go back to our log for patient visits.
Q. Would that be a patient log, or would it be your log?
A. Well, I mean at our -- at our office if we still have them back that far to know what time.
Q. And it would be called the patient's log?
A. Well, I mean, we keep a record of the patients' scheduled appointments, so we would know what time he was scheduled to be seen that day.
Q. But what would that document be called?
A. I have to say I don't know that we have a specific name for it. I mean, just our patient appointment record.

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Q. Okay, and who maintains that? Who oversees the keeping of those records? Do you have a practice manager?
A. Yes, but she would not have been the practice manager at that time.
Q. But the position would be practice manager?
A. Yes.
Q. And then the next visit to your group is the one of July 19, 2005?
A. That is correct.
Q. So there's a period of about eight or nine months that he did not see you and your group; is that your understanding?
A. Yes, sir.
Q. And do you know why?
A. Well, again, we hadn't identified any pulmonary issue for him to continue to need me.
Q. Okay.
A. And Dr. Grace was seeing him in terms of the issues that I had referred him for, so I didn't probably feel that I needed any -- you know, that he needed me any further.
Q. Doctor, some of your physicians, I believe, are involved in a research center?
A. That's correct.

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Q. Are you?
A. Yes. 7-19-05
Q. In Dr. Mendoza's visit of 7/19/2005; can you switch to that, please, sir?
A. Yes.
Q. There's a notation, again at the top, "Saw Dr. Forgarty at research several years ago." Did I read that correctly or can you better interpret that for me than I did?
A. Yeah, "I saw Dr. Forgarty at" -- I think that's research several years ago. "Sister still patient there."
Q. And do you know whose handwriting that is?
A. It probably would have been whichever nurse or assistant was working with Dr. Mendoza ---
Q. Mendoza?
A. --- that day, because it's clearly not Dr. Mendoza's handwriting which is pretty recognizable.
Q. And where is the research facility located?
A. It is located just off of I-85 on -- oh, I'm sorry, it -- I'd have to look up the address, but ---
Q. Does it a separate name other than Lung and Chest Medical Associates?
A. Yes.
Q. What is the name?

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A. I believe it's Spartanburg Pharmaceutical Research.
Q. If a patient is seen at the research center are there records maintained on that patient at that facility, not maintained at Lung and Chest?
A. Yes, that's correct.
Q. Have you discussed this litigation with anyone? Litigation against Dr. Feldman and Dr. Boscia?
A. Yes.
Q. And with whom have you discussed it?
A. Well, Dr. Fogarty has told me that he was involved in the deposition with this regard. And Mr. Thompson's wife used to work for us, and she had mentioned that she knew Mr. Casey and that he was involved in a suit against Dr. Feldman and Dr. Boscia.
Q. If you are called as a witness in this case, Dr. Smith, what would be your testimony as you understand it? You would testify as to the visits and your treatment of him; correct?
A. I'm -- I will testify to whatever ---
Q. Whatever questions are asked ---
A. Are asked.
Q. --- but, I mean, would you -- you would answer questions as to your treatment?
A. Sure.

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Q. And what other areas would you feel that you are knowledgeable to give information and evidence of?
A. Well, I am a pulmonary board certified, and so I would think I would be able to answer questions in that area.
Q. Would those areas include comments regarding care and treatment rendered by Drs. Boscia and Feldman?
A. Yes.
Q. Any other areas that you think that you would be qualified to render evidence -- into evidence?
A. Not that I can think of in this particular case.
Q. The procedures that were -- the operative procedures that were done in this case was a flexible bronchoscopy by Dr. Boscia; do you do that? Do you flexibles?
A. Yes, I do.
Q. And the procedure done by Dr. Feldman was a rigid bronchoscopy. Do you do that procedure?
A. I have done those.
Q. When did you last do those?
A. It'd be years and years and years ago.
Q. Do you consider yourself qualified to render opinions about a rigid bronchoscopy?
A. I do.
Q. Okay, and do you do lasering?

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A. I have.
Q. When did you last do lasering?
A. Probably several years ago.
Q. And what type laser did you use?
A. I used the YAG laser.
Q. Was it gas operated or water?
A. I have -- I'm not sure.
Q. Do you know whether you've ever used a water cooled YAG laser?
A. Again, I used whatever YAG laser we have at Spartanburg Regional. I was the one that started the laser program there.
Q. When did you last use a YAG laser?
A. I would guess four or five years ago.
Q. Do you have any criticisms of Dr. Boscia and his treatment of Mr. Casey?
A. Yes, I think that -- that it could have been handled differently.
Q. And tell me how you feel it could have handled differently?
A. Well, the chest x-ray that was taken shows an object. Because that chest x-ray is one view, you cannot tell the location of that object in relationship to being inside or outside the body, or if it is an artifact.

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Q. Okay.
A. I believe that that would have been prudent to have established by x-ray whether that object was in or outside the body or an artifact.
Q. So additional diagnostic x-rays should be taken; is that your testimony?
A. That's correct.
Q. Plain film x-ray?
A. A plain film would have been helpful or a CAT scan would have been done in place of that.
Q. Okay, do you think that reaches the level of a breach in standard of care?
A. I think it would be -- have been prudent to have done in this case.
Q. I heard that ---
A. Right.
Q. --- but my question is, in your opinion, does that reach the level of a breach in standard of care?
A. Yes.
Q. Other criticisms of Dr. Boscia?
A. He ordered a test which it's not apparent that he followed up the result of.
Q. And that is?
A. The CT scan.
Q. Okay, and that CT did not show a metallic body?

THOMPSON 002902

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A. That is correct.
Q. What is your criticism of Dr. Boscia in respect to the CT?
A. Well, having ordered the test, he was responsible to know the result of that and to communicate that then, since that would have likely changed the care of this patient. The working diagnosis was a foreign body, and the CT failed to confirm that. Therefore, he had a responsibility to communicate that if he was not going to continue to be the physician in charge.
Q. But Dr. Boscia did a flexible bronchoscopy and was not able to find a metallic body; correct?
A. That's correct.
Q. So the CT confirmed what Dr. Boscia had found by his procedure; correct?
A. That is correct.
Q. And did Dr. Boscia -- do you know, did he not communicate to Mr. Casey his negative finding of a metallic body?
A. Again, I do not find evidence that that was communicated prior to the laser bronchoscopy.
Q. That Dr. Boscia's not finding a metallic body was not communicated; is that your testimony?
A. Again, that the finding on the CT scan was not

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of care, in your opinion?
A. I do think, again, this is -- as we can see the results of not communicating that have important consequences. I do think that that was a mistake on his part, yes.
Q. And you think it reaches the level of breach in standard of care?
A. I think if he had knowledge that they were proceeding to the laser bronchoscopy, and I don't know that, but I -- but if he knew that they were proceeding on to this other step, then yes, that was a breach. If -- if ---
Q. All right, other criticism -- go ahead. I'm sorry. I didn't mean to cut you off there.
A. Well, I was just going to say, if at that point it had ended, if he said, I didn't find a foreign body. There's not a foreign body. Then that wouldn't have been -- it wouldn't have resulted in any harm not to have seen the CT.
Q. Okay.
A. But since he did not find a foreign body, and he didn't communicate that the CT had been done, nor that it did not show anything, then that is a breach. If -- if ---
Q. Any other criticism -- I'm sorry. Cut you off

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communicated.
Q. But if the flexible bronchoscopy finding was the same as the CT reading, i.e. no metallic body, that was known to Dr. Boscia when he did his procedure; correct?
A. Yes.
Q. Okay, and is it your testimony that Dr. Boscia did not communicate that he did not find a metallic body to Mr. Casey?
A. No, it is that as far as I can tell, the results of the CT scan were not made aware to either Dr. Feldman or Dr. -- or to Mr. Casey prior to the laser bronchoscopy.
Q. But if the same fact is obtained in another method, further than diagnostic study, it's determined in a procedure ---
A. No, you're -- you're incorrect. The negative finding on bronchoscopy would make me more want to see what the CT showed, because now I have not confirmed my initial impression. I didn't find any foreign body. I thought I saw one on the x-ray. What -- what's going on? Did I miss it at the bronchoscopy or was it never there in the first place?
Q. And does that reach the level of breach of standard

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twice. Excuse me.
A. Like I said, if he knew that there was going to be a subsequent procedure that involved the risk that a laser bronchoscopy does.
Q. Other criticisms?
A. Again, just that there wasn't a clear handoff of this patient to Dr. Feldman, that would have given Dr. Feldman all the information he needed to make decisions about his subsequent procedure.
Q. Okay, that's not a separate criticism?
A. No.
Q. Other criticisms of Dr. Boscia?
A. None.
Q. Criticisms of Dr. Fogarty? Excuse me, Dr. Feldman? Excuse me. I'm sorry.
Well, it's not apparent that he examined all the clinical material available to him before proceeding with this procedure.
Q. And what material would that be?
A. Well, again, the presence of the CT scan, which would perhaps have changed his thinking about the need for that procedure.
Q. Is that a breach of standard of care, in your opinion?
A. Again, to -- it certainly would be for this

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THEME: W/O the object (met FB) there is no need for Rigid Bronch.

WILSON P. SMITH, M.D.

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WILSON P. SMITH, M.D. (49)

Breach not to Confirm Whether object in lung body Chest before proceeding to Bronch

procedure to not have again, done those things which would have confirmed that this was an object in the lung.

Q. Okay, and again ---

A. So -- so if -- if he knows Dr. Boscia hasn't seen an object, and if he knows the x-ray is only a PA film, even if he doesn't know that the CT exists, he should have wanted to get another chest x-ray to confirm the presence of this object or to have ordered a CT scan himself to know, was this object where I think it is? F Should have ordered another CXR or CT scan

Q. Okay, now you're assuming that Dr. Feldman knew that the plain AV film showed a metallic body; correct?

A. Right. My understanding is that he had looked at that in the emergency room when Mr. Casey first appeared.

Q. And he had information from Dr. Boscia that Dr. Boscia had done a flexible bronchoscopy and had not found a metallic body?

A. That is correct.

Q. That Dr. Boscia had found abnormal tissue?

A. He had seen something on the bronchial wall; correct.

Q. And based upon knowing that -- those facts and

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WILSON P. SMITH, M.D. (51)

reach the level of breach of the standard care?

A. Again, at this point I haven't reviewed the whole clinical record, but of those are the things that I know that I -- I felt were wrong. LEAVES OPEN...

Q. And, Dr. Smith, I'm going to ask you if you -- if you form any additional opinions with respect to Dr. Feldman and Dr. Boscia, if you would tell Mr. Thompson or contact us and let us know that you have additional opinions, we'd like to talk to you about that.

A. Okay.

Q. Have you reviewed any information materials other than the records created by your group?

A. I looked at the x-rays that were available on -- through the PACS system at Spartanburg Regional.

Q. Would that include the AP taken on May 28th, 2004?

A. The -- no, I have -- I had looked at that chest x-ray, because at that time the emergency room was not on our digital system, and of course, Dr. -- or Mr. Casey had brought that with him the first time he came to see me.

Q. Because that's the AP plain film, May 28th that shows the object you have seen?

A. Yes, sir.

Q. And then you've looked at the films that were

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WILSON P. SMITH, M.D. (50)

proceeding with the rigid bronchoscopy, your opinion is that Dr. Feldman breeched the standard of care?

A. Well, again, there was -- without the object, there's no need for rigid bronchoscopy. The -- you may want to again repeat the bronchoscopy to confirm the abnormality and perhaps obtain biopsies of what Dr. Boscia saw. That would be reasonable. But there was no need to do a rigid bronchoscopy and no need to have done a laser.

Q. And so the bronchoscopy -- the second bronchoscopy would have been a flexible?

A. Again, if we say there -- and Dr. Boscia says, I saw something abnormal but I didn't biopsy it so I don't know what it is. Then the prudent course would have been to say, well, let's repeat your bronchoscopy and go back and biopsy that place.

Q. And that would be a flexible?

A. That would be a flexible.

Q. Other criticisms of Dr. Feldman?

A. That would be my main criticism. It just didn't seem that he had reviewed the clinical material available to him, and went in not assured that there was a foreign body to be found and removed.

Q. No other criticisms you have of Dr. Feldman that

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maybe repeat? Flex to confirm abnormality or obtain biopsies before jumping Rigid Bronch

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WILSON P. SMITH, M.D. (52)

available on the PACS system? Casey brought AP 5-28 to office; rev'd CT on PACS; rev'd film films post-op on PACS

A. That is correct.

Q. Would that include the CT?

A. The -- yes.

Q. Would that include post-operative --

A. I just briefly looked at the initial films in the recovery room and with the insertion of the chest tube.

Q. Anything else you've reviewed?

A. No, just our record here.

Q. Have you reviewed Dr. Fogarty's chart?

A. I did not.

Q. And Dr. Fogarty took over his care? He saw Dr. Mendoza one time and then Dr. Fogarty has seen him since then; is that a fair statement?

A. Correct.

Q. There have been allegations raised by the plaintiff that Mr. Casey suffered an air embolism to the brain and suffers cognitive dysfunction. Are you qualified to render opinions regarding the nature of the mechanism that would result in that injury?

A. Yes.

Q. And how so?

A. Well, because I have done training for laser bronchoscopy, and because I began the Hyperbaric

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Earlier And this was Breach of Standard on Page 48

THOMPSON 002904

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* W. Smith qualified to provided testimony on mechanism of arterial micro air embolism due to coper w/ laser training and Hyperbaric Chamber.

WILSON P. SMITH, M.D.

* p. 56 SHEET 14 PAGE 53

WILSON P. SMITH, M.D. 53

Chamber Program which is a treatment for air embolism.

Q. Do you have an opinion as to whether or not Mr. Casey suffered an air embolism to the brain?

A. Well, now, that's a different question than you just asked. What -- if you're asking, is it possible to -- for the injury he sustained to produce such a problem, then I can talk to that. As far as for Mr. Casey individually, I have not reviewed his subsequent evaluation in regards to that question.

Q. Okay, and what evaluation would that be?

A. Well, you said that he had had further neuro-cognitive testing. There's -- there is the first page in our chart on this side shows that he's had a neuro-psychological evaluation.

BY MR. THOMPSON:

Spencer, if I could just add one thing I had delivered to Dr. Smith yesterday morning. It's very similar to the same notebook that I provided to you and Mr. Gunn at the beginning of the litigation. This had some additional updates as to physician records. Then it had certified hospital records that were separated into the two hospitalizations. And it did have Dr. Wade's

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WILSON P. SMITH, M.D. 54

report. You know, all the physician reports ---

BY THE WITNESS:

Yeah, I'm sorry if I left that out that I did review the depositions -- some of the depositions in relationship to this.

BY MR. THOMPSON:

I don't know that he's had time to work his way through that.

DIRECT EXAMINATION RESUMED BY MR. KING:

Q. Let's go back. You've told me that you're not a neurologist and you're not a neurosurgeon?

A. Right.

Q. And if I understand, the brain is normally treated by a neurologists and neurosurgeons?

A. Correct.

Q. Tell me your qualifications to render an opinion as to an air embolism to the brain from a bronchial injury?

A. Well, as I said, because I have had training and have done laser procedures and because as a physician who started the Hyperbaric Chamber Program at Spartanburg Regional, that is the treatment that one renders potentially for those problems. And so I am aware of that through my training for that.

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WILSON P. SMITH, M.D. 55

Q. And what would be the mechanism as to how a rigid bronchoscopy and laser would result in an air embolism to the brain?

A. Well, you just have to create a communication between an air-containing space and a vein, that would result -- or artery that would result in the carriage of that air to the brain.

Q. And would that be either the pulmonary vein or the pulmonary artery?

A. Well, the -- the -- yes, either one would be likely to be able to do that.

Q. And you read the records from the procedure where the rigid bronchoscopy and lasering was done? Have you read those records?

A. I have not in some time. I read those originally.

Q. Would it be an air bubble that would enter into the pulmonary vein or the pulmonary artery?

A. Yes, it'd be more likely the pulmonary vein to result in air that would go to the brain.

Q. And so there would have to be a perforation of the pulmonary vein in addition to the bronchial wall?

A. Yes, there would need to be a communication created between one of the pulmonary veins and the air space. The -- in this case it'd be the bronchus.

Q. And what would be the condition of the patients as

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Symptoms of air embolism from P.V. breach:

WILSON P. SMITH, M.D. 56

far as signs and symptoms if a pulmonary vein was invaded?

A. They might be restless; they might become unconscious. It would depend upon the amount of air that had entered. Here you have the difficulty that immediately, or shortly after the event, you -- the patient is intubated and sedated so the evaluation of that person is rendered more difficult. difficult to determine. Immed. events once pt intubated & sedated

Q. Would you not have bleeding?

A. Not necessarily.

Q. If you invaded a pulmonary vein you would not bleed? You would not have bleeding?

A. Again, the veins are lower pressure than the arteries are. And this does not have to be a large vein for there to be air to enter it.

Q. Aren't there four pulmonary veins?

A. Well, again, you're talking about the largest veins. But yes, there would be veins on both -- draining both lungs.

Q. And so there are four?

A. Right.

Q. And this is not the veins you're talking about?

A. Yes, again, but you could have smaller vessels that would be present. Again, you don't -- you asked if

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Dr. Wilson about on phone W. Smith had Dr. Ward's 1st report in chart - but not enough time to review before depo

? D

THOMPSON 002905

W. Smith tx Pt 15 yrs ago w/ air embolism to brain.

WILSON P. SMITH, M.D.

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you have to have a lot of bleeding for this to happen ---
Q. Would you not have ---
A. ---and I don't -- I don't think that you necessarily do.
Q. Have you treated anyone with an air embolism?
A. I have.
Q. Air embolism to the brain?
A. Yes.
Q. When?
A. Gosh, it's probably been 15 years ago.
Q. And what was the mechanism that caused that air embolism?
A. They were getting hyperbaric treatment and had developed some hemoptysis inside the chamber.
Q. What was the initial injury that this person suffered?
A. They were being treated for a foot problem.
Q. That was 15 years ago?
A. Probably so.
Q. What is the texture, tissue, or what -- help me with the word of the bronchial wall?
A. The texture?
Q. Tissue or what's it composed of? What's the bronchial wall made of?

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A. Squamous cell in that -- in the larger bronchi. Ciliated bronchial cells. I'm not sure what I'm ---
Q. Is it easily perforated? Is it easily punctured?
A. No, sir.
Q. Is it like cartilage?
A. Well, it's surrounded by cartilage through a lot of its cores.
Q. And do you intend on rendering an opinion as to whether or not Mr. Casey suffers from cognitive dysfunction as a result of an air embolism?
A. I'm not an expert in that area.
Q. So the answer is no?
A. No.
Q. Okay.
A. Is the possibility that there would be communication -- perforation of the bronchial wall with a pulmonary vein that could result in an air embolism to the brain, does this reach the level of a probability of medical certainty?
A. I don't think you can say that it was with probable certainty that this happened.
BY MR. KING:
Excuse me just a minute.
(OFF THE RECORD).

No opinion (air embolism)

ask Wilson about on phone. ?

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BY MR. KING:
No more questions. Mr. Gunn has some.
EXAMINATION BY MR. GUNN:
Q. Dr. Smith, I represent Dr. Shantha in the case.
A. Yes.
Q. And I believe that I can be somewhat brief with you.
A. Yes, sir.
Q. Let me ask you this, I think from some of what you've said earlier, that you have not reached any opinions or drawn any conclusions about the standard of care by Dr. Shantha?
A. No.
Q. And would not consider yourself in fairness qualified to do so?
A. Correct.
Q. Board certification. You are board certified in pulmonology; are you not, sir?
A. I am.
Q. And when were you first board certified?
A. '82.
Q. And that's the one that you're in the group that you don't have to get board recertified?
A. That's correct.
Q. Do you consider board certification in a specialty,

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well, particularly in your primary line of work, pulmonology, to be an additional measure beyond just a medical license of competence in your field?
A. Yes, I think it has grown to that that if you are going to present yourself as an expert in that area that board certification would be a requirement.
Q. It's a demonstration. It's a good objective, fair demonstration of that professional competence?
A. And the hospitals are requiring it now for you to be able to put yourself forward as an expert in that area.
Q. Such as our hospital here, Spartanburg Regional Medical Center?
A. That's correct.
Q. And how long has that been the case that Spartanburg Regional requires that board certification, if you know? Just approximate it for me?
A. I would say we're talking within the last decade.
Q. I take it -- and Dr. Smith, for example, if you had a close friend or a loved one in some locality of the United States that needed the services of a pulmonologist and it just so happened that you didn't know anybody in that area, you'd get in a directory of some type. And the first thing that

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small — Spectrum — large

Confusion | Focal Neurological Deficit | Agitation restlessness confusion | Stroke | death

SHEET 16 PAGE 61

you would look for, or one of the first things that you would look for is board certification, isn't it?

A. Well, you'd look where they trained, and their -- and that they are boarded.

Q. All right, sir, let me ask you this. This is along the lines of the last several question exchanges that you and Mr. King had. You indicated that -- I'm trying to sort of speed it along by trying to kind of summarize what you said, and if I misstate it you jump right in there and correct me.

A. Okay.

Q. I thought I understood you to say that a patient such as Mr. Casey, it is possible to suffer an air embolism that travels to the brain; is that a fair ---

A. Yes.

Q. --- summary of it?

A. Yes.

Q. And I think you further said that in order for that to happen there has to be a communication from the air source, in this instance, the bronchus to the pulmonary artery or vein, and then, in this instance, mostly likely the vein?

A. That's correct.

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A. You could. You would see again, confusion if they were awake. You might, if it was large, see some focal neurologic deficit. You could have ---

Q. By that -- by a focal neurologic ---

A. --- weak -- weakness of one extremity, loss of vision, something that would be more specific for a stroke in that area. But the symptoms also could be subtle, and just -- it just could be agitation, restlessness, or confusion.

Q. Indeed, would you not expect at some point to see some manifestation of the injury on imaging?

A. No.

Q. MRI most probably?

A. No.

Q. Might or might not?

A. Not necessarily. And it would have to be some kind of specific studies done to look for that possibility.

Q. And if it was -- and if such a study was done and was negative, would that -- I know it wouldn't be conclusive, but would that guide you away from that injury? There'd be some evidence of non-injury?

A. Again, it certainly is helpful if it's positive. It's not a conclusive negative.

Q. Right. Okay.

MRI helpful if not concl. if

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Q. When you use the term "communication," list for me, if you can, the modes of communication that you're talking about. I mean, would it ---

A. With all -- well, with the laser you have made a hole.

Q. Okay.

A. Now that hole could be into a large vein; it could be into the lung. We have a situation in which there was a pneumothorax on that side. We can't -- the other possibility is that the lung has been entered and that the lung then is distended as it would be after intubation and mechanical ventilation, it's possible for the air to be forced into the vein.

Q. All right, sir. In that instance, sir, would you not expect to see some manifestation of physical injury in some fashion?

A. Physical injury where?

Q. To the patient? Well, anywhere? I think I'm looking for answers.

A. Are you talking about the symptoms on the part of the patient?

Q. Yes, sir.

A. Yes.

Q. What would you expect to see?

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A. Okay. And the time course is important as well, since these, if they are small, may disappear.

Q. And if they're small and they would disappear, would you not expect any sequelae to disappear, or would you leave that up to a neurologist or ---

A. Well, again, this would depend on the amount and the location of where the -- they had produced occlusion of flow.

Q. Would you defer to a neurologist or, I guess, whatever Dr. Grace is?

A. Well, not a psychologist, but certainly you -- a neurologist would be the -- the one with the expertise in this area to assess the damage.

BY MR. GUNN:

I think I'm about through. Let me check, because this is kind of a speak now or forever hold your peace. Okay, that's all, sir. Thank you very much.

EXAMINATION RESUMED BY MR. GUNN:

Q. Let me ask you this. You still do procedures, do you not, sir, where patients are put to sleep?

A. And when you -- define "put to sleep" for me.

Q. Well, that require the services of an anesthesiologist?

A. That's pretty unusual for us to require an

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p. 67 Portable AP screw above bronchus rather than inside bronchus

WILSON P. SMITH, M.D.

— W. Smith

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anesthesia. More often we get called in to help them with a difficult intubation, something like that.

Q. Oh, okay. But I mean, what type of procedures do you do presently in your practice that require a patient in the surgical suite?

A. Probably the one where we might do that would be, again, the removal of a foreign body. But I have a partner who we usually defer those to.

Q. Do you do -- you indicated earlier that you do do flexible bronchoscopy?

A. Yes, sir. But there we use what's called moderate sedation where a nurse under our direction administers a cocktail of drugs to produce sedation.

Q. Sort of like a similar situation with a colonoscopy?

A. Yes, exactly.

BY MR. GUNN:

All right, sir. Thank you.

BY THE WITNESS:

And the other thing I'd add, just to extend on yours, because now I remember I did need the services of an anesthetist when we do procedures down at The Village, their bronchoscopies are

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handled by the nurse anesthetist.

BY MR. GUNN:

Gotcha. Thank you, sir.

CROSS EXAMINATION BY MR. THOMPSON:

Q. Dr. Smith, I'm going to have just a few questions for you in follow-up. Have you seen this consult history and physical and summary. I believe it's dated 5/28/04 of Dr. Joseph A. Boscia?

A. Yes.

Q. And I've highlighted several places in yellow which can be copied after the deposition. But do you see in the history of present illness, if you can read where it starts, "Initial chest x-ray."

A. "An initial chest x-ray on admission showed what appeared to be a foreign body in the left main stem bronchus. I am being asked to comment on this."

Q. And under physical examination where it starts, "Chest x-rays have been reviewed."

A. "Chest x-ray has been reviewed and it does show what appears to be an irregular metallic foreign body in the left main stem bronchus."

Q. And in the summary just below that, if you could read the first sentence?

A. "46-year-old gentleman with what appears to be a foreign body in the left main stem bronchus. Will

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perform fiberoptic bronchoscopy to see if this foreign body is removable."

Q. And the portable AP chest x-ray that Dr. Boscia is referring to that was taken upon Ms. Casey's arrival at Spartanburg Regional on 5/28/04, have you had a chance to study that x-ray?

A. Yes, I have.

Q. And where it's stated there in the consult history and physical and summary that the foreign metallic body appeared to be in the left main stem bronchus, is that consistent with your review and interpretation of that x-ray?

A. Well, I have to say that the foreign body, which looks like a small screw, looks to be actually above the bronchus rather than inside the bronchus.

Q. And so when you compare your interpretation of the x-ray to what Dr. Boscia has here, if the metallic foreign object projecting on the portable AP x-ray is not within the left bronchus, would it be accessible either by flexible or a rigid bronchoscopy procedure?

A. No.

Q. So if the x-ray was initially misinterpreted by Dr. Boschia in that the metallic foreign body was actually outside the bronchus, then the flexible

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bronchoscopy procedure for removal of the foreign body, would that be a necessary or an unnecessary medical procedure?

A. It would be unnecessary.

Q. And whether or not the metallic foreign body projecting on the single portable AP chest scan, even if it shows it's outside the bronchus, would the standard of care still require Dr. Boscia to obtain a PA and lateral x-ray in order to determine whether or not the object is actually within the body and the approximate location within the body?

A. Yes, I think that would be prudent to do to establish the exact location of the object.

Q. And in the summary there of that two-page document ---

BY MR. THOMPSON:

I'd like to go ahead and get this marked, ma'am, if I could, as Plaintiff's Number 1.

(COURT REPORTER MARKS TWO-PAGE DOCUMENT AS PLAINTIFF'S EXHIBIT NO. 1; ATTACHED TO DEPOSITION).

CROSS EXAMINATION RESUMED BY MR. THOMPSON:

Q. In the summary, does Dr. Boscia indicate that he plans to do the fiberoptic bronchoscopy on 5/28 in an attempt to remove this foreign body which ---

A. He does.

THOMPSON 002908

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Q. And then characterizes as metallic?
A. Yes.
Q. I'm going to show you the consent form of the flexible bronch procedure 5/28. And it appears to have the signature of William M. Casey and it looks like possibly Christy Lockhart witnessed it?
A. Lookhart, uh-huh (affirmative response).
Q. It's hard for me to make out, but would you know that to be possibly the signature of Dr. Boscia?
A. I believe that's ---
Q. And where you have number 1 on the consent form, and it has -- I'll just read the first part of it, "I authorize and direct Drs. Feldman, Boscia and such assistants as may be selected by him/her to perform the following procedures upon me: tube in lungs to obtain specimen as needed." If the procedure is to attempt to remove what is believed to be a foreign metallic body from the left main stem bronchus, is that an adequate description of the procedure to inform the patient, in your opinion, as a physician?
A. Well, I'll have to say, that's our standard consent form that we use. So I don't have any problem with the consent.
Q. And Dr. Feldman -- let me find his consent form.

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There is a consent form that I've handed you dated 6/3/04 and it has the name of the patient, William Casey. And number 1, where it has "to perform the following operations upon me." It's blank after that; correct?
A. Well, actually he gives a description down below, still under number 1, of the procedure he was going to do.
Q. Okay. And it doesn't identify the doctor who is going to do the procedure, does it?
A. Well, it says that "Dr. Feldman has explained to me my conditions."
Q. But as far as number 1 where it has a slot to identify ---

BY MR. KING:

Object to the -- objection to the form of the question.

WITNESS ANSWERS:

A. Again, I'd have to say, this is our standard consent form that we use. And I think the assumption would be that if Dr. Feldman had explained the procedure and signed the consent that he would be the physician doing the procedure. I have to say, I don't see any problem with this.
Q. Okay. And the "time" there is left blank. In this

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situation where there's been testimony that this was completed by Dr. Feldman in his handwriting and executed in the holding room next to the main OR just prior to the procedure, do you attach any significance that it doesn't have time as to when this was obtained?
A. I mean, I don't -- I don't find that a problem.
Q. Okay.
A. I mean, certainly they're on us all the time to time and date. And I guess we see to some extent why that's helpful. But again, I'd have to say the majority of the time, on my own consents, we just get the date and so I don't see that that's a problem. They require us to have this within 48 hours of the procedure. So if the date was appreciably different from the date of the procedure, that might be a problem. But the fact he didn't put the time there, I don't -- I don't have a problem with.
Q. And where it has "Description of Operation in Language of Laymen," could you read that for me?
A. Yes, it shows "rigid bronchoscopy and laser and removal of foreign body."
Q. And language of laymen, would your typical layman understand what a rigid bronchoscopy with a YAG

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laser and -- plus removal of foreign body, would a typical layman understand what that is, from that language?
A. Well, I'd have to say, with that patient having had a previous flexible bronchoscopy and having the impression that there was a foreign body there, yes, I think that would be enough for him to understand what was about to take place.
Q. Is it clear to you that the purpose is for the removal of the foreign body? (of the 6-3-04 procedure)
A. Yes, sir.
Q. And in that, Dr. Feldman has testified in his deposition, and also responded to interrogatory requests that he never read the radiology report of his CT scan which was negative for metallic foreign body or any other radiopaque chest foreign body, and in fact was not even aware that such a CT scan had been scheduled at the request of Dr. Boscia. And also he never communicated the negative results of the CT scan to Mr. Casey. Do you think that Mr. Casey was given adequate information to be able to grant an informed consent for this particular procedure to remove what has been characterized as a metallic foreign body from his left main stream bronchus, not knowing that?

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WILSON P. SMITH, M.D.

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BY MR. KING:
Objection.
CROSS EXAMINATION RESUMED BY MR. THOMPSON:
Q. Not having been told that?
BY MR. KING:
Objection to the form of the question.
WITNESS ANSWERS:
A. Well, I would surmise, had he been told that no foreign body had been identified, that that would have changed his willingness to consent to that procedure, yeah.
Q. And I'm going to ask you to assume that Dr. Feldman has testified, and I could bring out the Interrogatory Responses, but it's clearly indicated that he did not communicate that to Mr. Casey and Dr. Boscia did not communicate that to Mr. Casey. And assuming that Mr. Casey did not have that knowledge, then the lack of his being told of those results would you consider this a informed consent or a defective consent?
BY MR. KING:
Objection to the form of the question.
WITNESS ANSWERS:
A. Well, I guess I'm ---
Q. And I'm not asking just about the form, because --

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I'm asking about the information provided to the execution of the form, which I've asked you to assume that it -- the negative CT results were not ever communicated to Mr. Casey by Dr. Feldman or Dr. Boscia and it appears by no one else.
BY MR. KING:
Are you finished? Mr. Thompson, are you finished with the question?
BY MR. THOMPSON:
Yes.
BY MR. KING:
Objection to the form of the question.
BY MR. THOMPSON:
You can go ahead and answer.
WITNESS ANSWERS:
A. Well, I -- again, this is asking me to make a lot of assumptions here. But again, I just say, if he had known there wasn't a foreign body, he probably would have made a different approach to the consent.
Q. And having said that, is that something that should have been communicated to him by Dr. Feldman?
A. Again, had he known that, yes, he should have communicated that. But I don't have any information that says that Dr. Feldman knew that.

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prior to beginning the procedure.
Q. Is it a responsibility of a surgeon, such as Dr. Feldman, to review the patient's chart prior to the procedure?
A. Well, it is his responsibility to review the pertinent medical record.
Q. And I want you to assume that Dr. Peter Ryan's radiology report on the 5/28 CT scan was in the chart as testified by Mr. Gunn's client, Dr. Shantha at ---
BY MR. GUNN:
Dr. Shantha.
BY MR. THOMPSON:
Excuse me, Dr. Shantha.
CROSS EXAMINATION RESUMED BY MR. THOMPSON:
Q. At 11:00 p.m., less than an hour before the procedure?
A. Well, I -- again, as I said earlier, I think it would have been imperative of him to have obtained that or some other study to confirm that this object was where it was thought to be. But I don't know that I can say that he's required to know about an x-ray that he didn't know was taken.
Q. Dr. Smith, you had mentioned an x-ray, I think when I believe I was referring to the CT scan?

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A. Yes, sir.
Q. And I've got his deposition and I can pull out and go to the specific entries if anyone would care for me to, but he testified in his deposition that he had not read the radiology report, Dr. Peter Ryan, as to the portable AP x-ray. He also testified that he had not read Dr. Ryan's radiology report as to the CT scan which was negative. He further testified that he had not read the history and physical of the ER physician, Dr. Leshman. He further testified that he had not read the monitoring notes from the ER from approximately 9:37 to 2:15 on 5/28/04 and he did not see Mr. Casey after his discharge on the 29th until the morning of the surgery in the holding room. If he had not previously read those things and there was a chart -- would the standard of care not require him to read those before he goes in and does his procedure?
BY MR. KING:
Objection to the form of the question.
WITNESS ANSWERS:
A. Well, here's what I would say, is that in the absence of an emergency situation, it is prudent to separate your assessment of the patient from the

THOMPSON 002910

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WILSON P. SMITH, M.D.

p. 80 screw (orig) vs crown (later) | W. Smith → having not found FB or estabh diagn. - proceeding to laser

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procedure so that you do have an opportunity not under time pressure to review those things that are pertinent to going ahead with the procedure. And I think that was one of the things that did end up resulting in what happened, was that a visit to his office before hand where he could have seen the patient and established what had been done and hadn't been done in assessment, might have prevented this from happening.

Q. For that relevant medical information to be immediately accessible to him and his having failed to review it, would you consider that a breach of the standard of care in going forward with the procedure?

BY MR. KING:

Objection to the form of the question.

WITNESS ANSWERS:

A. I don't think it's a breach of the standard of care so much as it allows for mistakes to occur to have yourself under time pressure, which we always are if you do a case in the OR, you're dependent on the case in front of you finishing. The guy behind you is waiting for you to get done on time. You can't make the same level of assessment that you can prior to going ahead with what is a fairly invasive

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procedure. Again, under certain circumstances you end up doing this, but this is not what you would consider ideal way to handle this procedure.

Q. Just a couple more questions. As noted on the consent form dated 6/3/04, rigid bronchoscopy with laser, plus removal of foreign body. And the foreign body having been consistently referred to as a "metallic foreign body." This being done in the main OR under general anesthesia, what is your consideration of using that laser as indicated in his operative note?

BY MR. KING:

Objection to the form of the question.

WITNESS ANSWERS:

A. Well, the problem as I see it is there is clearly no foreign body identified on the CT scan. So that throws the whole need to do this in question. ~~Like~~ I say, ~~I don't have a problem with saying, I need to repeat the bronchoscopy because Dr. Reed's has found something abnormal, but I don't see where a rigid bronchoscopy or a laser comes into play in doing that.~~ And certainly in using the laser, one wants to be very sure about what you're doing because this is many steps above in terms of risk from a routine bronchoscopy. And I think unless

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you clearly have seen what you're going to do, that you're taking a lot of risk, unless you're very sure that there is an object there that you're going to find and remove.

BY MR. THOMPSON:

If you'll mark that. I've referred to it. And if you can mark this for me. I believe this is Dr. Feldman's operative note.

(COURT REPORTER MARKS DOCUMENTS AS PLAINTIFF'S EXHIBIT NO. 2 and 3, ATTACHED TO DEPOSITION).

CROSS EXAMINATION RESUMED BY MR. THOMPSON:

Q. And Dr. Smith, are you familiar with Dr. Feldman's operative note?

A. Yes, I've read it.

Q. Do you see in there where he makes mention to centering the laser on what appeared to him to be a crown and applying pulses and believing that it had been vaporized?

A. Yes.

Q. And with the history of the object having consistently been identified as metallic in nature, do you consider that acceptable treatment or is that a deviation from the standard of care?

BY MR. KING:

Objection to the form of the question.

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F OF Note: originally identified as screw (or met FB) now being identified as crown (80)

WITNESS ANSWERS:

A. Well, it just -- again, I'm concerned that we have proceeded with the laser without clearly identifying that we've got what we thought we had. And that the object that was -- that appeared on the chest x-ray, which all this came about, was clearly a metallic object that resembled a screw. It did not resemble a crown or anything that would have come from somebody's tooth. So now we've found something for which we don't know for sure what we're dealing with and yet instead of establishing that diagnosis, we proceeded with the laser. And I think that's where we've gotten into trouble is having not found what we expected, we proceeded with the laser.

Q. So having not been aware of the negative chest CT scan and proceeding with a laser for removal of what has been consistently referred to as a metallic foreign body, would it be a deviation from the standard of care, not -- for Dr. Feldman not to have taken additional diagnostic procedures to get a definite confirmation of the presence of that foreign body in the bronchus of Mr. Casey?

BY MR. KING:

Objection to the form of the question, if that's a

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p.81 B area (erythematous) shows different that F area (subsequent) therefore ESTABLISH DIAGNOSIS BEFORE PROCEEDING TO REMOVAL.

WILSON P. SMITH, M.D. —per W. Smith

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question.
WITNESS ANSWERS:
A. Well, I certainly think it would have been a more -- a more acceptable and prudent course to have tried to establish what I was dealing with when it was not what I thought I was going to go and find. And it doesn't -- I think it somewhat sounds like this area was different than the area that Dr. Boscia had identified. So again, I would be concerned about what I was -- what I was dealing with and therefore it would have been prudent to have been -- to establish the diagnosis before proceeding with the removal.
Q. And when you say "prudent," in responding to my question, I think it was going forward without having taken additional diagnostic tests -- ordering additional diagnostic tests to get a clear, definite confirmation of the presence of this metallic foreign body in Mr. Casey's bronchus. Do you or do you not agree ---
A. Well, see what I go back to is not having established that object was not there, you approach it with a different mindset than if you are going in and you know that -- not for sure there's anything there. Now, I assume that what they

THOMP

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thought they saw here was something related to this original presumed object and that he was going to therefore remove it. So the error is made earlier in the line that leads to proceeding with something that wasn't necessary.
Q. So is it your testimony that this second procedure carried out by Dr. Feldman on 6/3/04 was medically unnecessary?
BY MR. KING:
Object to the form of the question.
WITNESS ANSWERS:
A. This particular procedure, no, was not indicated, had he known what was to be known prior to this procedure.
Q. And is that the same as saying medically unnecessary?
A. It was medically unnecessary. ~~As I said, though, a repeat flexible bronchoscopy would have been reasonable based on Dr. Boscia's finding.~~
BY MR. THOMPSON:
Thank you, Dr. Smith, I have nothing further.
BY MR. KING:
Thank you, Doctor.
(There being no further questions, this deposition was concluded at approximately 5:24 p.m.)

F Rigid Bronch medically unnecessary

Should have done at repeat flex Bronch based on D findings in

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG C. A. NO. 2006-CP-42-1728

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.

Certificate

This is to certify that the foregoing deposition of WILSON P. SMITH, M.D. was taken by the within court reporter, a notary public for the state of South Carolina, duly commissioned and qualified as such, on September 2, 2009, at The Ward Law Firm, 233 South Pine Street, Spartanburg, South Carolina.
That said court reporter is not a relative or employee of any of the parties or the attorneys, and further, is not of counsel or attorney for any of the parties to said action, and, is not in any manner

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interested in the cause, financial or otherwise.
That the deponent was duly placed under oath and admonished to speak the whole truth; that the oral deposition was duly taken and transcribed as to the questions propounded and the answers given; that the foregoing 82 pages is a true, accurate, and correct record of the testimony given by the deponent; together with such changes as said deponent may have made, if any, during the reading over and signing procedure.
That the court reporter has retained the original deposition in its possession for the purpose of sealing and filing same with the proper official.
That all offered exhibits, stipulations and objections, if any, involved in this cause are duly attached or included herein.
In witness whereof, I have set my hand and official seal.

Date: 9-8-09

Joanne S. Quebe, Court Reporter
Notary Public for South Carolina
My Commission Expires 10-12-11

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WILLIAM MARK CASEY

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG C. A. NO. 2006-CP-42-1728

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,

Deposition of WILLIAM MARK CASEY

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 29th day of August, 2007, commencing at approximately 10:15 a.m. attended by counsel as follows:

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Appearances:
RAY E. (CHUCK) THOMPSON, JR. AND WILLIAM H. RHODES
Burts, Turner, Rhodes and Thompson
260 North Church Street
Spartanburg, South Carolina 29306
Attorney for Plaintiff, William Mark Casey,

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Attorney for Defendants, Drs. Feldman & Boscia
And Upstate Critical Care Specialists,

WILLIAM U. GUNN, Esquire
Holcombe, Bomar, P.A,
100 Dunbar Street, Suite 200
Spartanburg, South Carolina 29306
Attorney for Defendant, Dr. Devendra Shantha.

Also Attending: Dr. Gregory Feldman
Dr. Joseph A. Boscia, III
Mary Etta Howard

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Exhibits: (Attached to deposition)
Defendants' Exhibit No. 1 Marked 138
Defendants' Exhibit No. 2 Marked 141

Deposition Reported By: Joanne S. Quebe, CR
Depositions And ..., Inc.
(864) 585-0542

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Pursuant to notice and/or agreement to take depositions, the within deposition was taken by the above reporter, a notary public, as required under the code of laws of South Carolina, 1976, section 19-17-10, and circuit court rule 30, et al., by consent of all parties at the Law Offices of The Ward Law Firm, 233 South Pine Street, Spartanburg, South Carolina.

WAIVER:

Counsel and the deponent agreed that both the reading over of and signing of the deposition are hereby dispensed with and WAIVED.

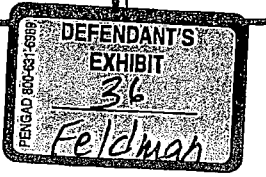
** ** **

The deponent was duly sworn to tell the truth, the whole truth, and nothing but the truth of his own knowledge concerning the matter herein.

WILLIAM MARK CASEY, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KING:

Q. You are William Mark Casey?
A. Yes.
Q. Mr. Casey, my name is Spencer King. I met you just a very few minutes ago. I'm a lawyer here in Spartanburg. We are in my office, about to begin the taking of your deposition in a case that Mr. Thompson and his law firm have filed against my



enough without these other problems, so take care of me. You know, tell me what's wrong. But I know I'm not ready to go back to Michelin. And I know I'm not okay to go start swinging a golf club, which is what I was told. So my sister said, "We need to go see the other set of" ---

Q. Pulmonologist?

A. --- "pulmonologists." And that's what we did is we set up -- arranged to go see -- she wanted to see Dr. Fogarty, but he wasn't available, so we saw Dr. Smith. And then we saw, from that point on -- I saw Dr. Fogarty.

Q. When you saw Dr. Smith initially, did he examine you?

A. Yes, sir.

Q. And what did he tell you he found?

A. No reason for the surgery. That -- he tried to explain -- he tried -- in my mind, I have no doubt of it. He tried to take up for his fellow doctors and say, well, this is why they did this and this is probably why they did this. But in the end, he came back to saying, they shouldn't have operated on me.

Q. Are you talking about Dr. Boscia, talking about Dr. Feldman or both?

A. Either one.

Q. Both of them?

A. Right. But really Dr. Feldman, because -- because of the laser and the metal -- the air, if there had been metal there. But Dr. Smith, the one thing he did was, up to the point of meeting with either one of them, I didn't understand what happened. What happened? What blew me up? What blew my -- air under my skin and what caused all that and why there's a possibility of these other things happening. Instead of saying they're not happening or talking to somebody else, he said, you know, you could be -- have lost here. You could have done this. This could be causing this. So he spent about 45 minutes with us that first day. And his nurse kept coming to get him, and saying, you got to see other patients, 'cause he didn't know what she was telling us about. So that's what I remember about that day.

Q. But he did examine you?

A. Yes, sir.

Q. And did he tell you there was anything ---

A. He just x-rayed. Excuse me.

Q. Did he tell you that there was anything abnormal that he found in his examination?

A. Of my chest?

Q. Yes.

A. No, sir.

Q. He told you that everything was normal?

A. Just -- I don't know. I'm not sure exactly the medical terms that he was saying. So, I mean, I don't know if he said your upper this or lower this is okay. I don't remember exactly. I just know he said that because certain things happened, this could have caused such and such which is now causing you to be unable to think clearly or your memory loss or some of the other things that were happening could have been caused by this episode of this being done and this. That's what I remember.

Q. Did he offer to treat you?

A. No, he was -- anybody -- because of my sister's relationship over there, they were going to treat me. She -- she knew them well from seeing them over 15 years, however long it's been. So they agreed to treat me when we called, because we called -- my sister told them that we needed to switch doctors that we weren't getting the answers that we wanted. And they said, that's fine and we switched.

(OFF THE RECORD).

DIRECT EXAMINATION RESUMED BY MR. KING:

Q. I guess what I'm trying to find out from you, Mr. Casey, is when you went to Lung and Chest, did you go over for medical treatment or did you go to talk about the treatment that had been rendered to you by Drs. Boscia and Feldman?

A. I went because I still didn't know what happened, why it happened, and who was responsible. All I cared about was -- and when I went to see him was -- you know, I never sued anybody, don't care about that, if we did something wrong, let's make it right. I still got to go to work, still got to do whatever. I need to know what happened. You can't just tell me I'm okay and go back to work and walk into Michelin, 'cause they'll drop in the floor if you're not physically ready, just doing that job. And they didn't -- didn't seem to -- to care what -- you know, it was more of a "I didn't do it" than anything else, which I just want to know what's happening and can we do anything to stop it. And I didn't feel like that was going to happen. Once Dr. Feldman told me I had to go back -- you know, they couldn't keep me out of work any longer, I had to -- I was out of there.

Q. Well, didn't Dr. Feldman tell you that you had had

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a pneumothorax -- that a pneumothorax had occurred?
A. We didn't discuss that in his office.
Q. Did he tell you that in the hospital?
A. I don't know.
Q. But you had heard the term, "pneumothorax" before ---
A. I'd heard the term.
Q. --- you went to Lung and Chest?
A. Yeah. Yeah. I mean, I knew the -- what happened. I just didn't know what caused -- you know, you go in to have surgery -- laser surgery, you don't come out not remembering what you did 15 months ago. That's what I was saying. Why is this happening? I understand that it happened. And I had air escape under whatever. I don't know why I'm having these sets of problems. I went in with these problems. I still got those. Now I got these.
Q. What did Dr. Smith tell you was wrong with you when you saw him?
A. He used the word "depression," among other things. But that was one of them. And I said, "I'm not depressed." But I don't know what "depressed" means. You know, at that time I hadn't seen anybody. I still don't understand to this day what -- why I worried -- people say, "don't worry."

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They say, "You need to get out of house. You need to" -- I don't know why I don't want to do those things. I don't, to this day -- still don't know it. So answers were what I was wanting. And I still ---
Q. Well, did he give you any reason for why you were depressed, Dr. Smith?
A. He was very concerned that that had happened and that they weren't trying to figure out everything they could do to make sure I was okay. Whatever happened, you know, let's -- let's find out what is happening. If we need to send you to see so and so, let's do that. If we need to send you to this doctor or whatever, let's do that. But his main concern was -- and I think because my sister knew so many people that maybe they had helped initially over if I had just came in on my own. It's like, I know her. Okay, you're her brother, so what -- you know, maybe they spent two more minutes with me than they would have initially. And then it went a little further. I don't know. But I just wanted to know why I couldn't sleep and still had the chest pains under exertion. I was just like, if I go back to Michelin, I'm going to go back to exertion and I'm going to go back to hurting,

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'cause we still haven't found that problem. That was my biggest fear.
Q. Did Dr. Smith answer those questions?
A. No.
Q. Did not?
A. He couldn't answer them. He just basically told me what had happened and what caused it, what -- what could have happened to cause -- you know, if you lose air, this could happen. If this happens, this could happen. If you laser this with metal in there -- in your lung, this could have happened. That's pretty scary. And he was just telling me what -- the basics of what he took -- what he -- if he'd have been in that situation looking at it then, how he would have thought it should have happened. And looking at me now, I'm going to try to answer some questions. 'Cause it was four or five weeks later and we still didn't have any answers. I don't ---
Q. Did Dr. Smith tell you what could have happened, or did he tell you what did happen?
A. He told me what did happen, as far as -- if this happened, this caused your air under your skin and this caused this. And if this doesn't happen -- I don't recall a lot of that. The things that I

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remember the most, I've got written down. And I've -- you know, what conversations we've had and things like that. I don't have a lot written down for Dr. Smith. I just remember saying thank you for trying to tell me at least what happened. But I don't recall exactly the words he was telling me that day.
Q. Did he tell you you had had a pneumothorax?
A. Yes.
Q. And you already knew that?
A. Well, I didn't really still even understand what it meant. But yes, sir; I knew that.
Q. Did he tell you you had any other injuries?
A. From that, no, I don't recall a -- you know -- you know, your side is going to get better. That's going to go away. That was a had-to-have happening kind of thing. And I don't recall exactly what he said. I've got it written down somewhere, but I don't -- I don't know -- I don't recall that exactly.
Q. Was Dr. ---
A. I just remember being happy. I'm sorry. I just remember being happy that I felt like I was understanding a little bit more what happened.
Q. Was Dr. Smith critical of Dr. Feldman?

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SHEET 28 PAGE 109

A. He wanted to be on their side. He wanted to say that -- and he did say, this is why they -- I think they did this. And this is why they think this. But two or three times over that 45-minute period he came back and said, "This shouldn't have happened to you." And if it did -- if it'd been me, I'd be, you know, trying to figure out what I can do to make this right. And that was more my concern is, why I was just going in there saying things to these doctors and that didn't deserve to be listened to and found out about. Maybe -- maybe this caused this, and we need to figure out what it is regardless of human error or not human -- whatever.

Q. He didn't tell you Dr. Feldman made an error?

A. Oh, yeah.

Q. Did not tell you that?

A. Yeah, he told me he did. If he went -- if he put a laser in my lung with metal in it, that would have been a huge error in his mind. Yes, he should not have done that.

Q. How about Dr. Boscia?

A. Dr. Boscia what?

Q. Was he critical of Dr. Boscia?

A. Was Dr. Boscia critical of Dr. Feldman?

PAGE 110

Q. No, no, excuse me, Dr. Smith. Was Dr. Smith critical of Dr. Boscia?

A. I didn't really have much concern with Dr. Boscia. I didn't feel like until later that -- that first one probably shouldn't have happened, because I didn't come out of the first one in the same shape I did the second one. So I really didn't understand until later, if we had discussed this and this had happened, maybe I shouldn't have ever had the first one. That, I think, was -- and -- and we tried to talk -- we were nice to each other. We -- I talked to him. I asked him questions. He just -- he would not speak for Dr. Feldman. He just said, "I'm not going to speak for him."

Q. Was Dr. Smith critical of Dr. Boscia though is my question?

A. I think he -- there's no doubt in his mind that nothing should have happened period. But he could see where Dr. Boscia would have maybe tried that procedure, but not the laser in the lung and the metal.

Q. Mr. Casey, what is your source of income now?

A. Only ---

Q. Social Security?

A. --- Social Security.

PAGE 111

Q. How much do you get for that?

A. Well, I'm supposed to be getting 1,700, but the government's taking 500 of it for two other -- one's taxes that I haven't been able to pay from having to get the 401k to live. So they're taking part of that. And then a bank loan for my son to go to school that I couldn't pay, so they're taking that. So 255 out of the 1,700 -- 255 twice out of 1,700. So the last few months it's only been 1,100.

Q. Mr. Casey, I think the term's "offset." So the government is offsetting your Social Security by taking pay back for taxes that were generated by -- because of your 401 early withdrawal?

A. Because it was the only money I could get to. Yes, sir.

Q. Took it out early before 62 or 65, 59 or whatever. So you had to pay taxes ---

A. So you had to pay another -- they already took 20 percent. They wanted some more.

Q. They're going to put a penalty on it?

A. They want some more; yes, sir. And they say that possibly I could get it back, but they want it all paid first and then we'll talk about it. That's just not going to happen, so ---

PAGE 112

Q. And then apparently you had -- your son had a student loan, and that must have also been federal government?

A. Federal. I've learned that, federal if you owe them, they're taking ---

Q. They're getting their money?

A. They're taking it.

Q. So they're taking -- you've got a total of $500 offset?

A. 255 twice. 500 and 10.

Q. So that leaves you $1,200 a month?

A. Less than that. 1,100 and something.

Q. What other source of income?

A. Huh-uh (negative response). I already went through all of it. I had some 401k, I had to use that. I had some stock, I had to use that. My sister and brother-in-law have helped tremendously, which I still owe them. And I've had some help from family, but -- you know, once -- the last few months have just been -- I got -- Social Security, when I got it, I got excess ---

Q. Back amount?

A. Yes, sir. But that's been gone through to, because I -- you know, it just wasn't enough to -- and other doctors wanted me to see other doctors. And

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A. I think -- I know my sister and I were talking about it. But if you -- my understanding was, if you didn't have a measurable type of thing against it, it really wouldn't help. If you didn't have something to say, this was what it was five years ago or ten years ago and this is what it is now. I think is why we didn't do that.
Q. What do you mean, "measurable"?
A. Again, I don't understand all the medical, but my understanding of what it is, is if you had an injury, it's not going to jump off the page like certain things would. And I'm not a doctor. I don't know what that means. But it would be very incremental and small, if you didn't have something recent -- fairly recent history of a few years, you wouldn't have something to measure it against. You can't never have one and say, well this is -- this is not the same as it was five years ago. You don't have anything to measure it against. That's what I've been told.
Q. Are you seeing a psychiatrist currently?
A. Yes, sir.
Q. That's Dr. Smith?
A. Dr. Smith.
Q. Are you still seeing him?

PAGE 122

A. Yes, sir.
Q. How often do you see him?
A. Every four or five months now. Five months, I think.
Q. When did you start seeing him?
A. I think Dr. -- well, Dr. Wilson Smith sent me to Dr. Joseph Grace, who sent me to Dr. -- well, to the other Dr. Smith.
Q. Dr. Jeffrey Smith?
A. Dr. Jeffrey Smith. So whenever I started seeing Dr. Grace is when I went to see Dr. Smith in Greenville.
Q. And you're saying you're still seeing him?
A. Dr. Smith?
Q. Dr. Jeffrey Smith.
A. Jeffrey Smith I see now -- I was seeing him every month. And then -- every couple weeks, then every month, then every two months. I think it's up to five, six months now.
Q. And you're under medication that he prescribes?
A. Yes, sir.
Q. So you saw Dr. Grace, Dr. Jeffrey Smith. Those are the only two psychiatrists you've seen?
A. Well, only one -- only one psychiatrist. One psychologist.

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Q. Psychologist. Dr. Grace is a psychologist?
A. Dr. -- yes, sir.
Q. Corrected that.
A. Yes, sir.
Q. Now, after seeing Dr. Wilson Smith one time, did you see Dr. Fogarty?
A. The next time I saw Dr. Fogarty.
Q. How many times have you seen Dr. Fogarty?
A. Probably -- I think I see him every six months. So three -- say four or five times, I think.
Q. Is he still treating you?
A. I go every six months.
Q. And what does he do for you?
A. Just to make sure I don't have a -- check -- does a -- the test to make sure there -- you know, haven't had any re-injurying of the lung or whatever is all I know. They do the blowing test and they have done some x-rays.
Q. Of your chest?
A. Yes, sir.
Q. Has Dr. Fogarty told you you have any permanent injury from the procedures by either Dr. Boscia or Dr. Feldman?
A. He says that we don't -- we can't tell that for sure. Nothing that jumps off of an x-ray at this

PAGE 124

time, you know, that he can say. But not to say that some damage that was done that's, you know, three or four years or five years later could -- could lead to a weakening of this or that and then possibly something.
Q. Do you know whether Dr. Fogarty has looked at your records from Spartanburg Regional during Drs. Feldman and Boscia's care?
A. I don't know.
Q. You don't know?
A. I think that my sister wanted him to see some things that -- she does -- I mean, I pretty much just go along with what she says. She said -- I think she -- I want him to look at something, but I don't know what.
Q. Has anybody told you that you have any brain damage that resulted from Dr. Boscia and Feldman's care?
A. I've been told that it's possible.
Q. Possible? Okay. Anybody -- who told you it was possible?
A. Well, Wilson Smith said it's possible. Dr. Fogarty said it's possible. Dr. Gray said it's possible. Dr. Ellis -- Dr. Smith said it's possible. All of them, because if you -- if you lost air to your brain during that procedure -- and that's just

SHEET 32 PAGE 125

based on what I was saying about, you know, conversations that people say we've had the night before and I don't know what they're talking about. And losses of time. Just -- there's been a bunch of different times that I just -- somebody'll say I said I was going to do something and this, that and the other and it hadn't happened. My daughter got -- now she's got a kid, it makes a little more sense to her about me. But -- what I was trying to tell her. But she got mad at me about a month ago and said, "Why don't you ever do anything with me?" And I said, "I don't want to go out of the house." And, you know, I don't have an explanation. I wish I did. And she said, you know, "I need -- I want to see my dad, but you don't act like my dad anymore." So -- it's more -- more of a -- you know, money's money, but ---

Q. I asked you about if anybody had told you you had brain damage.

A. No.

Q. Nobody has? Is that correct?

A. No.

Q. Now, the problems that I'm hearing, and you can add to or expand on, and I want to know how you are now versus how you were within several months -- a

PAGE 126

month -- let's say a month. When you went to Lung and Chest you were complaining of memory -- memory problems. Do you still have memory lapses?

A. Yes, sir.

Q. Has it improved?

A. It's improved. It's not as often. Still having some ---

Q. People who deal with memory talk in terms of short-term and long-term memory loss. Are there things that happened many years ago that you can't remember, or is your memory pretty good with those?

A. No. I remember pretty good with those.

Q. It's things that have recently occurred?

A. Yes, sir.

Q. Like the day before?

A. Yes, sir.

Q. Or even this morning?

A. Yes, sir.

Q. That's improving though?

A. Still happens, so I mean, I -- if you're still having them, I don't know if you'd say that's improving. If you don't have it as often but you still have them.

Q. Physically, are you any -- do you think you're any weaker now than you were?

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A. I'm weaker physically, but I -- I'm not going to -- I don't want to exert -- I don't want to go back to the hospital. I'm scared to go back. And I've done enough things to know that after 20, 30 minutes of whatever, the tightness starts coming, ---

Q. The chest pain ---

A. --- the pain starts -- starts to return. And fortunately, right now, I haven't had to go back to the place that makes it keep coming, 'cause I'm scared to go back to the hospital.

Q. You're not trying any type of exercise program?

A. I've done some -- you know, just walking and nothing of a -- of a set schedule or anything like that.

Q. Do you think that -- I mean, age affects strength; do you agree with me on that?

A. Yes, sir.

Q. Do you think that you're continuing to lose strength now, other than as related to as we get older?

A. There is some as we get older, I guess.

Q. But any more than that, you think you're still losing now?

A. I was -- the guy that went in the hospital that day

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was very active all the time and I'm not now.

Q. But is the lack of activity the result of loss of physical strength?

A. Uh-huh (affirmative response).

Q. You think for you it is?

A. Uh-huh (affirmative response). It's resulted in some loss of physical strength, just because I'm either scared or, you know, I do certain things and then when the pain starts to come back, or the tightness starts to come back in my chest. Whereas at Michelin I had to keep going, I don't have to keep going right now. And thank God for that, 'cause I don't want -- I don't want that pain to come back.

Q. But you don't blame Dr. Fogarty -- I mean, excuse me, Drs. Feldman and Boscia for the chest pain, do you?

A. The chest pain that I went in the hospital with was before that.

Q. And that's still -- that's the same chest pain you're still having?

A. Upon exertion; that's correct.

Q. How about nervousness; do you ---

A. I attribute all the other things to what happened to me in the hospital. The lack of -- the fact

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS
C. A. NO. 2006-CP-42-1728

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.

COPY

Deposition of *CHARLES M. FOGARTY, M.D.*

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 22nd day of December 2008, commencing at approximately 10:15 a.m. attended by counsel as follows:

DEPOSITIONS AND ..., INC.
(864) 585-0642

Hydrocodone?

A. Lortab would be a brand name and Hydrocodone would be the generic. I'd have to look it up to be sure, but I believe Hydrocodone is the ingredient of Lortab.

Q. Doctor, you found and handed to me two pages.

A. Yes, sir.

Q. And are those the two pages that we had talked about that you thought we had not ---

A. Yes, sir.

BY MR. KING:

Mark those as an exhibit.

BY COURT REPORTER:

Number 19.

(COURT REPORTER MARKS TWO-PAGE DOCUMENT AS DEFENDANTS' EXHIBIT NO. 19; ATTACHED TO DEPOSITION).

(COURT REPORTER MARKS THREE-PAGE DOCUMENT AS DEFENDANTS' EXHIBIT NO. 20; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KING:

Q. Dr. Fogarty, I'm going to hand you your office note of July 21st, 2005.

A. Yes, sir.

Q. The Bates number is 440 through 438. Doctor, let me go to page three of your report, under the broad heading of "Comment."

THOMPSON 017772

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A. I see it's page "tree."
Q. Page three, all right. The third paragraph under "Comment," would you read that to us, please, sir?
A. Sure. "With reference to the patient's difficulty concentrating, he undoubtedly had air emboli given his lengthy duration of anesthesia and laser perforation of the endrotracheal tree with resultant leakage of air into extra pleural and vascular extra pleural mediastinal and vascular 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 may be moot and 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."
Q. Doctor, are there diagnostic studies or tests that would assist in diagnosing a neurological deficit?
A. Formal neurocognitive -- there are formal tests that can be done for neurocognitive impairment. Some of the references I gave you indicate this is a area that's on -- research that's ongoing and as far as what battery of tests to use, I'm not a psychologist or a psychiatrist and there may be some debate about the best ways to make the

THOMPSON 017773

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Lung and Chest Medical Associates



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WILLIAM CASEY
77168
08-04-05

OFFICE NOTE

Chief Complaint

William Casey returns for follow up on his previous visit. Since we saw him he has had coronary calcium score and upper abdominal ultrasound.

Current Conditions

1. Chest pain.
2. Nausea and vomiting.
3. Persistent difficulty concentrating staying focused status post pneumomediastinum/pneumothorax complicating laser therapy in attempt for laser therapy for metallic artifact, which ultimately proved to be outside of chest.

Current Medicines

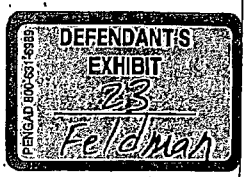
1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab four times daily as needed.

Social History

No tobacco or alcohol.

Review of Systems

No additional findings on cardiorespiratory, GI or GU review.



Physical Examination
Vital Signs: Wt. 178, BP 120/74, HR 75, RR 22 and SaO_2 is 98% on room air.
General: No acute distress.
Skin: Normal turgor.
HEENT: Pupils symmetric.
Neck: No jugular venous distention.
(Continued to next page)

000446

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Physical Examination (Continued)
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. Bowel sounds present.
Extremities: No edema or clubbing.
Neurological: The patient had some readily apparent difficulty staying focused with answers to questions and had difficulties repeating numbers backward on a simple cognitive screen.

Laboratory Data

The ultrasound showed no pathological findings.

Impression/Discussion/Plan

The patient has been instructed in optimal use of aerosol therapy. The patient was instructed on diet with attention at maintaining muscle mass and achieving an ideal body weight. The patient is instructed in exercise to promote mucous clearance, maintain balance and muscle mass. The patient was given our cell phone number to call any time any interval problems develop before the next visit.

The patient is to continue his current regimen. He will check back with us this fall.

Charles M. Fogarty, MD
CMF/ns

000445

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SPARTANBURG REGIONAL MEDICAL CENTER
Radiology Report

NAME: CASEY,WILLIAM
ORDERING PHYSICIAN: FOGARTY,CHARLES M
LOC: OPT
Pt. Type: OPT

UNIT #: 000146220
CI#: 1480551
DOB: [redacted]58
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

000444

Patient:CASEY, WILLIAM MRN:000146220 Encounter:0520101451 Page 1 of 2

THOMPSON 032159

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NAME: CASEY,WILLIAM
ORDERING PHYSICIAN: FOGARTY,CHARLES M
LOC: OPR
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 Joyce MD
Released By: William T Joyce MD

FINAL

000443

THOMPSON 032160

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SPARTANBURG REGIONAL HEALTHCARE SYSTEM
SPARTANBURG REGIONAL MEDICAL CENTER
Radiology Report
ACR Accredited Facility for Ultrasound

DOLV 7-21-05 no Appt

NAME: CASEY,WILLIAM
ORDERING PHYSICIAN: FOGARTY,CHARLES M
LOC: OPT
Pt. Type:OPT

UNIT #: 000148220
CI#: 1480525
DOB: [redacted]/58
AN#:SO520101451

Exam
80073 US GALLBLADDER
76705

Date: 07/28/05 0812
Ord Diag: 787.03-VOMITING ALONE

Sonogram of the gallbladder. 7/28/2005.

History: Epigastric pain with nausea.

Findings: Gallbladder is fluid filled. No stones are seen. Common duct is 5 mm which is normal. Pancreas and liver are unremarkable.

Conclusion: Negative sonogram of the gallbladder.

Read By: John HarrillMD
Released By: John HarrillMD

FINAL

000442

THOMPSON 032161

PIEDMONT IMAGING

Your Choice for MRI & CT Scans

Name: Cory Williams Date of Scan: 7-30-07

Address: 340 Highland Ave, Ext, Greenville SC 29605

Telephone: 864 [redacted] Date of Birth: [redacted]

PROCEDURE

MULTISLICE HELICAL CT CORONARY ARTERY CALIUM SCORING (CACS)

TECHNIQUE

MultiSlice Helical 3.2 mm transaxial CT images were obtained at 1.5 mm intervals for evaluation of the proximal 6.0 cm of the coronary arteries. A computer-generated score is calculated based on the amount of calcification detected.

RESULTS

L MAIN 0.0 LAD 1.4 CIRCUMFLEX 0.0 R. CORONARY 0.0 TOTAL 1.4

CALCIUM SCORE GUIDELINES

Total Score	Plaque Burden	Risk Category	Probability of Significant CAD	Guidelines
____ 0-1	No identifiable atherosclerotic plaque	Very Low	Very Unlikely	Reassurance while stressing adherence to general guidelines on diet and exercise.
1-10	Minimal identifiable plaque	Low	Unlikely	Follow the general guidelines on cardiovascular risk reduction.
____11-100	Mild identifiable plaque	Moderate	Mild or minimal coronary stenosis likely	Risk factor medication is recommended, including daily aspirin and strict adherence to National Cholesterol Education Program or proposed modification.
____101-400	Moderate identifiable plaque	Moderately High	Moderate likelihood of significant stenosis	Aggressive risk factor modification is recommended with stress testing preparatory to an exercise program. Daily aspirin is advised. Strict adherence to National Cholesterol Education Program or proposed modification.
____Over 400	Extensive plaque burden	High	High likelihood of significant coronary stenosis	Very aggressive risk factor modification is recommended (including aspirin and a statin medication) with stress imaging and possibly angiography.

Coronary artery calcification is a specific marker for coronary atherosclerosis. The amount of calcification correlates with severity of coronary atherosclerosis and the probability of obstructive disease. A score of 0 indicates no coronary artery calcification and this implies the absence of significant angiographic coronary narrowing in 99% of cases. It does not absolutely rule out the presence of soft non-calcified plaque, especially in younger patients and those who smoke heavily. A high score indicates a significant plaque burden and the relative risk for future cardiovascular events. It should be understood that calcification is not site specific for stenosis but rather indicates the extent of atherosclerosis in the coronary arteries overall. The score may be used as a benchmark to measure subsequent disease development or assess preventative programs

Thank you for your confidence in our center.

Sincerely,

Raul Ceballos, Jr. MD

Radiologist

684 North Pine St. • Spartanburg, South Carolina 29303

864-542-0033 • Fax 864-542-0025

000441

THOMPSON 032162

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Lung and Chest Medical Associates

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WILLIAM CASEY
77/68
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. This can be present without exercise although 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 overlying the chest. This was misinterpreted as being in the chest and the patient underwent bronchoscopy. And when the bronchoscopy did not show definite abnormality, but rather an area of erythema, he was scheduled for a laser bronchoscopy. He had the laser bronchoscopy complicated by pneumomediastinum with a lengthy two hour anesthesia. Since then, although the patient recovered from his pneumomediastinum and bilateral pneumothoraces with chest tubes, intubation and mechanical ventilation, since then he has had continued difficulties concentrating, staying focused and with his general energy.

He is not smoking.

Current Medicines

1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab 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 probably lose his job since he has been unable to hold gainful employment in the interim in large part because of his difficulties with concentrating, staying focused. Although the issue of his chest pain still remains unresolved.

(Continued to next page)

000440

2030 North Church Place, Spartanburg, South Carolina 29303 (864) 582-6858

Pulmonary Medicine · Critical Care · Bronchoscopy · Asthma Therapy · Sleep Disorders

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Family History

Coronary artery disease and hyperlipidemia.

Review of Systems

He did have a cardiac catheterization several years back but his CT during the May 2004 admission 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 SaO_2 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. Bowel sounds present.
Extremities: No edema or clubbing.
Neurological: The patient had some readily apparent difficulty staying focused with answers to questions and had difficulties repeating numbers backward on a simple cognitive screen.

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.
2. Nausea and vomiting.
3. Persistent difficulty concentrating staying focused status post pneumomediastinum/pneumothorax complicating laser therapy in attempt for laser therapy for metallic artifact, which ultimately proved to be outside of chest.

(Continued to next page)

000439

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

WILLIAM CASEY
77168
07-21-05
Page Tree

Comment

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 squeezing he does have risk factors for coronary artery disease in terms of his hyperlipidemia, family history and previous smoking and he did have coronary calcification incidentally noted 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.

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. 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 may be moot and 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.

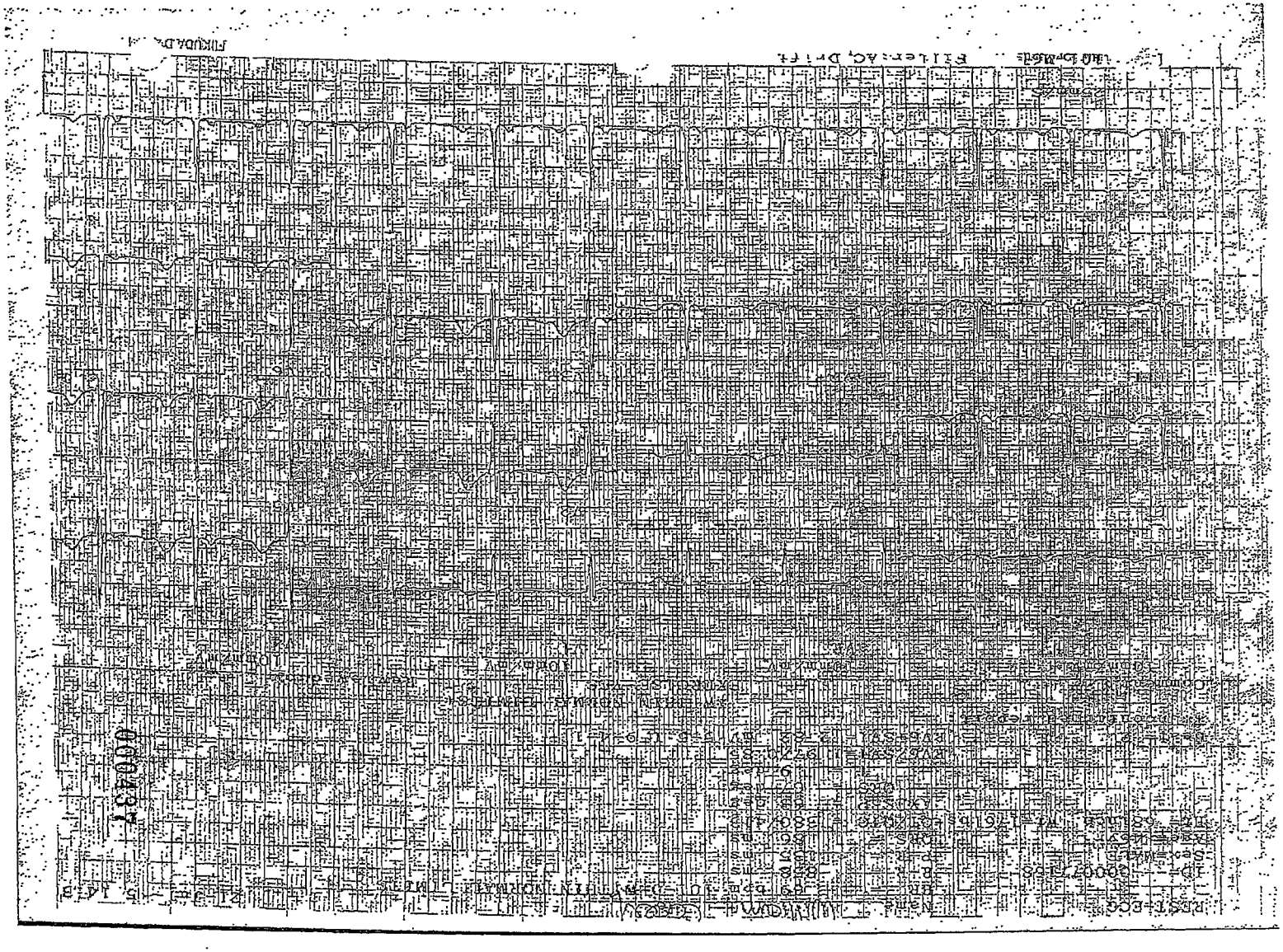
Plan

We will check back with the patient via phone with reference to his coronary calcium score and his gallbladder ultrasound. Further evaluation will proceed pending the results of above. Separately, we will review the patient's chart for him since he still has many questions about what happened during the hospital admission for his chest pain. We will review the patient's chart for him and try to put into lay language a summary of the chart with reference to what happened to him during the hospital admission for his chest pain last year.

Charles M. Fogarty, MD
CMF/ns
cc: Dr. Gonda

000438

THOMPSON 032166



ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates
Multi Spiro B

ID: 77168 Casey, William
Ethnic: CAUCASIAN Height: 68.0 in Sex: MALE Age: 46 Weight: 171.0 lb

MENTS:
E-BD COMMENTS:

LAST CALIBRATED: Thu Jul 21,2005 7:36:40 am

TYPE	Test Date and Time	Exp Time	Normals	Test#
Pre-BD	Thu Jul 21,2005 3:52:12 pm	5.9 secs	KNUDSON/IMTS	1

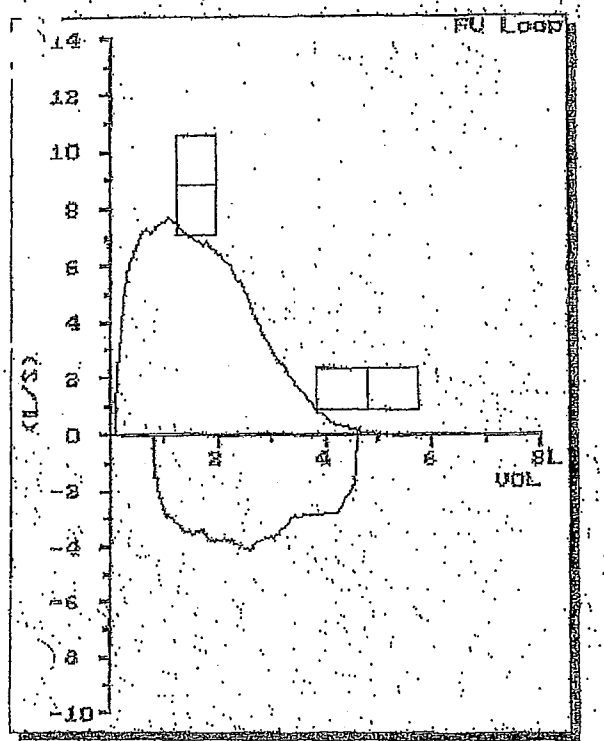
Expiratory	Actual	Predicted	% of pred
FVC	4.65 L	4.75 L	97.88 %
FEV 0.5	2.96 L	3.05 L	97.12 %
FEV 1.0	3.76 L	3.87 L	97.21 %
FEV 3.0	4.40 L	4.51 L	97.51 %
FEV 0.5/FVC	63.77 %	64.27 %	99.22 %
FEV 1.0/FVC	80.82 %	81.38 %	99.31 %
FEV 3.0/FVC	94.58 %	94.94 %	99.62 %
PEF	7.56 L/S	8.67 L/S	87.17 %
FEF 25-75%	3.91 L/S	3.95 L/S	99.06 %
FEF 75-85%	0.86 L/S	1.06 L/S	81.57 %
FEF 25	7.45 L/S	7.97 L/S	93.49 %
FEF 50	5.37 L/S	4.62 L/S	116.05 %
FEF 75	1.47 L/S	1.83 L/S	79.90 %
FEF .2-1.2	7.00 L/S	7.31 L/S	95.75 %

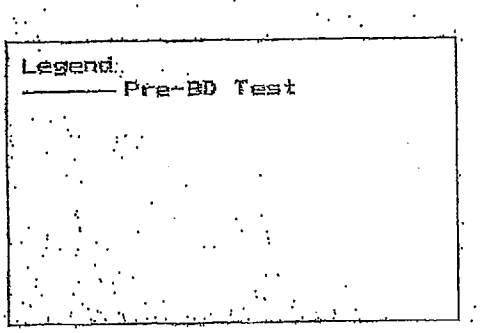
Inspiratory	Actual
IVC	3.86 L
FIV1	2.98 L
PIF	4.26 L/S
FIF50	3.97 L/S
FEF50/FIF50	135.01 %

Interpretation:

NORMAL

MAX FVC = 4.65L TEST # 1
MAX FEV-1 = 3.76L TEST # 1

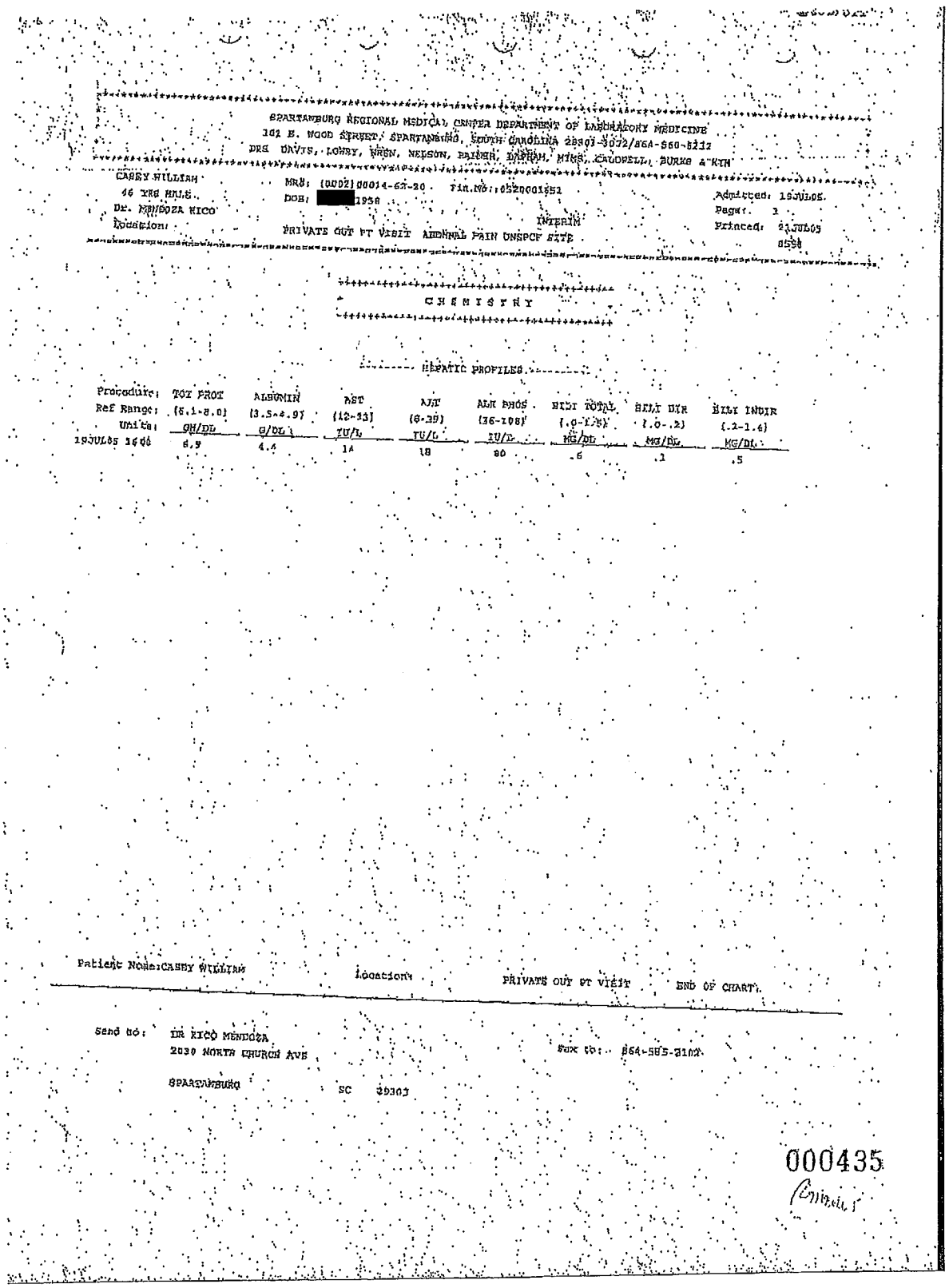




Good Effort NB

000436

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743



SPARTANBURG REGIONAL MEDICAL CENTER DEPARTMENT OF LABORATORY MEDICINE
101 E. WOOD STREET, SPARTANBURG, SOUTH CAROLINA 29303-3092/864-560-6111
DRS DAVIS, LOWRY, VAGN, NELSON, PAIDEN, DURHAM, MIMS, CALDWELL, BURNS & KIM

CASEY WILLIAM
46 YRS MALE
Dr. MENDOZA RICO
Location:

MRN: (MOD2)00014-67-20 Fin.No.:0520001952
DOB: [redacted]1958

Admitted: 19JUL05.
Page: 1
Printed: 21JUL05 0558

INTERIM

PRIVATE OUT PT VISIT ABDMNAL PAIN UNSPCF SITE

CHEMISTRY

HEPATIC PROFILES

Procedure:	TOT PROT	ALBUMIN	AST	ALT	ALK PHOS	BILI TOTAL	BILI DIR	BILI INDIR
Ref Range:	(6.1-8.0)	(3.5-4.97)	(12-33)	(6-29)	(36-108)	(.0-1.5)	(.0-.2)	(.2-1.6)
Units:	GM/DL	G/DL	IU/L	IU/L	IU/L	MG/DL	MG/DL	MG/DL
19JUL05 1606	6.9	4.4	14	18	80	.6	.1	.5

Patient Name:CASEY WILLIAM Location: PRIVATE OUT PT VISIT END OF CHART.

Send to: DR RICO MENDOZA
2030 NORTH CHURCH AVE
SPARTANBURG SC 29303
Fax to: 864-585-3102

000435

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

CMF WPS MLA EBK JDC RVM Beth Darla Lab

Lung and Chest Medical Associates

Name: William Cassell Chart#: 77608 Date: 7-19-05

Wt 174.9 Ht – B/P 129/88 H/R 85 RR 16 Temp 98.1 O2Sat 93 FiO2 –

Cough, Sputum, Dyspnea, Wheeze, Edema, Palpitations, Oriented, New Allergies; Smoking, Nausea, Vomiting, Diarrhea, Chest Pain, Pain, ETOH, Fever/chills

Present Illness + reason for visit: DOE Dont Wanna To See Goldman

Vomiting * Week – Chest SOB – Tight

Dry Hacking Cough

Saw Dr Beaty on Insist Several years ago Stable

When was your last DEXA Bone Densitometry Testing done? Sees pcp 7?

Seeing new doctors? NO For:

Hospitalizations or major life changes since last visit: yes 6-05 - stone

Meds. Review based on: in bottle on list from memory

PHYSICAL EXAM: WNL/NEG ABN/POS

*General Appearance: Sympathetic & Cooperative

*Skin Turgor: Can't take deep breath

*ENT: Chest heavy

*Mouth: No Overt acute Resp. Distress

*Sinus:

*Neck:

*Chest/Lungs: Breath Sounds: Pain

Wheezes, Rales, Effort, Symmetry: Crackles Upper Lobes Worse Left

*Heart: Rhythm, Murmurs, Gallop, Tones:

*Abdomen:

*Extremities:

*Mobility: Gait, Reflexes, Aides:

*Mental Status:

LAB ORDER: Spirometry 5 02 2 EKG Sinus CBC Glu PT INR O2Sat Rest 93%

Lung Vol DLCO UA CXR ABG's Bmp Cmp Lft's Theo O2Sat Exercise

Office Treatment: Nebs Solu

Education: Does pt want to quit smoking? Yes/No Other: PT no longer smoker

Materials/counseling given:

Diagnosis: Nausea / Vomiting Plan: √ UGI RO Smooth/Peptic Ulc.

___Abn CXR(lung fluid),793.1 ? Stricture / Candida esophagitis √ UGI

___Anticoagulant Circulating,286.5

___COPD,496 Pt's Upper Bite Ice in oral cavity

___Cough,786.2

___Dyspnea,786.09 Stop Smoking / Cessation

___Fatigue(general),780.79

___Fever,780.6

___H.D,515

___Monitoring(drug name)V58.6

___Rhinitis,477.9

___Sleep Apnea/Disorders (ncc), 780.52

Prescriptions:

Next appt: ___Weeks ___Months W/ CMF WPS EBK MLA JDC RVM PA NP Signature Staff

Next Visit: Spiro L/V DLCO PA PAL Sinus DEXA BLDWK Other

000434

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates Spiro A

ID: 77168 Casey, William Mark

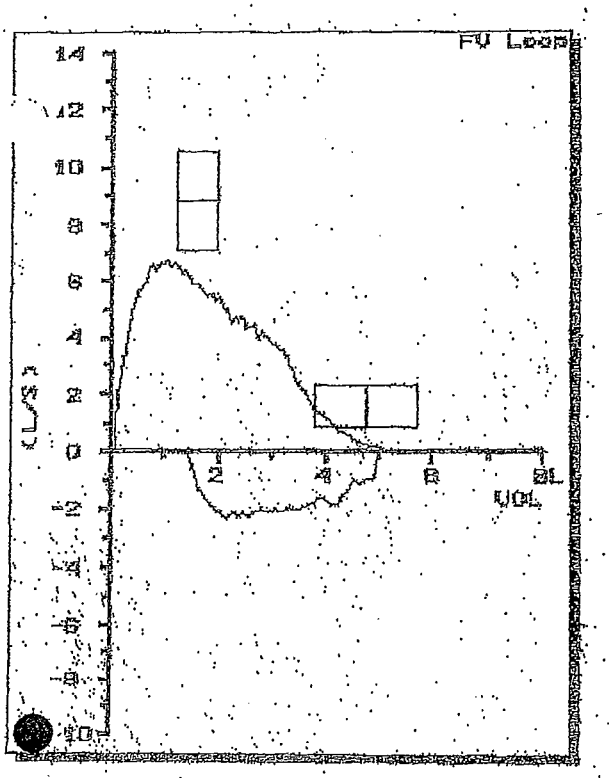
Ethnic: CAUCASIAN Height: 68.0 in. Sex: MALE Age: 46 Weight: 174.0 lb

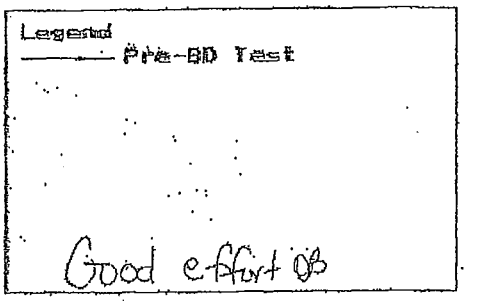
COMMENTS:

Pre-BD COMMENTS:

ST CALIBRATED: Tue Jul 19,2005 7:34:36 am

TYPE	Test Date and Time			Exp.Time	Normals	Test#
Pre-BD:	Tue Jul 19,2005 11:57:55 am			6.8 secs	KNUDSON/IMTS	2
Inspiratory	Actual	Predicted		% of pred	Inspiratory	Actual
FVC	5.02 L	4.73 L		106.19 %	IVC	3.61 L
FEV 0.5	2.75 L	3.04 L		90.50 %	FIVI	1.35 L
FEV 1.0	3.90 L	3.84 L		101.52 %	PIF	2.46 L/S
FEV 3.0	4.73 L	4.48 L		105.50 %	FIF50	2.20 L/S
					FEF50/FIF50	193.85 %
FEV 0.5/FVC	54.75 %	64.24 %		85.23 %		
FEV 1.0/FVC	77.66 %	81.23 %		95.61 %	Interpretation:	
FEV 3.0/FVC	94.18 %	94.79 %		99.35 %		
					NORMAL	
PEF	6.61 L/S	8.64 L/S		76.50 %		
FEF 25-75%	3.61 L/S	3.91 L/S		92.38 %	MAX FVC = 5.02L TEST # 2	
FEF 75-85%	0.90 L/S	1.04 L/S		87.81 %	MAX FEV-1 = 3.90L TEST # 2	
FEF 25	6.15 L/S	7.95 L/S		77.37 %		
FEF 50	4.26 L/S	4.59 L/S		92.85 %		
FEF 75	1.40 L/S	1.81 L/S		77.15 %		
FEF .2-1.2	5.82 L/S	7.26 L/S		80.13 %		





000433

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

LUNG AND CHEST MEDICAL ASSOCIATES

2030 North Church Place, Spartanburg, SC 29303

CMF WPS EBK MLA JDC RVM BE

LAB REQUISITION

PATIENT NAME William Green CHART # 7716 8 DATE 7-19-05

DIAGNOSIS _____ SEX M F RACE C B A H O

	DESCRIPTION	RESULTS	NORMAL VALUE	REPEATED VERIFIED RESULTS	INITIALS
	Theophylline		10-20 Mcg/dl		
	Glucose	121	70-110 Mg/dl		
	BUN	39	5-25 Mg/dl		
	Creatinine	0.7	0.5-1.4 Mg/dl		
	K+	4.2	3.5-5.1 Meq/dl		
	PT		14-18 sec		
	INR		2.0-3.0 Coumadin therapy		
			2.5-3.5 Prostatic Heart Valves		
	CBC				
	UA				
	HgbA1C	%	<7 %		
	Arterial Puncture				
	ABG's – FI02				
	ABG's – PH		7.35-7.45		
	ABG's – PC02		35-45 mmHg		
	AGG's – P02		80-100 mmHg		
	AGG's - 02 Sat		95-98%		

URINALYSIS – MACROSCOPIC

COLOR		PH	
APPEARANCE		PROTEIN	
GLUCOSE		UROBILINOGEN	
BILIRUBIN		NITRITE	
KETONES		LEUKOCYTES	
SP. GR.			

Rapid Strep Positive Negative

Z-Stat Flu Positive Negative

CMF ____ WPS ____ EBK ____ MLA ____ JDC ____ RVM ____ BE ____ Staff ____

Lab Requisition, 12-23-03

000432

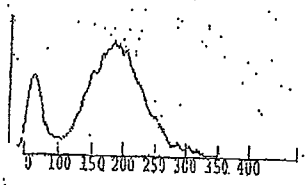
ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

2030 D CHURCH PLACE
SPARTANBURG SC 29303 JDC RVM BE
864-582-6858 CMF WPS BBK MLA

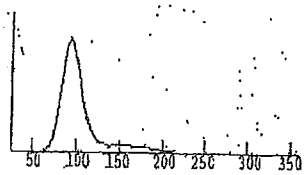
William Casey

77168 07-19-05
MB 09:58

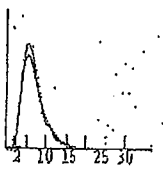
				Patient Limits 1	
WBC	13.7	H	x10^3/uL	4.5	11.0
LY	17.5	*	%	20.5	51.1
MO	5.9	*	%	1.7	9.3
GR	76.6	*H	%	42.2	75.2
LY#	2.4	*	x10^3/uL	1.2	3.4
MO#	0.8	*H	x10^3/uL	0.1	0.6
GR#	10.5	*H	x10^3/uL	1.4	6.5
RBC	4.68		x10^6/uL	3.90	5.10
Hgb	14.8		g/dL	12.0	15.6
Hct	43.5		%	36.0	46.0
MCV	93.0		fL	85.0	98.0
MCH	31.7		pg	28.0	33.0
MCHC	34.0		g/dL	32.5	36.0
RDW	12.1		%	11.6	13.7
Plt	677.	H	x10^3/uL	130.	400.
MPV	7.1	L	fL	7.8	11.0



WBC HISTOGRAM



RBC HISTOGRAM



PLT HISTOGRAM

000431

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

CMF WPS MEA EBK JDC RVM Beth Darla Lab

Lung and Chest Medical Associates

Name: Wm Casey Chart#: 7168 Date: 11/10/04

Wt 180.6 Ht B/P 162/97 H/R 92 RR 18 Temp 02Sat 95 NO2 2L

Cough / Smoking / Present Illness + reason for visit:
Sputum / Nausea
DOE Dyspnea / Vomiting
Wheeze / Diarrhea
Edema / Chest Pain
Palpitations / Pain
Oriented / STOP Some
New Allergies / Fever/chills

When was your last DEXA Bone Densitometry Testing done?

Seeing new doctors? For:

Hospitalizations or major life changes since last visit:

Meds. Review based on: in bottle on list from memory

PHYSICAL EXAM: WNL/NEG ABN/POS

*General Appearance
*Skin Turgor
*ENT
*Mouth
*Sinus
*Neck
*Chest/Lungs: Breath Sounds
Wheezes
Rales
Effort
Symmetry
*Heart: Rhythm
Murmurs
Gallop
Tones
*Abdomen
*Extremities
*Mobility: Gait
Reflexes
Aides
*Mental Status

LAB ORDER: Spirometry EKG Sinus CBC Glu PT INR O2Sat Rest
Lung Vol DLCO U/A CXR ABG's Bun Cre K+ Theo O2Sat Exercise
Office Treatment:
Education: Does pt want to quit smoking? Yes/No Other:
Materials/counseling given:
Diagnosis: Plan

Abn CXR(lung fluid),793.1
Anticoagulant Circulating,286.5
COPD,496
Cough,786.2
Dyspnea,786.09
Fatigue(general),780.79
Fever,780.6
ILD,515
Monitoring(drug name),V48.6
Rhinitis,477.9
Sleep Apnea/Disorders (nec), 780.57

Prescriptions:

Next appt: Weeks Months W/ CMP WPS EBK MLA JDC RVM PA NP Signature Staff

Next Visit: Spiro L/V DLCO PA PAL Sinus DEXA BLDWK Other

09/29/04

000430

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

CMF WPS MLA EBK JDC RVM Beth Data Lab

Lung and Chest Medical Associates

Name: Wm. Casey Chart#: 7168 Date: 8/12/04

4/15 Ht 5'11" Wt 229 HR 82 RR Temp O2Sat 96% FIO2 .21

Cough / Smoking / Present Illness + reason for visit:
Sputum / Nausea
Dyspnea / Vomiting — Short of breath
Wheeze / Diarrhea
Edema / Chest Pain: — Exertion
Palpitations / Pain back — No Cough, Sputum
Oriented / ETOH
New Allergies / Fever/chills

When was your last DEXA Bone Densometry Testing done? Two weeks with that

Seeing new doctors? For: No Medicine

Hospitalizations or major life changes since last visit:

Meds. Review based on: In bottle On list 1609/Pt Rpt/memory

PHYSICAL EXAM: WNL/NEG ABN/POS

*General Appearance
*Skin Turgor
*ENT
*Mouth
*Sinus
*Neck
*Chest/Lungs: Breath Sounds
Wheezes
Rales
Effort
Symmetry
*Heart: Rhythm
Murmurs
Gallop
Tones
Abdomen
Extremities
*Mobility Gait
Reflexes
Aides
*Mental Status

LAB ORDER: Spirometry EKG Sinus CBC Glu PT INR O2Sat Rest
Lung Vol DLCO U/A CXR ABG's Bun Cre K+ Theo O2Sat Exercise

Office Treatment:
Education: Does pt want to quit smoking? Yes/No Other:
Materials/counseling given:
Diagnosis: Plan Neg. Stress

- Abn CXR(lung fluid),793.1
- Anticoagulant Circulating,286.15
- COPD,496
- Cough,786.2
- Dyspnea,786.09
- Fatigue(general),780.79
- Fever,780.6
- ILD,515
- Monitoring(drug name),V48.6
- Rhinitis,477.9
- Sleep Apnea/Disorders (nec), 780.53

Prescriptions:

Next appt: Weeks Months W/ CMF WPS EBK MLA JDC RVM PA NP Signature Staff

Next Visit: Spiro L/V DLCO PA PAL Sinus DEXA BLDWK Other

03/26/04

000429

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SPARTANBURG REGIONAL MEDICAL CENTER DEPARTMENT OF LABORATORY MEDICINE
101 E. WOOD STREET, SPARTANBURG, SOUTH CAROLINA 29303-3078/864-560-6312
DES, DAVIS, LOWRY, WREN, NELSON, WALKER, LANHAM, HIMS, CARONELL & BURKS

CASEY WILLIAM MR#: (ODDE)00814-81-20 FIN.No.:042212031061 Admitted: 2502004
25 YRS MALE DOB: [redacted]1978 Page: 1
DR. SMITH WILSON P INTERIM Printed: 0402004 0204
Location: PRIVATE OUT PT VISIT - ROOM: NOS

CHEMISTRY

REFERENCE LAB TESTS

Procedure:	TIBC @	IRON @	% SATURATION @
Units:	ug/dL	ug/dL	%
1ENJDD4 1340	436 L	87	20 L
TIBC.....			Reference Range: 250-400
IRON.....			Reference Range: 60-180

TIBC should be ordered with iron for optimal utility.

% SATURATION: Reference Range: 15-50

8/4/04

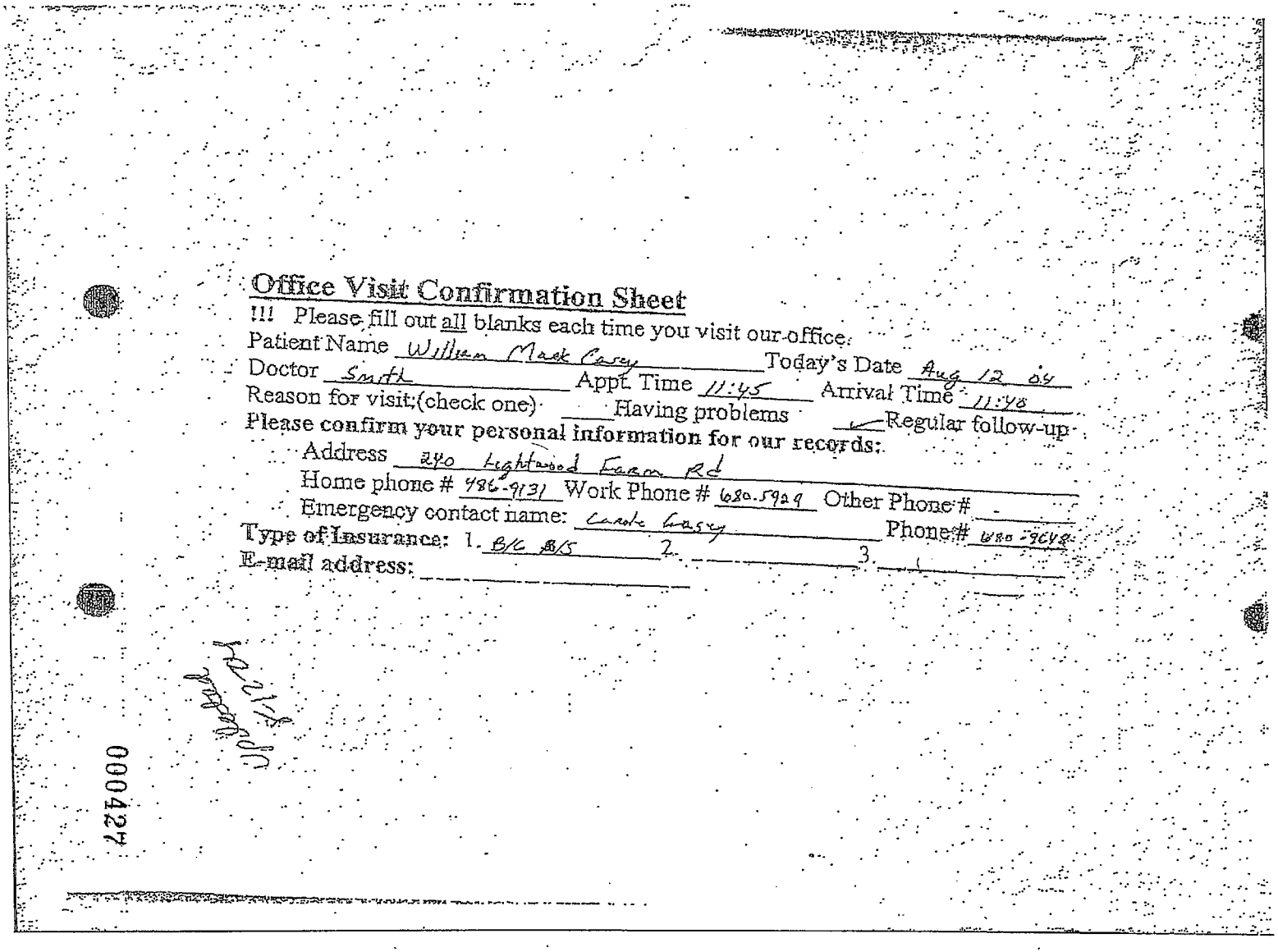
Symbols:
H = High, f = Footnote
@ = TIBC, IRON, % SATURATION Performed at QUEST DIAGNOSTIC LAB - 31606 ORTEGA HIGHWAY, SAN JUAN CAPISTRANO, CA. 92690

Patient Name: CASEY WILLIAM Location: PRIVATE OUT PT VISIT END OF CHART.

Send to: WILSON P SMITH MD Fax to: 864-582-3750
LUNG & CHEST
3030 NORTH CHURCH PLACE
SPARTANBURG SC 29303-3000

REVIEWED BY____ DATE____
(DO NOT FILE IF NOT COMPLETE)

000428



Office Visit Confirmation Sheet

!!! Please fill out all blanks each time you visit our office.

Patient Name William Mark Casey Today's Date Aug 12 04

Doctor Smith Appt. Time 11:45 Arrival Time 11:48

Reason for visit:(check one) ___ Having problems ✓ Regular follow-up

Please confirm your personal information for our records:

Address 240 Lightwood Farm Rd

Home phone # 486-9131 Work Phone # 680.5929 Other Phone # -

Emergency contact name: Carole Casey Phone # 680-9648

Type of Insurance: 1. B/C B/S 2. ___ 3. ___

E-mail address: ___

000427

THOMPSON 032176

713

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

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 F. Nawabi, M.D.
John J. Gallagher, M.D., F.A.C.C.
Robin Simpkins, R.N., A.N.P., A.C.N.P.

NUCLEAR STRESS STUDY

NAME: CASEY, WILLIAM M.

DOB: [redacted]58

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.

Date 8/9/04 By AS
DGI 7/29/04 DONE 8-10-04

000426

1083 Boiling Springs Road • Spartanburg, SC 29303-2298 • (864) 583-8647 • Fax: (864) 542-2227

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P Elia, 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
Cindy Edwards, F.N.P.
Fax: (864) 582-3750

WILLIAM CASEY
9-09-04
7716

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 Cardiolite stress test and consideration of pulmonary rehabilitation. EKG today is within normal limits and shows no acute changes.

WPS

Wilson P. Smith, Jr., M.D.
WPSjr/ns
cc: Dr. Gonda

9.9.04

000425

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SPARTANBURG REGIONAL MEDICAL CENTER DEPARTMENT OF LABORATORY MEDICINE
101 E. WOOD STREET, SPARTANBURG, SOUTH CAROLINA 29303-3072/864-560-6212
DRS: DAVIS, LOWRY, WREN, NELSON, PAINER, LAPHAM, MILS, CARMELA \T\ BURKS

ASKEW,WILLIAM MR#: (0002)00014-62-20 Fin.No:0421101061 Admitted: 29JUL04
45 YRS MALE DOB: [redacted]1958 Office Id: Page: 1
Dr: SMITH WILSON P CUMULATIVE Printed: 03AUG04
location: PRIVATE OUT PT VISIT - ANEMIA NOS 2027

CHEMISTRY

REFERENCE LAB TESTS

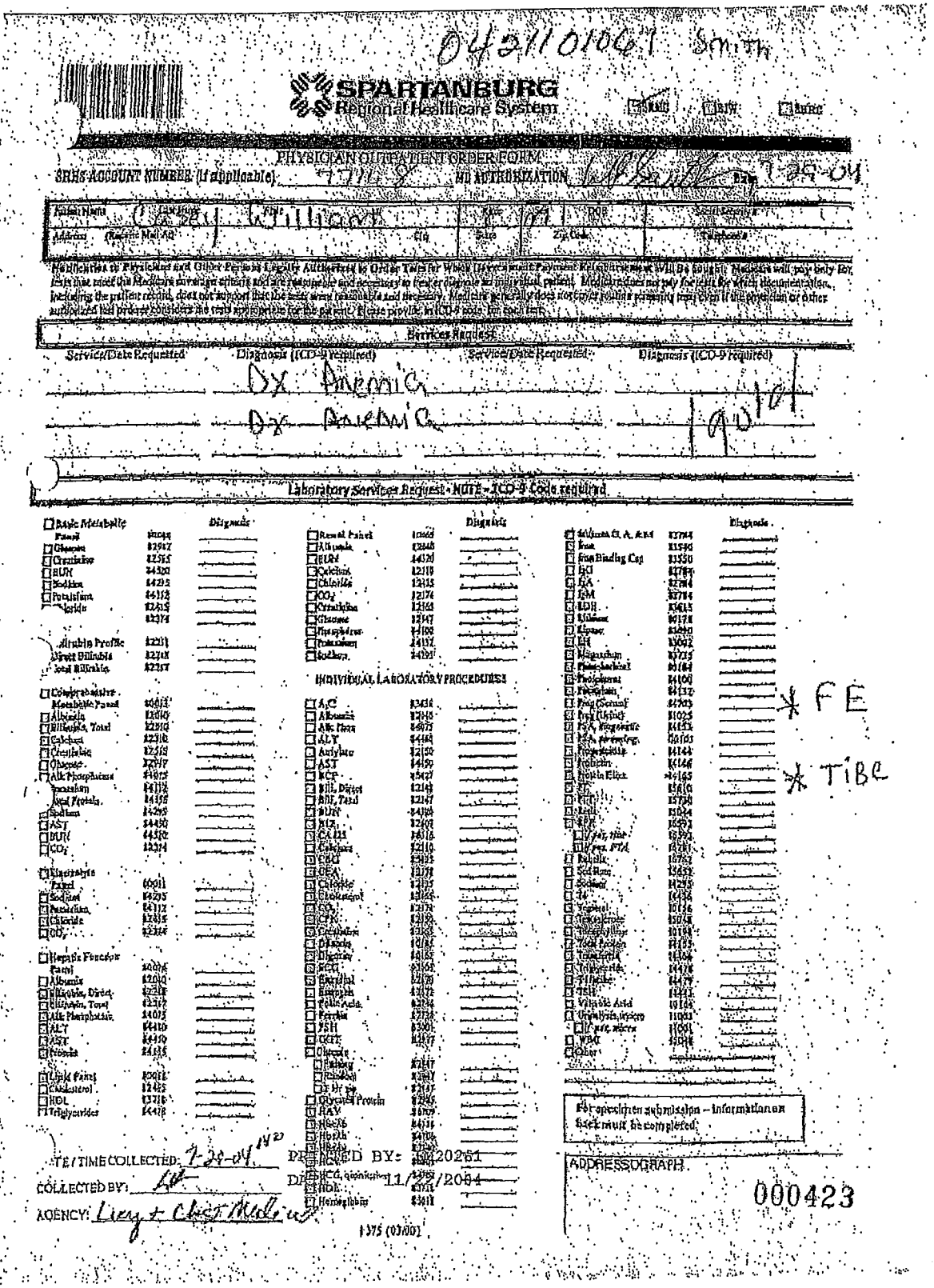
Procedure: / Units:	TIBC @ ug/dL	IRON @ ug/dL	% SATURATION @ %	
29JUL04 1340	434 H#	87 #	20 #	
TIBC				Reference Range: 250-400
IRON				Reference Range: 40-190
TIBC should be ordered with iron for optimal utility.				
% SATURATION				Reference Range: 15-50

Symbols:
H = High, # = Footnote
@ = TIBC, IRON, % SATURATION Performed at QUEST DIAGNOSTIC LAB - 33608 ORTEGA HIGHWAY, SAN JUAN CAPRISTRANO, CA. 92690

%%END

000424

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743



0423110106? Smith

SPARTANBURG Regional Healthcare System

PHYSICIAN OUTPATIENT ORDER FORM

SRHS ACCOUNT NUMBER (if applicable) 7777 2 MD AUTHORIZATION 7-29-04

Patient Name (Last, First) Gibson, William M Age 61 DOB Social Security #

Address (Number and Street) City State Zip Code Telephone #

Notification to Physicians and Other Persons Legally Authorized to Order Tests for Which Diagnosis must be Provided for Payment: Medicare will be billed. Medicare will pay only for tests that meet the Medicare coverage criteria and are reasonable and necessary to meet the needs of the individual patient. Medicare may pay for tests for which documentation, including the patient record, does not support that the tests were reasonable and necessary. Medicare generally does not pay for routine screening tests even if the physician or other authorized individual considers the tests appropriate for the patient. Please provide an ICD-9 code for each test.

Services Requested

Service/Date Requested	Diagnosis (ICD-9 required)	Service/Date Requested	Diagnosis (ICD-9 required)
	Dx Anemia		
	Dx Anemia		285.9

Laboratory Services Request - NOTE - ICD-9 Code required

		Diagnosis
☐ Basic Metabolic Panel	80048	
☐ Glucose	82947	
☐ Creatinine	82565	
☐ BUN	84520	
☐ Sodium	84295	
☐ Potassium	84132	
☐ Chloride	82435	
☐ CO2	82374	
☐ Alkaline Profile	82251	
☐ Direct Bilirubin	82248	
☐ Total Bilirubin	82247	
☐ Comprehensive Metabolic Panel	80053	
☐ Albumin	82040	
☐ Bilirubin, Total	82250	
☐ Calcium	82310	
☐ Creatinine	82565	
☐ Glucose	82947	
☐ Alk Phosphatase	84075	
☐ Potassium	84132	
☐ Total Protein	84155	
☐ Sodium	84295	
☐ AST	84450	
☐ BUN	84520	
☐ CO2	82374	
☐ Electrolyte Panel	80051	
☐ Sodium	84295	
☐ Potassium	84132	
☐ Chloride	82435	
☐ CO2	82374	
☐ Hepatic Function Panel	80076	
☐ Albumin	82040	
☐ Bilirubin, Direct	82248	
☐ Bilirubin, Total	82250	
☐ Alk Phosphatase	84075	
☐ ALT	84460	
☐ AST	84450	
☐ Protein	84155	
☐ Lipid Panel	80061	
☐ Cholesterol	82465	
☐ HDL	83718	
☐ Triglycerides	84478	

		Diagnosis
☐ Renal Panel	80069	
☐ Albumin	82040	
☐ BUN	84520	
☐ Calcium	82310	
☐ Chloride	82435	
☐ CO2	82374	
☐ Creatinine	82565	
☐ Glucose	82947	
☐ Phosphorus	84100	
☐ Potassium	84132	
☐ Sodium	84295	

INDIVIDUAL LABORATORY PROCEDURES

☐ A/C	83036	
☐ Albumin	82040	
☐ Alk Phos	84075	
☐ ALT	84460	
☐ Amylase	82150	
☐ AST	84450	
☐ BCP	85027	
☐ Bili, Direct	82248	
☐ Bili, Total	82247	
☐ BUN	84520	
☐ BUN/Creat	84540	
☐ CA 125	86304	
☐ Calcium	82310	
☐ CBC	85027	
☐ CEA	82378	
☐ Chloride	82435	
☐ Cholesterol	82465	
☐ CO2	82374	
☐ CPK	82550	
☐ Creatinine	82565	
☐ Diabetic	83036	
☐ Digoxin	80162	
☐ ECG	93000	
☐ Electrolyte	80051	
☐ Estradiol	82670	
☐ Estrogen	82672	
☐ Folic Acid	82746	
☐ Ferritin	82728	
☐ FSH	83001	
☐ GGT	82977	
☐ Glucose	82947	
☐ Fasting	82947	
☐ Random	82947	
☐ 2 hr pp	82947	
☐ Glycated Protein	82985	
☐ HAV	86709	
☐ HBcAb	86704	
☐ HBsAb	86706	
☐ HBsAg	87340	
☐ HCV	86803	
☐ HCG, quantitative	84702	
☐ HDL	83718	
☐ Hemoglobin	85018	

		Diagnosis
☐ Helicobacter G. A. Ab	87784	
☐ Iron	83540	
☐ Iron Binding Cap	83550	
☐ IgG	82784	
☐ IgA	82784	
☐ IgM	82784	
☐ LDH	83615	
☐ Lipase	83720	
☐ LH	83002	
☐ Magnesium	83735	
☐ Mononucleosis	86308	
☐ Neoplasm	84100	
☐ Phosphorus	84132	
☐ Prog (Serum)	84144	
☐ Prot (Urine)	84156	
☐ PSA, Diagnostic	84153	
☐ PSA, screening	84153	
☐ Progesterone	84144	
☐ Prolactin	84146	
☐ Protein Elect.	84165	
☐ PT	85610	
☐ PTT	85730	
☐ Renin	84244	
☐ RPR	86592	
☐ T3, Free	84481	
☐ T3, Total	84480	
☐ T4, Free	84439	
☐ T4, Total	84436	
☐ Testosterone	84403	
☐ Thyroid	84443	
☐ Transferrin	84466	
☐ Trig	84478	
☐ TSH	84443	
☐ Uric Acid	84550	
☐ Urine Protein	84156	
☐ Vitamin B12	82607	
☐ Vitamin D	82306	
☐ Vitamin, other	82607	
☐ WBC	85048	
☐ Other		

* FE

* TIBC

For specimen submission – information on back must be completed.

DATE/TIME COLLECTED: 7-29-04 1420 PREPARED BY: 20251

COLLECTED BY: LH DATE: 11/29/2004

AGENCY: Lieg + Chest Medicine

ADDRESSOGRAPH 000423

1375 (03/00)

THOMPSON 022180

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

CMF WPS MLA EBK JDC RVM Beth Darla Lab

Lung and Chest Medical Associates

Name: Wm Carver Shaw Chart#: 7716-8 Date: 7/29/04

Wt 175 4 Ht BP 139/86 HR 93 RR Temp 02Sat 95% FIO2 .21

Cough, Sputum, Dyspnea, Wheeze, Edema, Palpitations, Oriented, New Allergies

Smoking, Nausea, Vomiting, Diarrhea, Chest Pain Chest tightness, Pain on exertion, ETOH, Fever/chills

Present Illness + reason for visit:

When was your last DEXA Bone Densometry Testing done?

Seeing new doctors? For:

Hospitalizations or major life changes since last visit:

Meds Review based on: in bottle on list from memory

PHYSICAL EXAM: WNL/NEG ABN/POS

*General Appearance
*Skin Turgor
*ENT
*Mouth
*Sinus
*Neck
*Chest/Lungs: Breath Sounds
Wheezes
Rales
Effort
Symmetry
*Heart: Rhythm
Murmurs
Gallop
Tones
*Abdomen
*Extremities
*Mobility: Gait
Reflexes
Aides
*Mental Status

PACCAR

LAB ORDER: Spirometry EKG Sinus CBC Glu PT INR 02Sat Rest
Lung Vol DLCO U/A CXR ABG's Bun Cre K+ Theo 02Sat Exercise

Office Treatment:

Education: Does pt want to quit smoking? Yes/No Other: Stop Not Smoke Quit 4 weeks

Materials/counseling given:

Diagnosis: Plan

Abn CXR(lung fluid),793.1
Anticoagulant Circulating,28615
COPD,496
Cough,786.2
Dyspnea,786.09
Fatigue(general),780.79
Fever,780.6
ILD,515
Monitoring(drug name),V58.6
Rhinitis,477.9
Sleep Apnea/Disorders (nec), 780.53

Chest pain — Stress pain — Heart cardiolite

Prescriptions

Next appt: Weeks Months W/ CMF WPS EBK MLA JDC RVM PA NP Signature LVM Staff AP

Next Visit: Spiro L/V DLCO PA PAL Sinus DEXA BLDWK Other

03/26/04

000422

THOMPSON 032184

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Lung and Chest Medical Associates



Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. J. Mendoza, M.D.
J.P. Elm, P.N.P.

Fax: (864) 585-2102

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Cindy Edwards, P.N.P.

Fax: (864) 582-3750

WILLIAM CASEY
77168
07-29-04

X-RAY: PA & lateral of chest. Chest x-ray shows normal heart size and clear lung fields.

IMPRESSION: Normal chest.

Wilson P. Smith, Jr., M.D.
WPSjr/ns

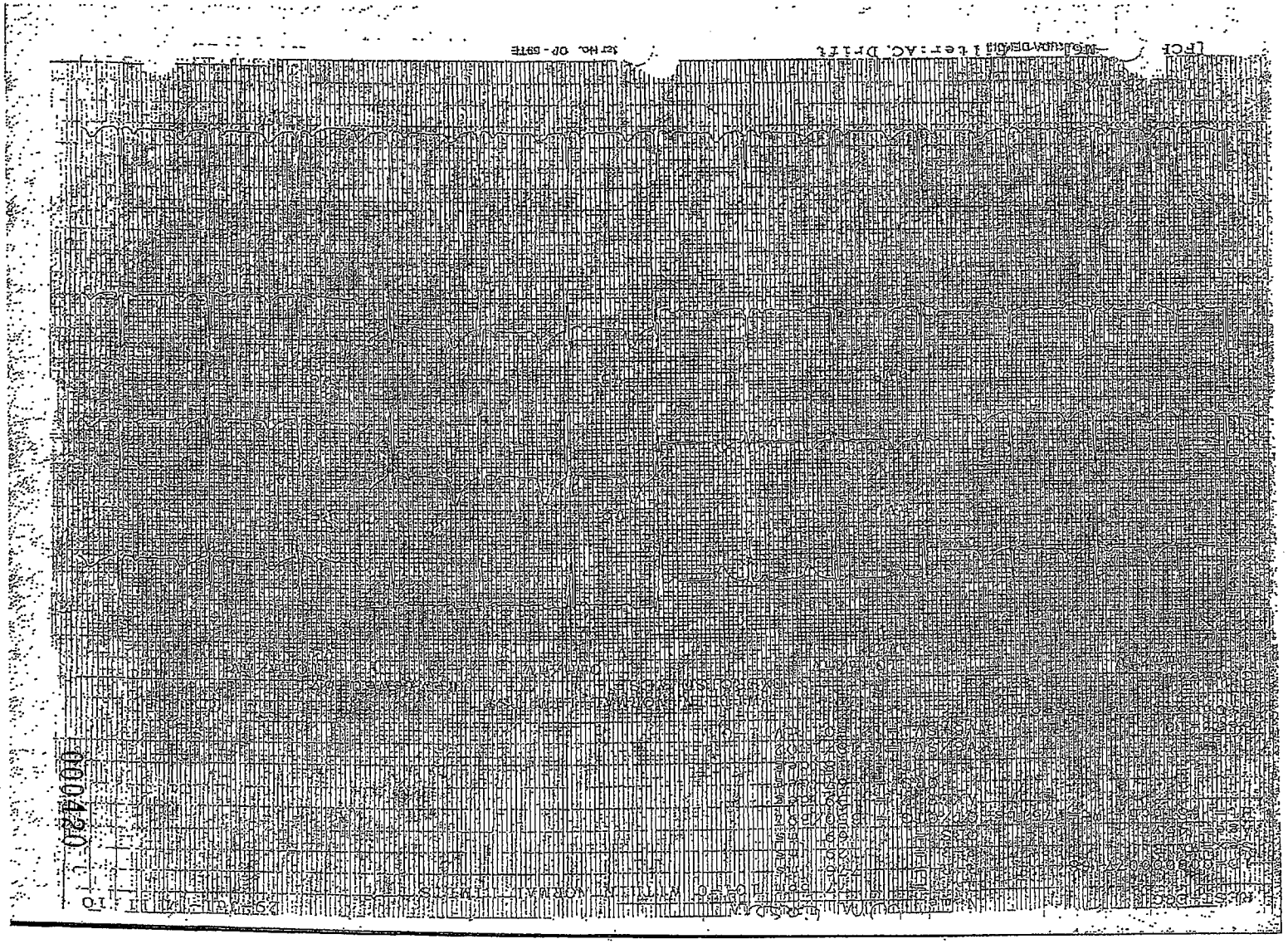
2030 North Church Place, Spartanburg, South Carolina 29303 (864) 582-6858

Pulmonary Medicine · Critical Care · Bronchoscopy · Asthma Therapy · Sleep Disorders

000421

THOMPSON 032182

THOMPSON 032183



ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

2030 N.CHURCH,ST. CMF WP8 EBK RVM LUNG AND CHEST MEDICAL SPARTANBURG,SC,29303. MLA 7DC BE 864;582-8858

ple ID.# 77168 Date: 07-29-04

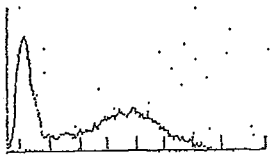
Patient Name: William Casey Time: 13:43 WPS

DOB: / / AGE: SEX: UPR ID: 06

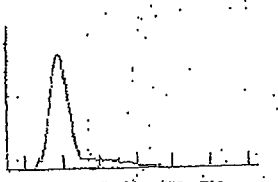
			Range #1				Range #1				Range #1
WBC	7.8	x10^3/uL	4.5- 11.0	RBC	4.54	x10^6/uL	3.90- 5.10	PLT	475. H	x10^3/uL	130.-400.
LYM	36.2	%	20.5-51.1	Hgb	14.2	g/dL	12.0-15.6	MPV	8.9 L	fL	7.4-10.4
MON	4.2	%	1.7- 9.3	Hct	43.0	%	36.0-46.0				
GRN	59.6	%	42.2-75.2	MCV	98.2	fL	85.0- 98.0				
LYM	2.8	x10^3/uL	0.7- 4.9	MCH	31.2	pg	28.0-33.0				
MON	0.3	x10^3/uL	0.1- 0.9	MCHC	32.8	g/dL	32.5-36.0				
GRN	4.6	x10^3/uL	1.5- 7.2	RDW	12.2	%	11.5-14.5				

7/30/04 WM

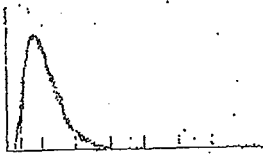
Sample ID # 77168 Analyzed Date & Time: 07-29-04 13:45



WBC HISTOGRAM



RBC HISTOGRAM



PLT HISTOGRAM

Sample ID # 77168 Analyzed Date & Time: 07-29-04 13:45

Microscopic Examination

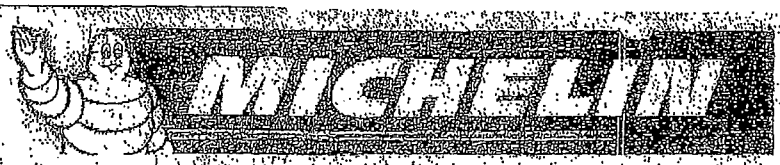
Neutrophil	____	Metamyelocyte	____	Anisocytosis	____	Retics	____
Band	____	Myelocyte	____	Hypochromia	____	Sedimentation Rate	____
Lymphocyte	____	Promyelocyte	____	Polychromasia	____		
Monocyte	____	Blast	____	Poikilocytosis	____		
Eosinophil	____	Atypical Lymphocyte	____	Macrocytosis	____		
Basophil	____	NRBCs	____	Microcytosis	____		

Comments: _____

Requested by: _____
Reviewed by: _____
date: _____

000419

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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: July 29, 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: Aug 16, 2004

Physical findings (diagnosis): Cleit from w.d. exertion
Cr Sca Cut/Slow coronary artery
Calculus

Treatment and/or recommendation:
Steroid Pak
Absence from work until Aug 16, 2004

M.D.

Address:

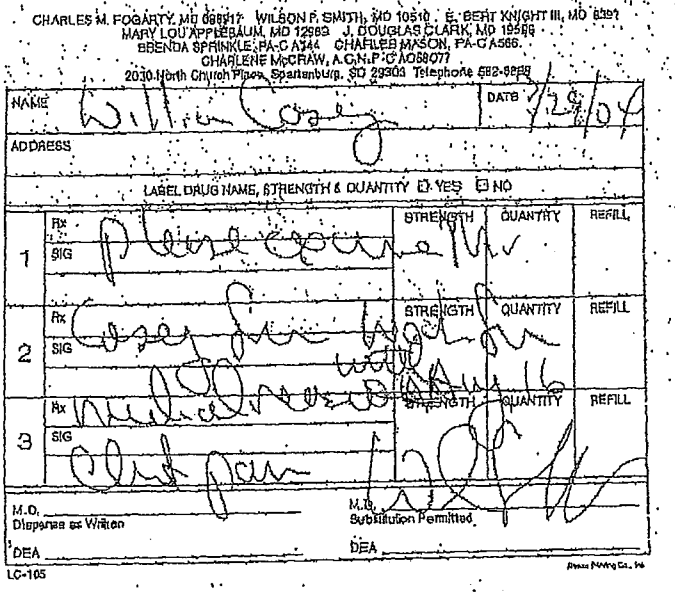
Telephone:

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.

LCF/SP/FORMS/DLMXTLV.DOC

000418

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CHARLES M. FOGARTY, MD 68917 WILSON F. SMITH, MD 10510 E. BERT KNIGHT III, MD 8397
MARY LOU APPLEBAUM, MD 12983 J. DOUGLAS CLARK, MD 19588
BRENDA SPRINKLE, PA-C A344 CHARLES MASON, PA-C A566
CHARLENE McCRAW, A.C.N.P.-C A068077
2030 North Church Place, Spartanburg, SC 29303 Telephone 582-9288

NAME William Cosby DATE 7/29/04

ADDRESS

LABEL DRUG NAME, STRENGTH & QUANTITY ☑ YES ☐ NO

		STRENGTH	QUANTITY	REFILL
1	Rx Percocet SIG			
2	Rx Vicodin SIG			
3	Rx Valium SIG Qhs prn			

M.D. Dispense as Written
M.D. Substitution Permitted
DEA
DEA

LC-105

000417

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SPARTANBURG
Regional Healthcare System

PULMONARY REHABILITATION PROGRAM
PHYSICIAN REFERRAL

This patient is referred to the Spartanburg Regional Healthcare System Pulmonary Rehabilitation Program:

Name: William Mark Cosey Referral Date: 7-23-04

Address: 240 Lightwood Farm Rd. Wellford, SC 29388

Home phone: 486-9131 Work phone: 680-5929 Date of Birth: [redacted]-58

Diagnosis: Shortness of breath & chest pain MRN:

Cardiac Clearance: (To be completed by physician prior to beginning pulmonary rehab).

- ☐ Perform cardiopulmonary exercise stress test. Your patient will be scheduled to begin pulmonary rehab after receiving results of the exercise stress test.
- ☐ Do not perform cardiopulmonary exercise stress test. Attach documentation to support cardiac clearance.

Comments:

CONSULTS:

Physical Therapy
Reason for referral: Evaluation/Treatment of postural deficits, thoracic mobility deficits, musculoskeletal dysfunction and/or pain, gait deficits.
Evaluation/instruction in: proper body mechanics for ADL's and lifting, postural correction and strengthening techniques, therapeutic exercise, stretching, and osteoporosis education.

Occupational Therapy
Reason for referral: Evaluation of activities of daily living, functional training in self care and home management, training in energy conservation, work simplification, and adaptive techniques for daily living.

Respiratory Therapy
Reason for referral: Evaluation of Home and Exercise Oxygen System Requirements.
Evaluation/instruction in: Breathing retraining, Airway Clearance Techniques, Proper use inhaled medications.

Education/Classes:
Anatomy & Physiology of COPD; Pursed Lip/Diaphragmatic breathing techniques; Respiratory medications; Infection control techniques; Effective coughing techniques; Panic control/relaxation techniques; Nutrition assessment.

DURATION/FREQUENCY: 3 Days per week for 6 Weeks

PROGRESS DOCUMENTATION/OUTCOME MEASURES:

- Pre and post program sub-maximal treadmill test, 6 minute walk, Dyspnea Index, Pulmonary Functional Status Scale (PFSS), Tennetti Assessment Tool.
- Monitoring: Pulse oximetry, blood pressure, heart rate, respiratory rate, Borg RPE, Pain scale, weight.
- Discharge summary with report to referring physician.

POTENTIAL FOR REHABILITATION? (Please circle): Excellent Good Fair

ATTENDING PHYSICIAN: (print or type): Dr. William Smith

PHYSICIAN'S SIGNATURE: William Smith DATE: 7/23/04

RETURN TO: Jack Robinson, RRT
Jenny Crocker, RRT
299 E. Pearl Street
Spartanburg, SC 29303

PHONE: (864) 560-4250
FAX: (864) 560-4245
email: jrobinson@srhs.com

000416

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Nico V.I. Mendoza, M.D.
J.E Elm, F.N.P.

Wilson F. Smith, Jr., M.D.
E. Bert Knight, III, M.D.
Mary Lou Applebaum, M.D.
Beth V. Edwards, PA-C
Cindy Edwards, F.N.P.

Fax: (864) 585 - 2102

Fax: (864) 582-3750

WILLIAM CASEY dob: [redacted]58
7X168 SS#: [redacted]
07-14-04

HISTORY AND PHYSICAL

REFERRING PHYSICIAN: Self-referred.

History Mr. Casey is a 45-year-old male who presents for evaluation of chest difficulties that began in May of this year when he presented to the emergency room at Spartanburg Regional Medical Center with a complaint of chest pain. A PA chest x-ray taken at that time suggested the possibility of a foreign body. He works for Michelin Tire Company. He underwent a bronchoscopy, which was felt to be abnormal but no foreign body was identified. A subsequent CT scan done the same day did not confirm any abnormality. However it does mention that there is left anterior descending coronary artery calcifications. In 2000 he had a stress test and catheterization which was normal. Following this underwent a rigid bronchoscopy in attempt to identify foreign body and remove it. During that procedure he had a perforation of the bronchial wall by a laser which resulted in pneumomediastinum and respiratory distress. He required intubation and heavy sedation and was able to be extubated the following day. Since that time he notes fatigue during the day. He continues to have dyspnea and chest pain with exertion. He has become very anxious. His sister accompanying him for the interview notes that he seems to have experienced a change in his ability to tolerate stress and appears much more anxious and restless than she has known him to be in the past. He is a previous smoker for about 12 years but has not smoked in the past three weeks. He does snore but feels he sleeps well. He denies any hemoptysis, chronic cough or weight loss. He still has the chest pain.

Past Medical History Previous hemorrhoid surgery in 1994 and a hospitalization for evaluation of chest pain in 2000 for which he underwent cardiac catheterization.

Current Medications

1. Lipitor 20 mgs a day.
2. Bextra 20 mgs daily.
3. Tramadol 50 mgs two tablets four times a day for pain.
4. Advair twice daily.
5. Combivent four times a day.

Allergies: No known drug allergies.

Family History His father died of a heart attack. He has a sibling who died of cancer.

Social History He is divorced. He completed one year of college. He drinks occasional alcohol. He likes to play golf. He has been unable to play since his injury.

(Continued to next page)

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Review of Systems Shows some arthritis which he manages with the Bextra. He has an elevated cholesterol for which he is on the Lipitor. He had an episode of rectal bleeding 10 years ago. He notes that he gets up three to four times during the night for micturition. He has disk problems and arthritis in his lower back.

Physical Examination
General: Middle-aged white male.
Vital Signs: BP 130/87, HR 100, Wt. 171, and SaO_2 is 95% on room air.
HEENT: Unremarkable. There is no jugular venous distention, cervical or supraclavicular adenopathy. The throat is clear.
Chest: Clear to auscultation.
Cardiac: Regular rate and rhythm without murmur or gallop.
Abdomen: Soft and nontender.
Extremities: No clubbing, cyanosis or edema.
Neurological: Motor strength appears 5/5 in all extremities. Cranial II through XII nerves are intact.

Laboratory Data

Pulmonary function studies show normal vital capacity and flow rates with a vital capacity of 4.7 liters, which is 99% of predicted and forced expiratory volume that is 98% of predicted. There was no change with bronchodilator. Flow volume loop showed no evidence of upper airway obstruction. Maximum voluntary ventilation was reduced at about 70 to 77% of predicted.

Impression

1. His pulmonary function is normal and chest x-ray does not show any evidence of sequelae of his bronchial perforation. The patient brought his outside films and he did not bring a recent follow up film. Pulmonary function studies are normal. I do not find any evidence for airway obstruction that would account for his problems. But I wonder if he suffers from a posttraumatic stress disorder related to his injury and intensive care unit experience. I would like to refer him to a psychologist for further evaluation. On his return we will get a follow up chest x-ray and a diffusion capacity and in view of his CT scan suggesting left anterior descending coronary artery calcification I believe a repeat stress test might be in order.

Wilson P. Smith Jr., MD
WPSjr/ns

cc: Dr. Joseph Grace

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

NAME ALER

NC & CHEST MEDICAL ASSOCIA

#77408

PATIENT NAME William Casey DATE 7/14/09

PHYSICAL EXAM:

TEMP: BP 96/67 Pulse 103 RESP: HT WT 171 O2SAT OXIMETER 95 %

HEENT: WD

SKIN:

NECK:

LUNGS: CTA

HEART: RRR

BREASTS:

ABDOMEN: Soft

EXTREMITIES: WD

NEUROLOGICAL Motor 5/5

LAB DATA:

X-RAYS: DATE PFT'S: DATE ABG'S: DATE

VALUE VALUE

OTHER LABS:

IMPRESSION/DIAGNOSIS:

1. HTN post traumatic stress
2. Coronary calcification
3. Diabetes
4.
5.

PLAN:

1. Refer to Psychiatrist
2. Diet
3.
4.
5.

NEWPT EXAM 8/19/97

DOCTOR

NURSING STAFF

000413

THOMPSON 032190

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates
Multi Spiro B

ID: 77168 Casey, William
Ethnic: CAUCASIAN Height: 68.0 in Sex: MALE Age: 45 Weight: 171.0 lb

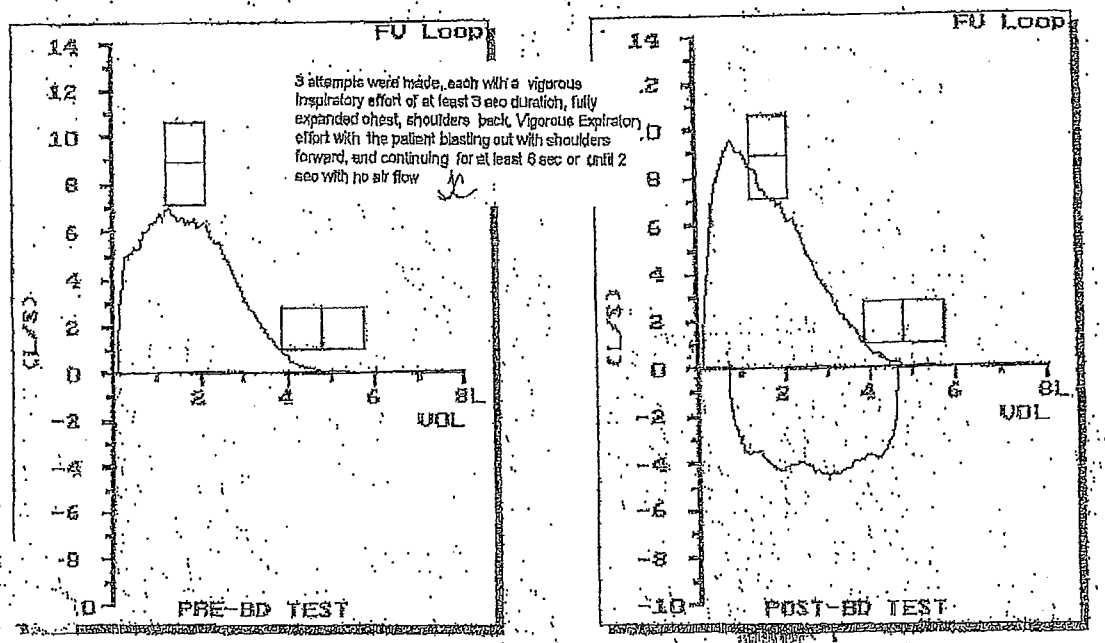
MENTS:
-BD COMMENTS:

LAST CALIBRATED: Wed Jul 14,2004 7:53:26 am

Type	Test Date and Time	Exp.Time	Normals	Test#
Pre-BD:	Wed Jul 14,2004 10:33:01 am	7.7 secs	KNUDSON/IMTS	1
Post-BD:	Wed Jul 14,2004 10:45:34 am	6.0 secs	KNUDSON/IMTS	5

INTERPRETATION Pre: NORMAL Post: NORMAL
Dilator: albuterol Modifier: Not Clearly Improved

Expire	Pre-Medication Actual	Pre-Medication % Pred	Post-Medication Actual	Post-Medication % Pred	Pre-Post Change Actual	Pre-Post Change % Chg	Pred Value
FVC	4.72 L	99.31%	4.74 L	99.79%	0.02 L	0.48%	4.75 L
FEV 0.5	2.93 L	95.93%	3.08 L	100.90%	0.15 L	5.18%	3.05 L
FEV 1.0	3.78 L	97.77%	3.85 L	99.59%	0.07 L	1.87%	3.87 L
FEV 3.0	4.41 L	97.71%	4.48 L	99.40%	0.08 L	1.73%	4.51 L
FEV0.5/FVC	62.08%	96.60%	64.98%	101.11%	2.90%	0.99%	64.27%
FEV1.0/FVC	80.11%	98.44%	81.22%	99.80%	1.11%	0.29%	81.38%
FEV3.0/FVC	93.40%	98.39%	94.57%	99.61%	1.16%	0.26%	94.94%
PEF	6.88 L/S	79.33%	9.46 L/S	109.14%	2.58 L/S	37.57%	8.67 L/S
FEF 25-75%	3.86 L/S	97.89%	3.92 L/S	99.41%	0.06 L/S	1.55%	3.95 L/S
FEF 75-85%	0.83 L/S	78.50%	0.90 L/S	84.56%	0.06 L/S	7.71%	1.06 L/S
FEF 25	6.88 L/S	86.29%	8.26 L/S	103.61%	1.38 L/S	20.08%	7.97 L/S
FEF 50	5.40 L/S	116.87%	5.31 L/S	114.90%	-0.09 L/S	-1.69%	4.62 L/S
FEF 75	1.37 L/S	74.79%	1.51 L/S	82.30%	0.14 L/S	10.03%	1.83 L/S
FEF .2-1.2	5.82 L/S	79.61%	8.48 L/S	116.03%	2.66 L/S	45.75%	7.31 L/S



000412

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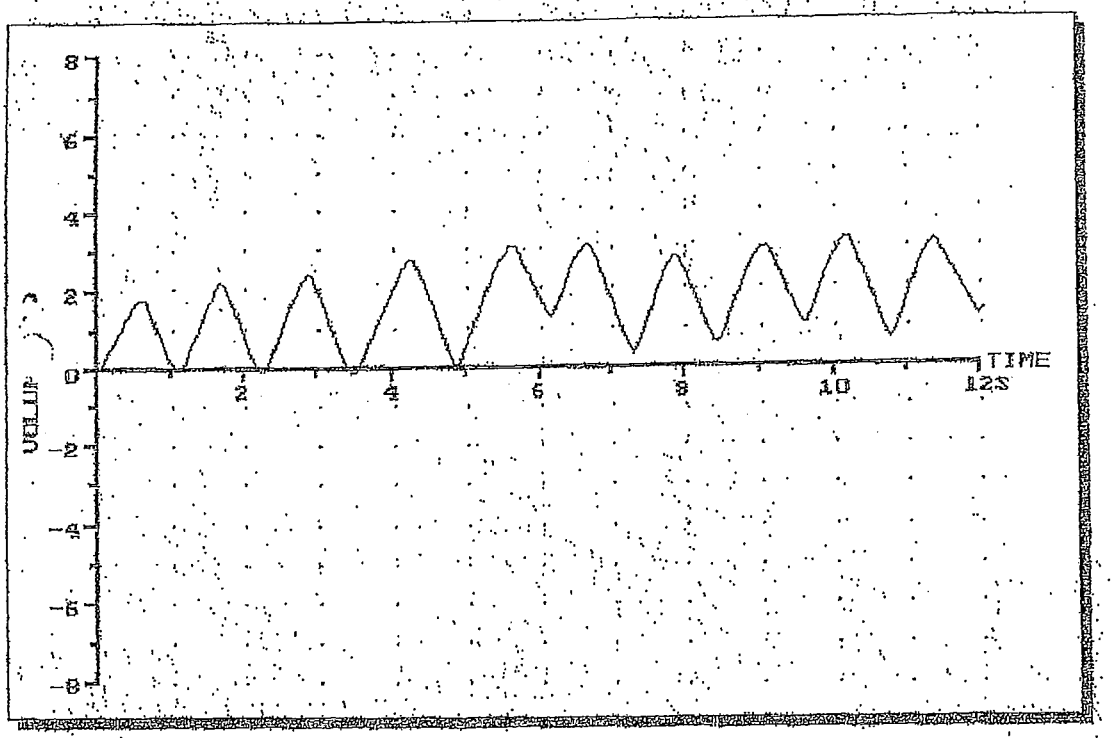
Lung and Chest Medical Associates
Multi Spiro B

ID: 77168 Casey, William
Ethnic: CAUCASIAN Height: 68.0 in. Sex: MALE Weight: 171.0 lb
A 45 Maximal Voluntary Ventilation Wed Jul 14,2004

E	Test Date and Time	Exp.Time	Normals
Current:	Wed Jul 14,2004 10:34:08 am	12.0 secs	KNUDSON/IMTS

Result	Rate	Total
Breaths	48.25 B/M	9.65 Breaths
MVV	117.79 L/M	4.74 L

Predicted MVV = 153.34 L/M
Percent of Predicted = 76.8 %



000411

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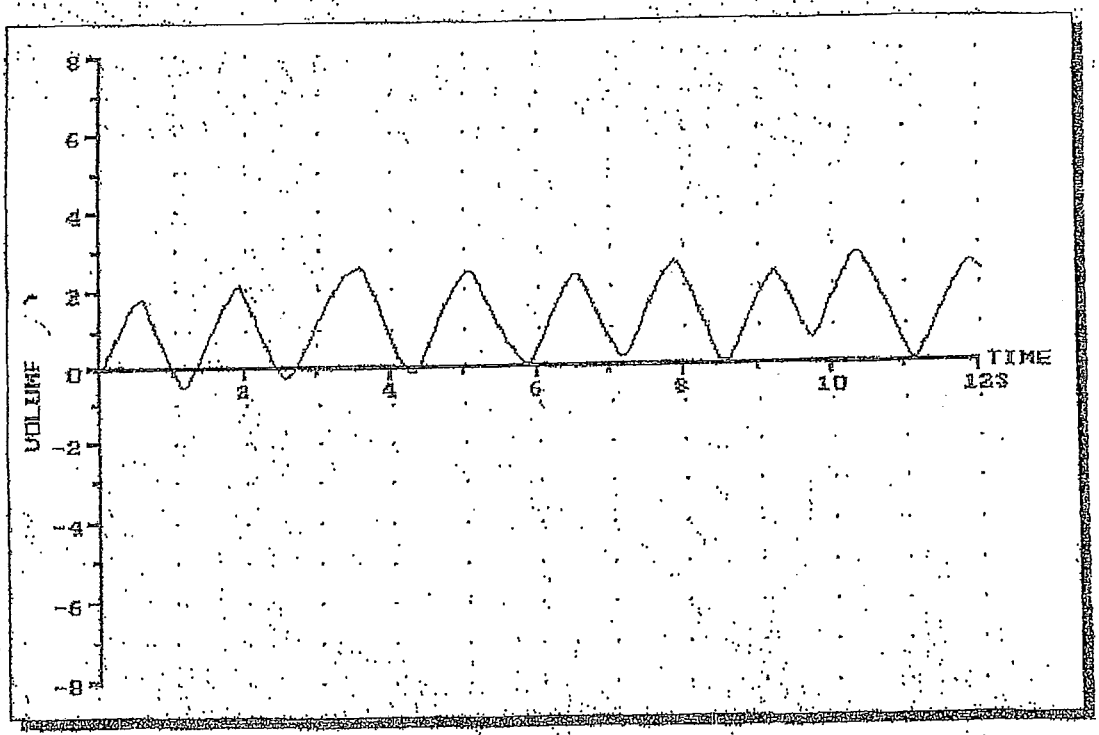
Lung and Chest Medical Associates
Multi Spiro B

ID: 77168 Casey, William
Ethnic: CAUCASIAN Height: 68.0 in Sex: MALE Weight: 171.0 lb
Age: 45 Maximal Voluntary Ventilation Wed Jul 14,2004

TYPE	Test Date and Time	Exp.Time	Normals
Current:	Wed Jul 14,2004 10:46:34 am	12.0 secs	KNUDSON/IMTS

Result	Rate	Total
Breaths	41.53 B/M	8.31 Breaths
MVV	107.47 L/M	4.91 L

Predicted MVV = 153.34 L/M
Percent of Predicted = 70.1 %



000410

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Lung and Chest Medical Associates
MEDICAL HISTORY INFORMATION SHEET

CHART# 7116 DATE: July 14, 2004

Patient's Name: William Mark Casey Age 45 Sex M

How did you hear about us?

Who referred you to our office?

Who is your family doctor? Dr. Frank Gonda

I. Present Illness

1. What Health Problem has brought you to our office? not happy with current lake problem - post operation - sob chest pain
2. How long have you had this problem? month Hoarseness hoarse
3. Does anything you do make the problem better or worse? exertion Benadryl
4. Have you lost weight recently? No How much? Were you trying to lose? Fatigue

II. Medicines and Inhalers (MD See Blue Sheet)

1. Patient, bring all your medicines with you when you come to our office (include any inhalers and over-the-counter medicines) Michelin
2. Are you ALLERGIC to any medications or food? No Please list: penicillin shot very unpleasant
3. Check the space and enter date last received: PPD Date , Tetnus Date Pneumonia vaccine Date , Flu vaccine Date . Blurred eye

III. Lung History

1. Are you a smoker? No How many packs per day? How many years
2. If you have quit smoking, how many years did you smoke? 12 How many packs per day? How long ago did you quit? 3 weeks
3. Do you have a chronic cough? No How long? Do you cough anything up? If so what color? 2000 had 8 years ago caffeine
4. Have you ever coughed up blood? No
5. Do you get short of breath if you walk or climb steps? No
6. Are you short of breath while you are resting? No
7. Do you ever notice yourself wheezing? What seems to make the wheezing worse?
8. Do you wake up tired? yes
9. Do you snore? yes
10. Do you have night sweats? some Fevers?
11. When was your last chest x-ray? June Where? Dr. Feldman
12. Potential Exposures:
    a. Does anyone else in your home smoke? No
    b. Have you ever had a skin test for TB (tuberculosis)? No When?
    c. What were the results of the skin test, if you know?
    d. Have you ever been exposed to TB? When?

LC111 – 12-23-03

000409

THOMPSON 032404

e. If you have been exposed to TB, have you had a skin test since then? ____

f. Do you have indoor pets? ____ What kind? ____

g. Have you been, or are you exposed to dust or fumes? ____ What kinds? ____

h. Have you traveled out of the upstate area? ____

IV. Work History

1. What type of work do you do? production - 8 to 12 hr shifts (swing)
2. Have you done other types of work? yes Please list: paint shop + restaurant
3. Have you ever served in the military? no Where? ____

V. Past Medical History (Hospitalizations)

Have you ever been admitted to a hospital for an operation or illness? (Use Back of Page if necessary)

Name of Hospital	When	Reason
Mary Black	1994?	hemorrhoid surgery
Regional	2000	chest pain

VI. Family History (Use back of page if necessary)

1. Mother's Age? ____ Living? ____ Or died of ____
2. Father's Age? ____ Living? ____ Or died of Heart attack
3. Brother or Sister's Age? 44 Living? ____ Or died of cancer
4. Brother or Sister's Age? 47 Living? ✓ Or died of ____
5. Brother or Sister's Age? 42 Living? ✓ Or died of ____

VII. Social History

1. Are you married? No Widowed? ____ Single? ____ Divorced? ✓
2. What was the highest grade you finished in school? 1 yr college
3. Do you drink alcoholic beverages (beer, wine, liquor)? yes How much? occasional
4. Have you ever used cocaine, marijuana or other street drugs? No How long has it been since you last used? ____
5. Have you ever received a blood transfusion? ____ When? ____
6. Do you have any hobbies (raising pigeons, woodwork shop, etc)? golf

VIII. Review of Systems

1. Do you wear glasses? yes
2. Do you have trouble hearing? no
3. Do you wear dentures? no
4. Do you have chest pain if you are just resting? ____ walking? ____ climbing steps? ____
5. What area of your chest hurts? ____
6. Have you ever been treated for heart trouble? ____
7. Have you ever been treated for high blood pressure? no
8. Do you have diabetes? no
9. Do you have a problem with nausea? ____ Vomiting? ____ Diarrhea? ____ Constipation? ____ Heartburn? ____
10. Have you ever vomited bright red blood? no

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11. Have you ever had rectal bleeding? yes When? 16 yrs ago
12. Have you ever has a "stomach x-ray"? ____ When? ____
13. Have you ever had a change in your appetite? NO More? ____ Less? ____
14. Have you ever had stomach ulcers? NO
15. Do you have any pain when you urinate? NO
16. Female patients: When was your last menstrual period? ____ Pap smear? ____
    Who is your gynecologist? ____
18. Male patients: When was your last prostate exam? Never
    Do you have trouble starting your stream when you urinate? NO
    How many times do you usually get up at night to urinate? 3 or 4
19. Do you have any numbness or tingling in your arms or legs? NO
20. Do you ever have swelling in your feet or legs? yes - feet sometimes

PLEASE COMPLETE THE FOLLOWING INFORMATION REGARDING PAST OR PRESENT CONDITIONS: Have you ever had or presently have any of the following:

MEDICAL CONDITION	NO	YES	WHEN DID YOU HAVE THIS	WHAT TREATMENT ARE YOU RECEIVING
ARTHRITIS		✓	current	Oxytra
ASTHMA	✓			
BLADDER INFECTION	✓			
BLOOD CLOTS IN LEGS	✓			
BLOOD CLOTS IN LUNGS	✓			
CANCER	✓			
CATARACTS	✓			
CHOLESTEROL (HIGH)		✓	current	Lipitor
CIRRHOSIS OF LIVER	✓			
COLON PROBLEMS	✓			
EMPHYSEMA	✓			
GLAUCOMA	✓			
HAY FEVER	✓			
HEPATITIS (YELLOW JAUNDICE)	✓			
KIDNEY FAILURE	✓			
KIDNEY STONES	✓			
PHLEBITIS	✓			
PNEUMONIA	✓			
PROSTATE PROBLEMS	✓			
RHEUMATIC FEVER	✓			
SEIZURES	✓			
SHINGLES	✓			
SINUS INFECTION	✓			
SKIN DISEASE	✓			
STROKE	✓			

Is there anything else you feel that the doctor needs to be aware of? (Use back of this page if necessary).

Have disc problems & arthritis in lower back

LC111 – 12-23-03

000407

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Lung and Chest Medical Associates

Authorization of Use and Disclosure of Protected Health Information

Appointment Reminders. Lung and Chest Medical Associates, Dr. Charles M. Fogarty, Dr. Wilson P. Smith, Dr. Mary Lou Applebaum, Dr. E. Bert Knight, Dr. J. Douglas Clark and/or Dr. Rico V. L. Mendoza may use your information to remind you about upcoming appointments. Typically, appointment reminders are made by a brief phone call, or non-specific message may be left on your answering machine. We may also use "appointment cards" to remind you about upcoming appointments. If you don't approve of these methods and would like alternative reminder methods (i.e. mail or e-mail) please indicate those methods in the space provided (samples of appointment reminders are available upon request):

How would you like to be contacted regarding appointments, treatment and/or other information pertinent to your healthcare and/or payment for your healthcare provided at Lung and Chest Medical Associates (Check all that apply)

✓ Regular Mail ✓ Home Telephone #864 486-9131 ✓ Work Telephone #864 680-5929

___ Appointment Cards ___ Email _____

Other: _____

If you have an answering machine, may we leave messages regarding appointments, treatment and/or other information pertinent to your healthcare and/or payment for your healthcare provided at Lung and Chest Medical Associates? (Check one)

✓ YES ___ NO ___ No Answering Machine Available

If "NO", how else may we contact you regarding this information?

_____

- **Are you interested in being made aware of the opportunity to participate in a research study that may apply to your case?** ✓ Yes ___ No
- **Do you give your permission for your medical chart to be reviewed for consideration in research studies that apply to your case?** ✓ Yes ___ No
- **Do you give your permission for your chart to be reviewed by staff from Spartanburg Pharmaceutical Research, Dr. Charles M. Fogarty, for consideration in research studies that apply to your case?** ✓ Yes ___ No

10/03

000406

THOMPSON 032197

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Lung and Chest Medical Associates

Authorization of Use and Disclosure of Protected Health Information

Persons Authorized to Receive Information:
Health Information Lung and Chest Medical Associates collects or receives about you may be disclosed to the following persons: 680-9698 476-5222

Carole Lynne Casey (Sister), Gregg Casey (Brother)
Name of Relatives

Dr. Frank Garcia
Name of Physicians

CVS
Name of Pharmacy Other

Use and Disclosure of Information:

✓ I authorize the person(s) listed above to receive all health information about appointments, treatment and/or other information pertinent to my healthcare and/or payment for my healthcare provided at Lung and Chest Medical Associates

____ I do not authorize the following information to be disclosed to any other parties except to me as the patient (Please specify):

Other Uses and Disclosures. Disclosure of your health information or its use for any purpose other than those listed in the "Notice of Privacy Policies and Practices" brochure and / or consent require your specific written authorization. If you change your mind after authorizing a use or disclosure of your information you may submit a written revocation of the authorization. However, your decision to revoke the authorization will not affect or undo any use or disclosure of information that occurred before you notified us of your decision. You have the right to request restrictions on use and disclosure of your health information.

____ I would like the following restrictions regarding the use and disclosure of my health information:

Expiration Date of Authorization
This authorization is effective through unlimited unless revoked or terminated by the patient or patient's personal representative. You should contact the PRIVACY OFFICER or other authorized representative to terminate this authorization.

Potential for Re-disclosure
The person or organization to which health information is sent may repeatedly disclose health information that is identified by this authorization. The privacy of this information may not be protected under the federal privacy regulations.

Signature: William Mark Casey July 14 2004 William Mark Casey
Signature of Patient Date Name of Patient (Print or Type)

Signature of Patient Representative Date Relationship to Patient

10/03

000405

THOMPSON 022408

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LUNG AND CHEST MEDICAL ASSOCIATES

Dr. Charles M. Fogarty, Dr. Wilson P. Smith, Jr., Dr. Mary Lou Applebaum, Dr. E. Bert Knight, III, Dr. J. Douglas Clark, Dr. Rick Mendoza

ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF PRIVACY PRACTICES

I have received a copy of the Notice of Privacy Practices. The Notice describes how my health information may be used or disclosed. I understand that I should read it carefully. I am aware that the Notice may be changed at any time. I may obtain a revised copy of the Notice by calling 864-582-6858, on Lung and Chest's website at lungandchest.com, or by requesting one at the Lung and Chest offices.

July 14, 2004
(Date)

William Mark Casey
(Signature*)

William Mark Casey
(Print or Type Name)

As the representative of the above individual, I acknowledge receipt of the Notice on his or her behalf.

Carole Lynne Casey
(Signature)

Sister
(Relationship)

July 14, 2004
(Date)

****

The patient _____ was provided with a Notice and Written Acknowledgment form by _____, who explained that signing the form merely indicates the patient's acknowledgment that he or she received the Notice, but the patient nonetheless refused to sign.

_____ _____
Staff signature Date

12/11/03

000404

THOMPSON 032199

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PATIENT INFORMATION

NAME: William Mark Casey CHART # 77168WPS

Mailing Address 240

Street Address 240 Lightwood Farm Road (City) Woodruff (State) SC (Zip) 29388

Date of Birth [redacted] 1958 Age 45 Sex M Race W Marital Status Divorced

Social Security # [redacted] Tel. Home (864) 486-9131 Business (864) 680-5829

Your Employer/School Michelin Tire Corp Address

E-Mail address: MARKMARKSC@aol.com

Spouse's/Parent's Name _____ Spouse's/Parent's Employer _____

Are you, the patient, covered by spouse's/ parent's insurance? _____ Spouse's/Parent's Date of Birth ___-___-___

If yes, spouse's/parent's Social Security # ___-___-___

Family Physician Dr. Frank Goode

Referring Physician (if different) _____

Emergency Contact Cook, Lynne Casey (Relationship) Sister (Phone) 864 680-79[illegible]

MICHELIN PPO

www.SouthCarolinaBlues.com 380

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.SouthCarolinaBlues.com.

Mental Health/Substance Abuse preauthorization and claims control ComPsych at 1-800-537-5221

Personnel Service Center (PSC) at 1-877-455-7848

BC/BS SC Customer Service at 1-888-765-3858

First Advice Nurse Line: 1-800-521-2583 (myBCBS)

Members: For information regarding PPO Network Providers call 1-800-810-2583 (myBCBS)

Hospital/Physicians: Submit all claims to your local plan following standard procedure.

Employers submit filed claims, including dental, should be mailed to: BlueCross and BlueShield Premium Service Center, P.O. Box 6580 Greenville, SC 29606-6580

Plan (or Licensee Cobrador Afiliado) processes 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 Licensee of the Blue Cross And Blue Shield Association GK

LONG TERM INSURANCE AUTHORIZATION

I request payment of authorized benefits be made on my behalf to Charles M. Fogarty, MD, PA, Wilson P. Smith, MD, PA, E. Bert Knight, MD, PC, Mary Lou Applebaum, MD, PC, J. Douglas Clark, MD, PC and/or Rico Vicente L. Mendoza, MD, PA for any healthcare services rendered to me by that physician. I authorize any holder of medical information about me to release to Health Care Financing Administration and/or my other insurance companies any information needed to determine benefits payable. I understand I am responsible for any amounts approved but not covered by my insurance.

William Mark Casey

(Patient's Signature)

July 14, 2004

CASEY,WILLIAM MARK
240 LIGHTWOOD FARM RD
WOODRUFF SC 293887600

DL#: [redacted]
Expires:

Class: D Hgt: 6-08 Wgt: 165
Sex: M DOB: [redacted]-1958
Issued: 10-15-2003 42079 R 4

Restrictions A

A:\LC102 New Pt. Ins Form- pink.doc 01/05/2004

000403

NEW PATIENT APPOINTMENTS
LUNG AND CHEST MEDICAL ASSOCIATES
2030 NORTH CHURCH PLACE
SPARTANBURG SC 29303

CMF RVM JDC
WPS MLA EBK

APPT DATE 7.14
APPT TIME 10

DATE July 7, 2004

PT NAME William M. Caver
DOB [redacted] 58 SS# 0

REFERRING DOCTOR SM
CONTACT 0 PH#

HOME # 486-9131 WK#

MAILING ADDRESS 210 Lakewood Lane KD 29385

REASON FOR VISIT Chest Pain (Not Cardiac)
Quit x 2 PE-Fabrikant Scan-Lucents Expire
FAMILY PHSICIAN

INSURANCE BCBS REFERAL Y N

MEDICAL RECORDS
CHEST XRAY OR CT SCANS
COMMENTS:

QUESTIONAIRE MAILED BY
CO LOGGED BY

000402

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Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rino V. I. Mendoza, M.D.
J.P. Elm, P.N.P.

Wilson P. Smith, Jr., M.D.
E. Bert Knight, III, M.D.
Mary Lou Applebaum, M.D.
Beth V. Edwards, PA-C
Cindy Edwards, P.N.P.

Faxi (864) 585 - 2102

Fax: (864) 582-3759

Jellison 5-13-2013

5-20-2013 6-7-13

Patient Authorization to Release Medical Information

I hereby authorize employees, Medical Staff Members or other agents of (name of organization) Upstate Lung & Critical Care and Spartanburg Regional to use or disclose the following information about me:

For the following purposes:
- ✓ At the request of the undersigned individual
- ____ Other (describe)

The health information described above may be used or released to: Lung & Chest Medical fax to 542-9043

This Authorization expires:
- ✓ On the following date: 12/31/2099 unless otherwise revoked by the patient, which is their right.
- ____ When the following event occurs:
- ____ No expiration (permitted only for authorizations used to create or maintain research databases or repositories)

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.

X William Mark Casey X 10-22-2004 X [redacted]958 X [redacted]

Patient Signature | Date | Date of Birth | Social Security Number

William Mark Casey — Maria J. Kinbrell

Patient printed name | Witness Signature

****

The above individual is unable to consent because:
- ____ Minor.
- ____ Incompetent
- ____ Other (explain):

I therefore consent on behalf of the individual named above.

Signature | Relationship

Witness Signature | Date

Upstate Lung
H&P, last office notes, any diagnostics

Spartanburg Regional
ER, Admission, Discharge, Diagnostic Info's, Bronch Report, Cytology

6-4-04

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TRANSMISSION VERIFICATION REPORT

TIME : 10/22/2004 13:32
NAME : LUNG&CHEST MEDICAL
FAX : 8648923750
TEL : 8648926858
SER.# : BROJ2N587248

DATE,TIME	10/22 13:32
FAX NO./NAME	5736529
DURATION	00:00:21
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

Faxed Medical Record release to Dr. Feldman's re: William Mark Carey

Marie Kimbrell

000400

THOMPSON 032203

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HP OfficeJet
Personal Printer/Fax/Copier

Fax Log Report

Oct-29-04 02:56 PM

Identification	Result	Pages	Type	Date	Time	Duration	Diagnostic
smmc med rec	OK	01	Sent	Oct-29	02:56P	00:00:36	0024c2030022

1.3.0 2.8

Signed Medical record release to SMMC
re: William Mark Casey
Marie Kimbrell CMA
10/28/04

000399

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----- ALLOW 2 LINES FOR PREDNISONE

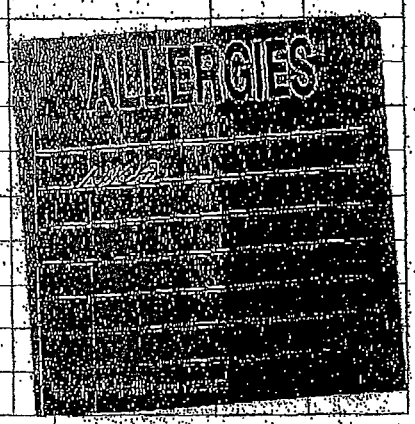
Upstate Lung and Critical Care Specialists
7091 Boiling Springs Road • Spartanburg, South Carolina 29303

NAME William Gray CHART# 11686

ALLERGIES NKA

ROUTINE MEDICATION LIST:

MEDICATION	Dose & Frequency Ordered by MD	Dose & Frequency Taken by Patient	Start Date	Stop Date
Bextra	take 1 qd			
Ultram	PRN if needed			
Zonafax (takes pill for sleep) 6/15				
Xanax (2 tabs a day) 6/25				
Had 6 shots in back from pain center				
Lipitor	1qd			



Date Reviewed and Updated / By Whom

6-8041KMS	/	/	/	/
6/25041KMS	/	/	/	/
/	/	/	/	/
/	/	/	/	/

UL-108

000398

THOMPSON 032205

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Upstate Lung And Critical Care Specialists, P.C.

Name: Casey William M. Chart# 11696 Date 8/17/04 F

Wt ____ Ht ____ B/P ____ H/R ____ RR ____ Temp ____ FiO2 ____

Cough ____ Smoking ____
Sputum ____ Nausea ____
Dyspnea ____ Vomiting ____
Wheeze ____ Diarrhea ____
Edema ____ Chest Pain ____
Palpitations ____ Pain ____
Oriented ____ ETOH ____
New Allergies ____
Last Chest X-Ray ____

Present Illness + reason for visit: WD SOB

Physical Exam: ✓ WNL/NEG ✖ ABN/POS

* General Appearance ____
* Skin/Turgor ____
* ENT ____
* Sinus ____
* Mouth ____
* Neck ____
* Heart: Rhythm ____
  Murmurs ____
  Gallop ____
  Tones ____
* Abdomen ____
* Chest/Lungs:
  Breath Sounds ____
  Wheezes ____
  Rales ____
  Effort ____
  Symmetry ____
* Extremities:
* Mobility: Gait ____
  Reflexes ____
  Aides ____
* Mental Status ____

LAB ORDER: Spirometry ___ EKG ___ Sinus ___ CBC ___ Glu ___ PT ___ INR ___ O_2Sat Rest
Lung Vol ___ DLCO ___ U/A ___ CXR ___ ABG'S ___ Bud ___ Cre ___ K+ ___ Theo ___
O_2Sat Rest ___

Office Treatment ____

Education ____

Diagnosis ____ Plan ____

Prescriptions ____

Next Appt ___ Wks ___ Months W/GJF JAB DRB Signature ____ Staff ____
Next Visit: Spiro L/V DLCO PA PAL Sinus Dexa BLDWK ____ Other ____

000397

THOMPSON 032206

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Upstate Lung And Critical Care Specialists, P.C.

F

Name: Casey William M Chart# 11686 Date 7-7-04

Wt 171 Ht ____ B/P 144/88 H/R 85 RR ____ Temp ____ FiO2 .21

Cough Severe Smoking Quit 1 yr ago Present Illness + reason for visit Feels Tightness

Sputum Yes/Brown Nausea + Mid Chest Pain x 3 days, Worse on Deep Breath

Dyspnea + Vomiting + Chest Pain x 3 days, Worse on Deep Breath

Wheeze Some Diarrhea + Pain on Left Side, Feels

Edema Trace Chest Pain @ Chest like sits like Heart is racing @ Times

Palpitations + Pain ____

Oriented yes ETOL ____

New Allergies ____

Last Chest X-Ray ____

Feels better coughing

Physical Exam:	✓ WNL/NEG	# ABN/POS
* General Appearance	✓	
* Skin/Turgor	✓	
* ENT	✓	Post Nasal Drip
* Sinus	✓	
* Mouth	✓	
* Neck	✓	
* Heart: Rhythm	✓	RRR Heart RRR
Murmurs	✓	
Gallop	✓	
Tones	✓	
* Abdomen	✓	
* Chest/Lungs:		
Breath Sounds	#	Clear
Wheezes	✓	
Rules	✓	
Effort	✓	
Symmetry	✓	
* Extremities:	✓	
* Mobility: Gait	✓	
Reflexes	✓	
Aides	✓	
* Mental Status	✓	

LAB ORDER: Spirometry ___ EKG ___ Sinus ___ CBC ___ Glu ___ PT ___ INR ___ O_2Sat Rest 98

Lung Vol ___ DLCO ___ U/A ___ CXR ___ ABG'S ___ Bun ___ Cre ___ K+ ___ Theo ___

O_2Sat Rest ___

Office Treatment Referred to Pul Rehab Home O2

Education ____

Diagnosis Asthma - Acute Plan Pul Rehab

CP Pneumomediastinum

Prescriptions ____

Next Appt. ___ Wks ___ Months W/GJF JAR DRE Signature ____ Staff ____

Next Visit: Spiro I/V DLCO PA PAL Sinus Dexa BLDWK ____ Other ____

000396

THOMPSON 032207

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SPIROMETRY REPORT UPSTATE LUNG AND CRITICAL CARE TEST DATE: 07/07/04
PB100 SW Rev: J-J TIME: 15:02

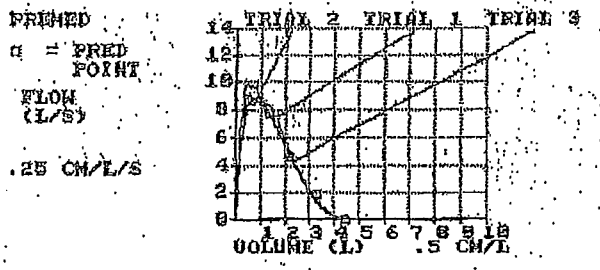
Patient Name: Adriani Casey PreMed Time: 15:03
Patient ID: 11686 Age: 48 Height (in): 68 Weight (lbs): 171 Sex: Male Race Correction: No Smoker: Yes
Barometric Pressure (mmHg): 760 Temp (deg F): 70 BTPS Correction: 1.110 Sensor: FS200 Insp Code: None
Last Cal Date: 07/07/04

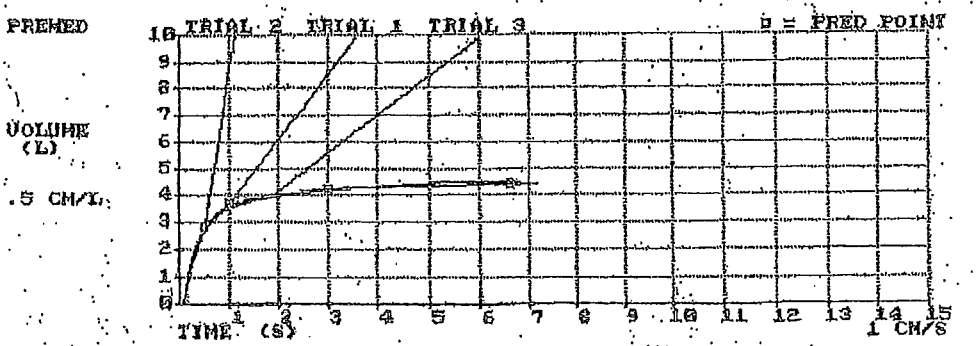
FVC TEST DATA - Clinical Format BEST TEST SHOWN Knudson 83 Adult Predicted Normals

Measurement		PreMed	Pred	%Pred	PostMed	%Pred	%Change
FVC	(L)	4.47	4.45	100%			
FEV1	(L)	3.61	3.66	99%			
%FEV1	(%)	80.76	82.42	98%			
FEF25%-75%	(L/S)	3.57	3.85	93%			
PEF	(L/S)	9.98	8.67	115%			
FEV3	(L)	4.26	4.24	100%			
FET	(S)	4.95					

HPS Consumer Advisor
Used yesterday, not today

Variability: PreMed: FVC = 0.0%(0ml) FEV1 = 0.3%(10ml) PEF = 10.7%





Interpretations:
Lung Age: 47 years
PREMED: Testing indicates normal spirometry.
Comments:

000395

THOMPSON 032208

1 of 3 pg 1

TELEPHONE CALL BACK - UPSTATE LUNG AND CRITICAL CARE SPECIALISTS

DATE 06/25/09 TIME: ___ AM/PM CHART# 11696 BY DC

___ / ___ called RE: William Casey
(caller name/relation)

TELEPHONE# ___ PT PHONE# ___

DATE OF LAST VISIT ___ NEXT APPT DATE ___ DOB [redacted]58

#1: NEED DRUG REFILL (For patient doing well and no reason not to refill)

Drug Name: ___ Strength: ___ Freq: ___

Name of Pharmacy: ___ Pharmacy Telephone#: ___

Drug Called in: ___ / ___ am/pm BY: ___ ___
(Staff) (Doctor)

#2: PATIENT COMPLAINT

Pt and sister here this visit. Pt come back for a return follow-up visit. Patient's sister started asking questions to Dr. Bascia re: the rigid Bronch. Sister (Carol Casey) wanted to know "Why the urgency of doing a bronch". Explained to patient that something was seen on the xray but he was unable to see it o the fibroptic-branch but something was there.

Nursing Interventions/Advice: Pt stated he did not have a prm with what Dr. Bascia had done. He reports he came to the hospital with pain in his chest reports symptomatic. Pt reported that all he wanted was something that

M.D. Signature

Call 911 ___ Go to ER ___ Appointment given in office ___

Referral(s) ___ Instructions Accepted Yes ___ No ___

___ / ___ ___ ___
(Date/Time) (Staff) (Doctor)

JUN 28 2004

CALLED
JUN 28 2004
Pt/Dr. Bascia

000394

THOMPSON 032209

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

(9)

TELEPHONE CALL BACK - UPSTATE LUNG AND CRITICAL CARE SPECIALISTS

DATE: / / TIME: AM/PM CHART# BY

(caller name/relation) called RE:

TELEPHONE# PT PHONE#

DATE OF LAST VISIT NEXT APPT DATE DOB

#1: NEED DRUG REFILL (For patient doing well and no reason not to refill)

Drug Name: Strength: Freq:

Name of Pharmacy: Pharmacy Telephone#:

Drug Called In: / am/pm BY (Staff) (Doctor)

#2: PATIENT COMPLAINT

would stop him from pacing All the time and be able to sleep at night. He reported that he has to take the Zanaflex prn just to sleep but he did not want to just be put to sleep he just wanted to rest and stop pacing. Pt reported he was able to rest sit and watch TV before All

Nursing Interventions/Advice this happened now he just finds himself pacing Dr Boscia told patient he was not able to answer all his questions because the procedure he did should not we caused all these pms. Dr Boscia Suggested

Call 911 Go to ER Appointment given in office

Referral(s) Instructions Accepted Yes No

/ Boscia

(Date/Time) (Staff) (Doctor)

000393

THOMPSON 032210

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

3

TELEPHONE CALL BACK - UPSTATE LUNG AND CRITICAL CARE SPECIALISTS

DATE 6/6 TIME: AM/PM CHART# BY

(caller name/relation) called RE:

TELEPHONE# PT PHONE#

DATE OF LAST VISIT NEXT APPT DATE DOB

#1: NEED DRUG REFILL (For patient doing well and no reason not to refill)

Drug Name: Strength: Freq:

Name of Pharmacy: Pharmacy Telephone#

Drug Called in: / am/pm BY (Staff) (Doctor)

#2: PATIENT COMPLAINT

to them that they should talk to his partner who performed the other procedures. Patient's sister quickly said that she did see that they were not going to get any answers here. Encouraged her to make an appointment to see Dr. Fekrat next week. She shook her head "no" that she would have "Some one" contrast

Nursing Interventions/Advice WS. At one point during the visit Mr. Casey stated "I don't want any parts of this, I just want to be able to rest. stop poking" At one point the sister talked about all the expenses of the hospital bill.

Call 911 Go to ER Appointment given in office

Referral(s) Instructions Accepted Yes No

/ (Staff) Boscia (Doctor)

(Date/Time)

000392

THOMPSON 032211

Patient was given an Prescription for Ambien And was Advised not to take this medication in conjunction with Cortab And Zanaflex.

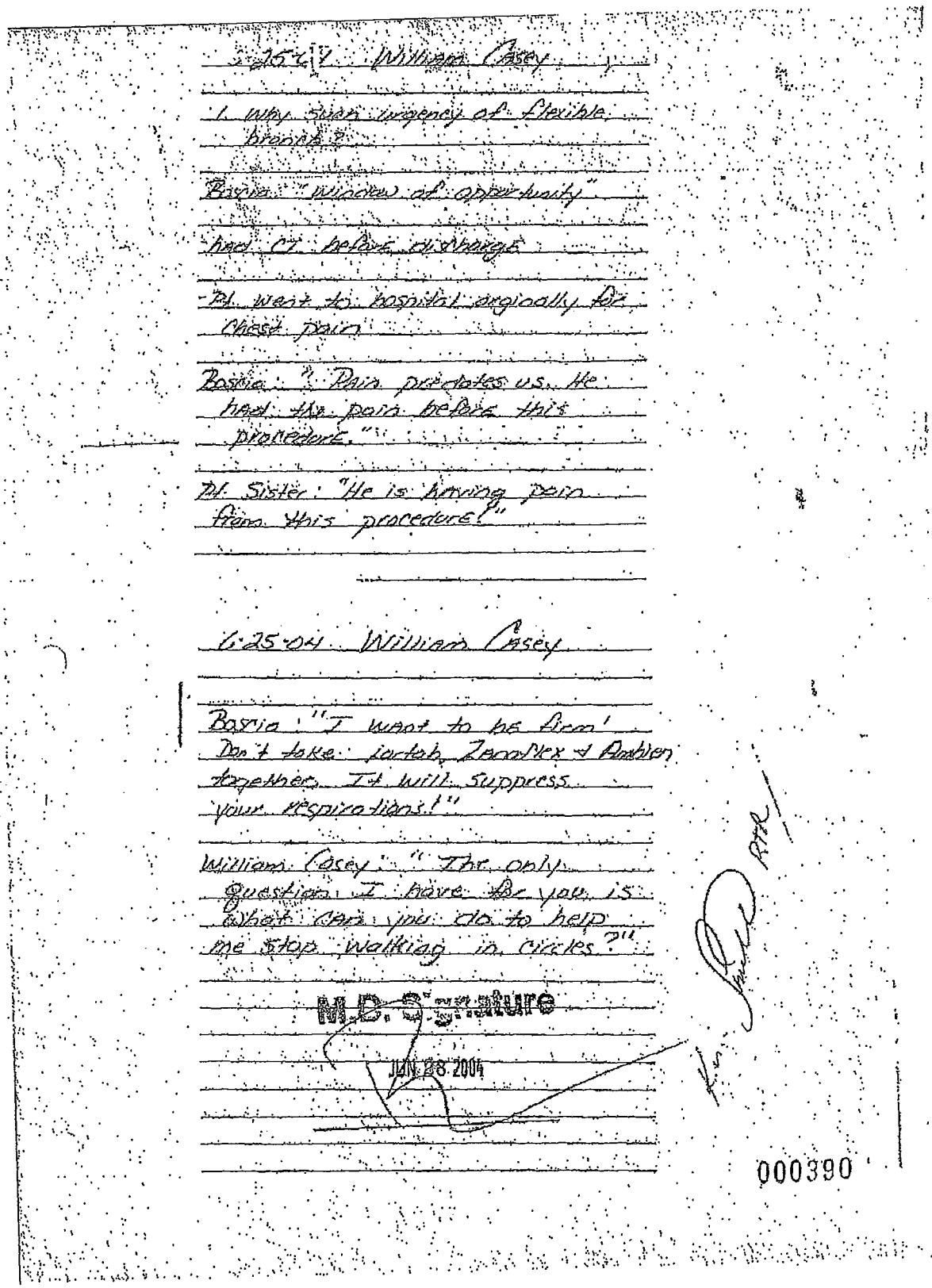
DiannFoster

000391

THOMPSON 032212

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743



6-25-04 William Casey

I may have incipency of flexible bronchi?

Bozia: "Window of opportunity" had CT before discharge

Pt went to hospital originally for chest pain

Bozia: "Pain predates us. He had the pain before this procedure."

Pt Sister: "He is having pain from this procedure!"

6-25-04 William Casey

Bozia: "I want to be firm! Don't take Ativan, Zantac & Ambien together. It will suppress your respirations!"

William Casey: "The only question I have for you is what can you do to help me stop walking in circles?"

M.D. Signature

JUN 28 2004

000390

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Upstate Lung And Critical Care Specialists, P.C. (1) B

Name: Casey William M. Chart# 11086 Date 6/25/09

Wt 172 Ht 68 B/P 130/90 H/R 90 RR ____ Temp ____ FiO2 RA

Cough OCC Smoking + Present Illness / reason for visit back tired easily
Sputum OCC Nausea ____ continues to have same
Dyspnea ____ Vomiting ____ chest tightness, breaths
Wheeze OCC Diarrhea ____ shortness of breath
Edema ____ Chest Pain tightness continues to have trouble
Palpitations OCC Pain Chronic back breathing + sister reports
Oriented yes ETOL Pain/ he snores and he cannot
New Allergies Pain Level 3 sit down because he hurts
Last Chest X-Ray ____

Physical Exam ✓ WNL/NEG * ABN/POS

* General Appearance
* Skin/Turgor
* ENT
* Sinus
* Mouth
* Neck
* Heart: Rhythm
Murmurs
Gallop
Tones
* Abdomen
* Chest/Lungs:
Breath Sounds
Wheezes
Rales
Effort
Symmetry
* Extremities:
* Mobility: Gait
Reflexes
Aides
* Mental Status

pt c/o pain flares
could not sleep
lying
Lot nites.
clear

LAB ORDER: Spirometry ___ EKG ___ Sinus ___ CBC ___ Glu ___ PT ___ INR ___ O_2Sat Rest
Lung Vol ___ DLCO ___ U/A ___ CXR ___ ABG'S ___ Bun ___ Cre ___ K+ ___ Theo 96%
O_2Sat Rest ___

Office Treatment ____

Education ____

Diagnosis Chronic Pain Syndrome

Plan Rx Feldene
m 2 weeks
Ambien for sleep

Prescriptions ____

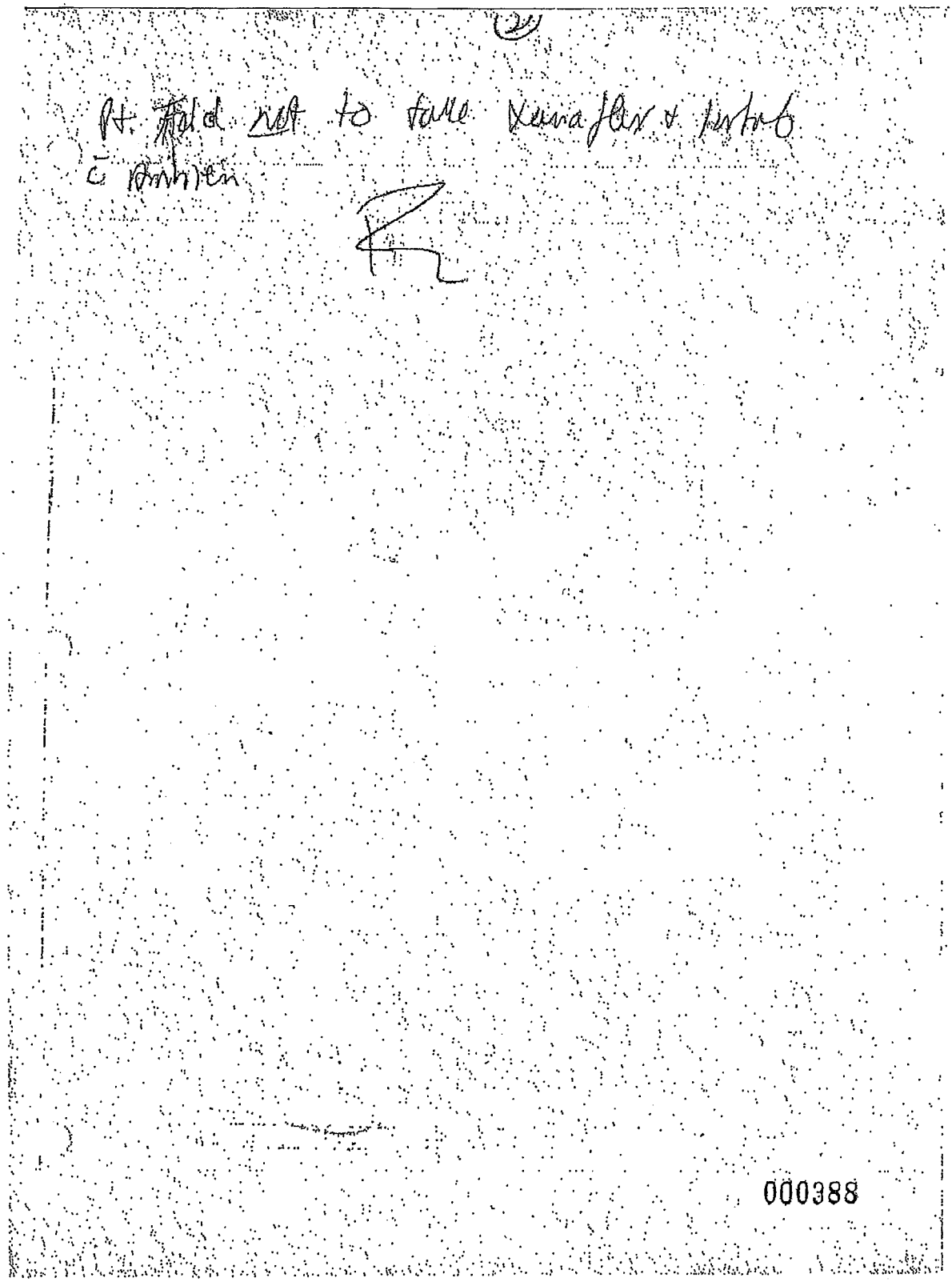
Next Appt: ___ Wks ___ Months W/GIF IAB DRE Signature ____ Staff ____
Next Visit: Spiro L/V DLCO PA PAL Sinus Dexa BLDWK ____ Other ____

UL-121 Flowtech

000389

THOMPSON 032214

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743



ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP420743

TELEPHONE CALL BACK - UPSTATE LUNG AND CRITICAL CARE SPECIALISTS

DATE 6/22/04 TIME: ____ AM/PM CHART# 11686 BY MEH

____ called RE: William Craig
(caller name/relation)

TELEPHONE# ____ PT PHONE# ____

DATE OF LAST VISIT ____ NEXT APPT DATE ____ DOB ____

#1: NEED DRUG REFILL (For patient doing well and no reason not to refill)

Drug Name: ____ Strength: ____ Freq: ____

Name of Pharmacy: ____ Pharmacy Telephone# ____

Drug Called In: ____ / ____ am/pm BY ____ ____
(Staff) (Doctor)

#2: PATIENT COMPLAINT Call came 6/17/04 @ 4:30

A. Called Alvo to get more of the inhaler, he was not available at the moment, he called him and he instructed me to tell him that it did not help at all. I could not understand him. He said he needed to get more. It was time to go. He said he would call back.

Medical Intervention/Actions Called Alvo back and left message for him to call back.

Plan Will call back.

(over)

CALLED
JUN 22 2004
given in office
BY

JUN 22 2004

Accepted Yes ____ No ____

(Date/Time) (Staff) (Doctor)

Left on Dr. Foster's desk

000387

THOMPSON 032216

Pt said he was taking Zanaflex
@ mng as needed to "pass out
@ night." Pt was warned not to
do that. Zanaflex not given by
this office

000386

THOMPSON 032217

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Upstate Lung And Critical Care Specialists, P.C.

(1)

Name: William M. Cassin Chart# 11686 Date 10-11-04

Wt 146 Ht 66 B/P 112/82 H/R 117 RR 28 Temp 100.0 FiO2 RA

Cough + Smoking + Present Illness + reason for visit: PN

Sputum brown Nausea — sweating all night

Dyspnea — Vomiting — coughing up brown phlegm

Wheeze — Diarrhea —

Edema — Chest Pain —

Palpitations — Pain Chest tube side, w/d

Oriented + ETOH —

New Allergies —

Last Chest X-Ray 10/8/04 USCCS

Physical Exam: ✓ WNL/NRG ≠ ABN/POS

* General Appearance	WNL	ill appearing white male in NAD
* Skin/Turgor	✓	dark + hairy chest
* ENT	✓	Cornea clear + deep
* Sinus	✓	no tenderness
* Mouth	✓	
* Neck	✓	JVD
* Heart: Rhythm	✓	
Murmurs	✓	
Gallop	✓	
Tones	✓	
* Abdomen	WNL	
* Chest/Lungs:		
Breath Sounds	≠ Rales ≠ Ron Wheezing	
Wheezes	✓	
Rales	✓	RUL
Effort	✓	
Symmetry		
* Extremities:		
* Mobility: Gait	✓	no clubbing
Reflexes	✓	
Aides	✓	
* Mental Status	X	Oriented — Walked into/called out of room with

LAB ORDER: Spirometry ___ EKG ___ Sinus ___ CBC ___ Glu ___ PT ___ INR ___ O_2Sat Rest

Lung Vol ___ DLCO ___ U/A ___ CXR ___ ABG'S ___ Bun ___ Cre ___ K+ ___ Theo 10 mg

O_2Sat Rest ___

Office Treatment: nurse note given. Neb

Education: Seen by Dr. Brown

Diagnosis: PNA Plan: Z pack (Zithromax)

Lung - spring mid — Rec - cxr

S/P pneumovax

Prescriptions

Next Appt. 2 Wks ___ Months W/GIF JAB DRB Signature ___ Staff ___

Next Visit: Spiro L/V DLCO PA PAL Sinus Dexa BLDWK ___ Other ___

000385

THOMPSON 032218

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Pt. told me he had talked to
A person of whom he saw their picture
while in my office about his condition.
I told him I wish he had not done
that because we do not speak of
any of our Pts with friends & family -
I would tell me Pts if he was not
- did not know you.
Hawkins

000384

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

TELEPHONE CALL BACK - UPSTATE LUNG AND CRITICAL CARE SPECIALISTS

DATE 6 / 11 /04 TIME: ___ AM/PM CHART# 11686 BY MEH

___ / ___ called RE: William Carey
(caller name/relation)

TELEPHONE# ___ PT PHONE# ___

DATE OF LAST VISIT ___ NEXT APPT DATE ___ DOB ___

#1: NEED DRUG REFILL (For patient doing well and no reason not to refill)

Drug Name: ___ Strength: ___ Freq: ___

Name of Pharmacy: ___ Pharmacy Telephone# ___

Drug Called in: ___ / ___ am/pm BY ___ ___
(Staff) (Doctor)

#2: PATIENT COMPLAINT

Pt's sister called to report her mother was in severe pain @ chest tube site. Was taking Percocet 5mg 2-3 @ a time every 4 hrs with no relief. Pt has appt with Pain Center on 6/17/04 if not sooner. Dr. Bosica ordered oxycontin 20mg 1 BID only amount until Pain Center

Nursing Interventions/Advice: Could see (R.N. Written up 13 pills) I talked with sister in front of Dawn Foster RN. If pain is not to take pain meds the best with oxycontin. Sister told nurse she would remove

Call 911 ___ Go to ER ___ Appointment given in office ___

Referral(s) ___ Instructions Accepted: Yes ___ No ___

___ / ___ ___ ___
(Date/Time) (Staff) (Doctor)

000383

THOMPSON 032220

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

TELEPHONE CALL BACK - UPSTATE LUNG AND CRITICAL CARE SPECIALISTS

DATE 6/11/09 TIME: ___ AM/PM CHART# ___ BY Mat

___ (caller name/relation) called RE: William Craig

TELEPHONE# ___ PT PHONE# ___

DATE OF LAST VISIT ___ NEXT APPT DATE ___ DOB ___

#1: NEED DRUG REFILL (For patient doing well and no reason not to refill)

Drug Name: ___ Strength: ___ Freq: ___

Name of Pharmacy: ___ Pharmacy Telephone# ___

Drug Called In: ___ / ___ am/pm BY ___ (Staff) ___ (Doctor)

#2: PATIENT COMPLAINT

Pt mom needs from his home & only leave with him what he could take ~~get~~ have C.D. Our office will call to see if to Appt with Pain Center can be done

Nursing Interventions/Advice

Rx was picked up by M.D. Signature

JUN 11 2009

Call 911 ___ Go to ER ___ Appointment given in office ___

Referral(s) ___ Instructions Accepted Yes ___ No ___

___ / ___ (Date/Time) ___ (Staff) ___ (Doctor)

DL-124

000382

THOMPSON 032221

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

TELEPHONE CALL BACK - UPSTATE LUNG AND CRITICAL CARE SPECIALISTS

DATE 6/3/04 TIME: ___ AM/PM CHART# 11686 BY MEH

___ / ___ called RE: ___
(caller name/relation)

TELEPHONE#: ___ PT PHONE#: ___

DATE OF LAST VISIT: ___ NEXT APPT DATE: ___ DOB: ___

#1: NEED DRUG REFILL (For patient doing well and no reason not to refill)

Drug Name: ___ Strength: ___ Freq: ___

Name of Pharmacy: ___ Pharmacy Telephone#: ___

Drug Called in: ___ / ___ am/pm BY ___ ___
(Staff) (Doctor)

#2: PATIENT COMPLAINT

Nursing Int

UPSTATE LUNG AND CRITICAL CARE SPECIALISTS, P.C.
1091 BOILING SPRINGS ROAD
SPARTANBURG, SC 29303
TELEPHONE (864) 573-6220
1419 N. LIMESTONE ST.
GAFFNEY, SC 29340
TELEPHONE (864) 487-9931
☐ Gregory J. Feldman, MD 16838 ☐ Joseph A. Bosco II, MD 22330 ☐ David R. Erb, MD 55599

NAME: William Craig DATE: 6/3/04
ADDRESS:

LABEL DRUG NAME, STRENGTH & QUANTITY ☐ YES ☐ NO

		STRENGTH	QUANTITY	REFILL
1	Rx: Will be out SIG: of work for 10 days			
2	Rx: until next office SIG: visit with Dr. Craig			
3	Rx: Proc. 11/04 Ca 15.99 SIG: Hydrocodone			

M.D. Dispense as Written M.D. M.H. Signature
DEA
UL-103

Call 911 ___ Go to ER ___ Appointment given in office ___

Referral(s) ___ Instructions Accepted Yes ___ No ___

___ / ___ ___ ___
(Date/Time) (Staff) (Doctor)

000381

THOMPSON 033333

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Upstate Lung And Critical Care Specialists, P.C.

Name: Casey, William Chart#: 11686 Date: 6/8/04

Wt. 168 Ht 5'8" B/P 154/92 H/R 82 RR ____ Temp ____ FIO2 ____

Cough + Smoking + Present Illness + reason for visit: Here

Sputum + Nausea ____

Dyspnea + Vomiting ____

Wheeze trace Diarrhea ____

Edema ____ Chest Pain + sore

Palpitations ____ Pain back

Oriented + ETOH ____

New Allergies ____

Last Chest X-Ray ____

0 - 10

Patient has been instructed on the DANGERS of Smoking and the importance of Stopping.

Dated: 6/8/04 By: KMS

Physical Exams: ✓ WNL/NEG * ABN/POS

* General Appearance
* Skin/Turgor
* ENT
* Sinus
* Mouth
* Neck
* Heart: Rhythm
Murmurs
Gallop
Tones
* Abdomen
* Chest/Lungs:
Breath Sounds
Wheezes
Rales
Effort
Symmetry
* Extremities:
* Mobility: Gait
Reflexes
Aides
* Mental Status

LAB ORDER: Spirometry ___ EKG ___ Sinus ___ CBC ___ Glu ___ PT ___ INR ___ O_2Sat Rest

Lung Vol ___ DLCO ___ U/A ___ CXR ___ ABG'S ___ Bun ___ Cre ___ K+ ___ Theo 9+/-

O_2Sat Rest ___

Office Treatment

Education must quit smoking

Diagnosis Referral to Dr. Porter

Prescriptions

Next Appt. ___ Wks ___ Months W/GJE JAB DRE Signature ____ Staff KSmith

Next Visit: Spiro L/V DLCO PA PAL Sinus Dexa BLDWK ____ Other ____

000580

THOMPSON 032223

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

UPSTATE LUNG AND CRITICAL CARE SPECIALISTS

PATIENT NAME: William Casey
ACCOUNT #:
DATE:
JOB #: 199

CHEST X-RAY:

FINDINGS: PA and lateral of the chest were obtained today. The heart, lungs, and bony structures are normal.

IMPRESSION:
1. Normal chest x-ray.

Joseph A. Boscia, MD

JAB:umt01
D: 06/11/04
R: 06/14/04
T: 06/15/04

000379

THOMPSON 032224

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

CAROLINAS CENTER For Advanced Management of Pain

Comprehensive Evaluation and Medical Management | Diagnostic and Therapeutic Injections | Implantable Pain Control Systems | Neurpablative Procedures

Dr. Feldman wants Appt. ASAP (this Week)

NEW PATIENT REFERRAL FORM

Patient Name: William Casey

D.O.B. [redacted] 1968 SS#: [redacted]

Address: 240 Lightwood Farm Road

City: Woodruff State: SC Zip: 29388

Home Phone #: 486-9131 Alt. Phone #: Carol Casey 680-9048 Sister

Reason for referral: ☐ Consult Only

☑ Consult & TX

☐ Injection Only: _____ (type)

☐ Others: _____ (type)

Diagnosis: Bulging Disk, Disabling pain
MRI of Back @ MBH

Insurance: BCBS (please send a copy of the card)

IS THIS A WORKMAN'S COMPENSATION INJURY? ☐ YES ☐ NO

IF YES: Carrier Information: _____

Adjuster/Case Manager: _____ Phone: _____

Referring Physician: Gregory Feldman

Office Address: 1091 Boiling Springs Rd

Office Phone#: 573-6320 Fax: 573-6323

Contact Person/Extension: Natalie Smith

PLEASE FAX MEDICAL RECORDS TO (864) 583-0398 WITH THIS REFERRAL FORM. APPOINTMENTS CANNOT BE MADE UNTIL BOTH ARE RECEIVED!

THE FOLLOWING PATIENT HAS AN APPOINTMENT WITH DR. _____

ON _____ AT _____ Scheduled by: _____

International Spinal Intervention Society
Society for Interventional Pain Management
American Pain Society

Carolinas Center for Advanced Management of Pain

68 McDowell Street
Asheville, NC 28801
828-232-1956

64 Bear Drive
Greenville, SC 29605
864-286-6399

279 East Kennedy Street
Spartanburg, SC 29302
864-583-0053

000378

THOMPSON 032225

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Upstate Lung and Critical Care Specialists

HEALTH HISTORY

(Confidential)

Name Wm Mark Casey Today's Date June 8, 2004

Age 45 Birthdate [redacted]-58 Sex M Date of last physical examination May 4, 2004

Who is your primary/referring physician? Dr. Frank Gonce

What is the reason for the visit? Follow up w/ Dr. Feldman

SYMPTOMS: Check (√) symptoms you currently have or have had in the past year.

GENERAL
- ☐ Chills
- ☐ Depression
- ☐ Dizziness
- ☐ Fainting
- ☐ Fever
- ☐ Forgetfulness
- ☐ Headache
- ☐ Loss of sleep
- ☐ Loss of weight
- ☐ Nervousness
- ☐ Numbness
- ☐ Sweats

MUSCLE/JOINT/BONE
Pain, weakness, numbness in:
- ☐ Arms ☐ Hips
- ☑ Back ☐ Legs
- ☑ Feet ☐ Neck
- ☐ Hands ☐ Shoulders

GENITO-URINARY
- ☐ Blood in urine
- ☐ Frequent urination
- ☐ Lack of bladder control
- ☐ Painful urination

RESPIRATORY
- ☐ Short of breath ☐ Cough
- ☐ Cough up blood ☐ Wheeze
- ☐ Loud snoring ☐ Excessive sleepiness

GASTROINTESTINAL
- ☐ Appetite poor
- ☐ Bleeding
- ☐ Bowel changes
- ☐ Constipation
- ☐ Diarrhea
- ☐ Excessive hunger
- ☐ Excessive thirst
- ☐ Gas
- ☐ Hemorrhoids
- ☐ Acid Indigestion
- ☐ Nausea
- ☐ Rectal bleeding
- ☐ Stomach pain
- ☐ Vomiting

CARDIOVASCULAR
- ☑ Chest pain
- ☑ High blood pressure
- ☐ Irregular heart beat
- ☐ Low blood pressure
- ☐ Poor circulation
- ☐ Rapid heart beat
- ☐ Swelling of ankles
- ☐ Varicose veins
- ☐ Blood clots

EYE,EAR,NOSE,THROAT
- ☐ Bleeding gums
- ☐ Blurred vision
- ☐ Crossed eyes
- ☐ Difficulty swallowing
- ☐ Double Vision
- ☐ Earache
- ☐ Ear discharge
- ☐ Hay fever
- ☐ Hoarseness
- ☐ Loss of Hearing
- ☐ Nosebleeds
- ☐ Ringing in ears
- ☐ Sinus problems
- ☐ Vision-Flashes
- ☐ Vision-Halos

SKIN
- ☐ Bruise easily
- ☐ Hives
- ☐ Itching
- ☐ Change in moles
- ☐ Rash
- ☐ Scars
- ☐ Sore that won't heal

MEN ONLY
- ☐ Breast lump
- ☐ Erection difficulties
- ☐ Lump in testicles
- ☐ Penis discharge
- ☐ Sore on penis
- ☐ Prostate difficulties
- ☐ Other

WOMEN ONLY
- ☐ Abnormal Pap Smear
- ☐ Bleeding between periods
- ☐ Breast lump
- ☐ Extreme menstrual pain
- ☐ Hot flashes
- ☐ Nipple discharge
- ☐ Vaginal discharge
- ☐ Other

Date of last menstrual period _____
Date of last Pap smear _____
Have you had a mammogram? _____
Date of mammogram _____
Are you pregnant? _____
Number of children _____

CONDITIONS: Check (√) symptoms you have or have had in the past.

- ☐ AIDS
- ☐ Alcoholism
- ☐ Anemia
- ☐ Anorexia
- ☐ Appendicitis
- ☑ Arthritis
- ☐ Asthma
- ☐ Bleeding Disorders
- ☐ Breast Lump
- ☐ Bronchitis
- ☐ Bulimia
- ☐ Cancer
- ☐ Cataracts
- ☐ Chemical Dependency
- ☐ Chicken Pox
- ☐ Diabetes
- ☐ Emphysema
- ☐ Epilepsy
- ☐ Glaucoma
- ☐ Goiter
- ☐ Gonorrhea
- ☑ Gout
- ☐ Heart Disease
- ☑ Hepatitis
- ☐ Hernia
- ☐ Herpes
- ☑ High Cholesterol
- ☐ HIV Positive
- ☐ Kidney Disease
- ☐ Liver Disease
- ☐ Measles
- ☐ Migraine Headaches
- ☐ Miscarriage
- ☐ Monomicleosis
- ☐ Multiple Sclerosis
- ☐ Mumps
- ☐ Pacemaker
- ☐ Pneumonia
- ☐ Polio
- ☐ Prostate Problem
- ☐ Psychiatric Care
- ☐ Rheumatic Fever
- ☐ Scarlet Fever
- ☐ Stroke
- ☐ Suicide Attempt
- ☐ Thyroid Problems
- ☐ Tonsillitis
- ☐ Tuberculosis
- ☐ Typhoid Fever
- ☐ Ulcers
- ☐ Vaginal Infections
- ☐ Venereal Disease

000377

THOMPSON 032226

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

MEDICATIONS: List medications you are currently taking including inhalers and over the counter medicines.
PLEASE BRING WITH YOU

Name	Strength	Times Per Day	Name	Strength	Times Per Day
Bextra	20 mg	1			
Uffzone	50 mg	BID			
Zantac		1			
Lortab	10	1X2			

PHARMACY NAME: CVS Asheville Rd. PHONE

ALLERGIES

HOSPITALIZATION

YEAR	HOSPITAL	REASON for HOSPITALIZATION and OUTCOME
2000	Chest Pain	
1996	Elem Methodist Surgery	
	Mary Black	

Have you ever had a blood transfusion? ☐ Yes ☒ No
If yes, please give approximate dates? _____

PHYSICIANS THAT YOU ROUTINELY VISIT:

NAME	ADDRESS	PHONE NUMBER
Dr Frank Gordon	Boiling Springs	

PULMONARY HISTORY

Are you a smoker ☐ No ☐ Yes If yes, how many packs? less than 1/2 pack How many years? 25 If you have quit, how many years did you smoke? _____ Packs per day? _____ How long did you quit? _____
Does anyone else in your home smoke? ☒ No ☐ Yes

Do you have a chronic cough? ☒ No ☐ Yes If yes, how long have you had it? _____ Did you cough anything up? ☐ No ☐ Yes What color are you coughing up? Have you ever coughed up blood? ☐ No ☐ Yes If yes, when?

Do you get short of breath if you walk or climb steps? ☒ No ☐ Yes At rest? ☐ No ☐ Yes At other times? ☐ No ☐ Yes If yes, when? _____

Do you ever notice yourself wheezing? ☐ No ☒ Yes If yes, what make the wheezing worse? _____

When was your last Chest X-ray? 6-6-04 Where? Spartanburg Regional

Have you ever had a skin test for TB (Tuberculosis) ☐ No ☐ Yes If yes, When? ?

Have you ever been exposed to TB ☐ No ☐ Yes If yes, When? No Have you had skin test since being exposed? ☐ No ☐ Yes If yes, what kind? _____

Do you have indoor pets? ☐ No ☒ Yes If yes, what kind? Golden Spaniel

Have you been or are you exposed to dust or fumes ☐ No ☒ Yes If yes, what kinds? Michelin - Hydrone

Have you traveled out of the Upstate area? ☐ No ☒ Yes If yes, Where?

000376

THOMPSON 032227

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP420743

SYMPTOMS:	SOCIAL HISTORY	OCCUPATIONAL CONCERNS
Check (✓) which substances you use and how much you use ☐ Caffeine Coffee ☐ Street Drugs ☑ Tobacco 1/2 pack ☑ Alcohol occas ☐ Other	☐ Married ☑ Divorced ☐ Widowed ☐ Single ☑ Number of Children 2 ☐ Hobbies Golf	OCCUPATION: Michelin Tire Check (✓) if your work exposes you to: ☐ Stress ☐ Heavy Lifting ☐ Hazardous Substances ☐ Other

FAMILY HISTORY

Parent's living? ☐ Yes ☑ No, ☐ Father's Age/Cause of Death 73- lung cancer

☐ Mother's Age/Cause of Death 72 - pneumonia, kidney failure, renal + cardiac complications

Siblings living? ☑ Yes ☐ No. ☐ Brother's Age/Cause of Death 43 - accident, fell in pulping ditch

☐ Sister's Age/Cause of Death + bronchitis, pneumonia, mouth & throat cancer

Any additional Pulmonary family problems? _____

Immunization History

Flu Vaccine _____

Pneumonia Vaccine _____

Do you have any other medical concerns that you would like to discuss with your doctor? ☐ Yes ☐ No

Wm Mark Casey
Signature

6-8-04
Date

I Dom will see no PP
SP Pulm medications
SP dyer pr cortisone
(Unable to find forms
Pt → Wm abnormal
breathing
(Referral)
C 2

000375

THOMPSON 032228

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

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
Society for Private Practice in Pain Management
American Pain Society

M.D. Signature

JUN 28 2004

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,

V. Eugene Mironer, M.D.

YEM/ss/mds -
cc: Frank E. Gonda, M.D.

(Dictated, not read)

RECEIVED
JUN 28 2004
BY:

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SPARTANBURG REGIONAL HEALTHCARE SYSTEM
SPARTANBURG, SC 29303

Note: Document is draft unless signed.
<END FOOTER>

M.D. Signature

JUN 08 2004

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 68. 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

000373

THOMPSON 032230

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

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, then 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:
ANDREAS KOSER, M.D., Admitting Physician

**END
Authenticated by Joseph A. Boscia, MD. On 6/07/04 5:08:48 PM

000372

THOMPSON 032231

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

SRHS 8/5/ 004 6:17 PAGE 001/002 Fr: Server

SPARTANBURG REGIONAL HEALTHCARE SYSTEM
SPARTANBURG, SC 29303

1/10/06

OP REPORTS M.D. Signature

000571

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

EXHIBIT

11

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. 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
77168
07-21-05

OFFICE NOTE

Chief Complaint

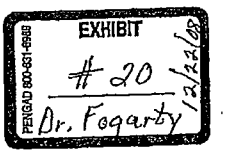
William Casey returns for follow up on his 7/19 visit. At that time he was having dry heaves and nausea and this was felt possibly to be an interaction between the Strattera and the Cymbalta and he was advised to discontinue these. Since then he is better. He continues to have chest pain, a squeezing sensation. This can be present without exercise although 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 overlying the chest. This was misinterpreted as being in the chest and the patient underwent bronchoscopy. And when the bronchoscopy did not show definite abnormality, but rather an area of erythema, he was scheduled for a laser bronchoscopy. He had the laser bronchoscopy complicated by pneumomediastinum with a lengthy two hour anesthesia. Since then, although the patient recovered from his pneumomediastinum and bilateral pneumothoraces with chest tubes, intubation and mechanical ventilation, since then he has had continued difficulties concentrating, staying focused and with his general energy.

He is not smoking.

Current Medicines

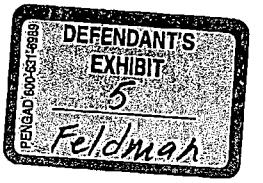
1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab four times daily as needed.



Social History

He has been out of work now for a year and probably will be out of health insurance and probably lose his job since he has been unable to hold gainful employment in the interim in large part because of his difficulties with concentrating, staying focused. Although the issue of his chest pain still remains unresolved.
(Continued to next page)

000440



THOMPSON 003170

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Family History

Coronary artery disease and hyperlipidemia.

Review of Systems

He did have a cardiac catheterization several years back but his CT during the May 2004 admission 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 SaO_2 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. Bowel sounds present.
Extremities: No edema or clubbing.
Neurological: The patient had some readily apparent difficulty staying focused with answers to questions and had difficulties repeating numbers backward on a simple cognitive screen.

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.
2. Nausea and vomiting.
3. Persistent difficulty concentrating staying focused status post pneumomediastinum/pneumothorax complicating laser therapy in attempt for laser therapy for metallic artifact, which ultimately proved to be outside of chest.

(Continued to next page)

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

WILLIAM CASEY
77168
07-21-05
Page Tree

Comment

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 squeezing he does have risk factors for coronary artery disease in terms of his hyperlipidemia, family history and previous smoking and he did have coronary calcification incidentally noted 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.

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. 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 may be moot and 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.

Plan

We will check back with the patient via phone with reference to his coronary calcium score and his gallbladder ultrasound. Further evaluation will proceed pending the results of above. Separately, we will review the patient's chart for him since he still has many questions about what happened during the hospital admission for his chest pain. We will review the patient's chart for him and try to put into lay language a summary of the chart with reference to what happened to him during the hospital admission for his chest pain last year.

Charles M. Fogarty, MD
CMF/ns
cc: Dr. Gonda

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

EXHIBIT
12

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. 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
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 rigid 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.

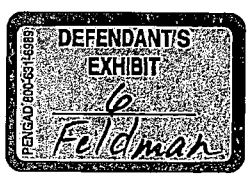
Current Medicines

1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab 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...



ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

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 SaO_2 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...

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Comment

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 squeezing 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 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. 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 via phone with reference to his coronary calcium score and his gallbladder ultrasound. Further evaluation will proceed pending the results of above.

Separately, we will review the patient's chart for him since he has many questions about the hospital admission for his chest pain, and try to put into lay language a summary of what happened during the hospital admission.

He is to check back with Dr. Grace regarding the persistence of his neurological impairment.

Charles M. Fogarty, MD
CMF/ns
cc: Dr. Gonda

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

EXHIBIT

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ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

1787

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Ricardo J. Mendoza, M.D.
J.B. Ellis, F.N.P.

Fax: (864) 585 - 2102

Wilson P. Smith, Jr., M.D.
E. 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

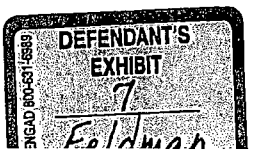
1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab four times daily as needed.

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.

9/6/05
Z

Continued...



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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 SaO_2 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...

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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

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EXHIBIT

14

Milton Mann

From: gfeld3232@aol.com
Sent: Wednesday, July 09, 2008 10:10 PM
To: milton.mann@gmail.com
Subject: Missing In Action

1. Upstate Lung Records, including Nursing Report/warning of Drug Misuse/Dangers...not provided to SS
2. Dr. Mironer record of no factual basis for Back Pain-removed
3. Patient own History and Physical also removed

4. Dr. Fogarty 2005 "Definite Air Embolus" note also removed and not provided to SS
(it is also not in Dr. Gonda's record)
Which may allow him to claim, that after looking at the records he has decided not to send it! And he Fogarty has nothing to do with Thompson's claim....he has told him only possible throwing Thompson under the bus, would not make Thompson very happy :)...And of course Firing Laser after Vital Signs started to destabilise, was just an honest error, he was just misunderstood, looked at wrong time, patient cannot be retrained, is depression, he cannot exclude brain damage, just not sure..Resp Arrest, Coma, Anoxia..Thompson/Sister misunderstood, he did not see records said consistent with...

He 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...

we can also

1. get SS involved
2. DEA (after Narcotics Record straight
3. Summary Judgement (Disability on COPD, Back Pain, Depression (all preexisting conditions)

The Famous, the Infamous, the Lame - in your browser. Get the TMZ Toolbar Now!

8/13/2008

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Milton Mann

From: gfeld3232@aol.com
Sent: Thursday, February 21, 2008 7:59 PM
To: milton.mann@gmail.com
Subject: Chart

Fogarty Chart (non-production) Possibilities

1. Honest Mistake

2. He has panicked (Has written something incriminating) And shreded it
(We need to subpoenae Insurance Payments for Office Visits plus all doctors/dentists) To know the dates

He may claim that chart lost, but they have computerised system!! cannot be shreded

3. He may Have submitted to Disability something that He did not want us to see, thinking we will never get Disability Records

4. Communication with Thompson may be on the Chart

More new features than ever. Check out the new AOL Mail!

2/22/2008

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Milton Mann

From: gfeld3232@aol.com
Sent: Saturday, February 16, 2008 2:47 PM
To: sking@wardfirm.com; milton.mann@gmail.com
Subject: Get from Spencer

"Air emboli have been reported as a common complication of laser bronchoscopy, even without perforation of the endotracheal tree, with result of leakeage of air into extrapleural vascular and mediastinal space. Although he is fortunate not to have any gross mental deficit, he may well have a permanent neurological deficit which indicates taking medicines such as strattera."

Spencer, above You have quoted from Fogarty record

I cannot find this in the Lung and Chest record that you paralegal has provided! We are meeting on Tuesday and I have found series of an astonishuing statememts, but not this one!

1. Did you give me all Fogarty records?

2. Please locate source of the above Statement!

Greg

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2/18/2008

MANN 000098

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10/12/09

DAVIDSON & LINDEMANN, P.A.

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Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

* Also admitted in North Carolina
† Certified Mediator

October 12, 2009

Via Email and US Mail
Personal and Confidential
F. Milton Mann, Jr., Esquire
Upstate Lung and Critical Care Specialists, P.C.
1091 Boiling Springs Road
Spartanburg, South Carolina 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
Civil Action Number: 06-CP-42-1728

South Carolina Medical Malpractice Liability Insurance Joint Underwriting Association and South Carolina Patients' Compensation Fund v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Upstate Lung and Critical Care Specialists, P.C., and William Mark Casey
Civil Action Number: 09-CP-42-4780
Our File Number: 22.8112

Dear Milton:

I am writing this letter on behalf of the JUA and PCF to address the posture of the underlying case in light of Judge Mark Hayes' refusal to rule on the declaratory judgment action as set forth in his email dated October 1, 2009.

As you are aware, the JUA and PCF have attempted to satisfy your clients' request to assume control of the defense and settlement in exchange for relinquishing their rights to indemnity under both the JUA and PCF coverages. Because this situation presents a novel issue under South Carolina law, the JUA and PCF were not comfortable in entering such an arrangement with your clients without first obtaining court approval and specifically a declaratory ruling that such an arrangement is permissible under South Carolina law. Unfortunately, Judge Hayes' initial ruling has the practical and consequential effect of mooting the issue given the impending October 19th trial date in the *Casey* action.

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We have been unable to obtain the declaratory relief sought in Civil Action Number 09-CP-42-4780, and as a result, the posture of the underlying malpractice case remains the same. The JUA and PCF, as permitted under their policies and statutory law, have and will retain full authority to control the litigation, including the right to negotiate a settlement within their discretion as confirmed in the case of *Doe v. South Carolina Medical Malpractice Liability Joint Underwriting Association*, 347 S.C. 642, 557 S.E.2d 670 (2001). The JUA has assigned defense counsel, specifically Spencer King and William Gunn, who will continue to report to the JUA and PCF and will defend the *Casey* malpractice action as they best see fit. This is not to suggest that the input from you and your clients is not welcome or that such input will not be given due consideration by defense counsel and by the JUA and PCF.

In light of recent developments including an unauthorized lawsuit for "perjury" filed in state court in Florida against one of Casey's expert witnesses, I find it necessary to remind your clients of their contractual duty to cooperate and their duty not to take any action which may prejudice or impair the defense of the underlying malpractice case. The JUA and PCF have serious concerns that unilateral action by your clients, such as the filing of the Florida lawsuit, will have a detrimental effect on the outcome of this litigation. As long as the JUA and PCF remain liable for indemnity under the policies and statutory law, they insist that your clients refrain from taking such unilateral action and from taking any action that may prejudice the defense strategy implemented by Mr. King and Mr. Gunn. Should your clients take any action that prejudices the rights of the JUA or PCF, I can assure you that those rights under the cooperation clause of the policies will be asserted.

Both the JUA and PCF are hopeful that we can all move forward and work together for the common goal of successfully defending the *Casey* lawsuit or resolving that suit under favorable terms. I trust that you will advise your clients of this letter. If there are any questions or concerns regarding the matters addressed in this letter, please let me know immediately so that we may address them.

Sincerely,

DAVIDSON & LINDEMANN, P.A.

Andrew F. Lindemann

AFL/

cc: Spencer King, Esquire *(via Email only)*
William U. Gunn, Esquire *(via Email only)*
Mr. Tim Ward *(via Email only)*
Ms. Terry Coston *(via Email only)*

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com
Sent: Thursday, August 07, 2008 7:45 PM
To: milton.mann@gmail.com
Subject: Fwd: Check out South Carolina Judicial Department - Opinions

NOT THE FIRST TIME I HAVE SENT THIS , I KNOW :)
MY EXCUSE? This is SC (not South California)
could not resist :)

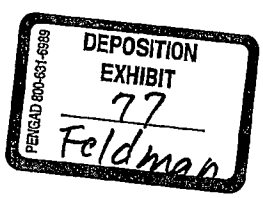
-----Original Message-----
From: GFeld3232@aol.com
To: GFeld3232@aol.com
Sent: Fri, 17 Aug 2007 6:53 pm
Subject: Check out South Carolina Judicial Department - Opinions

Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987). "Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence

Click here: South Carolina Judicial Department - Opinions

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MANN 001167

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From: gfeld3232@aol.com
Sent: Wednesday, March 19, 2008 4:35 PM
To: milton.mann@gmail.com
Subject: Fwd: Abuse of Process

-----Original Message-----
From: GFeld3232@aol.com
To: GFeld3232@aol.com
Sent: Sat, 29 Sep 2007 4:49 pm
Subject: Abuse of Process

"Abuse of process differs from malicious prosecution in that the gist of the tort is not commencing an action or causing process to issue without justification, but misusing, or misapplying process justified in itself for an end other than that which it was designed to accomplish. The purpose for which the process is used, once it is issued, is the only thing of importance. Consequently, in an action for abuse of process it is unnecessary for the plaintiff to prove that the proceeding has terminated in his/her favor, or that the process was obtained without probable cause or in the course of a proceeding begun without probable cause. It is often said that proof of 'malice' is required; but it seems well settled that, except
on the issue of punitive damages, this does not mean spite or ill will, or anything other than the improper purpose itself for which the process is used, and that even a pure spite motive is not sufficient where process is used only to accomplish the result for which it was created. Thus if the defendant prosecutes an innocent plaintiff for a crime without reasonable grounds to believe him/her guilty, it is malicious prosecution; if he/she prosecutes him/her with such grounds to extort payment of a debt, it is abuse of process

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From: gfeld3232@aol.com
Sent: Saturday, May 01, 2010 7:59 PM
To: sking@wardfirm.com; milton.mann@gmail.com
Subject: WAID-Fogarty
Attachments: Feldman Defendant's Memo in Sppt of Def Mtn to Dmss - rev 4-23.doc; Aetna Letters for Disability.pdf

PS I attached motion, cause it has WAID"s evaluation in Aetna file attachments)...And in another note that Noel brought to Fogarty Deposition..he writes "Common Complication....Spencer, Do you have Fogarty attachnments to deposition? (I need to go over all of his attachments)

Fogarty, July 21, 05 progress note

"with reference to the patient's difficulty concentrating, he undoubtedly had air emboli given his lengthy duration of aneastesia and laser perforation of the endotracheal tree with resultant leakage of air into extra pleural and vascular extra pleural mediastinal and vascular spaces. although he is fortunate not to have any gross motor deficit, he may well have a permanent neurological deficit in which case the indication for taking medication may be moot and the patient may simply need to recognise that although he would like to go back to work, he may be chronically disabled by his neurological impairement"

Compare to Waid note (probably minor, but curious) Waid writes:

Dr. Fogarty stated that with regard to Mr. Casey difficulty concentrating..(and Waid puts it in quote unquote)

"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"

1. First he quotes Fogarty (different quote)
2. No such record was found at Waid's office neither Fogarty note not above quote (removed)

But at this point they are trying to get him DISABILITY (other than mental..Aetna does not allow for mental)...and here we go Record generated!

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: miltymann@gmail.com
Sent: Wednesday, March 17, 2010 4:49 PM
To: gfeld3232@aol.com
Subject: Re: Spoliation

Not really. More punch in the abuse of process and civil conspiracy.

Sent from my Verizon Wireless BlackBerry

From: gfeld3232@aol.com
Date: Wed, 17 Mar 2010 16:45:17 -0400
To: <milton.mann@gmail.com>
Subject: Spoliation

Relevant?

Keep in mind that we also have virtually uncontrovertible evidence of Fogarty Spoliation of Evidence designed to make sure we do not find-out about his early involvement with Casey..and we have Interrogatory answered by both Plaintiff Casey-Expert Witness Fogarty designed to cover-up Spoliation (test done in 2004)

For example, in South Carolina and North Carolina, courts put more emphasis on intentional spoliation and it is less likely that sanctions will be levied against an unintentional spoliator.[10]

http://www.og-law.com/general.php?category=Resources&headline=Spoliation+of+Evidence+-+Jonathan+Lippert

Courts typically rely on five factors when deciding the appropriate remedy for spoliation: (1) whether the aggrieved party was prejudiced as a result of the destruction of the evidence; (2) whether the prejudice can be cured without sanction; (3) the practical importance of the evidence; (4) whether the spoliating party acted in bad faith; and (5) the potential abuse if testimony about the evidence is allowed.[6] Additionally, the spoliated evidence must be relevant to the plaintiff's cause of action in order for the court to levy sanctions against the spoliator.

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From: gfeld3232@aol.com
Sent: Thursday, November 19, 2009 9:33 AM
To: milton.mann@gmail.com

Plan Early for a Countersuit

Discuss with your attorney early any thoughts you might have in bringing a
countersuit

PS Can I discuss this with you? <GGG>>

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com
Sent: Saturday, November 07, 2009 5:20 PM
To: milton.mann@gmail.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 04-CV-1849-MSK-OES

CAVITAT MEDICAL TECHNOLOGIES, INC.,
Plaintiff and Counterclaim-Defendant,
AND ROBERT J. JONES,
Counterclaim-Defendant,

v.

AETNA, INC.,
Defendant and Counterclaim-Plaintiff.

http://www.casewatch.org/civil/cavitat/countersuit.shtml

MILTON, I JUST THINK i HAVE GREAT GROUND FOR COUNTERSUIT AGAINST FOGARTY...nonwithstanding your opinion to the contrary...Overwhelming evidence!

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com
Sent: Monday, November 02, 2009 9:37 AM
To: milton.mann@gmail.com

we have a fabrication of brain damage, we have thompson being told by Fogarty that he defer to neurologist, Wilson smith..same, Neurologist and Jantz who has relied on Fogarty and was not provided Neurologist opinion..

we have proof that conspiracy exist

we have Shanta malicious prosecution locked

all we need is JUA (not Spencer!) jua agreement for countersuit.. we are too passive...brain damage published in newspaper is not judicial

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: miltymann@gmail.com
Sent: Friday, May 01, 2009 10:44 PM
To: gfeld3232@aol.com
Subject: Re: Federal Court

Maybe. I've been thinking about this too. I would rather do the federal case in an individual name, not a pc. But, yes I think you are thinking down the right path.

Sent from my Verizon Wireless BlackBerry

From: gfeld3232@aol.com
Date: Fri, 01 May 2009 22:37:44 -0400
To: <miltymann@gmail.com>
Subject: Federal Court

Is it possible to file two lawsuits

1. Fraudulent Disability recovery in Federal Court on behalf of concerned citizens? say Upstate Lung

2. Conspiracy, Malicious Prosecution, Defamation, ets in State court? on behalf of Individuals

Or that would be consolidated on motion?

Can't afford a new spring wardrobe? Go shopping in your closet instead!

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com
Sent: Monday, November 17, 2008 6:31 PM
To: milton.mann@gmail.com
Subject: Confusiion

I still want to know how we can countersue in the same lawsuit

I realise that this will result in the Immediate Thompson being designated as a witness, but not necessarily Lawsuit will be dismissed!
Casey Pejury is not the ground for Lawsuit dismissal, neither is suborning perjury, it is the ground for Attorney dismissal...

I think we need to seek Summary Judgement not as a tool for Info gathering but for Real...after we get Thompson on the ropes

So I need you to ouline strategy

1. CMF deposition
2. Jantz deposition

3. MRI
4. Countersuit for Defamation plus Conspiracy....you said this many times we must seek Judge permission to file it! Perfect!..we seek permission armed with all the facts...We do not need Summary Judgement to get a ruling, we present our Formidable Evidence directly as Plaintiffs not as defendants

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From: gfeld3232@aol.com
Sent: Thursday, November 06, 2008 12:03 PM
To: milton.mann@gmail.com
Subject: 3 years

1. I am very unhappy about another extension of Trial June 2009

Meaning that stalling tactic worked again! Did they sign extension again for discovery?

2. Our Defamation issue has expiration date..3 years?

Greg

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ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com
Sent: Tuesday, September 16, 2008 4:36 PM
To: milton.mann@gmail.com
Subject: Lawsuit

1.1:520 Wrongful Use of Civil Proceedings; Abuse of Process; False Arrest

In Gaar v. North Myrtle Beach Realty Co., 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986), two attorneys for North Myrtle Beach Realty brought an action for damages in quantum meruit against the Gaars. The trial judge granted the Gaar's motion for a voluntary nonsuit, stating that the realty company had no cause of action against the Gaars. The Gaars subsequently sued the two attorneys for malicious prosecution. The South Carolina Court of Appeals set forth a six-part test for for establishing malicious prosecution, but held that "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution." Id. at 528-29, 339 S.E.2d at 889. The **court also stated that "[e]ven if the attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable if he acts primarily for the purpose of aiding his client in obtaining a proper adjudication of the client's claim."** Id. The court stated a number of reasons supporting this rule. First of all, attorneys must be free to advise their clients without the threat of harassment from lawsuits. Furthermore, since an attorney is liable to his client for not zealously representing him, holding an attorney liable for malicious prosecution may create a conflict of interest with the attorney's obligation to his client. Also, holding an attorney liable for malicious prosecution might hinder the development of new legal theories.

http://www.law.cornell.edu/ethics/sc/narr/SC_NARR_1_01.HTM

I just think when we have MRI in our hands, we have great case of Abuse of Process in this case, that would not only has no impact on any future conspiracy action, but will greatly enhance it!

And we can take Thompson down now and again later for conspiracy and malicious prosecution..
Unrelated subject!
Just Think!!!!

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com
Sent: Thursday, August 07, 2008 10:37 AM
To: milton.mann@gmail.com
Subject: Re:

if chuck knowingly withheld records from wade and than turned-around to use wade to manufacture his case he is co-conspirator
by not dropping his case after oct 06, he can't avoid malicious prosecution charge

aetna had our plus gonda's records, wade did not at chuck's doing

-----Original Message-----
From: gfeld3232@aol.com
To: milton.mann@gmail.com
Sent: Wed, 6 Aug 2008 9:12 pm

Model Rule 3.4
(Model Codes DR 1-102(4);DR 7-109(A) provides that "[a] lawyer shall not...unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value...") (

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ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com
Sent: Sunday, June 15, 2008 5:21 PM
To: milton.mann@gmail.com
Subject: cmf

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), 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?

Admit or Deny "Indiscriminate", "fire laser after vital signs started to deteriorate", Brain Damage, ets

Plus Documents Production (Everything that he send to Thompson-Paladuga questions, ets, Sponsors, ets...
What else do we need from CMF?

1. He alleged Disability related to Procedure (without Drug test, CT scan, neurology consultation, talking to Gonda, nothing)

2. And we will find what we are missing in Disability/Billing Records/MUSC

We do not need CMF to explain away anything before the lawsuit

Thompson is automatic witness if Fogarty lies in his interrogatories?

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From: gfeld3232@aol.com
Sent: Monday, June 09, 2008 3:36 PM
To: milton.mann@gmail.com
Subject: Depo questions

1. Do you want to talk to Dr. Wilson Smith?

2. Do you still want to retrieve non-produced (hidden) Fogarty records before his deposition (Kimbrell, Smith, Medical Records custodian)

3. Do you want to seek sunctions for non-production (afrer we get Records (Disability/Pharmacy/Billing

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From: gfeld3232@aol.com
Sent: Friday, March 21, 2008 12:20 PM
To: miltymann@gmail.com
Subject: Re: Summary/Awesome!

Right! But "Strattera" quote is not there...

PS House of Cards (Tainted Cards :)

PS Do yoou realise that Psychologist is talking about Dr. Fogarty Theory on Patient Theopry that his troubles started with Procedure..He has actually reviewd records! (Pneumothorax/Pneumomediastinum plus Dr. Wilson Smith no lung sequalae..

Theory of Creation: Must be Coma, Resp Arrest, Air Embolus..It must be! (based on patient belief, not record, not test, not their own objective finding of no neurological or mental impairement
This Fraud must be exposed to the fullest

-----Original Message-----
From: Milton Mann <miltymann@gmail.com>
To: gfeld3232@aol.com
Sent: Fri, 21 Mar 2008 11:07 am
Subject: RE: Summary/Awesome!

Looked back at CMF's records, we do have his report from 07-21-05. It has the "difficulty concentrating" due to an air emboli in it.

From: gfeld3232@aol.com [mailto:gfeld3232@aol.com]
Sent: Friday, March 21, 2008 10:34 AM
To: miltymann@gmail.com
Subject: Re: Summary/Awesome!

Plus his conclusion!..last page Subcortical Injry possible (That is with Traumatic Brain Injuy nd is easy seen on CT scan of the bain plus neurological impaiement, like speech, walking, headacke,
ets
Cognitive is Cortical by definition It is bzarre that Psychologist plus Pulmonologist provide only Neurological input in the face of totally normal neurological exam I must add

-----Original Message-----
From: Milton Mann <miltymann@gmail.com>
To: gfeld3232@aol.com
Sent: Fri, 21 Mar 2008 8:31 am
Subject: RE: Summary/Awesome!

Totally agree. They're not going to get anywhere with this. Nothing but a house of cards and straw.

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com [mailto:gfeld3232@aol.com]
Sent: Thursday, March 20, 2008 6:55 PM
To: milton.mann@gmail.com
Subject: Summary/Awesome!

The Report is Awesome! He did do Malingering Test!!!!..Casey failed it! Any Neuropsychologist will quickly point this out..Failed!

He points to Fogarty as a source Of an explanation (Air Embolus)

Casey lied to him about his previous Psychiatric history and Drug History of course

His conclusions are correct, (Not knowing about History of Depression/Drugs) except he omits stating FAILED MALINGERING test

He did not talk to Fogarty, but quotes from Fogarty report that Thompson/Anthony send to him, but Thompson Failed to produce it to us! Failed!

Resp Arrest/Coma will Kill them (Grace)

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From: gfeld3232@aol.com
Sent: Wednesday, March 19, 2008 5:02 PM
To: milton.mann@gmail.com
Subject: Fwd: Statue of Limitation

-----Original Message-----
From: GFeld3232@aol.com
To: GFeld3232@aol.com
Sent: Fri, 17 Aug 2007 6:38 pm
Subject: Statue of Limitation

A doctor could sue another physician for slander three years after the defamatory statements were made where the doctor discovered the statements only after he read a patient's deposition in a med-mal case, the Missouri Court of Appeals' Eastern District has ruled.
The physician argued that the two-year defamation statute of limitations applied to bar the claim.
But the court disagreed. "[The doctor] was not aware he had suffered any legal wrong until he received a copy of [the] patient's deposition in which she revealed [the physician's] statements," wrote Judge Mary Rhodes Russell for the court. "Therefore, the statute was tolled until that time."
The judgment was reversed in *Kennedy, et al. v. Bailey, et al.*, MLW No. 26168, issued on March 22.
Middle Ground
"This decision is good news for lawyers who represent plaintiffs in defamation suits," said Al W. Johnson of St. Louis, who represented the plaintiff.

Click here: Al W. Johnson - (314) 726-6489 - Saint Louis Lawyers

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From: Milton Mann <miltymann@gmail.com>
Sent: Thursday, March 20, 2008 8:41 AM
To: gfeld3232@aol.com
Subject: RE: Statue of Limitation

Sure. Two things statute of limitations and state of repose. Not too worried about this.

From: gfeld3232@aol.com [mailto:gfeld3232@aol.com]
Sent: Wednesday, March 19, 2008 5:02 PM
To: milton.mann@gmail.com
Subject: Fwd: Statue of Limitation

-----Original Message-----
From: GFeld3232@aol.com
To: GFeld3232@aol.com
Sent: Fri, 17 Aug 2007 6:38 pm
Subject: Statue of Limitation

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Middle Ground
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Click here: Al W. Johnson - (314) 726-6489 - Saint Louis Lawyers

---

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From: gfeld3232@aol.com
Sent: Wednesday, March 19, 2008 5:00 PM
To: milton.mann@gmail.com
Subject: Fwd: Countersuit

In order to prove malicious prosecution, the plaintiff physician must show: 1) that the defendant instituted (or continued) a prior judicial proceeding against the plaintiff physician; 2) that the prosecution was instituted without probable cause; 3) that the defendant acted maliciously in instituting the action; 4) that the prosecution terminated in the plaintiff physician's favor, and; 5) that the plaintiff physician was damaged by the action:
If an attorney, acknowledging there is no cause of action, and knowing this dishonestly and for some improper purpose files suit, or even if an attorney merely acts knowing that his client has no just claim and that his client is actuated by illegal or malicious motives, the attorney may be held liable for malicious prosecution.(6)
Nevertheless, the courts have declined to hold attorneys liable for malicious prosecution, **except in a few extreme cases**

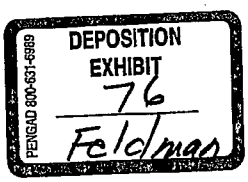
And that may be our case!

-----Original Message-----
From: GFeld3232@aol.com
To: GFeld3232@aol.com
Sent: Fri, 17 Aug 2007 6:34 pm
Subject: Countersuit

Click here: Fighting Fire With Fire: Physician Countersuits

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From: miltymann@gmail.com on behalf of Milton Mann <milton.mann@gmail.com>
Sent: Sunday, January 13, 2008 10:36 PM
To: gfeld3232@aol.com
Subject: Re:

I hear you and agree in theory, but that doesn't change the way this has to be addressed. If Spence will not file something, then we're going to have to wait till this case is over.

On Jan 13, 2008 4:22 PM, <gfeld3232@aol.com> wrote:
A plaintiffs attorney sued his adversary for asking "inhumane" questions during a deposition that allegedly inflict "grievous emotional distress." Bruce Nagel claims Judith Wahrenberger, his adversary in a medical malpractice case, acted tortiously by **asking a husband whether he felt his wife had played a role in the death of their infant daughter by handling the child roughly.**

http://www.scnursinghomelaw.com/2007/07/articles/discovery-issues/defense-lawyer-asking-inhumane-deposition-questions/

PS Looks like in theory it is possible to sue Lawyer for Improper and highly damaging to one's reputation questions

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From: miltymann@gmail.com on behalf of Milton Mann <milton.mann@gmail.com>
Sent: Sunday, January 13, 2008 10:34 PM
To: gfeld3232@aol.com
Subject: Re: Abuse

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. If you can get Spencer to agree, you've already got a way to address this. If he is asking questions that are not based in fact, the Judge should take action.

On Jan 13, 2008 3:27 PM, <gfeld3232@aol.com> wrote:
1. Milton, if there is a way to have Judge demand from Thompson the identity of the origin of this Claim?
2. Does this in addition to being Abuse of Process constitute a defamation? (Question is highly damaging to my standing)
Raja Paladuga was not asked to sign non-disclosure and thus Thompson disseminated Highly Improper and objectionable statement/question

What do you think?

Greg

-----Original Message-----
From: gfeld3232@aol.com
To: milton.mann@gmail.com
Sent: Sun, 13 Jan 2008 2:36 pm
Subject: Abuse

Milton, what prevents us from lawsuit of Abuse of Process?
Thompson asked Paladuga if he is aware that I am being investigated by SRMC for doing to many bronchs?

I am not aware of this! Even if that was true it would be highly privileged information to whatever committee, correct?
It can't serve any legitimate purpose, plus Raja testimony that all questions are hand-written by Fogarty?
What do you think?

Greg

PS I know Spencer is cotemplating some action ..But why can't I sue Thompson personally? This is tremendously improper form of question to the Doctor about another Doctor in the same community, it is non-factual and is not public info, even if it was?

Abuse of process is a common law intentional tort. It is to be distinguished from malicious prosecution, another type of tort that involves misuse of the public right of access to the courts.

The elements of a valid cause of action for abuse of process in most common law jurisdictions are as follows: it is the malicious and deliberate misuse or perversion of regularly issued court process (civil or criminal) not justified by the underlying legal action. "Process" in this context is used in the same sense as in "service of process," where "process" refers to an official summons or other notice issued from a court. The person who abuses process is interested only in accomplishing some improper purpose that is collateral to the proper object of the process and that offends justice, such as an unjustified arrest or an unfounded criminal prosecution. Subpoenas to testify, attachments of property, executions on property, garnishments, and other provisional remedies are among the types of "process" considered to be capable of abuse.

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15

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP420743

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

COPY

****

VIDEOTAPE DEPOSITION OF
WILSON P. SMITH, JR., M.D.

****

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the videotape deposition of WILSON P. SMITH, JR., M.D., was taken on the 5th day of May, 2017, commencing at the hour of 9:55 a.m. in the offices of Wilkes Law Firm, Spartanburg, South Carolina.

REPORTED BY: Rosalind Poole Walters,
Certified Verbatim Reporter-Master
VIDEOTAPED BY: Alan Metts,
Certified Legal Video Specialist

LEGAL EAGLE
Certified Verbatim Reporters
Post Office Box 5682
Greenville, South Carolina 29606
(864) 587-7050 or (864) 467-1373
depos@legaleagleinc.com

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Q. Dr. Smith, let me put a question before -- before you before you---

A. I mean, I -- just -- just before we -- this is the same, same one that I found, which was the one that's referenced to Dr. Gonda, but I swear that I saw that earlier, didn't we?

MS. CHEEK:

I think so. Shall I give it a go?

MR. MANN:

Please. Let's go back off, Alan.

VIDEOGRAPHER:

Off the record at 10:27.

(Off the Record)

VIDEOGRAPHER:

Back on the record at 10:30.

EXAMINATION RESUMED BY MR. MANN:

Q. Now, Dr. Smith, again, I want to make sure that we're accurate, and we've taken a few minutes to look through both your prior deposition and the chart attached to it as well as the chart that you've brought from us -- for us today. Can you please identify which versions of the notes that we were able to locate in the chart you've brought today as well as to your deposition?

A. Right. So there is a copy of Exhibit 6 --

Q. Okay.

A. -- which was sent to Dr. Gonda.
Q. Okay.
A. And then there is the unsigned copy which is Exhibit 5 --
Q. Okay.
A. -- in a different part of the chart.
Q. And, to the best of our efforts, we do not see a copy of---
A. Well, no, I'm sorry. Let me correct that. I see copy -- I see 7 here, Exhibit 7.
Q. Is it the one with the lines?
A. Yes, sir. Yes, sir.
Q. So you do not see 6?
A. Well, I see 6.
Q. Okay.
A. So I got 6 here. I got 7 back here.
Q. Okay. And do we have 5?
A. We're still looking for 5 then.
Q. Okay. While we -- while we look at what's here in your deposition, let me ask if Ms. Cheek can look in there for us and see if we can find a copy of Exhibit 5.
A. Okay.
Q. And Dr. Smith, now you've got a copy of the deposition that was marked --
A. Of the deposition.

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Q. -- marked earlier, and, to the best of your searching ability---

MS. CHEEK:

Milton?

MR. MANN:

Yeah.

MS. CHEEK:

I'm sorry. I'm not -- I don't mean to --

MR. MANN:

Yeah. No, no, no.

MS. CHEEK:

-- interrupt your question, but---

MR. MANN:

Please, by all means.

MS. CHEEK:

I think between counsel we've got unsigned---

MR. MANN:

Unsigned is right there.

MS. CHEEK:

Unsigned.

WITNESS:

Okay. Where---

MS. CHEEK:

So we've got marked the unsigned, which I believe if you'll look, it's Exhibit---

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MR. MANN:

It's Number 5.

WITNESS:

Five?

MR. MANN:

It is, mm-hmm.

MS. CHEEK:

And then we have back here, looking at the operative language and the signatures, I believe this is --

MR. MANN:

This is "complication."

MS. CHEEK:

-- 7.

MR. MANN:

Yeah, and that's going to be "complication," mm-hmm. Yeah, mm-hmm. So we've got 7. So we are missing 6 in the chart.

MS. CHEEK:

I am -- I have not found 6. I'm going to hand that back to you.

MR. MANN:

All right. Thank you.

WITNESS:

So here's 6.

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MS. CHEEK:

The one you're referencing as 6 has---

WITNESS:

Is Gonda.

MS. CHEEK:

Is that signed or unsigned?

EXAMINATION RESUMED BY MR. MANN:

A. I'm so sorry. I am so sorry. It is the unsigned copy. I am so sorry.

Q. Not a problem.

A. I just saw the Gonda.

Q. Yes, sir.

A. And I didn't realize he had that on the unsigned copy. I apologize.

Q. Not a problem. And I think that, to the best of our best efforts, version or, excuse me, Exhibit 6 is not contained in that particular chart.

A. That's correct. We have version 7 and version 5.

Q. Thank you, Dr. Smith.

A. I am so sorry.

Q. And thank you, Ms. Cheek. Now, what versions do we have previously that were attached to your deposition back in 2009, I believe --

A. Okay. So---

Q. -- is when your deposition was taken?

A. So there we have Exhibit 5, the unsigned copy, and Exhibit 7, the signed copy to Dr. Grace and Dr. Gonda.

Q. Okay. So we don't have a copy of 6.

A. We do not have a copy of 6.

Q. And Dr. Smith, I think you've previously stated that you were not aware that there were multiple copies?

A. No.

Q. Okay. Looking at the front page -- now, I understand we've got deposition stickers. We've got streaks from what appears to be a printer or a fax machine. But if you were just looking at the front page, taking off the Bates stamp numbers, would you agree that they look pretty similar, just looking --

A. Yes, they---

Q. -- at the front page?

A. They look the -- the same.

Q. And would you also agree that you really have to do a pretty careful review to -- to tell that there are actually differences in these, between 5, 6, and 7?

A. Yes.

Q. Okay. I believe you stated earlier that respecting the medical diagnosis and/or treatment plans, all three notes are pretty doggone similar?

A. Yes.

Q. It appears that the bulk of the differences would

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questions, but we can go back off the record, please Alan.

VIDEOGRAPHER:

Off the record at 10:38.

(Off the Record)

VIDEOGRAPHER:

Back on the record at 10:44.

EXAMINATION RESUMED BY MR. MANN:

Q. Dr. Smith, thank you so much. I have no further questions. I believe Ms. Cheek has some questions for you, and I appreciate your giving us your time today. So thank you.

A. Mm-hmm.

EXAMINATION BY MS. CHEEK:

Q. Dr. Smith, you had testified earlier that there are differences among the notes before you, notes 5, 6, and 7 as we've characterized them. Correct?

A. Yes, ma'am.

Q. And you had stated that the -- a difference that you've noted is the degree of certainty with which the causation opinion is rendered. Correct?

A. That is correct.

Q. Is there any difference among those notes with respect to the causation opinion itself?

A. No.

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CERTIFICATE OF REPORTER

I, ROSALIND POOLE WALTERS, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 31 pages represents a true and accurate transcript of the videotape deposition of WILSON P. SMITH, JR., M.D., which was taken by me on the 5th day of May, 2017.

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: 4/29/26

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THE WARD LAW FIRM, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 3188
SPARTANBURG, SOUTH CAROLINA 29304

JAMES W. HUDGENS
GENE ADAMS
H. SPENCER KING
ROBERT E. DAVIS*
JASON INHOFF
JOHN ROGERS

*ALSO MEMBER NORTH CAROLINA BAR

RUFUS M. WARD (1908-1988)
L. PAUL BARNES (1931-1986)

233 SOUTH PINE STREET
SPARTANBURG, S.C. 29302

FAX. NO. (864) 583-8961
E-mail: sking@wardfirm.com

Direct No. (864) 591-2364

May 11, 2009

Judy Wilbanks, Claims Specialist
JUA
PO Box 128
Greenville, C 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:

Please accept this as a follow-up on the request by Dr. Greg Feldman on his behalf, on behalf of his partner, Dr. Joseph Boscia and on behalf of his Practice Group, Upstate Lung and Critical Care Specialists, PC, to take over the defense of this case and pay any judgment that might be rendered against Doctors Feldman, Boscia or their Practice Group in this case.

The offer by Doctors Feldman, Boscia and the Practice Group was communicated by Milton Mann, General Counsel for Dr. Feldman at our meeting on April 17, 2009. Dr. Feldman feels very strongly that the Plaintiff's case is without merit and emphatically does not want payment made.

You also insure Dr. Shantha, the Anesthesiologist represented by Billy Gunn. Dr. Shantha also feels that the case is without merit.

With respect to Feldman's position, he believes that there is no medical negligence. Specifically that the bronchoscopy was warranted and the pneumothorax is a complication. Moreover, it is his belief that this lawsuit was orchestrated by third parties. If 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.

We have been ordered to mediate this case and will likely schedule that mediation for sometime in early June. If you feel you need the opinion of legal counsel in deciding your course of action, I will have to defer to someone else. I consider this to be a coverage question and cannot take a position.

I will be happy to discuss this with you and Tim at your convenience.

I am

Very truly yours,

H. Spencer King
The Ward Law Firm

HSK/mdh

cc: Tim Ward, Vice-President

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Greenville, SC

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POST OFFICE BOX 3188
SPARTANBURG, SOUTH CAROLINA 29304

JAMES W. HUDGENS
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ROBERT E. DAVIS*
JASON IMHOFF
JOHN ROGERS

*ALSO MEMBER NORTH CAROLINA BAR

RUFUS M. WARD (1908-1986)
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233 SOUTH PINE STREET
SPARTANBURG, S.C. 29302

FAX. NO. (864) 583-8981
E-mail: sking@wardfirm.com

Direct No. (864) 591-2364

September 4, 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:

We deposed Plaintiff William Mark Casey. We will forward the deposition transcript to you as soon as it arrives. In the meantime, I will summarize.

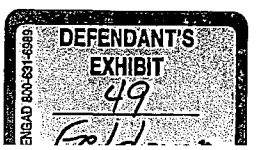
Mr. Casey is a nice-appearing 49 year-old gentleman, high school graduate and 22 year employee of Michelin Tire in Spartanburg. His only other job was for seven (7) years at Lockwood Green. At Michelin, he was a BNS operator, which is a truck tire builder. This is a very hard, physically demanding job which actually wears people out over a period of time, and most begin having physical problems as the approach 20+ years of work.

He had a history of low back pain and two (2) episodes of chest pain suspicious for cardiovascular causes which turned out not to be remarkable. His father died from a heart attack, and he admits to being very anxious about chest pain.

He describes himself as very physically active prior to late May 2004. He underwent several stresses in life in the 2002-2003 time frame. His wife and he separated after 20 years of marriage, and later divorced, which resulted in some financial stresses. He had difficulties with his teenage children, primarily a 14 year-old daughter he says was 14 going on 18, and the lack of her discipline and her activities contributed to the problems that led to his separation and divorce.

He began treatment for depression under his family physician, Dr. Frank Gonda, although he says he did not know he was being treated for depression.

May 28, 2004, while at work, he began experiencing chest pain caused by exertion. He says he had been having these problems over the past several weeks. He reported to the nurse at



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Michelin, was evacuated by EMS to Spartanburg Regional Emergency Department. On a plain film chest X-ray taken at that time, there appeared to be a metallic foreign body in the left mainstem bronchus. Drs. Feldman and Boscia, your insureds, were consulted. Dr. Boscia saw Mr. Casey in the emergency department and recommended and proceeded with a flexible bronchoscopy.

The flexible bronchoscopy was not successful in retrieving any object. Dr. Boscia ordered a CT scan after the flexible bronchoscopy, which resulted in normal findings and no foreign object.

I am told by my clients the CT scans in such cases are often not accurate, and Drs. Feldman and Boscia elected to proceed with a rigid bronchosopy and lasering. On June 3, Dr. Feldman performed a rigid bronchoscopy with laser, but again was unable to locate any foreign object, or at least none was found to extract. The procedure was thought to be uneventful, but upon recovery, Mr. Casey developed a pneumothorax and was hospitalized three (3) days.

During the course of his treatment, his sister, who works in food service at Spartanburg Regional Medical Center and apparently knows everyone in the Spartanburg medical community, got very involved in his care. She is the driving force behind the lawsuit. Her name is Carol Hayslip and in the several weeks that followed, she and her brother met with Drs. Feldman and Boscia who, Mr. Casey says did not give them a satisfactory answer as to why he is now having short-term memory loss, black-out spells, anxiety, depression, inability to work, and constant pacing and sleeplessness.

He says he has not been able to return to work at Michelin since that time. Michelin has a policy of one (1) year. If you are not back on the job in that time, you are terminated, thus he was terminated from Michelin June 3, 2005, and has not worked since June 3, 2004. He is drawing Social Security Disability.

When he and his sister did not get satisfactory answers from the insureds, they visited the competitive pulmonology 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.

The complaint alleges brain damage caused by an air embolus resulting from the lasering, which allegedly is the case of all Mr. Casey's complaints. However, Mr. Casey admitted in his deposition that no one has told him that most probably he has brain damage and there have been no diagnostic studies of his head or brain. In my judgment, Mr. Casey is anxious by nature and prone to worry. He has undergone numerous stressors in life with his family, the episode with his treatment primarily by Dr. Feldman, and the loss of his job and accompanying financial problems. It is not surprising he is anxious and depressed.

I am not prepared at this point to give you an opinion as to whether or not Dr. Feldman breached the standard of care in that he proceeded with the rigid bronchoscopy without viewing a negative CT scan and without doing any additional testing. A pneumothorax resulted which arguably would be supportive of breach of the standard of care and Plaintiff has an expert who

will testify accordingly. However, I do not believe there is any true permanent aggravation or exacerbation of Plaintiff's problems which existed prior to the procedures.

The deposition took approximately six (6) hours. Mr. Casey appears to be reasonably articulate, candid, not fidgety or emotional. He does not give the impression of anyone who has any type of brain injury or significant ongoing mental/emotional problems. In short, I do not think there is much of a damage claim.

I suggest employment of a private investigator. Perhaps Steve Byce can give us the names of some he considers to be good. I think that might be fruitful. I am attempting to get the Social Security Disability file, which will require a release or a court order. I have already talked with Dr. Bill Alleyne, a Rock Hill pulmonologist who is an excellent witness and is supportive of Dr. Feldman. Perhaps we need to consider a second pulmonologist, depending upon how strong the plaintiff's expert is.

After you have an opportunity to review the deposition, please give me some guidance as to your suggestions.

I am

Very truly yours,

H. Spencer King
The Ward Law Firm, P.A.

HSK/dch

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ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Davison, Burns H

From: Davison, Burns H
Sent: Wednesday, February 17, 2010 7:27 AM
To: gfeld3232@aol.com; BGunn@holcombebomar.com
Cc: milton.mann@gmail.com; sking@wardfirm.com
Subject: RE: Abuse of Process

Well said!

Unfortunately it's like dealing with small children -- the more attention you give your antagonist, the more motivation they have to persist with the activity. Some people will just push things beyond civility.

While the legal environment encourages civility, the lack of civility is primarily regulated by results rather than by sanction. Meaning that litigants and lawyers who are unable to demonstrate civility are much less successful.

Likewise, things said, explored or done within the umbrella of a civil lawsuit are generally protected by "qualified immunity." What that means is 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... like I tell my kids, pay no attention to your antagonist -- they will get their's in due time.

Stay warm, it's cold out there.

Burns...

From: gfeld3232@aol.com [mailto:gfeld3232@aol.com]
Sent: Tuesday, February 16, 2010 6:45 PM
To: BGunn@holcombebomar.com; Davison, Burns H; milton.mann@gmail.com
Subject: Re: Abuse of Process

10-4! We are on the same page
We all know we are dealing with Lunaticks..

Lunatism maybe a God's given gift, but one should not abuse it ☺

-----Original Message-----
From: Billy Gunn <BGunn@holcombebomar.com>
To: gfeld3232@aol.com <gfeld3232@aol.com>; Burns.H.Davison@marsh.com <Burns.H.Davison@marsh.com>; milton.mann@gmail.com <milton.mann@gmail.com>
Sent: Tue, Feb 16, 2010 4:23 pm
Subject: RE: Abuse of Process

Believe me, Greg nobody at the hospital is paying the least bit of attention to it. They recognize what we are dealing with and do not question that you tinkered with the system in any fashion. If asked, they would say it has no effect whatsoever on how they feel about your integrity or otherwise and is meaningless to them except as an interruption to them. Thus we would not be able to prove any damages.

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I want to keep our eye on the ball which is the successful defense of Casey v Feldman et al. We don't want to take the bait and get off on a tangent. You have some great ideas on the medicine in the case and ways to make poppycock of their theories etc. Lets focus on that.

Billy

William U Gunn
HOLCOMBE BOMAR PA
Attorneys at Law
PO Box 1897
Spartanburg SC 29304
864.594.5301 (direct)
864.316.6255 (mobile)
864.585.3844 (fax)
bgunn@holcombebomar.com

From: gfeld3232@aol.com [mailto:gfeld3232@aol.com]
Sent: Tuesday, February 16, 2010 4:06 PM
To: Billy Gunn; Burns.H.Davison@marsh.com; milton.mann@gmail.com
Subject: Abuse of Process

As far as I am concerned Chuck's baseless accusation of criminality against me, Boscia or both of us constitute Abuse of Process and outright Defamation disguised under "Discovery Process"...And I want that type od activity halted..

-----Original Message-----
From: gfeld3232@aol.com
To: BGunn@holcombebomar.com; Burns.H.Davison@marsh.com; milton.mann@gmail.com
Sent: Tue, Feb 16, 2010 1:52 pm
Subject: Re: CASEY-credentialling issue on Jantz

> They focus on some way to make it less harmful. The way it is they continue chasing with their supposed IT guy Joe Smith the worthless rabbit of the computer shenanigans at SRMC which is a total figment of their imagination.>>
>
> Milton, Billy How about if we join them in request to have IT give us answer from SRMC, (At their expense) as we do not appreciate this preposterous notion and accusation that we would commit criminal and illegal act of tampering with Computer System (Even if we knew how, and of course we have no clue)
> This is also must stop! The notion accusing us in criminality..and I need to put a stop to this outrage

-----Original Message-----
From: Billy Gunn <BGunn@holcombebomar.com>
To: gfeld3232@aol.com <gfeld3232@aol.com>
Sent: Tue, Feb 16, 2010 12:24 pm
Subject: FW: CASEY-credentialling issue on Jantz

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Wrong email previously, see below

William U Gunn
HOLCOMBE BOMAR PA
Attorneys at Law
PO Box 1897
Spartanburg SC 29304
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864.316.6255 (mobile)
864.585.3844 (fax)
bgunn@holcombebomar.com

From: Billy Gunn
Sent: Tuesday, February 16, 2010 12:23 PM
To: miltymann@gmail.com
Cc: sking@wardfirm.com; 'Davison, Burns H'; 'gfeld332@aol.com'
Subject: CASEY-credentialling issue on Jantz

Milton,

I got the written response back from ABIM to my credentialing inquiry on Plaintiffs expert Dr Jantz. It was the one we already have. Shows CC valid through end of 09, Pulmonary valid through end of 08 and IM expired way back end of 02. We knew that. We also knew that his cv continues to represent him as Bd Cert in all. This violates ABIM rules etc. He swore in his deposition Jan 8, 09 that his cv was accurate and that he was triple boarded. He did so falsely.

I called Kathy McMonagle at ABIM. I was screened by some fellow. It was like trying to call Centcom hq about something top secret. I persisted, and finally he told me for what I wanted, I needed to speak with another credentialist Cynthia Christopher. After I listened to some elevator music for a little while Ms Christopher appeared telephonically. She had Dr Jantz up on her screen and told me that which we already knew. I told her what we need etc. She said there is no way to get that without written authorization from Dr Jantz. I told her maybe if they have in house counsel I could explain what I need and he can tell me who procedurally would be the person to speak with or even subpoena. She took my information and said she would have in house counsel "Bob" contact me. I will await my call from Lawyerbob. I predict they are circling the wagons on this.

Couple of options here:

1. Serve a request to admit on plaintiff with the info from ABIM attached
2. Move for an order permitting a second deposition of Dr Jantz on this limited issue and do it by telephone.

Right now as it stands my belief is that the report from ABIM as we have it may be inquired about and even placed in evidence. Here is the scenario. Jantz takes the

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stand. Says his song and dance. (over some well placed objections etc) We cross examine. Dependent upon what he has said regarding bd cert on direct, we get into the issue on cross. Ask him whether or not he is board certified and if so what specialities/ subspecialties. See what he says (may have been covered on direct by Chuck et al) We whip out the transcript of depo...publish it...ask him whether what he said was true or false...let him answer either way, doesn't matter to me....then we show him the ABIM verification of certification status...rub him in the ground a little with that...offer it as an exhibit, NOT FOR THE TRUTH OF THE MATTER BUT FOR IMPEACHMENT PURPOSES. If handled with some aplomb, we accomplish our result, hopefully at a dramatic juncture during trial. Plus, if we do either of the two options above we call a lot of attention to it etc. in advance. They focus on some way to make it less harmful. The way it is they continue chasing with their supposed IT guy Joe Smith the worthless rabbit of the computer shenanigans at SRMC which is a total figment of their imagination.

Consider this.

Billy

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864.316.6255 (mobile)
864.585.3844 (fax)
bgunn@holcombebomar.com

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Davison, Burns H

From: Davison, Burns H
Sent: Friday, January 22, 2010 4:46 PM
To: gfeld3232@aol.com; milton.mann@gmail.com
Subject: RE: Simplify this

Greg:

I understand; but this is how it works.

a. I don't believe that this case can or will destroy you -- even in the highly unlikely event that Casey is successful.

b. Most claims / lawsuits have the "feel" of extortion -- on the continuum of validity, the less valid the claim, the more it feels that way. Contrived proof undermines validity. Exaggeration by Plaintiffs (which are common) undermines validity. Obvious motivation of secondary gain, i.e. an award or malice, undermines validity.

c. 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.

d. Thompson would no more admit to having sat down with Fogarty to plan this scheme than Fogarty would. That gets proven through circumstantial evidence; which we have a good deal of. What more likely happened is Fogarty, having no love lost for you, saw Casey & thought -- "AHA! Feldman's screwed up, I'll get him." Either directly or indirectly (through Thompson's wife, for instance), the claim gets referred to Thompson and we're off to the races... Fogarty is thereafter driven by his feelings for you -- all of which is fairly apparent.

e. In addition to exploring in depth the Professional Liability angle as to Thompson (which you and I have discussed), we are also exploring the alias medical testing in NC, insurance fraud, and social security fraud angles.

f. Don't worry ~~ in the hourglass of trial preparation, four months is an eternity.

We are in the process of withdrawing all offers.

Be well my friend. Enjoy your weekend!

Burns...

From: gfeld3232@aol.com [mailto:gfeld3232@aol.com]
Sent: Friday, January 22, 2010 10:58 AM
To: milton.mann@gmail.com; Davison, Burns H
Subject: Simplify this

Burns, let me simplify this for you..

1. Plaintiff-Casey, Charles m. Fogarty, MD and his buddy Att Chuck Thompson have decided that they would frame Grg Feldman and his partner...with the Goal for Fogarty to destroy his main competitor with literally millions at stake for Fogarty in addition to long-standing and well-known to community visceral hate

2. Plaintiff and chuck were to extort money from Insurance Company

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Now our lawyers propose to try this case using regular 'channels"... and admitedly the scientific theories are so preposterous, that this approach has some validity..

3. What is in a shadow is a real truth, that this is not conventional Medical Malpractice Case, even if one to include many 'frivolous" lawsuits, where Plaintiff will fabricate or exaggerate his complains or injuries..

This is outright invention of the Medical record, "Medical' Diagnosis, and 'evidence"...And i am absolutely entitled to the discovery of the extent of this for my defence....
and I am absolutely entitled to depose Chuck Thompson, as he is vital part of the evidence as how it was concosted and executed..and evidence of the absolute necessity of this is overwhelming..I simply cannot ask anyone else, did you sit-down with Dr. Fogarty in Summer-Fall of 2004 to plan the strategy? (Disability, Brain Injury, ets)...

Greg

PS Burns, Again no response necessary

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG S. Carolina Pharmaceutical Research, Inc., Plaintiff, vs. Charles M. Fogarty, M.D, Defendant.	IN THE COURT OF COMMON PLEAS C.A. No.: 2005-CP-42-1085 **STIPULATION OF DISMISSAL WITH PREJUDICE**

The parties hereby stipulate to the dismissal with prejudice of all of Plaintiff's and Defendant's claims which were ever asserted in this action and any other claims which could have been asserted in this action, including but not limited to those claims asserted in Defendant's proposed counterclaim for attorney's fees and costs.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2007 FEB 15 PM 2:55
MARC KITCHENS

WE SO STIPULATE:

F. Milton Mann, Jr.
Attorney for Plaintiff

2/15/07
(Date Signed)

Ellen S. Cheek
Attorney for Defendant

2/15/07
(Date Signed)

DEFENDANT'S EXHIBIT 30 Feldman

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EXHIBIT

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ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Subj: **Re: SC**
Date: 6/14/2007 11:26:14 A.M. Eastern Daylight Time
From: GFeld3232
To: GFeld3232

http://www.dba-oracle.com/internet_laws_message_boards_forums_blogs_personal_liability.htm

The laws also vary by State and Nation, and **South Carolina has strict laws against invasion of privacy.** In the publication "THE RIGHT TO PRIVACY vs. THE FIRST AMENDMENT" (1978), author Alice Marie Beard notes that in many States it appears to be illegal to intrude upon someone's seclusion or solitude, to publicly disclose embarrassing private facts about someone; or to generate publicity that places the someone in a "false light" in the public eye: (see Renwick, 310 N.C. at 322, 312 S.E.2d at 411)

> *Four areas of the right to privacy are recognized:*
> *(1) intrusion upon the plaintiff's seclusion or solitude, or into his private affairs;*
> *(2) public disclosure of embarrassing private facts about the plaintiff;*
> ***(3) publicity that places the plaintiff in a false light in the public eye, and***
> *(4) appropriation, for the defendant's advantage, of the plaintiff's name or likeness.*

Now, a lot has changed since 1978, but much it it moves in the direction of making people responsible for what they publish, even if they are grossly unprepared to be a journalist. In this great essay title "Here Come the Judges (and Lawyers)", Dan Gillmor notes that old Aunt Sara's catty blog is now subject to U.S. Libel laws:

> *Online journalists are no less required*

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19

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com
Sent: Thursday, August 07, 2008 7:45 PM
To: milton.mann@gmail.com
Subject: Fwd: Check out South Carolina Judicial Department - Opinions

NOT THE FIRST TIME I HAVE SENT THIS , I KNOW :)
MY EXCUSE? This is SC (not South California)
could not resist :)

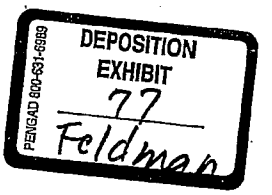
-----Original Message-----
From: GFeld3232@aol.com
To: GFeld3232@aol.com
Sent: Fri, 17 Aug 2007 6:53 pm
Subject: Check out South Carolina Judicial Department - Opinions

Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987). "Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence

Click here: South Carolina Judicial Department - Opinions

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From: gfeld3232@aol.com
Sent: Wednesday, March 19, 2008 5:00 PM
To: milton.mann@gmail.com
Subject: Fwd: Countersuit

In order to prove malicious prosecution, the plaintiff physician must show: 1) that the defendant instituted (or continued) a prior judicial proceeding against the plaintiff physician; 2) that the prosecution was instituted without probable cause; 3) that the defendant acted maliciously in instituting the action; 4) that the prosecution terminated in the plaintiff physician's favor, and; 5) that the plaintiff physician was damaged by the action:
If an attorney, acknowledging there is no cause of action, and knowing this dishonestly and for some improper purpose files suit, or even if an attorney merely acts knowing that his client has no just claim and that his client is actuated by illegal or malicious motives, the attorney may be held liable for malicious prosecution.(6)
Nevertheless, the courts have declined to hold attorneys liable for malicious prosecution, **except in a few extreme cases**

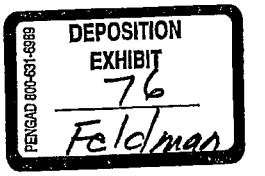
And that may be our case!

-----Original Message-----
From: GFeld3232@aol.com
To: GFeld3232@aol.com
Sent: Fri, 17 Aug 2007 6:34 pm
Subject: Countersuit

Click here: Fighting Fire With Fire: Physician Countersuits

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21

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

From: gfeld3232@aol.com
Sent: Wednesday, March 19, 2008 4:35 PM
To: milton.mann@gmail.com
Subject: Fwd: Abuse of Process

-----Original Message-----
From: GFeld3232@aol.com
To: GFeld3232@aol.com
Sent: Sat, 29 Sep 2007 4:49 pm
Subject: Abuse of Process

"Abuse of process differs from malicious prosecution in that the gist of the tort is not commencing an action or causing process to issue without justification, but misusing, or misapplying process justified in itself for an end other than that which it was designed to accomplish. The purpose for which the process is used, once it is issued, is the only thing of importance. Consequently, in an action for abuse of process it is unnecessary for the plaintiff to prove that the proceeding has terminated in his/her favor, or that the process was obtained without probable cause or in the course of a proceeding begun without probable cause. It is often said that proof of 'malice' is required; but it seems well settled that, except
on the issue of punitive damages, this does not mean spite or ill will, or anything other than the improper purpose itself for which the process is used, and that even a pure spite motive is not sufficient where process is used only to accomplish the result for which it was created. Thus if the defendant prosecutes an innocent plaintiff for a crime without reasonable grounds to believe him/her guilty, it is malicious prosecution; if he/she prosecutes him/her with such grounds to extort payment of a debt, it is abuse of process

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From: gfeld3232@aol.com
Sent: Wednesday, March 19, 2008 5:02 PM
To: milton.mann@gmail.com
Subject: Fwd: Statue of Limitation

-----Original Message-----
From: GFeld3232@aol.com
To: GFeld3232@aol.com
Sent: Fri, 17 Aug 2007 6:38 pm
Subject: Statue of Limitation

A doctor could sue another physician for slander three years after the defamatory statements were made where the doctor discovered the statements only after he read a patient's deposition in a med-mal case, the Missouri Court of Appeals' Eastern District has ruled.
The physician argued that the two-year defamation statute of limitations applied to bar the claim.
But the court disagreed. "[The doctor] was not aware he had suffered any legal wrong until he received a copy of [the] patient's deposition in which she revealed [the physician's] statements," wrote Judge Mary Rhodes Russell for the court. "Therefore, the statute was tolled until that time."
The judgment was reversed in *Kennedy, et al. v. Bailey, et al.*, MLW No. 26168, issued on March 22.
Middle Ground
"This decision is good news for lawyers who represent plaintiffs in defamation suits," said Al W. Johnson of St. Louis, who represented the plaintiff.

Click here: Al W. Johnson - (314) 726-6489 - Saint Louis Lawyers

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BURTS, TURNER, RHODES & THOMPSON
ATTORNEYS AT LAW
260 NORTH CHURCH STREET
SPARTANBURG, S.C. 29306

SAM BURTS (1907 - 1982)
NOEL TURNER
RICHARD H. RHODES
RAY E. THOMPSON, JR.
M. NOEL TURNER, III

MAILING ADDRESS
P.O. BOX 3408 29304
PHONE: 864-585-8166
FAX: 864-583-6927

June 20, 2006

VIA HAND DELIVERY

William U. Gunn, Esq.
P.O. Box 1897
Spartanburg, SC 29304

RE: William Mark Casey

Dear Billy:

Enclosed please find a complete copy of the following medical records for Mark Casey as delivered from his medical providers:

1. Spartanburg Regional Medical Center – Diagnostics 2000
2. Spartanburg Regional Medical Center – Admission 5/28/04
3. Spartanburg Regional Medical Center – Admission 6/3/04
4. Upstate Lung & Critical Care – Drs. Feldman & Boscia
5. Carolinas Ctr. For Advanced Mgmt. of Pain – Dr. Eugene Mironer
6. Lung and Chest Medical – Dr. Charles Fogarty
7. Dr. Glenn Scott, Orthopedist
8. Dr. Jay Grace, Licensed Counseling Psychologist
9. Piedmont Psychiatric – Dr. Jeffrey Smith
10. Foothills Family Medicine – Dr. Frank Gonda

The charge from Kinko's to make this copy is $37.54.

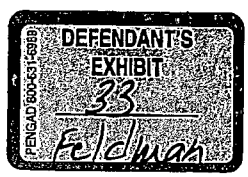
Also, my legal assistant, Ms. Karen Greer, has made several attempts to make contact with Spencer King with no success. If Spencer contacts you and wants a copy of these records, I have no objection to allowing him to copy them.

With warm regards,

I remain,
BURTS, TURNER, RHODES & THOMPSON

By: _____
RAY E. THOMPSON, JR.

RET:ar
Encl.



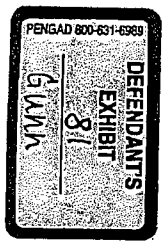
GUNN 001617

Extremely Confidential

GREENVILLE SC 296
18 AUG 2008 PM 3 L

H. Spencer King
Attorney At Law
The Ward Law Firm
P.O. Box 5663
Spartanburg, SC 29304

29304+5663



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THIS PHOTOCOPY IS OF A DISK AND IS BEING SENT TO YOU SO THAT THE PLAYING FIELD IS LEVEL. CHUCK THOMPSON ARRANGED FOR HIS CLIENT TO HAVE AN MRI/HEAD AT PRESBYTERIAN HOSPITAL IN CHARLOTTE, NC, AND FAILED TO PROVIDE IT IN DISCOVERY. HE ARRANGED FOR THE MRI TO BE CARRIED OUT USING THE ALIAS "MARK JOHNSON" THROUGH DR. GODWIN, HIS BROTHER IN LAW, AT PRESBYTERIAN HOSPITAL. AND, IT APPEARS THE TEST WAS PAID FOR IN CASH BY CHUCK. OBVIOUSLY, CHUCK'S CLIENT'S SIGNING AN AUTHORIZATION WOULD NOT HELP YOU IN GETTING A COPY OF SAME. PLEASE USE WHATEVER MEANS NECESSARY TO OBTAIN THE TEST RESULTS AND THE MANNER IN WHICH THE TEST WAS SCHEDULED, PERFORMED AND WHY CHUCK WENT TO SUCH LENGTHS TO HIDE IT FROM YOU.

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In
CD
Click on Patient List.
Double click on Study to display.
Use Vertical scroll bar or arrow keys to scroll through images.
Click & drag to adjust contrast & density.
There are several tools that you can use to optimize viewing located under TOOLS 1,2 & LAYOUT tabs.

record #
5330541
Mark Johnson
dob: 10-18-58
date of exam
2-4-07

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EXHIBIT

24

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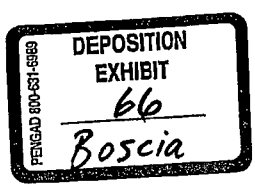
Ellen Cheek

From: Milton Mann <miltymann@gmail.com>
Sent: Wednesday, October 19, 2016 1:30 PM
To: Ellen Cheek; Matt; todd@m.dcoin.co
Subject: Fwd: CMF-Decem 22, 08-deposition records subpoena
Attachments: 201605111524.pdf; ATT00001.htm

Milton Mann
864/680-5079

Begin forwarded message:

From: Gregory Feldman <gfeld3232@aol.com>
Date: October 19, 2016 at 9:30:52 AM EDT
To: Milton <milton.mann@gmail.com>, Joe Boscia <bronchnu@aol.com>
Subject: Fwd: CMF-Decem 22, 08-deposition records subpoena



ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
William Mark Casey, Plaintiff, v. Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung and Critical Care Specialists, PC, and Devendra Shantha, MD, Defendants.	)	C.A. No.: 2006-CP-42-1728 CERTIFICATE OF SERVICE

I hereby certify that a copy of the Subpoena Duces Tecum and Notice of Deposition of Charles M. Fogarty, M.D. was served upon attorney for Plaintiff this 7th day of October, 2008 by depositing a copy of same in the United States Mail, postage pre-paid to the following address:

Ray E. Thompson, Jr., Esquire
260 North Church Street
Spartanburg, SC 29306

Mitzi Higgins
Mitzi Higgins
Paralegal to H. Spencer King

THOMPSON 052309

A. No, sir.
Q. Have you ever?
A. Only under supervision.
Q. Have you removed foreign bodies from the bronchus?
A. Yes, sir.
Q. When is the last time you removed a foreign body from a bronchus?
A. When Dr. Feldman came to Spartanburg and joined our practice, I basically stopped doing YAG laser procedures and removal of foreign body procedures.
Q. And about when was this? About what time was this? Roughly year wise.
A. I'd say around 1992.
Q. Dr. Fogarty, we -- the notice of deposition asked you to bring records with you. Have you seen that notice?
A. Yes, sir. Mr. Thompson showed me the notice this weekend.
Q. Did you bring those records?
A. Yes, sir.
Q. Can I see what you brought?
A. Do you want to put the box on the ---
Q. Yeah, that's probably the best thing.
A. Okay.
BY MR. GUNN:

THOMPSON 017710

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ATTACHMENT "A"

1. All records regarding your treatment of Plaintiff William Mark Casey.
2. All reports regarding your treatment of Plaintiff William Mark Casey.
3. All notes, communications, memorandums including e-mails, to and from any third party related to this litigation or the parties to this litigation.
4. Copies of all questions, memoranda and documents furnished to Plaintiff's counsel related to the depositions of other witnesses.
5. All documents of any kind and nature related to this litigation.
6. If any records as described above have been destroyed, please provide documents with the dates of destruction, the name of the person who destroyed them, the basis for the destruction, and the reason for the destruction.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2008 NOV 25 PM 3:52
MARC KITCHENS

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

STATE OF SOUTH CAROLINA
ISSUED BY THE C ION PLEAS COURT IN THE COUN Y OF SPARTANBURG

William Mark Casey,
Plaintiff,

v.

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

SUBPOENA DUCES TECUM

C.A. No. 2006-CP-42-1728

COPY

TO: **Charles Fogarty, M.D., c/o Ray E. Thompson, Jr., Esquire, P.O. Box 3408, Spartanburg, SC 29304**

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

Place of Testimony -	Courtroom:
	Date and Time:

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

Place: **The Ward Law Firm** **233 S. Pine Street** **Spartanburg, SC 29302**	Date and Time: **10:00 am on November 14, 2008**

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

All medical records from your practice including, but not limited to, doctor's notes, nurse's notes, laboratory studies, pathology reports, pathology specimens, radiology films and/or reports, reports in your files from other healthcare providers, as well as any and all other medical records and parts of your medical file concerning treatment of Plaintiff William Mark Casey, SSN 251-02-2977, DOB: 11/03/1958 and complete billing records fo his care as well as the information listed in ATTACHMENT A.

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

Premises	Date and Time

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

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER H. Spencer King, Esq., The Ward Law Firm, P.A., 233 South Pine Street PO Box 3188, Spartanburg, SC 29304-3188 (864/582-4365)	

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

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE: October 7, 2008

Attorney for Defendants Gregory J. Feldman, MD, Joseph A. Boscia, MD, and Upstate Lung and Critical Care Specialists, PC

SCCA FORM 254 (7/93) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse

FILED
2008 NOV 25 PM 3:52
MARC KITCHENS
CLERK OF COURT
SPARTANBURG COUNTY

THOMPSON 052287

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. Elm, F.N.P.

Fax: (864) 585 - 2102

Wilson P. Smith, Jr., M.D.
R. Bert 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. This can be present without exercise although 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 overlying the chest. This was misinterpreted as being in the chest and the patient underwent bronchoscopy. And when the bronchoscopy did not show definite abnormality, but rather an area of erythema, he was scheduled for a laser bronchoscopy. He had the laser bronchoscopy complicated by pneumomediastinum with a lengthy two hour anesthesia. Since then, although the patient recovered from his pneumomediastinum and bilateral pneumothoraces with chest tubes, intubation and mechanical ventilation, since then he has had continued difficulties concentrating, staying focused and with his general energy.

He is not smoking.

Current Medicines

1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab four times daily as needed.

EXHIBIT # 20 Dr. Fogarty 12/22/09

Social History

He has been out of work now for a year and probably will be out of health insurance and probably lose his job since he has been unable to hold gainful employment in the interim in large part because of his difficulties with concentrating, staying focused. Although the issue of his chest pain still remains unresolved.
(Continued to next page)

000440

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Family History

Coronary artery disease and hyperlipidemia.

Review of Systems

He did have a cardiac catheterization several years back but his CT during the May 2004 admission 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 SaO_2 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. Bowel sounds present.
Extremities: No edema or clubbing.
Neurological: The patient had some readily apparent difficulty staying focused with answers to questions and had difficulties repeating numbers backward on a simple cognitive screen.

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.
2. Nausea and vomiting.
3. Persistent difficulty concentrating staying focused status post pneumomediastinum/pneumothorax complicating laser therapy in attempt for laser therapy for metallic artifact, which ultimately proved to be outside of chest.

(Continued to next page)

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Comment

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 squeezing he does have risk factors for coronary artery disease in terms of his hyperlipidemia, family history and previous smoking and he did have coronary calcification incidentally noted 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.

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. 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 may be moot and 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.

Plan

We will check back with the patient via phone with reference to his coronary calcium score and his gallbladder ultrasound. Further evaluation will proceed pending the results of above. Separately, we will review the patient's chart for him since he still has many questions about what happened during the hospital admission for his chest pain. We will review the patient's chart for him and try to put into lay language a summary of the chart with reference to what happened to him during the hospital admission for his chest pain last year.

Charles M. Fogarty, MD
CMF/ns
cc: Dr. Gonda

000438

THOMPSON 018213

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EXHIBIT

25

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP420743

Ellen Cheek

From: Milton Mann <miltymann@gmail.com>
Sent: Wednesday, October 19, 2016 1:31 PM
To: Ellen Cheek; matt@henriksonlaw.com; todd@m.dcoin.co
Subject: Fwd: Knew no evidence for Brain Damage
Attachments: In their own writing.pdf; ATT00001.htm

Milton Mann
864/680-5079

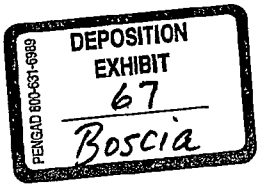
Begin forwarded message:

> **From:** Joseph Boscia <bronchnu@aol.com>
> **Date:** October 19, 2016 at 1:28:16 PM EDT
> **To:** Milton Mann <milton.mann@gmail.com>
> **Subject: Fwd: Knew no evidence for Brain Damage**

Sent from my iPhone

Begin forwarded message:

> **From:** Gregory Feldman <gfeld3232@aol.com>
> **Date:** October 19, 2016 at 10:04:28 AM EDT
> **To:** Joe Boscia <bronchnu@aol.com>
> **Subject: Knew no evidence for Brain Damage**



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Letter F__: Pulmonologist qualified to give air emboli opinion?

NEED: What areas will Fogarty testify to?

1.
2.
3.
4.
Etc.

1. Neurological deficiencies due to air emboli – diagnosis – but medical records provide no objective data to substatiate this opinion?

Neurological exams (normal) – no focal deficits to support cerebral dysfunction associated with air emboli.

2. No chemical imaging studies/EEGs show abnormal assocation with focal cerebral lesions.

3. Neuropyschology findings consistent with depression and anxiety.

4. Temporal issue of manifestation of symptoms of air emboli.

5. June 2005 __ 8/30/05 & 9/10/05 function not expected with cognitive deficit from cerebral lesions from air emboli where maximum onset one year to stability

(↓ exams not expected)

6. Reported decline (subsequent) in cognitive ability not associated with air emboli.

Rx

Narcotic Prescriptions

CVS – Spartanburg
CVS – Moore
CVS – Boiling Springs
Ron's Pharmacy

Q: On 2/12/06, Fogarty writes Hydrocodone (#150) with 5 refills?

THOMPSON 082935

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

EXHIBIT

26

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Ellen Cheek

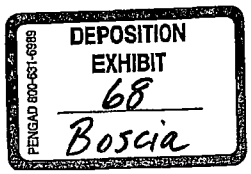
From:	miltymann@gmail.com
Sent:	Wednesday, October 19, 2016 1:40 PM
To:	Ellen Cheek; matt@henriksonlaw.com; todd@m.dcoin.co
Subject:	Fwd: Electronic Medical Records
Attachments:	Wilson Smith-electronic Medical records.pdf; ATT00001.htm

Milton Mann
864/680-5079 cell

Begin forwarded message:

From: Gregory Feldman <gfeld3232@aol.com>
Date: October 19, 2016 at 10:26:50 AM EDT
To: Joe Boscia <bronchnu@aol.com>, Milton <milton.mann@gmail.com>
Subject: Fwd: Electronic Medical Records

Smith Secretary-Wilson Smith deposition
Nothing on the chart -that was not produced (2009)
Why would anyone be suspicious it exist



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SHEET 5 PAGE 17

Medical Associates on Mr. Casey?
A. Yes, sir.
Q. Do you know of any other records that Lung and Chest Medical Associates has on Mr. Casey?
A. We had gone to an electronic medical record, and I glanced in there last night and I didn't see any office visits there, but it is possible there's something in that electronic record, but I do not think there is.
Q. When did you go to electronic records?
A. Well, I looked at that yesterday.
Q. But, are there any ---
A. I can make a phone call and just answer that question if you'd like?
Q. That's fine. While he's doing this I'm going to mark this as Defendant's Exhibit number 1.
A. But I have myself not seen him since we've gone to the electronic record.
Q. Okay.
(COURT REPORTER MARKS ENTIRE FILE OF DR. SMITH AS DEFENDANTS' EXHIBIT NO. 1; ATTACHED TO DEPOSITION).
BY MR. KING:
And what we're going to do, we agreed we will copy this, substitute the copy ---
BY MR. THOMPSON:

PAGE 19

BY MR. KING:
If she could reproduce those.
BY THE WITNESS:
Would you make a physical copy of all those for me? We'll deliver those to you tomorrow?
BY MR. KING:
That's fine.
BY THE WITNESS:
Thanks. Appreciate it, Crystal. Bye.
BY MR. KING:
Was that on the record?
BY COURT REPORTER:
Yes.
BY MR. KING:
So on the record we have that there are some electronic records from the span of July 7, 2006 to December 8, 2008. Dr. Smith's going to get us copies of those, but none of those were visits where Dr. Smith was involved in the care; is that a fair statement?
BY THE WITNESS:
That's correct.
DIRECT EXAMINATION RESUMED BY MR. KING:
Q. Doctor, the first visit that I have that I believe that you recorded when you saw Mr. Casey first

PAGE 18

Yes.
BY MR. KING:
--- for the exhibit and give ---
BY MR. THOMPSON:
Dr. Smith back his records.
BY THE WITNESS:
Hey, Crystal, this is Dr. Smith. Can you do me a favor? Would you look up and see if we have any electronic medical record on William Mark Casey. He's about 50 years old.
BY MR. GUNN:
11/03/58.
BY THE WITNESS:
Birth date's 11/3/58. We do. How many visits? All right, do you want me to have them make a physical copy of those?
BY MR. KING:
First question, what are the dates -- the span of those visits?
BY THE WITNESS: Electronic 7-7-06 > 12-8-08
What's the span of the dates of those visits, the first to the last? July 7th 2006. December the 8th of '08. And can you see if any -- were any of those mine, or are they all somebody else's? None of them were mine.

PAGE 20

time, July 14, 2004?
A. Yes.
Q. And was he referred to you by anyone at that time?
A. No, he was a self-referral.
Q. And you take self-referrals?
A. Yes.
Q. In the chart there is a medical history. It says, "Medical History Information Sheet." Do you see that?
A. Yes, sir.
Q. And in 2004 was that a form that your practice used for new patients?
A. Yes, it was.
Q. And the information, is that recorded in the patient's handwriting? Do you ask the patient to complete that?
A. Yes, though I had made notes as well in the -- to the side. 7-14-04
Q. Doctor, would you talk me through your notes?
A. Okay. "Sleep well, fatigue, Michelin, swing shift, very physical job for several years, 2000 had a stress test and a cath which was normal." And follows over there in the ---
Q. And are these notes that you made during your first visit with him?

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Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. Elm, F.N.P.

Fax: (864) 585 - 2102

Wilson P. Smith, Jr., M.D.
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Mary Lou Applebaum, M.D.
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Fax: (864) 582-3750

WILLIAM CASEY
77168
07-21-05

OFFICE NOTE

Chief Complaint

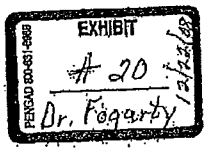
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We should note that it was this symptom that led him to go to the emergency room May 2004. Although the presenting complaint was chest pain, a chest film showed a metallic fragment overlying the chest. This was misinterpreted as being in the chest and the patient underwent bronchoscopy. And when the bronchoscopy did not show definite abnormality, but rather an area of erythema, he was scheduled for a laser bronchoscopy. He had the laser bronchoscopy complicated by pneumomediastinum with a lengthy two hour anesthesia. Since then, although the patient recovered from his pneumomediastinum and bilateral pneumothoraces with chest tubes, intubation and mechanical ventilation, since then he has had continued difficulties concentrating, staying focused and with his general energy.

He is not smoking.

Current Medicines

1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab 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 probably lose his job since he has been unable to hold gainful employment in the interim in large part because of his difficulties with concentrating, staying focused. Although the issue of his chest pain still remains unresolved.
(Continued to next page)

000440

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

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Extremities: No edema or clubbing.
Neurological: The patient had some readily apparent difficulty staying focused with answers to questions and had difficulties repeating numbers backward on a simple cognitive screen.

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Impression

1. Chest pain.
2. Nausea and vomiting.
3. Persistent difficulty concentrating staying focused status post pneumomediastinum/pneumothorax complicating laser therapy in attempt for laser therapy for metallic artifact, which ultimately proved to be outside of chest.

(Continued to next page)

ELECTRONICALLY FILED - 2017 Jun 15 4:45 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

Comment

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Charles M. Fogarty, MD
CMF/ns
cc: Dr. Gonda

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EXHIBIT

27

Confidential Exhibit __
Note A, Note B, and Note C

	Document	Note A	Note B	Note C
1	Identifying language in "Comments"	*"undoubtedly had air emboli"*	*"common complication . . . when there is laser perforation"*	*"a complication . . . even without perforation"*
2	Signature block	Unsigned cc: Dr. Gonda	Signed by Fogarty cc: Dr. Gonda	Signed by Fogarty cc: Dr. Gonda Dr. Grace
3	Date by which Plaintiffs first obtained	July 7, 2006 (King Dep. 94)	August 14, 2006 (King Dep. 95-96)	July 3, 2006 (King Dep. 96-97)
4	Copies possessed and reviewed by Plaintiffs (in Plaintiffs' MMA files copied in this case)	1. King (King Dep. 94) 2. Mann 1477-1479 3. Mann 24080-24082 4. Mann 25452-25454 5. Gunn 1999-2001 6. Gunn 4292-4294 7. Gunn 4818-4820	1. King 2145-2147 2. Mann 23962-23960 [a] 3. Mann 24618-24623 [b] 4. Mann 25634-25636 5. Mann 25644-25646	1. King 1947-1949 [c] 2. Mann 26236-26238 3. Gunn 4363-4365

[a] Bears handwritten asterisk, question mark, and "CMF" (Fogarty's initials) beside "Comment" and "Plan" sections.
[b] Bears Feldman's handwritten memo noting that this document is not "Bailiff Stamped" and does not have a stamp indicating receipt by Social Security.
[c] Bears highlighted bracket around "Comment" section, indicating review by King. (Ex. 7/King Dep. 100-101.)

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	Document	Note A	Note B	Note C
5	Attached as exhibit to MMA depositions	Exhibit 20 to Fogarty Dep. on 12-22-08 (Thompson 3170-3172) Exhibit 1 to Smith Dep. on 9-2-09 (Gunn 4292-4294)		Exhibit 1 to Gonda Dep. on 8-14-08* (Thompson 36347-36554) * Also read into record during deposition (Thompson 36208) Exhibit 1 to Smith Dep. on 9-2-09 (Gunn 4363-4365)
6	Block quoted by Plaintiffs (in Plaintiffs' MMA files copied in this case)	1. By Feldman at Gunn 2544-2551 (Feld. 3-3-10 email). 2. By Feldman at Gunn 2589-2593 (Feld. 4-13-10 email). 3. By Feldman at Mann 5153 (Feld. 5-1-10 email). [d] 4. By Gunn at Gunn 2177-2179 (Gunn file memo 1-23-08).	1. By Feldman at Mann 98 (Feld. 2-16-08 email). 2. By King at King 1575-1625 (Master Medical Summary) at 1616. 3. By King at King 2091-2102 (Summary of Lung and Chest records), at 2097. 4. By King at Mann 24077 (questions for Fogarty 2-19-08).	1. By Feldman at Mann 22840 (Feldman email 9-30-07). 2. By Feldman at Mann 5153 (Feld. 5-1-10 email).
7	Block quoted by others (in Plaintiffs' MMA files copied in this case)	1. Gunn 2497-2504 (Rehabilitation Associates report 5-23-10, at 2499). 2. Gunn 2505-2525, (Rehabilitation Associates report, at 2507). 3. Mann 25355 (Aetna report).		1. King 244 (Waid report). 2. Gunn 356 (Waid report). 3. Gunn 2122 (Waid report). 4. Gunn 4141 (Aetna report). 5. Gunn 4999 (Waid report). 6. Mann 23947 (Waid report). 7. Mann 24505 (Waid report). 8. Mann 24937 (Waid report). 9. Mann 25384 (Waid report). 10. Mann 25437 (Waid report).

[d] Feldman notes that the differences between Note A and the Waid report (Note C) are "minor."

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	Document A	Note A	Note B	Note C
				11. Mann 25637 (Waid report). 12. Mann 26241 (Waid report).
8	Comment Section Comparison	Comment . . . 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. 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 may be moot and 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. [unsigned] cc: Dr. Gonda	Comment . . . 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. 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. [Signed] cc: Dr. Gonda	Comment . . . 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. 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. [Signed] cc: Dr. Gonda Dr. Grace

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EXHIBIT

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Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V. I. Mendoza, M.D.
J.P. Elm, F.N.P.

Wilson P. Smith, Jr., M.D.
E. Bert Knight, III, M.D.
Mary Lou Applebaum, M.D.
Beth V. Edwards, PA-C

Fax: (864) 585 - 2102

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 rigid 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 fr
bilateral pneumothoraces requiring chest tubes, intubation a
However, he has been unable to work and is now depresse

FUMARTY
NOT
BAILIFF
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STAMP OF
RECEIVER
BY SS

Current Medicines

1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain
4. Lipitor 10 mg daily.
5. Lortab four times daily as needed.

Social History

He has been out of work now for a year and probably will be
job, since he has been unable to hold gainful employment b
because of his difficulties with concentrating and staying foc
pain still remains unresolved. Cardiac evaluation was nega
benign chest wall. On the plus side, he has quit smoking.

Continued...

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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 rigid 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. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab 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...

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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 SaO_2 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...

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Comment

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 squeezing 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 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. 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 via phone with reference to his coronary calcium score and his gallbladder ultrasound. Further evaluation will proceed pending the results of above.

Separately, we will review the patient's chart for him since he has many questions about the hospital admission for his chest pain, and try to put into lay language a summary of what happened during the hospital admission.

He is to check back with Dr. Grace regarding the persistence of his neurological impairment.

Charles M. Fogarty, MD
CMF/ns
cc: Dr. Gonda

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No. 2010-CP-42-5743
COUNTY OF SPARTANBURG	)	
Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, and Upstate Lung & Critical Care Specialists, P.C.,	)	
	)	**MEMORANDUM IN OPPOSITION TO DEFENDANTS' AMENDED MOTION FOR SUMMARY JUDGMENT**
Plaintiffs,	)	
vs.	)	
William Mark Casey, Ray E. "Chuck" Thompson, and Charles M. Fogarty M.D.,	)	
Defendants.	)	

Plaintiffs Gregory J. Feldman, MD, Joseph A. Boscia III, MD, and Upstate Lung & Critical Care Specialists P.C. oppose Defendants' Amended Motion for Summary Judgment filed by Defendants in this action on December 7, 2016 and Amended Motion for Summary Judgment on March 30, 2017. This memorandum is submitted in advance of the hearing in this matter, which is currently scheduled for June 20, 2017.

FACTS

This action was commenced on October 27, 2010, when Plaintiffs filed a Summons and Complaint initiating an action for Abuse of Process and Civil Conspiracy in the Spartanburg County Court of Common Pleas against Defendants seeking damages and punitive damages, along with attorneys' fees and costs, arising as a result of alleged wrongdoings during a medical malpractice action 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

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number 2006-CP-42-1728 and tried, commencing on May 11, 2010, before the Honorable Roger L. Couch to a defense verdict on May 28, 2010. Defendants have moved for summary judgment on the **limited issue** of whether Plaintiffs had notice based upon Plaintiff Feldman's email of August 11, 2007, respecting a newspaper article dated May 31, 2006. (MANN001168; THOMPSON 082751)

LAW & ARGUMENTS

"Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Thomas Sand Co. v. Colonial Pipeline Co.,* 563 S.E.2d 109, 112 (S.C. Ct. App. 2002). "Summary Judgment is appropriate when it is clear from the pleadings, depositions, answers to interrogatories, and admissions on file, along with any affidavits, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *BPS, Inc. v. Worthy,* 608 S.E.2d 155 (S.C.App. 2005); *Belton v. Cincinnati Inc. Co.,* 360 S.C. 575, 602 S.E.2d 389 (2004); *McCall v. State Farm Mut Auto Ins. Co.,* 359 S.C. 372, 597 S.E.2d 181 (Ct.App. 2004); Rule 56(c), SCRCP; *see also Higgins v. Medical Univ. of South Carolina,* 326 S.C. 592, 486 S.E.2d 269 (Ct.App. 1997) (noting that when ruling on motion for summary judgment, trial judge must consider all of the documents and evidence within the record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits.) "Under Rule 56(c), the party seeking summary judgment has the initial burden of proof of demonstrating the absence of a genuine issue of material fact." *Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.,*563 S.E.2d 331 (S.C. 2002); *Baughman v. American Tel. and Tel. Co.,* 306 S.C. 101, 410 S.E.2d 537 (1991).

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"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.*,563 S.E.2d 331 (S.C. 2002); *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefore must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm'n,* 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock,* 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997). If triable issues exist, those issues must go to the jury. *Rothrock v. Copeland,* 305 S.C. 402, 409 S.E.2d 366 (1991).

"Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a disagreement concerning the conclusion to be drawn from those facts." *Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.*,563 S.E.2d 331 (S.C. 2002); *Moriarty v. Garden Sanctuary Church of God,* 341 S.C. 320, 534 S.E.2d 672 (2000). "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., Inc.,* 673 S.E.2d 801, 803 (S.C. 2009).

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). In Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005) the Court "recognized that, under the discovery rule, the statute of limitations begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist." However, "the statute of limitations is triggered not

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merely by knowledge of an injury but by knowledge of facts, diligently acquired, **sufficient to put an injured person on notice of the existence of a cause of action against another.**" True v. Monteith, 327 S.C. 116, 118, 489 S.E.2d 615, 617 (S.C. 1997)(emphasis added). Defendants' Amended Motion for Summary Judgment states simply 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 possess 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." (Defendants' Amended Motion for Summary Judgment, p.1)

Plaintiffs' Second Amended Complaint pleads an abuse of process cause of action. The elements of abuse of process are an **ulterior purpose** and a **willful act** in the use of the process not proper in the conduct of the proceeding. Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E.2d 693 (1967)(emphasis added). The mere filing of a lawsuit does not give rise to a cause of action for an abuse of process claim. ("Hence, to sustain a claim for the tort, 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 misapplied or abused." Food Lion, Inc. v. United Food & Commercial Workers Inter. Union, 567 S.E.2d 251, 351 S.A. 65 (S.C.App. 2002). An aggrieved party must be aware of facts sufficient to allege not only the inception of a lawsuit but an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding. (Food Lion, Inc. v. United Food & Commercial Workers Inter. Union, 567 S.E.2d 251, 351 S.A. 65 (S.C.App. 2002).

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Plaintiffs' verified Second Amended Complaint and Plaintiffs' affidavits allege, in great detail, the depths the Defendants conducted themselves to avoid discovery of their ulterior purposes, willful acts in the use of the process not proper in the conduct of the proceedings and their conjoined efforts which were concealed until sometime within 2008. (Affidavits of Plaintiffs Feldman, Upstate Lung and Critical Care Specialists, P.C. and Boscia, filed June 16, 2017)

Defendants' did not specify a particular date as to when they believe the statute of limitation was triggered, but rather based their assertion on one (1) email from Plaintiff Feldman to Plaintiff Boscia dated August 11, 2007, before any depositions were taken. It is important to note that attorney Spencer King had to Notice Defendant Casey for deposition, as well as chase Defendant Fogarty for over a year, in the underlying medical malpractice litigation, in what seemed an insurmountable task even to get them to sit for their depositions and begin the discovery process. (EXHIBIT 1, King November 19, 2008 letter to Thompson and Turner, GUNN 001685-86)

It has been discovered subsequent to the April 1, 2016 discovery production that the three different versions of the July 21, 2005 note was published with each increasingly dramatizing Casey's alleged injury as well as its causation, ending in a final version which concluded that Casey had "undoubtedly" suffered brain injury as a result of the surgical procedure conducted by Feldman. (EXHIBIT 2, King Deposition, March 28, 2017, p. 32, line 18 through p. 33, line 9) Defendants assertion in this action that they produced all three different versions of the altered medical note during the Casey litigation fails because, despite being within Defendant Thompson's file and Defendant Fogarty's practice file were never produced together. (EXHIBIT 3, Letter from Donna C. Hill (Spencer King) to Lung and Chest Medical Associates of June 16, 2006, KING 002169; EXHIBIT 4, Letter from Defendant Thompson to Billy Gun on

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June 20, 2006, THOMPSON 000516, GUNN 004818-004820) Plaintiffs respectfully disagree and submit, as shown below, that their Second Amended Complaint clearly pleads in detail that the essential facts required in establishing the necessary elements of their causes of action were actively concealed from them by the Defendants until 2008.

Subsequent to the newspaper article being published and the referenced email being sent, Defendant Casey was deposed August 29, 2007, and, under oath, unequivocally denied speaking with anyone from the Herald Journal. (EXHIBIT 5, William Mark Casey Deposition Excerpt, August 29, 2007, p. 132-133, THOMPSON 065434, 065565-065566) In that same deposition, Defendant Casey stated that no one had told him he had brain damage,. (EXHIBIT 6, William Mark Casey Deposition Excerpt, August 29, 2007, p. 125, THOMPSON 065434, 065558) Additionally, Defendant Fogarty testified in his December 22, 2008, deposition that he had not spoken with or provided any written statements to anyone with the Herald-Journal respecting the newspaper article. (EXHIBIT 7, Spartanburg Herald-Journal, May 31, 2006 newspaper article; EXHIBIT 8, Charles M. Fogarty, M.D. Deposition Excerpt, December 22, 2008, p.p. 219-220, THOMPSON 017687, 017906-017907). Clearly, Defendants are disavowing any willful act respecting the newspaper article. Finally, Defendant Thompson had an unfettered right to speak with and disseminate information to the reporter subject to South Carolina Rules of Professional Responsibility, Rule 3.6, Trial Publicity.

A September 18, 2007 email from Plaintiff Feldman to Plaintiff Boscia, copying Attorney Spencer King, shows that, as late as September 18, 2007, Plaintiff Feldman believed that Defendant Fogarty did not tell or was misinterpreted by Casey's sister and/or Defendant Thompson as to the diagnosis of a brain injury showing Plaintiffs continuing investigative

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efforts. (EXHIBIT 9, Feldman Eemail to Boscia and King, September 18, 2007, MANN 001005-001006)

Given the facts that, subsequent to the referenced email being sent, Defendants Casey and Fogarty denied any involvement in the publishing of the newspaper article and the knowledge that Defendant Thompson had an unfettered right to speak with the reporter subject to South Carolina Rules of Professional Responsibility, Rule 3.6, the Defendants were dissuaded from believing there was a cause of action and/or some willful act, which is a required element in an abuse of process action

It was revealed during the deposition of Joseph Grace, PhD, on April 2, 2008, that Defendant Fogarty had been seeing Defendant Casey since 2004; that Fogarty had begun treating and testing Defendant Casey in 2004; and, that Defendant Fogarty had been seeing Defendant Casey at his research facility. (EXHIBIT 10, Joseph Glover Grace, III Deposition Excerpt, April 2, 2008, THOMPSON 062140; EXHIBIT 11, Grace Notes attached as exhibits to Grace Deposition THOMPSON 062451-53) This information served to show Defendant Fogarty's involvement dated back to 2004.

As stated within the Second Amended Complaint, Defendant Fogarty actively sought to prevent discovery efforts respecting the level of and purpose of his involvement in the litigation and was successful until his deposition on December 22, 2008. (EXHIBIT 12, King letter to Thompson and Turner, November 19, 2008, GUNN 001685-001686; EXHIBIT 10; EXHIBIT 11) Unjustly, Defendant Fogarty and Defendant Thompson concealed their relationship to the extent of Defendant Fogarty lying under oath during his deposition in a continuing effort to hide his role and level of involvement in the medical malpractice action, with Defendant Thompson

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suborning his perjury. (EXHIBIT 13, Charles M. Fogarty Deposition Excerpt, December 22, 2008, pp. 25-26, THOMPSON 017687, 177111-177112; EXHIBIT 14, Thompson letter to Parham Smith & Dodson, LLC, January 7, 2005, THOMPSON 000556-57; EXHIBIT 11) It was not until after the April 1, 2016, exchange of discovery materials that Plaintiffs understood the lengths Defendants went to in order to fraudulently conceal their willful acts and to prevent Plaintiffs from knowing there was a potential cause of action. Now knowing what Defendants did to hide evidence of their willful acts, Plaintiffs argue it is unsupportable for Defendants to put forth an argument which, in essence, that they were so open and obvious with their hidden conduct, despite working together surreptitiously, intentionally preventing Plaintiffs from discovering their willful deeds, that Plaintiffs were placed on notice that a cause of action existed. (Plaintiffs' Feldman, Upstate Lung and Critical Care Services, P.C. and Boscia Affidavits, filed June 16, 2017)

A willful act and concealment of the act was discovered during Defendant Fogarty's deposition on December 22, 2008, when he lied under oath as to the inception date of his involvement with Defendant Casey, which was learned during the Grace deposition. (EXHIBIT 15, Charles M. Fogarty Deposition Excerpt, December 22, 2008, pp. 25-26, 67, 80-82, 85-87, 116-117, 219-220, THOMPSON 017687, 017711-017712, 017754, 017767-017769, 017772-017774, 017803—017804, 017906-017907; EXHIBIT 16, Joseph Glover Grace, III Deposition Excerpt, April 2, 2008, pp. 55-56, Notes, THOMPSON 062140, 062194-062195, 062451-062453) Defendant Thompson was in attendance and made no effort to correct Defendant Fogarty's statements.

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A willful act of concealment was performed by Fogarty and Thompson at the time of Fogarty's deposition on December 22, 2008. In preparation for that deposition, defense attorney Spencer King (who was then defending Feldman in the Casey litigation) issued a subpoena to Fogarty to produce his entire record on Casey. (EXHIBIT 17, King Deposition, March 28, 2017, p. 15, Lines 15 – 24, p. 18, lines 20-22). The subpoena, identified as Exhibit 93 in King's deposition, required Fogarty to produce at his deposition (in the Casey litigation) all records of treatment generated by Fogarty for Casey and "any reports that he has rendered" as well as "any memorandums that you generated, any communication, whatever that you received from any third party." Fogarty did not do so as evidenced by Mr. King's Deposition (EXHIBIT 2; EXHIBIT 17; EXHIBIT 18, King Deposition, March 28, 2017, pp. 28-31, 34, 48-51)

At Defendant Fogarty's deposition, one version of the three note was attached as Exhibit 20 to Fogarty's deposition and was the final amended version, in which Fogarty concluded that Casey had "undoubtedly" sustained "neurological impairment" during the surgery by Feldman. (EXHIBIT 15 at pp. 85-86, THOMPSON 017772-017773) Defendant Thompson was present at the Fogarty deposition and remained silent, not revealing his knowledge that Fogarty's production to King's subpoena was incomplete. Defendant Fogarty owned the "undoubtedly" version of the July 21, 2005 note, read it into the record, and never indicated that this was a "draft" or the existence of previous notes. (EXHIBIT 15 at pp. 85-86, THOMPSON 017772-017773)

On February 4, 2007, Defendant Thompson and Defendant Casey engaged in secret medical testing, an MRI, which they knew if negative would be disastrous to their medical malpractice claim by having it performed under a fictitious name, date of birth and in another state.

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Approximately seven months after the secret MRI test, Defendant Thompson advised Defendant Casey to lie under oath during his deposition, thereby abandoning Defendant Thompson's ethical obligations to the Court pursuant to Rule 3.3 in an effort to continue their abuse of discovery efforts by the Plaintiffs. (EXHIBIT 19, Affidavit of H. Spencer King, January 28, 2009, GUNN 000631-000635)

Between February 4, 2007 and 2009, Defendant Casey, in furtherance of Defendant Fogarty , and Defendant Thompson's permanent brain damage scheme, willingly took part with Defendant Thompson, and other unnamed third party(ies) in their efforts to circumvent the Rules of Civil Procedure. Defendant Thompson received the negative results, yet continued to litigate the matter for eighteen months, August of 2008, without revealing the MRI test or report to the Plaintiffs, with the Plaintiffs only learning of the MRI by virtue of an anonymous letter. The MRI was a materially important piece of evidence to the Plaintiffs, which was withheld, concealed, and secreted from them by Defendant Casey and Defendant Thompson.

At a pretrial hearing before Circuit Court Judge Roger Couch on April 29, 2010, Thompson admitted his own involvement in setting up the MRI, instructing Casey to use a false name and false social security number, and withholding the MRI from production. (EXHIBIT 19)

Thompson was well aware of the repercussions to license for perjury, suborning perjury and use of fraudulent documents. Defendant Thompson had two choices – to confess and suffer the consequences to his law license or proceed with the litigation. He chose to proceed with the litigation, including, but not limited to, dozens of depositions, fully knowing his only intent was to coerce and extort monies by applying financial pressure.

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Rule 11 Pleading Requirement

South Carolina Rules of Civil Procedure, Rule 11, Signing of Pleadings; Attorneys

(a) Signature. Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. An attorney or party may only utilize an electronic signature in pleadings, motions or other papers that are E-Filed in the SCE-File electronic filing system.

All motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held. There is no duty of consultation on motions to dismiss, for summary judgment, for new trial, or judgment NOV, or on motions in Family Court for temporary relief pursuant to Family Court Rule 21, or in real estate foreclosure cases, or with pro se litigants.

If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court,

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upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

South Carolina Rules of Civil Procedure

In *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000), the South Carolina Supreme Court stated, "[T]he rule the Court of Appeals' opinion is not whether Moriarty herself was on notice by a certain date (a subjective standard), but whether a reasonable person in her circumstances would have been on notice by a certain date (an objective standard). The statute begins to run on the date that the jury believed the repression ended and the resurfacing memories would have put a reasonable person on sufficient notice." Further, the *Moriarty* Court held that the "[A]pplication of the discovery rule contained in S.C. Code Ann. §15-3-535, as well as the determination of the date the statute began to run in a particular case, are questions of fact for the jury when the parties present conflicting evidence." See Johnston v. Bowen, 313 S.C. 61, 64 437 S.E.2d 45, 47 (1993) (whether a claimant knew or should have known that they had a cause of action is question for the jury); Manios v. Nelson, Mullins, Riley & Scarborough, LLP, 389 S.C. 126, 697 S.E.2d 644 (S.C. App 2010) (the date the statutes of limitations began to run involves questions for the jury ...). In denying Defendants' Motion for Summary Judgment, Plaintiffs still bear the burden of proving their Abuse of Process claim and the jury must determine when the Plaintiffs knew or should have known, "such that a person of common knowledge and experience would be on notice that some right of [theirs had] been

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invaded or that some claim against another party might exist. It is on that date the statute of limitations begins to run." *Moriarty,* 334 S.C. at 169.

In the instant case, there is obviously a conflict as to when the parties feel Plaintiffs knew or should have known that they had a claim against Defendants based upon willful acts within the process. Defendants' inferences in their favor and assertions not based on the face of the Complaint are in clear opposition to the facts asserted in Plaintiffs Second Amended Complaint, as well as their own denials respecting the newspaper article. As such, the issue is one for the jury.

Thus, Plaintiffs' Second Amended Complaint should not be dismissed due to the totality of circumstances alleged within it, which allege that material facts were actively withheld from the Plaintiffs and that they were placed on notice within 2008, which was within the statute of limitations window to bring their claims.

Equitable Estoppel Argument

South Carolina courts permit a statute of limitations defense to be defeated when the conduct of a defendant is so egregious that a mechanical approach of the limitations period would be manifestly unfair to justice. The South Carolina Supreme Court has noted that a determination of whether equitable estoppel bars a limitations defense is a question of law for the Court, not an issue for the jury. Gaymon v. Richand Memorial Hospital, 327 S.C. 66, 488 S.E.2d 332 (1997). An element of equitable estoppel as to a limitations period is "active concealment" by the defendants. Hedgepath v. American Tel & Tel.Co ., 348 S.C. 340, 559 S.E.2d 327 (Ct.App. 2001).

After learning of the existence of a secret MRI of Casey, performed at a North Carolina hospital using an assumed name and false date of birth, defense attorney Billy Gunn filed a Motion to Compel against Casey and Thompson, seeking the MRI results. Gunn's motion was

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filed on January 28, 2009. In response to the motion, Casey signed an affidavit admitting the secret MRI had occurred on February 4, 2007, but Thompson opposed production of the MRI results, arguing that the MRI results were "work product."

At a pretrial hearing before Circuit Court Judge Roger Couch on April 29, 2010, Thompson admitted his own involvement in setting up the MRI, instructing Casey to use a false name and false date of birth, and withholding the MRI from production.

Plaintiffs submit that the outrageousness of the conduct of the Defendants in this matter (both during this Casey litigation and the instant action) require a ruling, as a matter of law, that the statute of limitations in this action has not expired on the abuse of process of case, removing the issue from the trial of this matter.

CONCLUSION

Based upon the Affidavits William F. Alleyne, M.D., F.C.C.P., Gregory J. Feldman, M.D. and Upstate Lung and Critical Care Specialists, P.C., and Joseph A. Boscia, M.D. filed in this lawsuit, it is clear there is a genuine issue of material fact, hence, the moving party, Defendants in this case, is not entitled to a judgment as a matter of law. Based upon the law, affidavits, legal reasoning, all exhibits which are attached hereto, to be incorporated herein, and the evidence and all inferences which can be reasonably drawn therefore viewed in the light most favorable to the Plaintiffs, Defendant has not met the burden on proving the absence of a genuine issue of material fact required under Rule 56(c), SCRCP. Therefore, Defendants' Motion for Summary Judgment should be denied.

Respectfully submitted,

/s/ F. Milton Mann, Jr.
F. Milton Mann, Jr., Esquire
Attorney for Plaintiffs
151 Harold Fleming Court
Spartanburg, SC 29303
864-680-5079

Spartanburg, SC
June 20, 2017

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THE WARD LAW FIRM, P.A.
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FAX. NO. (864) 583-6981
E-mail: sking@wardfirm.com

Direct No. (864) 591-2364

November 19, 2008

Ray E. Thompson, Jr., Esquire
Noel Turner, III., Esquire
PO Box 3408
Spartanburg, SC 29304

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 Chuck and Noel:

You are leaving us with no alternative but to ask the Court for help in getting discovery moving forward in this case.

I think the defense has tried to cooperate in meeting your discovery needs but do not believe that you have done the same.

We have been trying to get Dr. Jantz, your Florida expert's deposition scheduled for over a year now. Tentatively, we have been told that it is going to be December 22, 2008, and we will agree to that.

Dr. Fogarty is a similar issue. We have been trying to get Dr. Fogarty's deposition taken also for a lengthy period of time. We have had three times which we agreed on. The first was cancelled two weeks before when you determined that you needed to declare him an expert. You wanted other fact witnesses' depositions including Feldman and Boscia taken before his deposition and we agreed.

Then, the depositions of Feldman and Boscia went so long that the Court Reporter did not get the transcriptions completed in the normal time and the deposition of Dr. Fogarty that had been scheduled was again cancelled and we agreed.

You then offered him as an expert for November 14, 2008, only to find out two days before that he had a long standing two week trial. I do not know how his deposition could have been set up with him knowing that he would not be here. When we learned of this latest complication, you agreed that we would re-schedule his deposition as soon as we return from

Boston. Despite phone calls from me on numerous occasions, I cannot even get a return phone call.

You are leaving me no alternative but to ask the Court for help.

Your prompt attention is requested.

I am

Very truly yours,

H. Spencer King
The Ward Law Firm, P.A.

HSK/mdh

cc: William U. Gunn, Esquire
F. Milton Mann, Jr., Esquire

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

****

DEPOSITION OF
H. SPENCER KING, III, ESQUIRE

****

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of H. SPENCER KING, III, ESQUIRE was taken on the 28th day of March, 2017, commencing at the hour of 10:31 a.m. in the offices of The Ward 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

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Q. And it's a minor point. So, anyway, I'd like you to look again at those two optional paragraphs that we've talked about that are contained on page 3 of the two particular notes, and I'd like to discuss for just a minute or two a comparison between the operative language of both of those paragraphs, please. So if you would take a look again and then let me ask you some questions.

A. I'm having trouble keeping pages back.

Q. Yes, sir.

A. Help me. What page am I on?

Q. You're at 2147 in Exhibit Number 95, and you're at page --

A. I've got that one.

Q. -- 18213. I know. I'm just putting it on the record so we make sure we get it there.

A. Okay. Okay.

Q. Would you agree with me the paragraph that is in Exhibit 20 attached to Dr. Fogarty's deposition wherein it says he undoubtedly had air emboli --

A. Okay.

Q. -- is a much stronger statement than what is contained in Exhibit Number 95?

MR. HENRIKSON:

Object to the form.

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EXAMINATION RESUMED BY MR. MANN:

A. Right. Correct.

Q. And, again, if you're looking to establish a medical malpractice case, what are the elements that you have to establish, Mr. King?

A. Most probable.

Q. Is undoubtedly, does that reach the level of most probable?

A. Yes.

Q. Now, looking back at page number 2147 of Exhibit 95, does that reach that level?

A. Not in my judgment.

Q. So that might be a motivation to rewrite that exhibit?

MR. HENRIKSON:

Object to the form.

MS. CHEEK:

Objection.

EXAMINATION RESUMED BY MR. MANN:

Q. Could it possibly be?

A. I can't -- I don't know what the motivation would be. I can't answer that.

Q. And that's fine. If you would have had both of those notes when you were taking Dr. Fogarty's deposition, would you have asked him as to the difference in that paragraph's language?

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JAMES W. HUDGENS
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SPARTANBURG, S.C. 29302

FAX. NO. (864) 583-8661
E-mail: sking@wardfirm.com

Direct No. 864-591-2364

June 16, 2006

Donna,
Invoice faxed 8-14-06.
Thanks,
Maria Kimbrell CMA

Lung and Chest Medical Associates
Medical Records Custodian
2030 North Church Place
Spartanburg, SC 29303

582-6703
ext. 502

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, or 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

PENGAD 800-631-6989
DEPOSITION EXHIBIT
99
KING

Lung & Chest-67

KING 002169

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June 20, 2006

VIA HAND DELIVERY

William U. Gunn, Esq.
P.O. Box 1897
Spartanburg, SC 29304

RE: William Mark Casey

Dear Billy:

Enclosed please find a complete copy of the following medical records for Mark Casey as delivered from his medical providers:

1. Spartanburg Regional Medical Center – Diagnostics 2000
2. Spartanburg Regional Medical Center – Admission 5/28/04
3. Spartanburg Regional Medical Center – Admission 6/3/04
4. Upstate Lung & Critical Care – Drs. Feldman & Boscia
5. Carolinas Ctr. For Advanced Mgmt. of Pain – Dr. Eugene Mironer
6. Lung and Chest Medical – Dr. Charles Fogarty
7. Dr. Glenn Scott, Orthopedist
8. Dr. Jay Grace, Licensed Counseling Psychologist
9. Piedmont Psychiatric – Dr. Jeffrey Smith
10. Foothills Family Medicine – Dr. Frank Gonda

The charge from Kinko's to make this copy is $37.54.

Also, my legal assistant, Ms. Karen Greer, has made several attempts to make contact with Spencer King with no success. If Spencer contacts you and wants a copy of these records, I have no objection to allowing him to copy them.

With warm regards,

I remain,
BURTS, TURNER, RHODES & THOMPSON

By: _____
RAY E. THOMPSON, JR.

RET:ar
Encl.
bcc: Mark Casey

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Lung and Chest Medical Associates

Charles M. Fogarty, M.D.
J. Douglas Clark, M.D.
Rico V.I. Mendoza, M.D.
J.P. 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
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. This can be present without exercise although 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 overlying the chest. This was misinterpreted as being in the chest and the patient underwent bronchoscopy. And when the bronchoscopy did not show definite abnormality, but rather an area of erythema, he was scheduled for a laser bronchoscopy. He had the laser bronchoscopy complicated by pneumomediastinum with a lengthy two hour anesthesia. Since then, although the patient recovered from his pneumomediastinum and bilateral pneumothoraces with chest tubes, intubation and mechanical ventilation, since then he has had continued difficulties concentrating, staying focused and with his general energy.

He is not smoking.

Current Medicines

1. Advair 250/50 twice daily.
2. Combivent 1 puff four times daily as needed.
3. Ultram 50 mg four times daily as needed chest pain.
4. Lipitor 10 mg daily.
5. Lortab 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 probably lose his job since he has been unable to hold gainful employment in the interim in large part because of his difficulties with concentrating, staying focused. Although the issue of his chest pain still remains unresolved.
(Continued to next page)

000440

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Family History

Coronary artery disease and hyperlipidemia.

Review of Systems

He did have a cardiac catheterization several years back but his CT during the May 2004 admission 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 SaO_2 is 96% 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. Bowel sounds present.
Extremities: No edema or clubbing.
Neurological: The patient had some readily apparent difficulty staying focused with answers to questions and had difficulties repeating numbers backward on a simple cognitive screen.

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.
2. Nausea and vomiting.
3. Persistent difficulty concentrating staying focused status post pneumomediastinum/pneumothorax complicating laser therapy in attempt for laser therapy for metallic artifact, which ultimately proved to be outside of chest.

(Continued to next page)

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WILLIAM CASEY
77168
07-21-05
Page Tree

Comment

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 squeezing he does have risk factors for coronary artery disease in terms of his hyperlipidemia, family history and previous smoking and he did have coronary calcification incidentally noted 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.

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. 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 may be moot and 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.

Plan

We will check back with the patient via phone with reference to his coronary calcium score and his gallbladder ultrasound. Further evaluation will proceed pending the results of above. Separately, we will review the patient's chart for him since he still has many questions about what happened during the hospital admission for his chest pain. We will review the patient's chart for him and try to put into lay language a summary of the chart with reference to what happened to him during the hospital admission for his chest pain last year.

Charles M. Fogarty, MD
CMF/ns
cc: Dr. Gonda

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG C. A. NO. 2006-CP-42-1728

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.

Deposition of ***WILLIAM MARK CASEY***

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 29th day of August, 2007, commencing at approximately 10:15 a.m. attended by counsel as follows:

A. I have dizziness, yeah. I don't faint that I'm aware of, no.
Q. But you do have dizzy ---
A. I do get dizzy. I have a lot of times now where I can be just a short -- a period of time as tying my shoe and I can feel a tightness in there and a light headedness that -- that -- yeah, get real dizzy. And that's only, you know, 30 seconds. But that's not a strenuous ---
Q. That's what?
A. Not caused by, you know, exertion. So -- but there are times when I'm bent over for some reason, for a short period of time that I'll get this quick tightness that's different than what I get when it's strenuous pain. But that's associated with some dizziness.
Q. Contemporaneous with the filing of this lawsuit, did you meet with a Herald-Journal reporter?
A. No.
Q. You did not?
A. No.
Q. Did you see an article that came out in the Herald-Journal about this?
A. Yeah, I did.
Q. The reporter did not interview you?

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A. No.
Q. You didn't give any written statements? I'm not asking of anything Mr. Thompson may have given him. I'm asking ---
A. I didn't talk to anybody from the Herald-Journal.
Q. You didn't talk to them?
A. No. No, I didn't like the way it -- I mean, that wasn't like the way it came out, you know, with brain damage. It doesn't -- whether I've got it or not, it just -- for the people -- it didn't -- I wasn't particularly pleased with it.
Q. Would you agree it wasn't accurate?
A. I didn't say it wasn't accurate. It's just, if you -- you know, for somebody who hadn't seen me and been around me or talked to me, it's like, hey, did you know Mark had brain damage? I don't -- I don't know. I mean, I don't know what's wrong. I just know something's wrong.
Q. But you don't know it's brain damage?
A. I don't know what it is. But I'm not saying it's not.
Q. On June the 25th -- we've talked throughout this deposition about a meeting with Dr. Boscia?
A. Uh-huh (affirmative response).
Q. And if I understand, you thought you were going to

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG C. A. NO. 2006-CP-42-1728

William Mark Casey,
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Deposition of ***WILLIAM MARK CASEY***

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 29th day of August, 2007, commencing at approximately 10:15 a.m. attended by counsel as follows:

based on what I was saying about, you know, conversations that people say we've had the night before and I don't know what they're talking about. And losses of time. Just -- there's been a bunch of different times that I just -- somebody'll say I said I was going to do something and this, that and the other and it hadn't happened. My daughter got -- now she's got a kid, it makes a little more sense to her about me. But -- what I was trying to tell her. But she got mad at me about a month ago and said, "Why don't you ever do anything with me?" And I said, "I don't want to go out of the house." And, you know, I don't have an explanation. I wish I did. And she said, you know, "I need -- I want to see my dad, but you don't act like my dad anymore." So -- it's more -- more of a -- you know, money's money, but ---

Q. I asked you about if anybody had told you you had brain damage.

A. No.

Q. Nobody has? Is that correct?

A. No.

Q. Now, the problems that I'm hearing, and you can add to or expand on, and I want to know how you are now versus how you were within several months -- a

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WED., MAY 31, 2006 SPARTANBURG HERALD-J

Man sues lung specialists; claims surgery was botched

By RACHEL E. LEONARD
Staff Writer

A 47-year-old Spartanburg County man says physicians at Upstate Lung and Critical Care Specialists carried out a botched, unnecessary procedure in 2004 that left him with permanent brain damage.

Spartanburg attorney Chuck Thompson, who represents William Mark Casey, said his client is now disabled and can no longer work. According to the lawsuit, a procedure in June 2004 caused Casey to suffer a perforated bronchial wall, allowing air bubbles to escape from his lung into blood vessels and into his brain.

The lawsuit names Spartanburg physicians Gregory Feldman, Joseph Boscia and anesthesiologist Devendra Shantha. All of the doctors declined to comment on the litigation.

Thompson said the incidents alleged in the lawsuit occurred after Casey's employer sent him to Spartanburg Regional Medical Center to be evaluated.

"(He) was having some chest pain with exertion, and as a precautionary measure, they sent him to the emergency room," Thompson said.

Under the belief that Casey had inhaled a metallic object, Boscia performed a flexible bronchoscopy on the man on May 28, 2004, the lawsuit states.

On June 3 of that year, Feldman performed a rigid bronchoscopy on Casey, using a laser, even though a CT scan showed there was no such object lodged in the lung, according to the complaint.

It was during that surgery that Casey suffered a perforated bronchial wall, and the procedure was continued even after Casey's vital signs began to destabilize, the lawsuit states.

The action was filed last week in the Court of Common Pleas for Spartanburg County.

#94

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG C. A. NO. 2006-CP-42-1728

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.

COPY

Deposition of ***CHARLES M. FOGARTY, M.D.***

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 22nd day of December 2008, commencing at approximately 10:15 a.m. attended by counsel as follows:

DEPOSITIONS AND ..., INC.
(864) 585-0642

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aggressive billing clerks at the Lung and Chest office. And they have -- and I wouldn't known which ones, but they have submitted bills for written reports for independent medical evaluations, which would be a little different. I mean, the first step's an IME and that would be a little bit different than a deposition.

Q. But you have not billed and do not intend to bill for your expert time in this case?

A. No, sir.

Q. Doctor, this Exhibit 19, which you prepared and we've talked about this.

A. Yes, sir.

Q. Was that prepared after this lawsuit was commenced or before?

A. That was prepared after the suit was commenced, sir.

Q. There was an article that appeared in the Spartanburg Herald Journal within days after this lawsuit. The article is dated May 31st, 2006. And it's by staff writer, Rachel Leonard. Have you seen that article?

A. I don't recall this. That's got a -- I probably did see this, because it's got a -- the "botched" word is kind of inflammatory. Yes, sir; I believe

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that I saw this.

Q. Did you discuss this -- the contents of this article with Ms. Leonard before it was published?

A. Before it was -- no, I don't even know who Ms. Leonard is.

Q. You've never -- you did not -- to your knowledge, you did not meet with Ms. Leonard ---

A. No.

Q. --- in preparation ---

A. I have no idea.

BY MR. KING:

I believe that's it.

BY MR. GUNN:

It's 5:10 civilian time now. I have some more questions, given the state of the testimony.

EXAMINATION BY MR. GUNN:

Q. Dr. Fogarty, I've got a -- and I may be mistaken, but I gathered from your testimony earlier when you were testifying about your background and what you did these days in practice, do you still do procedures that require patients to undergo general anesthesia?

A. Not generally. I do do bronchoscopies with conscious sedation. I'm hitting 65. I've had a corneal transplant. I'm looking -- there are guys

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From: GFeld3232 <GFeld3232@aol.com>
To: Bronchnu <Bronchnu@aol.com>
Cc: sking <sking@wardfirm.com>
Subject: Actual Procedure-Contradictiions.
Date: Tue, Sep 18, 2007 9:16 pm

.I think Fogarty will deny he told his sister/Thompson anything definitive..and if he did they took it out of context, unless Disability Evaluation is incriminating

Q. Has anyone discussed with you the specifics and the detail regarding the lasering that was done by Dr. Feldman?
A. I know my sister said she talked with him about it after. And she said he said he was -- had some trouble and was having to laser more than he had expected to. And she said something about, so you were like playing a video game in his chest or something? But that's not -- I mean, that was sort of what -- that's her saying that more lasers were fired, or whatever the term would be, than what was thought to be intended when they originally

0141

started, 'cause they couldn't get it. But there wasn't anything to get. That's only -- that's the only discussions that I've had. I haven't -- didn't discuss that with either, you know, Dr. Fogarty or Wilson Smith, as far as actual -- the performance or the surgery itself and what that was.

Q. But no one has told you that he just -- that he just indiscriminately was firing the laser?
A. He said he fired it a lot is all I know.

Q. Mr. Casey, I just have one more question, I think, just in follow up. Did anybody tell you that during the procedure that Dr. Feldman did, that when he was using the laser, that the laser was being fired when your vital signs were declining? Anybody ever tell you that?
A. My understanding is that at some point during -- 'cause Dr. Boscia's procedure was five minutes or something like that, and Dr. Feldman's was like an hour and 50 minutes.
Q. Right.
A. And that was way too long is all I know. Somewhere in there, medical -- the medical people who looked

MANN 001005

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25 at it, and I don't know which one or maybe more
0148
1 than one said that you can tell when my blood
2 pressure changed and something else changed that it
3 should not have gone any further than that. At
4 **what point that is, I do not know.**
5 **Q. Do you remember who told you that?**
6 **A. I'm not sure.**
7 **Q. It's one of the doctors you listed?**
8 **A. Yes, sir.**
9 **Q. And that the lasers were continuing to be fired ---**
10 **A. After that.**
11 **Q. --- after that?**
12 **A. Yes, sir.**
13 Q. And the second -- the one and a half hours was too
14 long for this procedure?
15 A. Way too long is what I understand.
16 Q. How long -- did somebody tell you how long it was
17 supposed to last?
18 A. I don't know. I don't remember. Just that was way
19 too long.
20 Q. But you don't ---
21 A. Dr. -- the flexible was two minutes and the rigid
22 was an hour and 50.
23 Q. But how long is the rigid supposed to take?
24 A. I don't know. I think about 25 -- 20 -- I don't
25 know. I don't remember what I was told on that. I
0149
1 don't know.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SPARTANBURG) C.A. # 06-CP-42-1728

WILLIAM MARK CASEY,

PLAINTIFFS,

VERSUS

GREGORY J. FELDMAN, M.D., JOSEPH A. BOSCIA, M.D., UPSTATE LUNG AND CRITICAL CARE SPECIALISTS, P.C., AND DEVENDRA SHANTHA, M.D.,

DEFENDANTS.

COPY

****

DEPOSITION OF

JOSEPH GLOVER GRACE, III

****

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF JOSEPH GLOVER GRACE, III, WAS TAKEN ON **THE 2ND DAY OF APRIL, 2008,** COMMENCING AT THE HOUR OF 10:20 A.M., IN THE LAW OFFICES OF HOLCOMBE BOMAR, SPARTANBURG, SOUTH CAROLINA:

REPORTED BY: MARCIE L. SMITH, VERBATIM REPORTER.

FREELANCE REPORTING SERVICES
Certified Verbatim Reporters
Post Office Box 170637
Spartanburg, South Carolina 29301
(864) 587-7050 OR (864) 706-1241
FreelanceRpt@charter.net

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Q. ALL RIGHT, SIR. DO YOU FEEL LIKE MR. CASEY IS TOTALLY AND PERMANENTLY DISABLED FROM ANY KIND OF WORK?

A. YES, SIR.

Q. SO HE NEVER WILL BE ABLE TO GO BACK TO WORK DOING ANYTHING?

A. I HAVE REALLY GIVEN A LOT OF CONSIDERATION TO MARK OVER THE YEARS AS TO WHAT I THOUGHT HE COULD POSSIBLY DO. THE FIRST THING OBVIOUSLY WE HAD TO DO IS RULE OUT MICHELIN. AND FRANKLY, I THOUGHT, YOU KNOW, MARK HAS SOME BACK PROBLEMS AND A BULGING DISC. I'M NOT SURE HOW MUCH LONGER HE COULD WORK FOR MICHELIN ANYWAY. BUT CERTAINLY HE COULD HAVE DONE SOMETHING VERY DIFFERENT. THAT, AS I UNDERSTAND IT, HE WAS AN OUTSTANDING EMPLOYEE WITH MICHELIN, AND THAT THE ONLY THING THAT GOT MARK IN TROUBLE IS HE WAS FAIRLY OUTSPOKEN. AND BOY, THAT'S ANYTHING BUT MARK NOW. BUT THAT HE WAS MADE A SUPERVISOR, AND I THINK THAT APPOINTMENT WAS TAKEN AWAY FROM HIM BECAUSE HE WAS TOO OUTSPOKEN. THAT -- BUT HE TOLD ME THAT OCCASIONALLY THAT HE WOULD GET HIS JOB DONE. HE WAS MAKING TRUCK WHEELS. AND HE WAS SO -- HE WAS SO QUICK AT DOING THAT, THAT HE WOULD GET THROUGH AND HAVE TIME TO GO TO THE BREAK AREA OR WHEREVER. AND OCCASIONALLY SOME OF THE PEOPLE WOULD BE A LITTLE RESENTFUL OF MARK. BUT BASICALLY FROM WHAT I UNDERSTAND, HE WAS A PRETTY LIKABLE GUY. BUT I'VE

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THOUGHT ABOUT WHAT ELSE HE COULD DO. AND CERTAINLY, YOU KNOW, FROM HIS COMMENTS AND FROM INDICATIONS THAT -- SOMETHING I READ I GUESS FROM DR. FOGARTY INDICATED THAT HE HAD THE LUNGS BACK IN THE FIRST YEAR THERE, '84, THAT HE SEEMED TO HAVE THE LUNG CAPACITY OF A 60 YEAR OLD MAN. AND I GUESS ---

Q. '04 YOU'RE TALKING ABOUT?

A. '04, RIGHT. AND I GUESS THAT -- BUT I HAVE NOT HEARD THAT HE HAS IMPROVED. NOTHING HE'S SAID OR DONE HAS INDICATED TO ME ANY IMPROVEMENT. SO I THOUGHT WELL, YOU KNOW, HE'S GOT COMPROMISED LUNG FUNCTION. HE HAS COMPROMISED COGNITIVE FUNCTION. EMOTIONALLY HE DOESN'T DEAL WITH STRESS WELL AT ALL. AND I'M THINKING COULD HE HANDLE A TELEPHONE JOB AT HOME. AND I THOUGHT, YOU KNOW, THE FIRST TIME OR TWO THAT SOMEBODY GIVES HIM A HARD TIME, MARK'S GOING TO CALL AND QUIT. AND HE'S NOT GOING TO CALL AND QUIT BECAUSE HE'S THAT ARROGANT. HE'S GOING TO CALL AND QUIT BECAUSE HE'S JUST SO FRUSTRATED AT HIS INEFFECTIVENESS THAT -- AND IF YOU WANT TO SAY THAT PART OF THAT IS THAT HE FEELS SORRY FOR HIMSELF. I'M SURE THERE IS THAT ELEMENT. I THINK THERE'S NO QUESTION. BUT I'VE ALSO THOUGHT MANY TIMES, TOO, I'VE THOUGHT, WOW, IF THIS HAD BEEN ME, I CERTAINLY WOULD BE FEELING SORRY FOR MYSELF, TOO. PARTICULARLY IF I FELT LIKE MY LIVELIHOOD HAD BEEN

Mark Casey 12-2-04

motivated yesterday to clean his shower (1 shrub) and 3½ hrs of house work. However, M. got a peculiar sensation in chest.

Dr Fogarty performed stress test on M. C hooked and breathing tube, said M. was "functioning (lung capacity?) like a 60 yrs old person." Dr F has several other tests scheduled.

Seems brighter and more affable

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Marla Casey 11-11-04

saw Jeff Smith yesterday who switched to Cymbalta and Ambien

Charlie Fogarty is feeling somewhat dx of Costrochondritis

Dx: Major Depressive Disorder, Single Episode (296.23)

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Mark Casey 11-5-04

Seeing Church Thompson as an attorney
Charlie Fogarty is helping Carol evaluate
the medical treatment he has received
and the outcome

off
apt 5 1/2 with next week - Wed.

Mr. Casey has much calmer now
but no ↑ in motivation.

Feels blasea physically

has developed a social phobia

150 mg. on Zoloft

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THE WARD LAW FIRM, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 3168
SPARTANBURG, SOUTH CAROLINA 29304

JAMES W. HUDGENS
GENE ADAMS
H. SPENCER KING
ROBERT E. DAVIS*
JASON IMHOFF
JOHN ROGERS

*ALSO MEMBER NORTH CAROLINA BAR

RUFUS M. WARD (1908-1988)
L. PAUL BARNES (1931-1989)

233 SOUTH PINE STREET
SPARTANBURG, S.C. 29302

FAX. NO. (864) 583-6961
E-mail: sking@wardfirm.com

Direct No. (864) 591-2364

November 19, 2008

Ray E. Thompson, Jr., Esquire
Noel Turner, III., Esquire
PO Box 3408
Spartanburg, SC 29304

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 Chuck and Noel:

You are leaving us with no alternative but to ask the Court for help in getting discovery moving forward in this case.

I think the defense has tried to cooperate in meeting your discovery needs but do not believe that you have done the same.

We have been trying to get Dr. Jantz, your Florida expert's deposition scheduled for over a year now. Tentatively, we have been told that it is going to be December 22, 2008, and we will agree to that.

Dr. Fogarty is a similar issue. We have been trying to get Dr. Fogarty's deposition taken also for a lengthy period of time. We have had three times which we agreed on. The first was cancelled two weeks before when you determined that you needed to declare him an expert. You wanted other fact witnesses' depositions including Feldman and Boscia taken before his deposition and we agreed.

Then, the depositions of Feldman and Boscia went so long that the Court Reporter did not get the transcriptions completed in the normal time and the deposition of Dr. Fogarty that had been scheduled was again cancelled and we agreed.

You then offered him as an expert for November 14, 2008, only to find out two days before that he had a long standing two week trial. I do not know how his deposition could have been set up with him knowing that he would not be here. When we learned of this latest complication, you agreed that we would re-schedule his deposition as soon as we return from

Boston. Despite phone calls from me on numerous occasions, I cannot even get a return phone call.

You are leaving me no alternative but to ask the Court for help.

Your prompt attention is requested.

I am

Very truly yours,

H. Spencer King
The Ward Law Firm, P.A.

HSK/mdh

cc: William U. Gunn, Esquire
F. Milton Mann, Jr., Esquire

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#94

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG C. A. NO. 2006-CP-42-1728

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.

COPY

Deposition of ***CHARLES M. FOGARTY, M.D.***

Pursuant to notice of deposition and/or agreement in the above-entitled case, a deposition was taken on the 22nd day of December 2008, commencing at approximately 10:15 a.m. attended by counsel as follows:

DEPOSITIONS AND ..., INC.
(864) 585-0642

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Spencer, are you going to take a minute to go through those?

BY MR. KING:

Yeah, that's fine.

BY MR. GUNN:

I'm not suggesting you to do that.

BY MR. KING:

That's probably a good idea. Yeah, we'll go off the record now.

BY VIDEOGRAPHER:

Off the record at 10:45 a.m.

(OFF THE RECORD).

BY VIDEOGRAPHER:

On the record at 11:02 a.m.

DIRECT EXAMINATION RESUMED BY MR. KING:

Q. Dr. Fogarty, we went off the record a minute ago for you to produce records that you were asked to bring today. And we've had an off the record discussion. First off, you have your chart of treatment of Mr. Casey. And whereas my records did not show that you saw him after 2006. From the records you've brought today, you have continued to see him, have you not?

A. Yes, sir. As I mentioned my kind of graph (phonetic) discussions, after seeing Mr. Casey in

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June or whatever of '05, I continued to see him basically at six-month intervals. I've continued to see him at six-month intervals up to the present.

Q. And the most recent note that I have in your records is December 8th, 2008; ---

A. Yes, sir.

Q. --- is that correct?

A. A couple weeks ago.

Q. And you've told us that in the last year or two you have gone to computer generated records?

A. Yes, sir.

Q. And in preparation for today's deposition you went into the computer and printed out the records of visits?

A. I didn't do it, but I asked our office manager. Otherwise you would have nothing for this year.

BY MR. KING:

We'll mark as the next exhibit the records from Dr. Fogarty's office, beginning with the visit of January 3rd, 2007 through the record visit of December 8, 2008. That will be -- what is that? What's that number?

BY COURT REPORTER:

Exhibit 2.

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January 7, 2005

SENT BY FAX (864) 271-6155 & US MAIL

Ms. Camille Klein
Parham Smith & Dodson, LLC
P. O. Box 2800
Greenville, SC 29602

Re: **William Mark Casey**
DOB: [redacted]/58
SSN: [redacted]

Dear Camille:

This is in follow-up to our telephone conversation of yesterday. I had Mr. Casey to come in to sign a medical authorization for the release of his medical records to Lung & Chest, the medical office out of which Dr. Charles Fogarty and Dr. Wilson Smith practice pulmonary medicine. Dr. Smith is the physician who began treating Mark following the termination of the physician/patient relationship between Mark and Dr. Feldman and Feldman's office. I understand that you have all of Mark's medical records with the exception of the records from Lung & Chest. Dr. Fogarty carried out a metabolic stress test on Mark which he has told me was indicative of severe and residual pulmonary injury and that Mark has the pulmonary function of an individual 60 years of age or older, although he is only 46. He also told me that Mark would never be able to return to any type of employment of a physical nature and he suspects that Mark has sustained brain damage. Dr. Fogarty has not yet completed the written report from the metabolic stress test and he would like the benefit of Mark's medical records to review before he dictates his report. Dr. Fogarty's metabolic stress test report will be incorporated into Mark's treatment file with Dr. Smith. Because of Dr. Fogarty's prior relationship with Dr. Feldman he believes it would be in Mark's best interest that he not testify either on the standard of care or his damages. However, Dr. Fogarty has great concern for Mark and the tragic and severe injuries and residual problems caused by medical errors which resulted in the pulmonary injury and possible brain damage to Mark. Dr. Fogarty has stated that he would like to meet with Mike and I (and I hope you will also attend) one night to do a review of the case and I think it would be very helpful to us to take him up on this opportunity and invitation. If you will let me know when you and Mike are ready to schedule the meeting, please contact me and I will contact Dr. Fogarty to set it up. I have requested Mark's medical file from Michelin Corporation where I understand he underwent pulmonary tests, I believe, on alternating years during his 20+ years of employment with Michelin. I will forward these to you upon receipt. I am also enclosing Mark's high school records from Dorman High School where he graduated. Mark has been a personal friend since high school and from a layman's perspective it appears very obvious

to me that he has sustained brain injuries affecting his personality, behavior, ability to control his emotions, memory, and other cognitive problems. My thoughts are that we may want to schedule Mark for a neuropsychological work-up. Please let me know your's and Mike's thoughts on this. As to the complete copy of medical records that Dr. Fogarty would like to receive, I would appreciate your forwarding those records to me as I would like to make a copy for my file and then I will forward the other copy to Dr. Fogarty at Lung & Chest.

Please feel free to call me at any time.

Thank you for sending me the medical summary which you prepared in this case. The summary is most impressive and I can see where your medical knowledge is invaluable in working with Mike.

With warm regards, I remain

Sincerely,

BURTS, TURNER, RHODES AND THOMPSON

By:_____
RAY E. THOMPSON, JR.

RET/dp
Enc.

bcc: Mr. William Mark Casey

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#94

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG C. A. NO. 2006-CP-42-1728

William Mark Casey,

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BY VIDEOGRAPHER:

Off the record at 10:45 a.m.

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THOMPSON 017711

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BY COURT REPORTER:

Exhibit 2.

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BY MR. GUNN:

Spencer, is that the one with 345 lines? The pages aren't numbered.

DIRECT EXAMINATION RESUMED BY MR. KING:

Q. Is that correct? To answer Mr. Gunn's question, it actually ends ---

A. Yes, sir.

Q. --- on line 345?

A. Yes, sir. I knew -- this is a new software program. I found the button to line the page, but I didn't find the button to number the page, so ---

Q. Doctor, have you ---

BY MR. GUNN:

That would be preferable.

DIRECT EXAMINATION RESUMED BY MR. KING:

Q. Have you rendered any other written reports in this case?

A. I did not render a written report, but I did render a list of findings, conclusions, questions. As I mentioned, that's a two-page list that I failed to produce. I can produce it. I think -- I don't know if it's two pages or three pages. But ---

BY MR. TURNER:

That is -- I want to say it's five pages.

BY THE WITNESS:

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which did not show any abnormality. Now, he did have risk factors. He had -- he's a smoker. He had hyperlipidemia. His CT actually showed some coronary calcification. And he is similar to a fair number of patients I have who have chronic pain and you're kind of telling them that, I'll prescribe pain medicine, but this is a chronic condition and you really need to learn to live with the condition on the one hand, but recognize that like the person who cries wolf one time too many, fits -- there's always the potential that chest pain could shift from being due to your chest wall to heart trouble. So we do need to keep an eye on things periodically. So the way we left from his cardiopulmonary end is that particularly since Dr. Smith was chief of staff at the time and was fairly busy, that I would be willing to see him. Each time I saw him, it took some time. Had to write notes. He seemed easily distracted. So it was -- each visit was a time consuming event. But I agreed to see him on a six-month basis. And I think I'm -- I'm -- probably was aware somewhere in there of the potential for drug abuse. Because I told him, "If this is a chronic pain condition and you need to realize that you cannot over take --

over use the medicine. Because if you do, then you're going to be labeled as a drug abuser." And we go from -- I mean, it can happen to a lot of people. And so on that end I've been seeing him essentially every six months. And he continues to have aches and pains that -- on the other side of the coin, he had aches and pains when he was working. And he was taking the Lortab. So I've been refilling his Lortab. He was taking Lortab prior to all of this happening.

Q. And you're still seeing him?

A. Yes. And -- so my mission is to refill his Lortab -- is to listen to his lungs, check his lung function tests, go over his history, make sure that -- he's still smoking. Make sure that his lungs haven't gotten any worse. That his heart's not any worse. And it's appropriate for me to continue refilling the Lortab as opposed to saying, "You need to go back and have another heart catheterization."

Q. From a pulmonary standpoint, is there any permanent injury to his lungs or pulmonary function not related to his cigarette abuse?

A. No, sir. That was one of the things that I told him, that the lungs are -- were blessed and

THOMPSON 017768

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wonderful organs, and if you don't abuse it with the smoking, you can have an operation and the surgeon can remove a whole lobe of your lung and you can still function normally. So you can still have lung function tests that come out pretty close to normal. So each visit I'm encouraging him to quit smoking and, you know, your lungs are still okay, and don't -- don't make it worse.

Q. And other than filling the Lortab for aches and pains, anything else you were doing medically?

A. Just making sure that his lung function is stable and that there's nothing changed in the character of his pain to suggest that it's other than chest wall. And continuing to really bug him on the smoking. And I think Dr. Gonda -- faxing copies of our office visits to Dr. Gonda, and I believe he's keeping an eye on the cholesterol and his other general medical problems as well.

Q. Doctor, can you look at your chart, please, sir, and tell me what medications have been prescribed by your group for Mr. Casey?

A. Well, I'm -- right now, I'm probably the only -- the only medicines I'm personally aware of prescribed would be refills on the Lortab, because he's not on any pulmonary medicines. I doubt that

THOMPSON 017769

Hydrocodone?

A. Lortab would be a brand name and Hydrocodone would be the generic. I'd have to look it up to be sure, but I believe Hydrocodone is the ingredient of Lortab.

Q. Doctor, you found and handed to me two pages.

A. Yes, sir.

Q. And are those the two pages that we had talked about that you thought we had not ---

A. Yes, sir.

BY MR. KING:

Mark those as an exhibit.

BY COURT REPORTER:

Number 19.

(COURT REPORTER MARKS TWO-PAGE DOCUMENT AS DEFENDANTS' EXHIBIT NO. 19; ATTACHED TO DEPOSITION).

(COURT REPORTER MARKS THREE-PAGE DOCUMENT AS DEFENDANTS' EXHIBIT NO. 20; ATTACHED TO DEPOSITION).

DIRECT EXAMINATION RESUMED BY MR. KING:

Q. Dr. Fogarty, I'm going to hand you your office note of July 21st, 2005.

A. Yes, sir.

Q. The Bates number is 440 through 438. Doctor, let me go to page three of your report, under the broad heading of "Comment."

THOMPSON 017772

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A. I see it's page "tree."
Q. Page three, all right. The third paragraph under "Comment," would you read that to us, please, sir?
A. Sure, "With reference to the patient's difficulty concentrating, he undoubtedly had air emboli given his lengthy duration of anesthesia and laser perforation of the endrotracheal tree with resultant leakage of air into extra pleural and vascular extra pleural mediastinal and vascular 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 may be moot and 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."
Q. Doctor, are there diagnostic studies or tests that would assist in diagnosing a neurological deficit?
A. Formal neurocognitive -- there are formal tests that can be done for neurocognitive impairment. Some of the references I gave you indicate this is a area that's on -- research that's ongoing and as far as what battery of tests to use, I'm not a psychologist or a psychiatrist and there may be some debate about the best ways to make the

diagnosis and monitor any progress.
Q. But aren't there diagnostic studies such as MRI, CAT scans, EEGs, that are ---
A. Those things are generally normal in neurocognitive impairment.
Q. Have you seen any diagnostic studies of the brain done on Mr. Casey?
A. Not to my knowledge.
Q. Would that helpful?
A. Based on my experience with the other patients that I've taken care of with this ailment, they've spent a lot of money and the tests didn't show anything.
Q. Other patients you've mentioned ---
A. I've got about a half dozen patients with -- this is a fairly common occurrence after open heart surgery. And obviously we have a lot of COPD patients that have had open heart surgery and we see them back.
Q. Do you have any patients who have had a bronchoscope that you thought had ---
A. Oh, no, sir. This ---
Q. This is the only one that ---
A. This is a kind of a only case in the world situation here.
Q. But do you know whether or not Mr. Casey has seen a

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A. I might need to clarify when I say "there are other articles." On a Google search, there are a lot of references that I -- I have references that I have not printed out. But I can print them out for you, sir..

BY MR. KING:

Would you -- Chuck, Noel, would you provide us ---

BY MR. THOMPSON:

Yeah.

DIRECT EXAMINATION RESUMED BY MR. KING:

Q. You're still treating Mr. Casey?

A. Yes, sir.

Q. And you're still prescribing medication to him?

A. Yes, sir.

Q. And also Dr. Smith, a psychiatrist, is prescribing medication?

A. Yes, sir.

Q. And Dr. Gonda, his primary care physician?

A. Yes, sir.

Q. Any others that you know of?

A. I'd have to look at the medicine list. What I do know is that when I started out he was on -- I was prescribing some Advair and some pulmonary medicines but we concluded that since his lung function was normal, that there really wasn't any

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need for me to continue prescribing the pulmonary medicines.

Q. Who is monitoring his medication intake?

A. Well, I would say each physician is responsible for monitoring what he's prescribing and notifying the other physicians. And as I mentioned, I've mentioned particularly now that Mr. Casey's on Adderall, because he wasn't on Adderall when I saw him initially. And that's another controlled substance. And in general our office, while we may prescribe controlled substances, we try to have one physician prescribe all the controlled substances. So, you know, our next step here would be to notify Dr. Smith, I believe the Greenville psychiatrist, and I will defer prescribing the refills on the Lortab so he can coordinate that with what he's seeing him on the Adderall.

Q. So you would agree that one physician, when there are multiple physicians involved giving various medications, that one should be in control?

A. Well, it requires extra vigilance if you're sharing it. And if Rush Limbaugh can get into trouble with inadvertent duel doctors, it can happen to anybody.

Q. There could be reactions?

A. Well, I think, first of all, it's not very

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aggressive billing clerks at the Lung and Chest office. And they have -- and I wouldn't known which ones, but they have submitted bills for written reports for independent medical evaluations, which would be a little different. I mean, the first step's an IME and that would be a little bit different than a deposition.

Q. But you have not billed and do not intend to bill for your expert time in this case?

A. No, sir.

Q. Doctor, this Exhibit 19, which you prepared and we've talked about this.

A. Yes, sir.

Q. Was that prepared after this lawsuit was commenced or before?

A. That was prepared after the suit was commenced, sir.

Q. There was an article that appeared in the Spartanburg Herald Journal within days after this lawsuit. The article is dated May 31st, 2006. And it's by staff writer, Rachel Leonard. Have you seen that article?

A. I don't recall this. That's got a -- I probably did see this, because it's got a -- the "botched" word is kind of inflammatory. Yes, sir; I believe

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THOMPSON 017906

that I saw this.

Q. Did you discuss this -- the contents of this article with Ms. Leonard before it was published?

A. Before it was -- no, I don't even know who Ms. Leonard is.

Q. You've never -- you did not -- to your knowledge, you did not meet with Ms. Leonard ---

A. No.

Q. --- in preparation ---

A. I have no idea.

BY MR. KING:

I believe that's it.

BY MR. GUNN:

It's 5:10 civilian time now. I have some more questions, given the state of the testimony.

EXAMINATION BY MR. GUNN:

Q. Dr. Fogarty, I've got a -- and I may be mistaken, but I gathered from your testimony earlier when you were testifying about your background and what you did these days in practice, do you still do procedures that require patients to undergo general anesthesia?

A. Not generally. I do do bronchoscopies with conscious sedation. I'm hitting 65. I've had a corneal transplant. I'm looking -- there are guys

THOMPSON 017907

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SPARTANBURG) C.A. # 06-CP-42-1728

WILLIAM MARK CASEY,

PLAINTIFFS,

VERSUS

GREGORY J. FELDMAN, M.D., JOSEPH A. BOSCIA, M.D., UPSTATE LUNG AND CRITICAL CARE SPECIALISTS, P.C., AND DEVENDRA SHANTHA, M.D.,

DEFENDANTS.

COPY

****

DEPOSITION OF

JOSEPH GLOVER GRACE, III

****

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF JOSEPH GLOVER GRACE, III, WAS TAKEN ON **THE 2ND DAY OF APRIL, 2008**, COMMENCING AT THE HOUR OF 10:20 A.M., IN THE LAW OFFICES OF HOLCOMBE BOMAR, SPARTANBURG, SOUTH CAROLINA:

REPORTED BY: MARCIE L. SMITH, VERBATIM REPORTER.

FREELANCE REPORTING SERVICES
Certified Verbatim Reporters
Post Office Box 170637
Spartanburg, South Carolina 29301
(864) 587-7050 OR (864) 706-1241
FreelanceRpt@charter.net

Q. ALL RIGHT, SIR. DO YOU FEEL LIKE MR. CASEY IS TOTALLY AND PERMANENTLY DISABLED FROM ANY KIND OF WORK?

A. YES, SIR.

Q. SO HE NEVER WILL BE ABLE TO GO BACK TO WORK DOING ANYTHING?

A. I HAVE REALLY GIVEN A LOT OF CONSIDERATION TO MARK OVER THE YEARS AS TO WHAT I THOUGHT HE COULD POSSIBLY DO. THE FIRST THING OBVIOUSLY WE HAD TO DO IS RULE OUT MICHELIN. AND FRANKLY, I THOUGHT, YOU KNOW, MARK HAS SOME BACK PROBLEMS AND A BULGING DISC. I'M NOT SURE HOW MUCH LONGER HE COULD WORK FOR MICHELIN ANYWAY. BUT CERTAINLY HE COULD HAVE DONE SOMETHING VERY DIFFERENT. THAT, AS I UNDERSTAND IT, HE WAS AN OUTSTANDING EMPLOYEE WITH MICHELIN, AND THAT THE ONLY THING THAT GOT MARK IN TROUBLE IS HE WAS FAIRLY OUTSPOKEN. AND BOY, THAT'S ANYTHING BUT MARK NOW. BUT THAT HE WAS MADE A SUPERVISOR, AND I THINK THAT APPOINTMENT WAS TAKEN AWAY FROM HIM BECAUSE HE WAS TOO OUTSPOKEN. THAT -- BUT HE TOLD ME THAT OCCASIONALLY THAT HE WOULD GET HIS JOB DONE. HE WAS MAKING TRUCK WHEELS. AND HE WAS SO -- HE WAS SO QUICK AT DOING THAT, THAT HE WOULD GET THROUGH AND HAVE TIME TO GO TO THE BREAK AREA OR WHEREVER. AND OCCASIONALLY SOME OF THE PEOPLE WOULD BE A LITTLE RESENTFUL OF MARK. BUT BASICALLY FROM WHAT I UNDERSTAND, HE WAS A PRETTY LIKABLE GUY. BUT I'VE

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THOUGHT ABOUT WHAT ELSE HE COULD DO. AND CERTAINLY, YOU KNOW, FROM HIS COMMENTS AND FROM INDICATIONS THAT -- - SOMETHING I READ I GUESS FROM DR. FOGARTY INDICATED THAT HE HAD THE LUNGS BACK IN THE FIRST YEAR THERE, '84, THAT HE SEEMED TO HAVE THE LUNG CAPACITY OF A 60 YEAR OLD MAN. AND I GUESS ---

Q. '04 YOU'RE TALKING ABOUT?

A. '04, RIGHT. AND I GUESS THAT -- BUT I HAVE NOT HEARD THAT HE HAS IMPROVED. NOTHING HE'S SAID OR DONE HAS INDICATED TO ME ANY IMPROVEMENT. SO I THOUGHT WELL, YOU KNOW, HE'S GOT COMPROMISED LUNG FUNCTION. HE HAS COMPROMISED COGNITIVE FUNCTION. EMOTIONALLY HE DOESN'T DEAL WITH STRESS WELL AT ALL. AND I'M THINKING COULD HE HANDLE A TELEPHONE JOB AT HOME. AND I THOUGHT, YOU KNOW, THE FIRST TIME OR TWO THAT SOMEBODY GIVES HIM A HARD TIME, MARK'S GOING TO CALL AND QUIT. AND HE'S NOT GOING TO CALL AND QUIT BECAUSE HE'S THAT ARROGANT. HE'S GOING TO CALL AND QUIT BECAUSE HE'S JUST SO FRUSTRATED AT HIS INEFFECTIVENESS THAT -- AND IF YOU WANT TO SAY THAT PART OF THAT IS THAT HE FEELS SORRY FOR HIMSELF. I'M SURE THERE IS THAT ELEMENT. I THINK THERE'S NO QUESTION. BUT I'VE ALSO THOUGHT MANY TIMES, TOO, I'VE THOUGHT, WOW, IF THIS HAD BEEN ME, I CERTAINLY WOULD BE FEELING SORRY FOR MYSELF, TOO. PARTICULARLY IF I FELT LIKE MY LIVELIHOOD HAD BEEN

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Mark Casey 12-2-04

motivated yesterday to clean his shower (1 dub) and 3½ hrs of house work. However, M. got a peculiar sensation in chest.

Dr. Fogarty performed stress test on M. C. bike and breathing tube. Said M. was "functioning (lung capacity?) like a 60 yr. old person." Dr. F. has several other tests scheduled.

Seems brighter and more affable.

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Merle Casey 11-11-04

Saw Jeff Smith yesterday who switched to Cymbalta and Ambien

Charlie Fogarty to Keizley Emeworthy Dx of Costrochondritis

Dx: Major Depressive Disorder, Single Episode (296.23)

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Marla Casey 11-5-04

Seeing Church Thompson as an attorney

Charlie Fogarty is helping Carol evaluate the medical treatment Dr. has received and the outcome

Jeff

Appt 5 Smith next week - Wed.

She says he's much calmer now but no ↑ in motivation.

Feels basically physically.

has developed a social phobia

150 mg. on Zoloft

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

****

DEPOSITION OF
H. SPENCER KING, III, ESQUIRE

****

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of H. SPENCER KING, III, ESQUIRE was taken on the 28th day of March, 2017, commencing at the hour of 10:31 a.m. in the offices of The Ward Law Firm, Attorneys at Law, Spartanburg, South Carolina.

REPORTED BY: Rosalind Poole Walters,
Certified Verbatim Reporter-Master

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Certified Verbatim Reporters
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Greenville, South Carolina 29606
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A. Yes.
Q. If it is a testifying expert witness, any communication that you have with that expert witness is discoverable, is it not?
A. Correct. Correct.
Q. And any information that's prepared by that expert witness is also discoverable?
A. Correct.
Q. And in this case, would you have requested for those informations; and that is information prepared by expert witnesses and disseminated to the plaintiff's team?
A. Sure. I mean, that's a standard question in my initial interrogatories.
Q. Okay. Let me see, and I may take a minute doing this because I did not mark this one and I didn't memorize where it is. So let's go off the record for about three to five minutes.
(Off the Record; 10:46 -- 10:50 a.m.)
(Deposition Exhibit Number 93 marked)
EXAMINATION RESUMED BY MR. MANN:
Q. Mr. King, can you please identify that document for us?
A. That was the subpoena that was issued for the de bene esse deposition of Dr. Fogarty signed by me.
Q. And would you tell us, please, how many pages that

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put the boxes right back there in the corner where Dr. Fogarty happens -- of course, he was -- I think he was probably sitting over here somewhere, probably where I am, but we put the records over there. So that's kind of a memory peg that I've got that I think that's why -- I do think we took it here. And that's interesting. I have -- if you ask me anything else about the deposition, I'm going to -- my memory's not going to be that good. I don't know why I focused on that, but...

Q. Yes, sir, and for what it's worth, I have that recollection, also. I do remember it being in this room. Looking back at the third page of what we marked as Exhibit 93, you requested certain things to be brought to the deposition, did you not?

A. Yes.

Q. And can you tell us what those things were that you requested? And I'm fine with generalities or I'm fine with you reading it, but can you tell us what you were looking for to be brought to Dr. Fogarty's deposition?

A. Well, first off, you're asking for records of treatment generated by the witness, in this case a physician, and next would be any reports that he has rendered. Those reports to me include both any medical reports that he has generated based upon his treatment either for the file or to any third parties and also includes reports

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

****

DEPOSITION OF

H. SPENCER KING, III, ESQUIRE

****

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of H. SPENCER KING, III, ESQUIRE was taken on the 28th day of March, 2017, commencing at the hour of 10:31 a.m. in the offices of The Ward Law Firm, Attorneys at Law, Spartanburg, South Carolina.

REPORTED BY: Rosalind Poole Walters,
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A. I saw three copies in there.
Q. And we're going to talk about that a good little bit, but you will definitely accept that there's only one copy that is attached to Dr. Fogarty's deposition?
A. Yes.
Q. Quite frankly, it's not the copy that was provided to you through your discovery efforts?
MR. HENRIKSON:
Object to the form.
EXAMINATION RESUMED BY MR. MANN:
Q. And let me be more specific, because I think Matt has a good point. So we previously looked at your medical notebook.
A. Right.
Q. And I have attached to your deposition Exhibit 95.
A. Correct.
Q. And it is my understanding from your prior testimony that these are the records that you received through your discovery efforts?
A. Correct. That's what I'm -- that's what I'm having hesitation on is -- and I realize it's marked King 002147. That is -- that is a copy of what is in my medical record notebook.
Q. Yes, sir.
A. Then that's the only one -- that's the only one I had.

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Q. And you do understand that these two are not the same.
A. Correct.
Q. And as we stated, other than preparing for this deposition --
A. Correct.
Q. -- with the information provided to you --
A. Yes.
Q. -- you have never noticed --
A. No.
Q. -- that there were multiple copies.
A. No. No.
Q. Let me ask you -- and, again, let's make sure. Exhibit 95, the one that's in your hand, Mr. King.
A. Right.
Q. Looking at the first page of that 7/21/05 note, I see above the King 002145, I see a Lung and Chest dash 43. Is that a typical Bates stamping that your office did at this time? And I do understand this has been almost 10 years ago.
A. Yes. Yes.
Q. So you have no reason to doubt that that was not a record that you received?
A. No.
Q. And, quite frankly, it would have been through your discovery efforts?

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A. Correct.
Q. Okay. Have you run into other cases, medical malpractice cases where there have been multiple copies of an office note dated the exact same date?
A. I don't recall another one.
Q. Is there to your understanding -- because, again, you provide medical defense to physicians. Is there a way to modify a medical record?
MS. CHEEK:
Objection.
EXAMINATION RESUMED BY MR. MANN:
A. For the physician to modify a medical record?
Q. Yes, sir. I did ask that question poorly. So based upon your expertise as a medical malpractice attorney, is there an accepted fashion within the medical community for a physician to modify an office visit record?
A. The practice that I would recommend and that I have seen is if there is a modification that the modification is noted, initialed, and dated.
Q. That's not what occurred between these two records, is it?
A. Doesn't appear to be, no.
Q. And, again, during Dr. Fogarty's deposition he produced, for lack of a better term, the undoubtable

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note. Correct? Which is marked Number 20 as an exhibit to his deposition.

A. I cannot tell you without reading my -- going back through and reading Dr. Fogarty's deposition, I cannot tell you where I got Exhibit 20.

Q. Is it fair---

A. I mean, I could have -- I could have brought the medical records that had been provided to me prior to the deposition. I could have brought that to the deposition, and would be more generally what I would do, that I would hand the exhibit to the witness. Otherwise, the other practice would be I could ask the witness for his chart and his file and then pick it out and mark it as an exhibit. So I can't tell you where Exhibit 20 came from.

Q. Well, if we know in your medical record notebook what is marked Exhibit 20 to the deposition is not within your medical record notebook --

A. Right.

Q. -- is it fair to assume that you didn't bring that to the deposition?

MS. CHEEK:

Objection.

EXAMINATION RESUMED BY MR. MANN:

A. I assume that to be correct, but, again, I don't know.

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A. Yes. Yes.
Q. If you'd have had three copies, would you have asked him about all three?
A. Yes.
Q. And if you'd have had 10 different versions of that note---
A. Yes. Yes.
Q. Okay. So that would have potentially changed how you defended the case. Correct?
A. I can't say it would have changed how I would have defended the case.
Q. All right. Let's move on to the next exhibit, and then we're going to -- all right, let's mark this, and I believe we're at 96. Correct? Let's mark that as 96. Oh, hang on. Let's strike this, and I need to take a brief recess, please.

MS. CHEEK:

That's fine.

(Off the Record; 11:24 a.m. -- 12:47 p.m.)

EXAMINATION RESUMED BY MR. MANN:

Q. Mr. King, we were previously talking about a couple of versions of a note that were from 7/21/05, if I'm not mistaken, and I went to introduce another exhibit, and I apologize again that I didn't have the full exhibit, so, therefore, we had to take a break. So thank you

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MS. CHEEK:

What page of the deposition?

MR. MANN:

It would be 85.

EXAMINATION RESUMED BY MR. MANN:

Q. 85 of the deposition, Mr. King. I'm sorry.

A. Okay.

Q. And do you see where two pages were marked as Exhibit Number 19?

A. I do.

Q. And, of course, you're welcome to look at this deposition as much or as little as you need to, but let me jump ahead and ask you to go to the very end to the exhibits and let's go to Exhibit 19, and that would be 018209, 18209, and that will be Exhibit Number 19.

A. Okay.

Q. And get your notebook so you can look at this. We're going to spend a couple minutes on this. Do you remember that being produced during the deposition?

A. I can't say I remember it, no.

Q. Well, let's do this. What are we to? 97? Let's mark this as 97, and let me just get to my point.

(Deposition Exhibit Number 97 marked)

EXAMINATION RESUMED BY MR. MANN:

Q. Looking at what we just marked as Exhibit Number 97,

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does that appear to be the same? I understand there's different writing on these two versions, but the underlying marked-up version or, excuse me, the underlying typewritten version, do those appear to be the same?

A. With the changes, yes.

Q. How many pages is Exhibit Number 97?

A. I want to check my math.

Q. Mr. King, I'll represent it's 21 pages.

A. Okay. I counted that, but I was trying to do the math to make sure.

Q. Yes, sir. But I will, I'll represent it's 21 pages. And anybody can correct me.

A. Okay, I miscounted. I got 20, and that's why I was doing the -- trying to do the math.

Q. And I will tell you this was produced through Mr. Thompson's file. Have you ever seen this document before?

A. I don't recall having seen it before.

Q. However, you did see the first two pages of it.

A. Yes. Yes.

Q. Which were attached to the deposition.

A. Deposition.

Q. But the rest of it you were not provided?

MS. CHEEK:

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Objection.

EXAMINATION RESUMED BY MR. MANN:

A. I don't recall.

Q. If you would have been provided it, do you think you would have attached it or asked questions---

A. Well, it's marked -- it's got my deposition number marked for this today. That's the only -- that's why my number is on it right now.

Q. Right.

A. It did not come from my file.

Q. Yes, sir, it did not come from your file. It came from Mr. Thompson's file.

A. I have no knowledge of seeing it then.

Q. Okay. If this was a document that Dr. Fogarty assisted in the preparation of, should it have been produced pursuant to your subpoena?

A. Yes, sir.

Q. There is light at the end of the tunnel. I don't have a lot more. Okay? And I appreciate your patience. And I believe we're to, what, 98, please? Let's mark this as 98.

(Deposition Exhibit Number 98 marked)

EXAMINATION RESUMED BY MR. MANN:

Q. Mr. King, I will represent to you this is another document that was produced when Mr. Thompson's file was

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
William Mark Casey,	)	
Plaintiff,	)	
	)	C.A. No.: 2006-CP-42-1728
v.	)	
Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung and Critical Care Specialists, PC, and Devendra Shantha, MD,	)	AFFIDAVIT OF H. SPENCER KING
Defendants.	)	

Before me appeared H. Spencer King, being first duly sworn and says that he is an attorney licensed to practice in South Carolina within his principal office in Spartanburg, South Carolina at the Ward Law Firm.

That your affiant is one of the defense counsel in the action filed by William Mark Casey against Gregory J. Feldman, M.D., Joseph A. Boscia, M.D., Upstate Lung and Critical Care Specialists, P.C., and Devendra Shantha, M.D. That he has been actively involved in the defense of this case since the filing on May 24, 2006.

The allegations against the defendants relate to an alleged unnecessary surgical procedure known as a rigid bronchoscopy with laser resulting in a pneumothorax with alleged neurocognitive injury resulting from an air embolism. Mr. Casey has not been seen by a neurologist or a neurosurgeon, nor according to information provided by Plaintiff's counsel, no diagnostic studies of the brain have been performed.

Your affiant believes that the opinions of a neurologist and diagnostic studies of the brain are quite material as to any alleged cognitive deficiency that Mr. Casey allegedly developed

following the procedure of June 3, 2004. Your affiant's belief is based on information provided by neurologist Brian Mercer, M.D. practicing in Boston, Massachusettes, who reviewed Mr. Casey's medical records in connection with a claim for disability and Kent Kistler, M.D. of Greenville, South Carolina who's been consulted by your affiant as an expert witness. Your affiant has been told by neurologists that diagnostic studies of the brain are quite material.

That your affiant received unsolicited the attached documents on or about August 18, 2008, to the effect that Mr. Casey, utilizing a fictitious name, has undergone an MRI in Charlotte, North Carolina at Presbyterian Hospital under the direction of Mr. Thompson who is one of his attorneys, and that this information is extremely relevant to the defense of this case and has not been provided to the Defense.

H. Spencer King

SWORN TO before me this 28th day of January, 2009.

Notary Public for the State of South Carolina

My Commission Expires: 4/28/2018

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Extremely Confidential

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H. Spencer King
Attorney At Law
The Ward Law Firm
P.O. Box 5663
Spartanburg, SC 29304

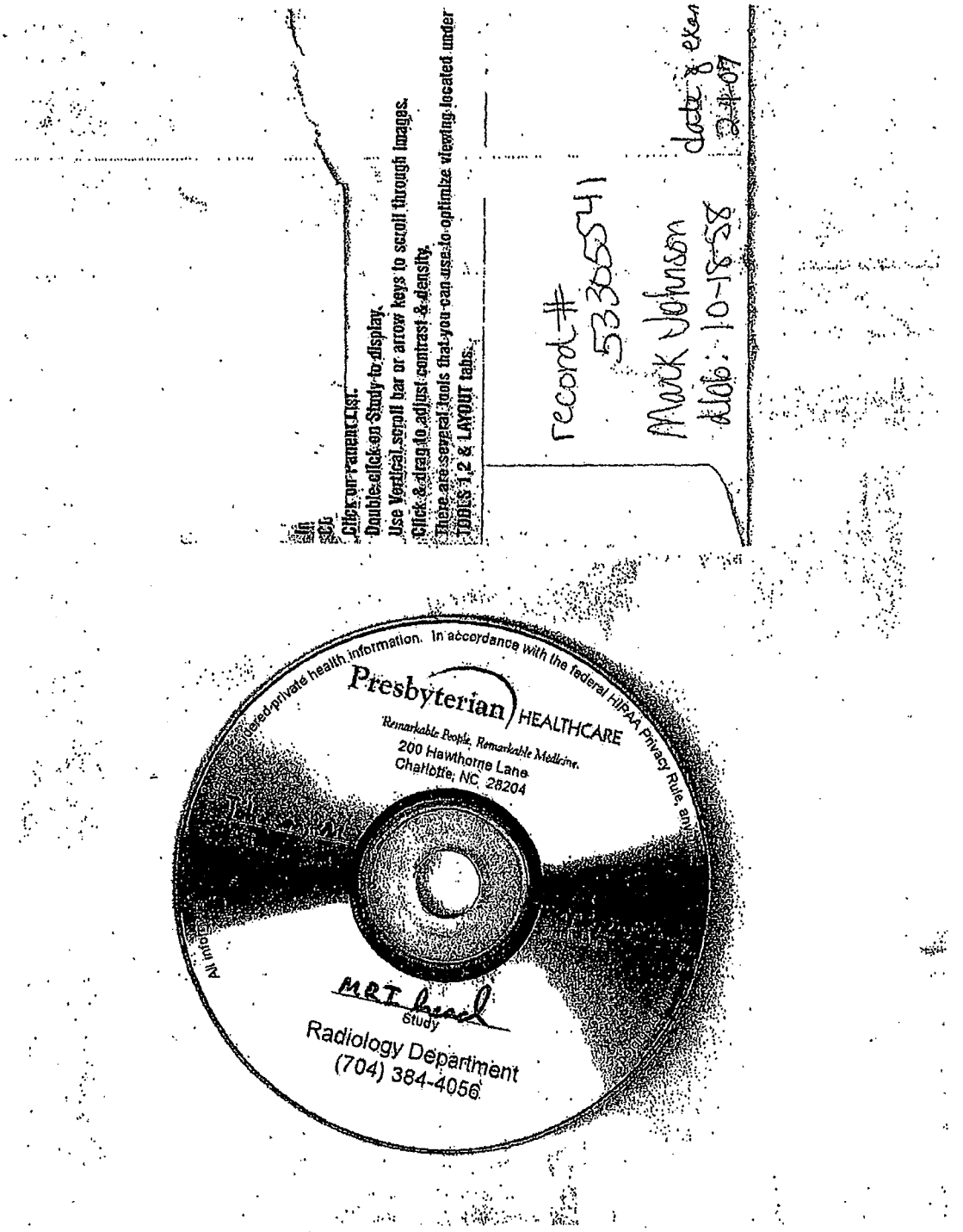
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ELECTRONICALLY FILED - 2017 Jun 20 2:01 AM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

THIS PHOTOCOPY IS OF A DISK AND IS BEING SENT TO YOU SO THAT THE PLAYING FIELD IS LEVEL. CHUCK THOMPSON ARRANGED FOR HIS CLIENT TO HAVE AN MRI/HEAD AT PRESBYTERIAN HOSPITAL IN CHARLOTTE, NC, AND FAILED TO PROVIDE IT IN DISCOVERY. HE ARRANGED FOR THE MRI TO BE CARRIED OUT USING THE ALIAS "MARK JOHNSON" THROUGH DR. GODWIN, HIS BROTHER IN LAW, AT PRESBYTERIAN HOSPITAL. AND, IT APPEARS THE TEST WAS PAID FOR IN CASH BY CHUCK. OBVIOUSLY, CHUCK'S CLIENT'S SIGNING AN AUTHORIZATION WOULD NOT HELP YOU IN GETTING A COPY OF SAME. PLEASE USE WHATEVER MEANS NECESSARY TO OBTAIN THE TEST RESULTS AND THE MANNER IN WHICH THE TEST WAS SCHEDULED, PERFORMED AND WHY CHUCK WENT TO SUCH LENGTHS TO HIDE IT FROM YOU.

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GUNN 000635

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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,	)	
	)	**STIPULATION RELATING TO MOTION FOR SUMMARY JUDGMENT**
Plaintiffs,	)	
	)	
vs.	)	
	)	
William Mark Casey, Ray E. "Chuck" Thompson, and Charles M. Fogarty, MD,	)	
	)	
Defendants.	)	

During the summary judgment hearing held in this case on June 20, 2017, counsel for Plaintiffs stated that Dr. Fogarty was not identified as an expert witness in *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") until sometime in 2008. The parties stipulate that this statement was inaccurate, as reflected in the discovery responses that are attached to this stipulation as Exhibit 1, and that also were attached as Exhibit 35 to Feldman's deposition in this case (Thompson 29889-29894). These discovery responses demonstrate that Dr. Fogarty was identified as an expert witness in the MMA on August 31, 2007, over 15 months prior to his deposition on December 22, 2008.

The parties further stipulate that Dr. Fogarty was not called as a witness at the trial of the MMA.

June 22, 2017

By: /s/ F. Milton Mann, Jr.

F. Milton Mann, Jr.
151 Harold Fleming Court
Spartanburg, SC 29303
(864) 680-5079
Attorney for Plaintiffs

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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

/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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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, MD, Upstate Lung and Critical Care Specialists, PC, and Devendra Shantha, MD, Defendant.	**PLAINTIFF'S SUPPLEMENTAL RESPONSES TO WRITTEN INTERROGATORIES OF DEFENDANTS FELDMAN & BOSCIA , MD, and UPSTATE LUNG AND CRITICAL CARE SPECIALISTS, P.C. and DEFENDANT DEVENDRA SHANTHA, MD** C.A. No. 2006-CP-42-1728

TO: SPENCER KING, ATTORNEY FOR DEFENDANTS JOSEPH A. BOSCIA, MD, GREGORY J. FELDMAN, MD, UPSTATE LUNG AND CRITICAL CARE SPECIALISTS, PC and BILLY GUNN, ATTORNEY FOR DEFENDANT DEVENDRA SHANTHA, MD

In compliance with Scheduling Order of Judge Roger L. Couch filed 08/16/07, the Plaintiff supplements his Interrogatory Responses to identify the following additional potential expert witnesses, which may be called on behalf of Plaintiff William Mark Casey in the trial of this case.

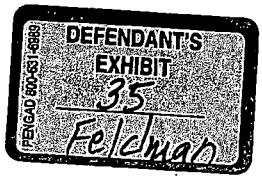
L. Randolph Waid, Ph.D.
Licensed Clinical Psychologist
Tidewater Executive Center
222 West Coleman Blvd.
Mr. Pleasant, SC 29464

Clinical Associate Professor in Psychiatry/Neurology at Medical University of S.C.

It is anticipated that Dr. Waid will offer expert opinion consistent with neuro-psychological evaluation performed on William Mark Casey, a copy of which has been provided to Defense counsel (Bates Nos. 557-564)

Joseph G. Grace, III, Ph.D.
853 N. Church Street, Ste. 510
Spartanburg, SC 29303

It is anticipated that Dr. Grace will offer expert testimony consistent with psychological evaluation, care, and treatment of William Mark Casey from approximately 8/4/04 and still continuing. Furthermore, it is anticipated Dr. Grace will offer expert



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testimony and opinion as to permanent cognitive and brain injuries and mental and related physical dysfunction caused and initiated by Defendants' negligent medical care treatment rendered to Mr. Casey.

Dr. Benson Hecker
506 Pettigru Street
Greenville, SC 29601

Dr. Hecker is a vocational expert and is expected to testify that Mark Casey is unable to engage in gainful employment as a result of his current injuries, disabilities and deficits.

Dr. Charles Alford
209 Laurens Road
Building 4, Suite D
Greenville, SC 29607

Dr. Alford is an economist expected to testify as to Mr. Casey's causally related past and future economic losses. A copy of Dr. Alford's economic report is attached and may be supplemented.

Dr. Charles Fogarty
Lung and Chest Medical Associates
2030 North Church Place
Spartanburg, SC 29303

Dr. Fogarty is a board certified pulmonologist and will be asked to render expert testimony based on his review of Mr. Casey's medical and other records documenting his medical care and treatment and based on Dr. Fogarty's independent evaluation and treatment of Mr. Casey. Dr. Fogarty will be asked to address the standard of care required of the Defendant physicians, breaches thereof, proximate cause, and damages suffered by Mr. Casey. Defense counsel has a copy of records of Lung and Chest Medical Associates.

Dr. Wilson P. Smith, Jr.
Lung and Chest Medical Associates
2030 North Church Place
Spartanburg, SC 29303

Dr. Smith is a board certified pulmonologist and will be asked to render expert testimony based on his review of Mr. Casey's medical and other records documenting his medical care and treatment and based on Dr. Smith's independent evaluation and treatment of Mr. Casey. Dr. Smith will be asked to address the standard of care required

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of the Defendant physicians, breaches thereof, proximate cause, and damages suffered by Mr. Casey. Defense counsel has a copy of records of Lung and Chest Medical Associates.

Dr. Bert E. Knight
Lung and Chest Medical Associates
2030 North Church Place
Spartanburg, SC 29303

Dr. Knight is a board certified pulmonologist and will be asked to render expert testimony based on his review of Mr. Casey's medical and other records documenting the medical care and treatment of Mr. Casey. Dr. Knight will be asked to address the standard of care required of the Defendant physicians, breaches thereof, proximate cause, and damages suffered by Mr. Casey.

Dr. Rico Mendoza
Lung and Chest Medical Associates
2030 North Church Place
Spartanburg, SC 29303

Dr. Mendoza is a board certified pulmonologist, who provided medical treatment to Mark Casey, and may be asked to render expert testimony based on his review of Mr. Casey's medical and other records documenting his medical care and treatment and based on Dr. Mendoza's independent evaluation and treatment of Mr. Casey. Dr. Mendoza may be asked to address the standard of care required of the Defendant physicians, breaches thereof, proximate cause, and damages suffered by Mr. Casey. Defense counsel has a copy of records of Lung and Chest Medical Associates.

Dr. Peter Ryan
Spartanburg Regional Medical Center
100 E. Wood Street
Spartanburg, SC 29303

Dr. Ryan is board certified radiologist and M.D. Dr. Ryan is expected to offer expert testimony as to his evaluations and interpretations – along with recommendations as to a portable chest x-ray taken of Mr. Casey on 05/28/04 and CT scan (chest) performed 05/29/04. Dr. Ryan reviewed both the portable x-ray and CT scan. Dr. Ryan will be asked to give expert opinion within the scope of his medical expertise concerning Mr. Casey's medical care and treatment and any act of omission or commissions by the Defendant physicians in providing medical care to Mr. Casey.

Jeffrey Leshman, MD – ER Medical Director
Raja Paladugu, MD – Internal Medicine-Hospitalist (sp??)

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Andras Koser, MD – Internal Medicine-Hospitalist (sp??)

Each may be called as a witness by Mr. Casey to provide testimony and expert opinion within the scope of their medical expertise regarding the care and treatment rendered to Mr. Casey. Each of the three physicians above had involvement in Mr. Casey's medical care and treatment.

Carole Fruscello, CRNA
Anesthesiology

Ms. Fruscello may be called as a witness to provide testimony and possible expert opinion within the scope of her medical expertise - as to the medical care and treatment rendered to Mr. Casey of which she had involvement.

Dr. Paul LePage
Regional Surgical Specialists
853 North Church Street
Spartanburg, SC 29303

Dr. LePage is anticipated to testify consistent with Mrs. Carole Lynn Hyslop's summary in Plaintiff's Response to Interrogatory #1 as to Dr. LePage's involvement with Ms. Hyslop, Mr. Casey and Dr. Feldman on 06/06/04 at the Spartanburg Regional Medical Center. Dr. LePage reviewed Mr. Casey's chest x-ray which prompted the discussion regarding artifact and may have expert testimony to offer.

Dee Furtect
Information Technology/Physician Office Management
Upstate Lung and Critical Care Specialist, PC

Dee Furtect is believed to be the person who was employed by Upstate Lung and Critical Care Specialist, PC during the period Mr. Casey was a patient there. She is expected/anticipated to testify as an expert regarding Upstate Lung and Critical Care practices and procedures for the retention of medical records and scheduling of appointments, Upstate's computer system, patient information technology, acquisition and retention of documentation, maintenance of patient files, storage, and data input of Mark Casey.

Dr. Frank Gonda
2212 Old Furnace Road
Boiling Springs, SC 29316

Dr. Gonda is Mr. Casey's family physician. Dr. Gonda may be called as a witness and if so, is expected to provide expert testimony regarding medical treatment, evaluation and care he rendered to Mr. Casey, some of which may involve expert medical opinion.

Dr. Tuan Nguyenduy
225 East Wood Street
Spartanburg, SC 29303

Dr. Nguyenduy is a surgeon was involved in immediate emergency care following procedure of 06/03/04. He may be called to render expert opinion regarding care and treatment of Mr. Casey, medical issues and potentially the standards of care in the pending litigation.

Plaintiff's counsel reserves the right to call expert witnesses identified by any Defendant, and this is to include each of the three Defendant Physicians.

Plaintiff's counsel reserves the right to call any healthcare provide involved in Mr. Casey's medical evaluation and treatment within the scope of their medical expertise. This interrogatory response to Defendants will be more fully supplemented as allowed by the progression of discovery.

BURTS, TURNER, RHODES & THOMPSON
Attorneys for Plaintiff
P.O. Box 3408
Spartanburg, SC 29304
(864)585-8166; Fax: (864) 583-6927

By: _____
RAY E. THOMPSON, JR.

Dated: August 31, 2007
Spartanburg, South Carolina

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ELECTRONICALLY FILED - 2017 Jun 22 4:14 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP420743

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.

AFFIDAVIT OF FAXING AND MAILING

C.A. No. 2006-CP-42-1728

This is to certify that on the 31st day of August, 2007, the undersigned served Supplemental Response to **Plaintiff's Supplemental Responses to Written Interrogatories of Defendants' Feldman & Boscia, MD and Upstate Lung and Critical Care Specialists, P.C. and Defendant Devendra Shantha, MD**, by depositing a copy of the same into the United States Mail, postage pre-paid and in the correct amount to the following:

H. Spencer King, Esq.
The Ward Law Firm, PA
P.O. Box 3188
Spartanburg, SC 29304
Fax No.: 583-8961

William U. Gunn, Esq.
P.O. Box 1897
Spartanburg, SC 29304
Fax No.: 585-3844

Angela M. Roper

ANGELA M. ROPER
Legal Assistant to Ray E. Thompson, Jr.

SWORN to before me this 31st day of August, 2007.

(SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3/14/2007

ELECTRONICALLY FILED - 2017 Jul 18 2:29 PM - SPARTANBURG - COMMON PLEAS - CASE#2010CP4205743

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,	)	
	)	**STIPULATION OF DISMISSAL WITH PREJUDICE AS TO WILLIAM MARK CASEY**
v.	)	
William Mark Casey, Ray E. "Chuck" Thompson, and Charles M. Fogarty, M.D.,	)	
Defendants.	)	

Pursuant to South Carolina Rule of Civil Procedure 41 (a) (1), Plaintiffs, Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D. and Upstate Lung and Critical Care Specialists, P.C., by and through their undersigned attorney, and with the consent of Defendants, have agreed to dismiss all of their claims in their entirety in the above-captioned action as between William Mark Casey ("Casey") and all Plaintiffs with prejudice, and Casey shall be dismissed as a Defendant in this action. These parties are to bear their own costs of the action as to the case brought by Plaintiffs.

The case as to the Plaintiffs and remaining Defendants shall continue.

s/F. Milton Mann, Jr., Esq.
F. Milton Mann, Jr., Esq.
151 Harold Fleming Court
Spartanburg, SC 29303
Attorney for all Plaintiffs

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s/Joe Mooneyham, Esq.
Joe Mooneyham, Esq.
Mooneyham Berry, LLC
1225 Church Street
Greenville, SC 29605
Attorneys for Defendant William Mark Casey

s/ Ellen S. Cheek
Michael B. T. Wilkes
Ellen S. Cheek
Wilkes Law Firm, P.A.
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
Attorneys for Defendant Charles M. Fogarty, M.D.

s/ Matthew H. Henrikson
Matthew H. Henrikson
Henrikson Law Firm, LLC
P.O. Box 26554
Greenville, South Carolina 29616
Attorney for the Defendant Ray E. "Chuck" Thompson

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, and Upstate Lung and Critical Care Specialists PC,	)	
Plaintiffs,	)	
	)	PLAINTIFFS' MOTION FOR RECONSIDERATION
vs.	)	
Ray E. "Chuck" Thompson and Charles M. Fogarty, MD,	)	
	)	C.A. NO.: 2010-CP-42-5743
Defendants.	)	

TO: THE HONORABLE R. KEITH KELLY, MATTHEW H. HENRICKSON, ATTORNEY FOR DEFENDANT RAY E. "CHUCK" THOMPSON AND ELLEN CHEEK, ATTORNEY FOR DEFENDANT CHARLES M. FOGARTY, M.D.:

YOU WILL PLEASE TAKE NOTICE, pursuant to Rule 59(e), Plaintiffs Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., and Upstate Lung & Critical Care Specialists, PC (collectively, "Plaintiffs") hereby submit this motion for reconsideration of the Court's Order Granting Defendants' Motion for Summary Judgment dated and entered July 20, 2017 (the "Order") as it relates to Plaintiffs' claims being time-barred and respectfully raises these issues:

> **That the Court's Order is factually and legally deficient in not identifying a willful act that should have been discovered by the Plaintiffs outside of the statute of limitations window; and**
>
> **That Defendants' assertion respecting Dr. Feldman's affidavit being a sham is materially false.**

This motion for reconsideration shall be based upon Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment, the Summary Judgment Hearing Transcript, federal case law, statutory case law in the State of South Carolina including, but not limited to, South Carolina Rules of Civil Procedure 52(b) and 59(e) and shall be made upon such grounds as it

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may appear at the hearing on such motion and any supporting memorandum.

WILLFUL ACTS

The elements of abuse of process are an **ulterior purpose** and a **willful act** in the use of the process not proper in the conduct of the proceeding. Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E.2d 693 (1967) (emphasis added). The mere filing of a lawsuit does not give rise to a cause of action for an abuse of process claim. "Hence, to sustain a claim for the tort, 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 misapplied or abused." Food Lion, Inc. v. United Food & Commercial Workers Inter. Union, 567 S.E.2d 251, 351 S.A. 65 (S.C.App. 2002) (emphasis added). An aggrieved party must be aware of facts sufficient to allege not only the inception of a lawsuit but an ulterior purpose and a **willful act** in the use of the process not proper in the conduct of the proceeding. Food Lion, Inc. v. United Food & Commercial Workers Inter. Union, 567 S.E.2d 251, 351 S.C. 65 (S.C.App. 2002) (emphasis added). "Furthermore, although an ulterior purpose may be inferred from an improper **willful act**, 'the inference is not reversible and it is not possible to infer [improper] acts from the existence of an improper motive alone.'" (footnotes omitted) (emphasis added) Id. The Court's Order does not specify a particular date as to when the statute of limitation was triggered or what **willful act** did so.

At the Summary Judgment hearing, Defendants' based their assertion on one (1) email from Plaintiff Feldman to Plaintiff Boscia, dated August 11, 2007, regarding a newspaper article and based upon said newspaper article publication, stated an abuse of process had occurred. Subsequent to the newspaper article being published and the referenced email being sent,

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Defendant Casey was deposed on August 29, 2007, and, under oath, unequivocally denied speaking with anyone from the Herald Journal. (William Mark Casey Deposition Excerpt, August 29, 2007, p. 132-133, THOMPSON 065434, 065565-065566) Additionally, Defendant Fogarty testified in his December 22, 2008, deposition that he had not spoken with or provided any written statements to anyone with the Herald-Journal respecting the newspaper article. (Spartanburg Herald-Journal, May 31, 2006 newspaper article; Charles M. Fogarty, M.D. Deposition Excerpt, December 22, 2008, p.p. 219-220, THOMPSON 017687, 017906-017907.) Further, Defendant Thompson had an unfettered right to speak with and disseminate information to the reporter consistent with the complaint subject to South Carolina Rules of Professional Responsibility, Rule 3.6, Trial Publicity. Therefore, it is uncontroverted that the newspaper article is not a **willful act** and cannot serve as a basis for the Court's granting of Defendants' Motion for Summary Judgment. Finally, Dr. Feldman's affidavit is clear evidence, pursuant to South Carolina Rules of Civil Procedure, Rule 11 pleading requirements, that he investigated his mere suspicion and rejected the newspaper article as a willful act. (Affidavit of Gregory J. Feldman, filed June 16, 2017)

Defendants asserted **willful acts** surrounding the newspaper article and email, along with assertions regarding the filing of the lawsuit, Plaintiff Feldman's assertions of baselessness, suspicions, and perceived animosity legally fail as **willful acts**. Thus, Plaintiffs' actual allegations must be considered as pled in their Second Amended Complaint to find **willful acts** within this case. It was revealed during the deposition of Joseph Grace, PhD, on April 2, 2008, that Defendant Fogarty had been seeing Defendant Casey since 2004; that Fogarty had begun treating and testing Defendant Casey in 2004; and, that Defendant Fogarty had been seeing

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Defendant Casey at his research facility. (Joseph Glover Grace, III Deposition Excerpt, April 2, 2008, THOMPSON 062140; Grace Notes attached as exhibits to Grace Deposition THOMPSON 062451-53.)

As stated within the Plaintiffs' Second Amended Complaint, Defendant Fogarty actively sought to prevent discovery efforts respecting the level of and purpose of his involvement in the litigation and was successful until his deposition on December 22, 2008. (King letter to Thompson and Turner, November 19, 2008, GUNN 001685-001686; Joseph Glover Grace, III Deposition Excerpt, April 2, 2008, THOMPSON 062140; Grace Notes attached as exhibits to Grace Deposition THOMPSON 062451-53) Unjustly, Defendant Fogarty and Defendant Thompson concealed their relationship to the extent of Defendant Fogarty lying under oath during his deposition in a continuing effort to hide his role and level of involvement in the medical malpractice action, with Defendant Thompson suborning his perjury. (Charles M. Fogarty Deposition Excerpt, December 22, 2008, pp. 25-26, THOMPSON 017687, 177111-177112; Thompson letter to Parham Smith & Dodson, LLC, January 7, 2005, THOMPSON 000556-57; Grace Notes attached as exhibits to Grace Deposition THOMPSON 062451-53)

A **willful act** and concealment of the act was discovered during Defendant Fogarty's deposition on December 22, 2008, when he lied under oath as to the inception date of his involvement with Defendant Casey, which was learned during the Grace deposition. (Charles M. Fogarty Deposition Excerpt, December 22, 2008, pp. 25-26, 67, 80-82, 85-87, 116-117, 219-220, THOMPSON 017687, 017711-017712, 017754, 017767-017769, 017772-017774, 017803—017804, 017906-017907; Joseph Glover Grace, III Deposition Excerpt, April 2, 2008, pp. 55-56,

Notes, THOMPSON 062140, 062194-062195, 062451-062453) Defendant Thompson was in attendance and made no effort to correct Defendant Fogarty's statements.

A **willful act** of concealment was performed by Fogarty and Thompson at the time of Fogarty's deposition on December 22, 2008. In preparation for that deposition, defense attorney Spencer King (who was then defending Feldman in the Casey litigation) issued a subpoena to Fogarty to produce his entire record on Casey. (King Deposition, March 28, 2017, p. 15, Lines 15 – 24, p. 18, lines 20-22). The subpoena, identified as Exhibit 93 in King's deposition, required Fogarty to produce at his deposition (in the Casey litigation) all records of treatment generated by Fogarty for Casey and "any reports that he has rendered" as well as "any memorandums that you generated, any communication, whatever that you received from any third party." Fogarty did not do so as evidenced by Mr. King's Deposition (King Deposition, March 28, 2017, p. 32, line 18 through p. 33, line 9; King Deposition, March 28, 2017, p. 15, Lines 15 – 24, p. 18, lines 20-22; King Deposition, March 28, 2017, pp. 28-31, 34, 48-51)

It was not until Drs. Grace and Fogarty's depositions that Plaintiffs understood the lengths Defendants went to in order to fraudulently conceal their **willful acts** and to prevent Plaintiffs from knowing there was a potential cause of action. Knowing what Defendants did to hide evidence of their **willful acts**, Plaintiffs argue it is unsupportable for Defendants to put forth an argument which, is in essence, that they were so open and obvious with their hidden conduct, despite working together surreptitiously, intentionally preventing Plaintiffs from discovering their **willful acts**, that Plaintiffs were placed on notice that a cause of action existed. (Plaintiffs' Feldman, Upstate Lung and Critical Care Services, P.C. and Boscia Affidavits, filed June 16, 2017)

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On February 4, 2007, Defendant Thompson and Defendant Casey engaged in secret medical testing, an MRI, which they knew, if negative, would be disastrous to their medical malpractice claim. The MRI was performed under a fictitious name, date of birth and in another state and only discovered by Plaintiffs on or about August 18, 2008. Approximately seven months after the secret MRI test, Defendant Thompson advised Defendant Casey to lie under oath during his deposition, thereby abandoning Defendant Thompson's ethical obligations to the Court pursuant to Rule 3.3, in an effort to continue their abuse of discovery efforts by the Plaintiffs. (Affidavit of H. Spencer King, January 28, 2009, GUNN 000631-000635) At a pretrial hearing before Circuit Court Judge Roger Couch on April 29, 2010, Thompson admitted his own involvement in setting up the MRI, instructing Casey to use a false name and false date of birth, and withholding the MRI from production. (Affidavit of H. Spencer King, January 28, 2009, GUNN 000631-000635)

Thus, Defendants' assertions that the email referencing the newspaper is a willful act fails and further ignores the actual willful acts of discovery abuse, perjury, and suborning perjury.

MISSTATEMENT OF FACT

"When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. Anthony v. Padmar, Inc., 307 S.C. 503, 415 S.E.2d 828 (Ct.App.1992); Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986). However, factual statements of the attorneys, whether made during argument or in written briefs or memoranda, ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists. Gilmore, 290 S.C. 53, 348 S.E.2d 180. Moreover, reliance on an unpublished order is improper. Plante v.

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State, 315 S.C. 562, 446 S.E.2d 437 (1994) (partly discounting a litigant's argument by citing Rule 239(d)(2), SCACR, and holding that the party on appeal could not rely on an unpublished order)." Higgins v. Medical University of South Carolina, 486 S.E. 2d 269, 326 S.C. 592 (S.C. App., 1997).

"In determining whether a genuine issue of material fact exists, a court must consider everything in the record--pleadings, depositions, interrogatories, admissions on file, affidavits, etc. Keiser v. Coliseum Properties, Inc., 614 F.2d 406 (5th Cir.1980). Like its federal counterpart, Rule 44 did not, and new Rule 56 does not, 'distinguish between documents merely filed and those singled out by counsel for special attention--the court must consider both before granting a summary judgment.' Id. at 410." Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (S.C. App., 1986). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. **The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor**. *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970) at 1608-1609." (emphasis added) Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

Plaintiff Feldman takes exception to misrepresentations that his affidavit is a sham and inconsistent with his depositional testimony. (MSJ Hearing Transcript, June 20, 2017, Page 9, Lines 13-24) Dr. Feldman testified that during the S. Carolina litigation, he had no information regarding Dr. Fogarty's involvement with the newspaper article and expressly stated that the only involvement of Dr. Fogarty that he knew of at that time was the office visit note (Feldman

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Deposition, October 17-18 & 21, 2016, Page 172, Lines 15-16). Plaintiff Feldman further testified:

> Q: And your contention is that Dr. Fogarty published this article or had some hand in its publication?
> A: Not at all. ...
> (Feldman Deposition, October 17-18 & 21, Page 167, Lines 6-8)
> Q: And what is the connection between Dr. Fogarty and the newspaper?
> A: Direct. We are going to have a jury decide that. ...
> (Feldman Deposition, October 17-18 & 21, Page 166, Lines 8-10)

> Q: You assessed early in the medical malpractice action that you had possible claims against the people that had brought the lawsuit against you. Correct?
> A: Did not. Did not. Did not. Totally did not. The first thing that have occurred in my mind is when they arrange for the fake x-ray. This is the first thing that I start getting really concerned. Okay? After the fake x-ray that was arranged by Thompson at Fogarty's office.
> (Feldman Deposition, October 17 -18 & 21, Page 296, Line 24-25 through Page 297, Lines 1-7)

> Q: At that time, you also thought that the suit was not justified. Correct?
> A: No. No, not at all. I thought the suit was going to be just dropped. I thought that's it. Okay? When I walked out of the deposition, I was expecting the lawsuit to just go away.
> (Feldman Deposition, October 17-18 & 21, Page 297, Lines 14-19)

> Q: So when was it that you had reason to think the lawsuit was going forward?
> A: Well, we had a deposition with Mr. Casey in 2007. I think it was October, September. And he said nobody told him he had brain damage. So I said that's it, the case is over. All right? That was over. Where my concern started crop up was in 2008. In 2008 there was a deposition of Dr. Paladugu taken in 2008. Paladugu, which he was hospitalist. And during that deposition, it was produced a letter where they have a – Thompson and Fogarty have created crazy x-ray. Okay? They sent it. They hook up something to the patient. Wasn't any medical reason. At the lawyer request. I start getting very worried. Whoa, whoa, whoa, whoa, whoa. A lawyer sending a patient for the x-ray to attach something to his body. Not to diagnose pneumonia, not to diagnose any medical condition. In a lawsuit. That was first sign I start getting worried. Okay? I said whoa, whoa, whoa, whoa, whoa. A lawyer sending the patient for the x-ray to the doctor's office, a totally unnecessary x-ray. I start getting worried. But after MRI, it was – it was clear that we got it.
> Q: And when was the MRI?

A: I'm talking about MRI of the brain.
Q: When was the MRI of the brain?
A: We discovered MRI of the brain in 2008, sometime in August, September. Anonymous letter was written and actual thing came to – it was 2009 when we got our hands on it, but – but that was it. After we got MRI, we knew what we got.
(Feldman Deposition, October 17-18 & 21, Page 105, Lines 8-25 through Page 106, Lines 1-13)

Q: You are. And I just asked a question.
A: And I just told you that 2006 and 2007, we were waiting for this lawsuit to be thrown out. Okay? Because the founder of the law firm, Mr. Turner, was a great patient of mine who wrote me a letter saying I have nothing to do with this, Greg, don't worry. Okay? In 2008, at Dr. Paladugu's office we have discovered a very, very troubling thing. Yes, we started to worry. Then Mr. Turner has requested research records. What did research record have to do with Mr. Casey? Of course, you're not testifying today. It's a rhetorical question. Nothing. Okay? And my emails to Mr. Mann is basically about, hey, why he requesting S. Carolina record. It's got nothing to do with this. ...
(Feldman Deposition, October 17-18 & 21, Page 160, Lines 10-23)

Q: Okay. You state under Evidence of Misconduct, "Dr. Fogarty is withholding records." And that's something you've talked to me today about, right, among these notes, that you believe that you didn't have all three of these notes?
A: Not at all. This is about prescription drugs. They were not produced in 2007. We started discovering his prescription drugs in 2008. Okay? We had nothing. All of a sudden with have a pharmacy in 2008 with Fogarty writing Lortab almost every other week. ...
(Feldman Deposition, October 17-18 & 21, Page 157, Lines 12-21)

Q: And the publishing of this was damaging to you?
A: That will be for the jury to determine, but yes, my contention it was extraordinarily damaging to me and others.
(Feldman Deposition, October 17-18 & 21, Page 168, Lines 15-18)

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Q: And your contention is that Dr. Fogarty published this article or had some hand in its publication?
A: Not at all. My contention he mastermind everything, absolutely everything. This is just small part of it.
(Feldman Deposition, October 17-18 & 21, Page 167, Lines 6-9)
Q: And you also told me that you believe Dr. Fogarty was working on a brain injury theory during 2004, 2005. Correct?
A: Yeah. We have discovered that much, much later. We have discovered that from Grace reports. That was discovered much, much later. I knew about that personally in 2009, but it was discovered in 2008. But I read them, I read them in 2009. That's when the revelation was made that Dr. Fogarty was conducting tests, that Dr. Fogarty was seeing Casey and Carole regularly. Those revelations contained in Dr. Grace production which I read in 2009 in preparation to the trial. The trial was scheduled to be in September of 2009 until Honorable Judge Hayes has postponed it.
(Feldman Deposition, October 17-18 & 21, Page 313, Line 23 through Page 314, Line 11)

Q: Okay. So, there's many bases on which you're filing the case. Is that accurate?
A: Well, absolutely.
Q: Okay. Now, the July 21 visit is a part of it. Correct?
A: Yeah, it's part of the scheme. Yeah, it's part of the scheme, yes.
(Feldman Deposition, October 17-18 & 21, Page 16, Lines 14-20)

Nothing in Dr. Feldman's deposition contradicts the statements attested to in his June 16, 2017 affidavit. Therefore, based upon the aforementioned, as a non-moving party, Dr. Feldman's assertions in his affidavit should be believed and any consideration given to Defendants' unsupported statements, should be disregarded and the Order should be reversed.

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CONCLUSION

"(N)o man may take advantage of his own wrong. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently been employed to bar inequitable reliance on statutes of limitations." (footnote omitted) Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231, 3 L.Ed.2d 770, 79 S.Ct. 760 (1959). Plaintiffs respectfully request the Court's Order be reversed and this matter be reinstated.

/s/ F. Milton Mann, Jr.
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July 31, 2017

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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 OPPOSING PLAINTIFFS' MOTION FOR RECONSIDERATION**
Plaintiffs,)	
)	
vs.)	
)	
Ray E. "Chuck" Thompson, and Charles M. Fogarty, MD,)	
)	
Defendants.)	
)	

Defendants Ray E. Thompson, and Charles M. Fogarty, MD (collectively, "Defendants") hereby file this Brief in Opposition to Plaintiffs' Motion for Reconsideration ("Plaintiffs' Motion"), which seeks the reversal of this Court's July 20, 2017, Order Granting Defendants' Motion for Summary Judgment (the "Order"). For the reasons discussed herein, Defendants respectfully submit that Plaintiffs' Motion should be denied.

Rule 59(e) Standard

Rule 59(e), SCRCP, 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), SCRCP, 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). Under Rule 59(f), SCRCP, a Rule 59(e) motion "may in the discretion of the court be determined on the briefs filed by the parties without oral argument." *Pollard v. Cty. of Florence*, 314 S.C. 397,

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402, 444 S.E.2d 534, 536 (Ct. App. 1994).

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 this rule'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. *Wactor v. Jackson Nat'l Life Ins. Co.*, [add WL citation] (D.S.C. Oct. 8, 2013). 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).

Argument and Citation of Authority

A. Plaintiffs' Motion Does Not Advance Any Argument Supporting Reversal of the Order Under 59(e).

Plaintiffs' Motion should be denied because it does not contain any grounds appropriate for seeking a reversal of the Order under Rule 59(e). Plaintiffs advance two points in support of their request that this Court reverse its Order, neither of which warrants such action under Rule 59(e).

First, Plaintiffs claim that the 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. (Pls.' Br. 1, 2.) In support of this position, Plaintiffs re-assert two of the same arguments Plaintiffs made in opposing Defendants' summary judgment

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motion, which include their contention that Feldman's August 11, 2007, email (the "August 11 Email"), which states his belief that Plaintiffs had an abuse of process claim against Defendants, concerned only his suspicion that Defendants had abused the process by causing the *SHJ* Article to be published. (Pls.' Br. 2-3; *see also* Pls.' Mem. Opp. Defs.' Am. Mot. Summ. J. 6-7; *see also* Feldman Aff. ¶¶ 7-22.) Plaintiffs' argument appears to be that since Feldman later learned that the *SHJ* Article could not form the basis of an abuse of process claim against Defendants, the statute of limitations on Plaintiffs' claim could not have started running when Feldman sent that email. This argument was previously presented by Plaintiffs to the Court during the summary judgment hearing, and was rejected. Plaintiffs' Motion also re-asserts Plaintiffs' previous argument that Defendants' misconduct during and relating to the MMA was concealed from Plaintiffs until in or after 2008, which is when Plaintiffs first were able to discover that they possessed an actionable abuse of process claim against Defendants, and therefore is when the statute of limitations on their claim began running. (Pls.' Br. 4-6; *see also* Pls.' Mem. Opp. Defs.' Am. Mot. Summ. J. 7-10.)

Second, Plaintiffs' Motion advises that "Feldman takes exception to misrepresentations that his affidavit is a sham and inconsistent with his depositional testimony." (Pls. Br. 7.)

Plaintiffs' Motion should be denied, because Plaintiffs' first point simply disagrees with how the Court applied the law to their case, and re-asserts the same arguments Plaintiffs previously made to this Court. As stated in *Hutchinson*, a dislike of the Court's application of legal standards does not support bringing a Rule 59(e) motion. *Hutchinson*, 994 F.2d at 1082. Rule 59(e) cannot properly be used by Plaintiffs "to complete presenting [their] case after the court has ruled against [them]." *Pacific Ins. Co.*, 148 F.3d at 403. This is especially true in this instance, because as discussed below, Plaintiffs have attempted to complete the presentation of their case by mis-citing the law governing abuse of process claims, in an attempt to draw attention away from relevant, record evidence that this Court properly considered in holding that

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Plaintiffs failed to file this action within the three-year limitations period.

Plaintiffs' second point, regarding Feldman's affidavit, does not even include an argument as to why Plaintiffs believe the Order should be altered, and therefore is facially improper under Rule 59(e).

Plaintiffs' Motion should be denied for these reasons alone, even though Plaintiffs' two points also lack merit, if they are considered.

B. Plaintiffs' Argument Regarding Willful Acts Should Be Rejected.

This Court should reject Plaintiffs' incorrect assertion that it committed factual and legal error by not identifying in its Order a particular act that satisfies the "willful act" element of Plaintiffs' abuse of process claim, and by not stating the date on which Plaintiffs could have discovered that such act occurred. (Pls.' Br. 1, 2, 4-6.) As stated above, this argument is improper under Rule 59(e), because it merely re-asserts Plaintiffs' previous contention that the August 11 Email cannot have started the limitations period on Plaintiffs' claim running, because that email reflects only Feldman's belief that Plaintiffs had a cause of action for abuse of process against Defendants based on the *SHJ* Article – a belief Plaintiffs allege they later learned was incorrect. Plaintiffs also attempt to re-hash their previous argument that Defendants actively concealed their alleged wrongdoing as to the MMA until 2008, when Plaintiffs claim they first learned of that alleged misconduct, and when they claim the statute of limitations on Plaintiffs' cause of action thus began to run. Regardless, if this Court does consider Plaintiffs' argument, it should be rejected, as it does not establish a clear error of fact or law contained in the Order, and because it is based on Plaintiffs' own mis-construction of applicable law.

In deciding and granting Defendants' summary judgment motion, the Court properly examined the evidence showing when Plaintiffs believed they held legal claims against Defendants in relation to the MMA, and properly found that Plaintiffs held that belief more than three years before they filed this action. Dissatisfied with that ruling, Plaintiffs argue that the

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Court could not properly find that the statute of limitations bars their claim without identifying a particular "willful act" committed by Defendants that satisfies the improper act element of an abuse of process claim.[1] This argument fails, because in deciding Defendants' summary judgment motion, this Court was not required to enumerate or specify the alleged willful acts that Plaintiffs claim support or form the basis of their abuse of process cause of action. The Court was asked only to decide whether Plaintiffs' claim was time-barred based on the statute of limitations, and did so based on its review of the undisputed case facts and the application of the law to those facts. Plaintiffs do not want their claim to be dismissed; so they now are demanding that the Court re-evaluate the same evidence and law that the Court already has considered, and reach a different conclusion. Plaintiffs' describing the Court's ruling as containing legal and factual errors not only is inaccurate and based on Plaintiffs' own mis-statement of the law, but also fails to legitimize their improper grounds for moving for reconsideration under Rule 59(e).

In support of their reconsideration request, 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.) This mis-statement of law is crucial to Plaintiffs' argument, because Plaintiffs wish to focus this Court's attention on alleged wrongful acts that Plaintiffs contend Defendants committed and/or Plaintiffs discovered in 2008, within the limitations period – not acts that Plaintiffs have previously and directly asserted that Defendants committed before, at, and around the MMA's filing in 2006, which alleged actions Feldman himself has asserted form the basis of Plaintiffs' current lawsuit, and which fall

[1] "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).

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decidedly outside the limitations period.

Food Lion, however, directly contradicts Plaintiffs' position. 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.

Plaintiffs, having made this errant citation of the law governing abuse of process claims, then attempt to use this misstatement of law to argue that Feldman's own, direct testimony and "assertions" regarding the wrongful acts that he believes Defendants committed in relation to "the filing of the lawsuit . . . legally fail as willful acts." (Pls.' Br. 3 (emphasis omitted).) Plaintiffs appear to be making this argument because, as summarized below and discussed fully in Defendants' summary judgment brief, Feldman clearly testified during his deposition that Plaintiffs' position is that Defendants committed improper and willful acts prior to the MMA which caused the MMA to be filed, and thus rendered the entire MMA an abuse of process. This position is decidedly different and contradictory to the arguments Plaintiffs now assert in an attempt to avoid the entry of summary judgment against them, which is that Defendants' "willful acts" occurred and/or became discoverable only years later, during discovery in that case, and within the limitations period. Also during depositions in this case, Plaintiffs stipulated that no later than August 2006, they possessed facts and evidence reflecting the alleged improper and willful acts that Feldman testified were committed by Fogarty prior to the MMA's being filed and directly caused the MMA to be filed against Plaintiffs.

Food Lion instructs that Plaintiffs' present position – which is that these pre-MMA acts legally fail to qualify as "willful acts" – is incorrect. Instead, the alleged acts of Defendants that Feldman identified during his deposition as being the bases of Plaintiffs' abuse of process claim

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could qualify as "willful acts" that form the basis of Plaintiffs' abuse of process claim, were properly considered by this Court in deciding Defendants' summary judgment motion, and demonstrate that this Court was correct in finding Plaintiffs' claim to be time-barred.

Specifically, during Feldman's deposition in this case, Feldman consistently and repeatedly testified that the "wrongful act" that Fogarty allegedly committed in relation to the MMA, and the reason that Plaintiffs are suing Defendants in this case, was Fogarty's writing 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. (*See* Feld. Dep. 76-77.) Feldman testified that he believes that Thompson, in turn, abused the legal process when he engaged in the act of filing the MMA, because he did so based on Fogarty's "undoubtedly" record (i.e., Note A) and with the intent to get disability benefits for Casey. (*See* Feld. Dep. 83-85.) Plaintiffs then stipulated that they 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 in the MMA. (*See* King Dep. 94-97, and 101-103.) Feldman also testified – contrary to the affidavit Plaintiffs recently filed in opposition to Defendants' summary judgment motion, and contrary to the arguments advanced in Plaintiffs' Motion – that he 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 another wrongful act that damaged Plaintiffs and constituted an abuse of process. (*See* Feld. Dep. 292.)[2]

Food Lion instructs that an abuse of process claim *can* be based on alleged improper acts that occur prior to the issuance of process and cause it to be issued, and that the filing of a lawsuit itself *can* constitute an abuse of process. And, this is what Feldman testified that Plaintiffs believed at least by August 2006, when the MMA had been filed against them, the *SHJ*

[2] Defendants emphatically deny having engaged in any wrongful acts that abused the process that was the MMA.

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Article had been published, and they had collected the July 21 Notes and saw what Fogarty had written in his Note A. Feldman testified in his deposition that Plaintiffs' abuse of process claim *is* based on Fogarty's act of writing "undoubtedly" in his Note A prior to the MMA's filing in order to have that suit instituted against them, and that Plaintiffs' claim *is* that the filing of the MMA itself was an abuse of process. Defendants dispute these contentions, of course; but because Plaintiffs' contentions *could* serve as the basis of an abuse of process claim under *Food Lion*, they prevent Plaintiffs from now disclaiming those acts as the basis of their lawsuit, or claiming that they could not form the basis of that suit. Likewise, Feldman's testimony prevents Plaintiffs from now arguing that some other allegedly improper acts – and, specifically, some allegedly improper acts that occurred less than three year before Plaintiffs filed this suit – are the only "willful acts" on which Plaintiffs could have based and did file their claim. Plaintiffs cannot now pick and choose from among their own allegations and testimony regarding what constitutes a "willful act" in an attempt to avoid the application of the statute of limitations to their abuse of process claim. Yet this is exactly what Plaintiffs have attempted to do in this case, in the arguments Plaintiffs advanced against Defendants' summary judgment motion and the affidavits they filed immediately before the hearing on that motion, as well as in their present Motion. Plaintiffs' vain and self-serving efforts should be recognized as such, and should be disregarded.

As stated above, this Court was not required to include in its Order an enumeration of the willful acts that Plaintiffs claim support their abuse of process claim. Regardless, the Order reflects that the facts this Court considered in granting Defendants' motion included Feldman's direct testimony that the acts that Plaintiffs believe Defendants committed as to the MMA and rendered that suit an abuse of process – i.e., Fogarty's writing Note A and Defendants' using that note to institute the MMA against Defendants, and the publication of the *SHJ* Article – occurred before and when the MMA was filed. That evidence also includes Plaintiffs' stipulation that

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they possessed that information at least by August 2006 – a full year before Feldman wrote the Feldman Emails. Further, that record evidence includes Feldman's testimony that the MMA-related acts that Defendants alleged committed prior to, at, and shortly after the MMA's filing are the very reasons Plaintiffs believed the MMA was an abuse of process from its inception, and are the reasons Plaintiffs filed this abuse of process lawsuit against Defendants. Plaintiffs have not denied and cannot avoid Feldman's testimony in this regard, and in fact have submitted an affidavit of Plaintiff Boscia affirming and adopting all of Feldman's testimony as his own. (*See* Boscia Aff.)

The record evidence thus fully supports this Court's finding that Plaintiffs' abuse of process claim is time-barred, and Plaintiffs have presented no new evidence altering these case facts. Further, the established law governing the application of those facts has not changed. That law was and remains that the statute of 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). "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). The limitations period does not begin to run on the date of discovery of the wrongdoer, *id.*, or 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).

In this case, the Order correctly finds that the record evidence, including Plaintiffs' own emails, shows that no later than August 11, 2007, Plaintiffs held the actual belief that they had suffered harm in relation to the MMA, and that they possessed legal claims against Defendants

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as a result thereof – including an abuse of process claim. Plaintiffs' actual belief triggered the statute of limitations' running on Plaintiffs' claim. Plaintiffs had a duty to investigate and ascertain, within the three-year limitations period, whether facts existed to support that belief. This period was not suspended until Fogarty's or Casey's allegedly false deposition testimony came to Plaintiffs' attention in or after 2008, or until they learned in 2008 that Casey had an MRI that Thompson did not reveal during discovery in the MMA. Despite Plaintiffs' awareness of their injury from the MMA and their belief that Defendants were the cause of same, Plaintiffs waited more than three years to file this lawsuit.

In sum, the Order properly considered the record evidence and applied governing law in holding that Plaintiffs' abuse of process claim is time-barred. Plaintiffs' Motion does not advance any argument that meets Rule 59(e)'s standard for reconsideration, and therefore should be denied.

C. Plaintiffs' Protest Regarding Feldman's Affidavit Should Not Alter This Court's Ruling.

Plaintiffs' Motion next advises that "Feldman takes exception to misrepresentations that his affidavit is a sham and inconsistent with his depositional testimony." (Pls. Br. 7.) Defendants stand by their arguments made at the Court's June 20, 2017, hearing on Defendants' summary judgment motion, and strongly deny that Defendants' counsel has mischaracterized or made any misrepresentations regarding the affidavit that Feldman submitted in opposition to that motion. Regardless, Plaintiffs' contrary position and their demand that "Feldman's assertions in his affidavit should be believed" do not advance any argument or grounds on which Plaintiffs' Motion could properly be based or granted under Rule 59(e). Plaintiffs' statement does not identify any factual error contained in the Order, much less argue 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, Plaintiffs' Motion should be denied.

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Conclusion

The Order ruled fully on the statute of limitations issue raised by Defendants' Motion for Summary Judgment, and properly dismissed Plaintiffs' abuse of process claim as being time-barred. Accordingly, Defendants respectfully request that this Court deny Plaintiffs' Motion for Reconsideration.

August 10, 2017

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