

200547

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1009259

Jeffrey L. McFadden, ... Appellant,

vs.

City of Lake City and South Carolina Municipal
Insurance Trust, ... Respondents.

RECORD ON APPEAL
Volume I

RECEIVED
OCT 31 2012
SC Court of Appeals

Stephen J. Wukela
Wukela Law Firm
Attorney for Appellant
Po Box 13057
Florence SC 29504
843-669-5634

Grady L. Beard
Sowell Gray Stepp & Laffitte, LLC
Attorney for Respondents
PO Box 11449
Columbia SC 29211

ORDERS

Administrative Order of Commissioner Susan S. Barden granting Defendants' Petition for a Hearing dated May 6, 2011	1
Order of Single Commissioner G. Bryan Lyndon dated October 26, 2011	3
Order of the Appellate Panel dated May 23, 2012	5

PLEADINGS

Claimant's Form 50 dated July 7, 2011	10
Defendants' Form 51 dated June 23, 2011	11
Claimant's Motion for Attorney's Fees and Costs Pursuant to the S.C. Frivolous Civil Proceedings Sanctions Act, S.C. Code §15-35-10, <u>et. seq.</u> dated September 20, 2011, and attachments	542
Defendants' Response to Motion for Attorney's Fees and Costs pursuant to the S.C. Civil Frivolous Proceedings Sanctions Act, S.C. Code §15-35-10, <u>et. seq.</u> dated September 30, 2011	14
Defendants' Motion to Quash Subpoena filed by Claimant's counsel dated October 14, 2011	16

TESTIMONY

Transcript of Deposition of the Claimant dated June 8, 2011	
Direct Examination by Grady L. Beard	20
Transcript of Deposition of Dr. Anthony Alexander dated June 15, 2011	
Direct Examination by Stephen J. Wukela	90
Cross-Examination by Grady L. Beard	111
Re-Direct Examination by Stephen J. Wukela	166
Re-Cross Examination by Grady L. Beard	171
Transcript of Hearing before the Appellate Panel dated March 19, 2012	
Argument for Appellant by Stephen J. Wukela	181
Argument for Respondents by Grady L. Beard	185
Reply for Appellant by Stephen J. Wukela	191

OTHER

Claimant's APA Submissions dated September 16, 2011, and Supplement dated October 4, 2011	199
Medical Record of Dr. Anthony Alexander dated February 22, 2011	302
Defendants' Petition for Hearing filed April 7, 2011	485
Claimant's Return to Carrier's Petition for Hearing dated April 14, 2011	490
Defendants' APA Submissions dated September 21, 2011	557

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1009259

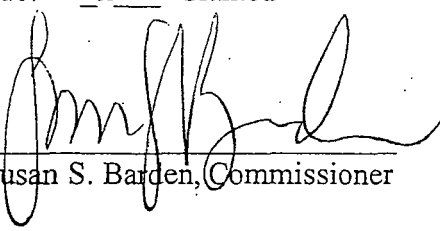
Jeffrey L. McFadden,)
)
 Claimant,)
 vs.)
)
 City of Lake City,)
)
 Employer,)
)
 SC Municipal Insurance Trust,)
)
 Carrier,)
 Defendants)
)

A Motion regarding the following issue(s) has been received.

- ☐ Discovery or Subpoena
☐ Appointment of guardian Ad Litem
☐ Attorney's appearance before the Commission
☐ Withdrawal of Representation
☐ Attorney's Fee
☐ Claim Pending Commission Review
☐ Postpone
☐ Adjourned the Scheduled Hearing
☐ Self Insurance Privileges
☐ Penalties and Interest
☐ Third Party Practice
☒ Other: Motion for Petition for Hearing

The following disposition has been made: ☒ Granted ☐ Denied

Columbia, SC


Susan S. Barden, Commissioner

CERTIFICATE OF SERVICE

WCC FILE NO. 1009259

This is to certify that the undersigned has this date served this Order in the above-captioned action upon all parties to this cause depositing a copy hereof, first class postage paid, or if indicated below by certified mail, return receipt requested, in the United States mail addressed to the attorney or attorneys for said parties.

This 6th day of May, 2011.

BY Kristi Love
Kristi Love, Assistant to Commissioner Barden

cc:

Grady Beard, Esquire
Sowell Gray
PO Box 11449
Columbia, SC 29211

Steve Wukela, Jr.
Wukela Law Firm
PO Box 13057
Florence, SC 29504

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1009259

Jeffrey L. McFadden,	)	
	)	
Employee,	)	
	)	
Claimant,	)	
v.	)	
	)	<u>ORDER</u>
City of Lake City,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
South Carolina Municipal Insurance Trust,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

A Hearing was scheduled in this matter before the undersigned for Florence, South Carolina, on October 20, 2011, pursuant to the Forms 50 and 51 filed on behalf of the parties. Prior to the scheduled Hearing date, the parties and the undersigned had an extensive Office Conference on October 10, 2011, regarding the issues in dispute, including but not limited to, the defendants' request to stop payment of benefits due to the claimant's involvement in a motor vehicle accident which they maintain constitutes a subsequent intervening accident that broke the chain of causation as expressed in Sanders v. Wal-Mart Stores, Inc., 379 S.C. 554, 66 S.E.2d 297 (Ct. App. 2008); the claimant's request for additional medical care; and the Motion for Attorney's Fees and Costs pursuant to S.C. Code Annotated Section 15-36-10 filed by counsel for the claimant against the defendants. Upon his own motion and without holding a formal Hearing or addressing the merits of the case, the undersigned exercised his discretion and makes the following determination:

1. The Hearing scheduled for October 20, 2011, in Florence, South Carolina, is cancelled.
2. The defendants will schedule an appointment with Dr. Thomas J. Holbrook for a surgical evaluation and/or treatment for anything causally-related to the first motor vehicle accident (not the alleged intervening accident on February 17, 2011).
3. The undersigned denies the request for costs, fines or sanctions filed by Claimant's counsel and the similar cross-claim filed by defense counsel in the Response.
4. This Order is appealable, to which the parties agree, as any other Order would be under the rules, and the parties did submit their APA Submissions for review to the undersigned.
5. The parties will take depositions or conduct other additional discovery rather than have live medical testimony at a Hearing.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that the Hearing scheduled for October 20, 2011, is cancelled for the reasons set forth above. The Defendants will schedule Claimant to be seen by Dr. Thomas Holbrook as referenced above. Neither party is entitled to costs, sanctions or attorneys' fees. The claim will be returned to general files and either party may request a Hearing before the next available jurisdictional Commissioner upon completion of the evaluation and additional discovery referenced above unless either party pursues an appeal of this Order.

IT IS SO ORDERED.



G. Bryan Lyndon, Commissioner

South Carolina Workers' Compensation Commission

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

October 26, 2011

By: Tamara Morris, Administrative Assistant to Commissioner Lyndon

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1009259

JEFFERY L. MCFADDEN CLAIMANT/APPELLANT,

v.

CITY OF LAKE CITY AND SOUTH
CAROLINA MUNICIPAL INSURANCE TRUST.
DEFENDANTS/RESPONDENTS.

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on March 19, 2012, per notices
timely and properly served upon
all parties of interest.

Appellate Panel Decision and Order

filed, 5/23/12

APPEARANCES: CLAIMANT/APPELLANT represented by Steven J. Wukela., Esquire, of
Florence, South Carolina; and

DEFENDANTS/RESPONDENTS represented by Grady L. Beard, Esquire,
of Columbia, South Carolina.

STATEMENT OF THE CASE

This is an appeal by the claimant of the Decision and Order of Commissioner G. Bryan Lyndon filed October 26, 2011. Specifically, the claimant contends the Hearing Commissioner erred in failing to award the claimant attorneys' fees and costs incurred as a result of the prosecution of an alleged frivolous defense pursuant to S.C. Code Annotated Section 15-36-10. The defendants maintain they have asserted a good faith defense in this matter and the Hearing Commissioner properly declined to assess attorney's fees and costs.

By way of background, this claim involves an admitted workers' compensation claim that occurred on July 16, 2010. The defendants accepted the claim; authorized medical care for the claimant's injury and began providing compensation for temporary total disability (TTD). In October 2010, the claimant's TTD checks inadvertently fell off auto-payment and a check issued to bring the claimant current was lost and had to be reissued. The claimant was aware at all times of the mistake and that the defendants were seeking to correct the problem. The defendants subsequently paid the claimant all TTD owed and continued payment of TTD. The claimant, however, filed a Form 50 with the Commission seeking fines and sanctions for improper termination of TTD. Prior to the Hearing date, the parties resolved the issues in dispute and the claimant withdrew the Form 50.

The following year the defendants discovered the claimant had been involved in a motor vehicle accident on February 17, 2011.¹ The defendants took the position that the motor vehicle accident constituted a subsequent intervening accident which broke the causal chain as set forth in Sanders v. Wal-Mart Stores, Inc., 379 S.C. 554, 66 S.E.2d 297 (Ct. App. 2008), and began investigating the claim. Following their investigation, the defendants filed a Petition for Hearing on April 7, 2011, pursuant to Section 42-17-20, requesting a Hearing be scheduled to determine whether they may stop payment of TTD benefits and medical care, as the claimant's current condition was the result of a subsequent intervening cause rather than the admitted accident. On April 19, 2011, the claimant filed a Return to the Carrier's

¹ The subsequent intervening accident was specifically noted in a medical report of Dr. Alexander, the claimant's authorized treating physician, dated February 22, 2011.

Request for a Hearing requesting the Petition be dismissed as same was contrary to the Act. On May 6, 2011, Commissioner Susan S. Barden issued an Order granting the defendants' Motion for a Hearing. The claimant did not appeal this Order but rather filed a Form 50 with the Commission on May 19, 2011, requesting a Hearing seeking additional medical care; compensation for permanent disability; and attorney's fees and costs associated with the prosecution of a frivolous defense pursuant to Section 15-36-10. The claimant also filed a Motion for Attorney's Fees and Costs pursuant to the S.C. Frivolous Civil Proceedings Act Section 15-36-10.

A Hearing was scheduled in this matter before Commissioner Lyndon in Florence, South Carolina, on October 20, 2011, pursuant to the Forms 50 and 51, as well as the various Motions filed on behalf of the parties. Prior to the scheduled Hearing date, the parties and Commissioner Lyndon had an extensive office conference on October 10, 2011, regarding the issues in dispute. Upon his own motion and without holding a Hearing or addressing the merits of the case, Commissioner Lyndon made the following determination:

1. The Hearing scheduled for October 20, 2011, in Florence, South Carolina is cancelled.
2. The defendants will schedule an appointment with Dr. Thomas J. Holbrook for a surgical evaluation and/or treatment for anything causally-related to the first motor vehicle accident (not the alleged intervening accident on February 17, 2011).
3. The undersigned denies the request for costs, fines or sanctions.
4. This Order is appealable as any other Order would be under the rules.
5. The parties will take depositions or conduct other additional discovery rather than have live medical testimony at a Hearing.

By way of Form 30 filed with the Commission on November 7, 2011, the claimant appealed the Order of Commissioner Lyndon to the Full Commission contending the Hearing Commissioner erred in failing to award penalties, including attorney's fees and costs. The defendants respectfully requested the Full Commission affirm the Order of the Hearing Commissioner in its entirety as the claimant failed to establish attorney's fees and/or costs are appropriate in this case.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Full Commission and has since been under study and consideration.

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial Hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Single Commissioner. After careful review in the instant case of all grounds raised by claimant, and the briefs and oral arguments presented by both parties, the Commission, by unanimous vote, **AFFIRMS** the Decision and Order of the Single Commissioner denying the claimant's request for costs, fines or sanctions to be imposed upon the defendants, while **AMENDING** the order to fine the claimant for a frivolous appeal. The claimant's attorney, not the claimant, must pay the fine. Hearing costs for an appellate matter are One Thousand Fourteen and 86/100 (\$1,014.86) Dollars.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the positions of the claimant and the defendants presented during the Hearing, the medical evidence and other evidence submitted through the APA, **THE APPELLATE PANEL FINDS AS A FACT THAT:**

1. The claimant's request for costs, fines, or sanctions to be imposed upon the defendants is denied.
2. The claimant is assessed Hearing costs in the amount of One Thousand Fourteen and 86/100 (\$1,014.86) Dollars for a frivolous appeal. The claimant's attorney, not the claimant, must pay the fine.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of the Appellate Panel that:

1. Pursuant to Section 15-36-10, no costs, fines, or sanctions shall be imposed on the defendants.

2. Pursuant to Section 42-17-80, the claimant is assessed costs in the amount of One Thousand Fourteen and 86/100 (\$1,014.86) Dollars for a frivolous appeal.

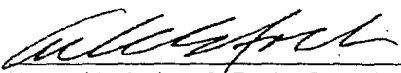
ORDER

IT IS, THEREFORE, ORDERED, the Decision and Order of the Hearing Commissioner filed in the above-captioned matter on October 26, 2011, is hereby **AFFIRMED WITH AMENDMENTS**. The claimant is assessed costs in the amount of One Thousand Fourteen and 86/100 (\$1,014.86) Dollars for a frivolous appeal, and these costs shall be paid by the claimant's attorney.

AFFIRMED WITH AMENDMENTS.

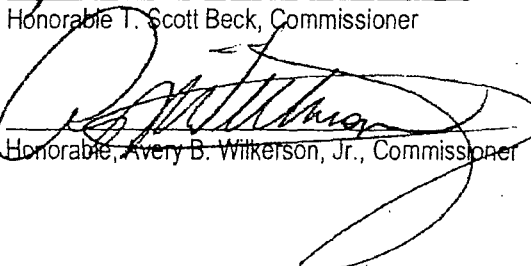
AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Honorable Andrea C. Roche Commissioner
For the Appellate Panel

CONCUR:


Honorable I. Scott Beck, Commissioner


Honorable Avery B. Wilkerson, Jr., Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 23 day of May 2012
By Valerie D. Bell

Administrative Assistant to the Commissioner

Grady L. Beard
Steve Wilkerson

South Carolina Workers' Compensation
Commission
13 Main Street, 5th Floor • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5700
www.wcc.sc.gov



WC File #: 1009259
Carrier File #: 63-77747
Carrier Code #: _____
Employer FEI #: _____

Claimant's Name: Jeffrey McFadden SSN: [REDACTED] Employer's Name: City of Lake City
Address: [REDACTED] Address: P.O. Box 1329
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Lake City State: SC Zip: 29560
Home Phone: () - Work Phone: () - Insurance Carrier: SCMIT % Companion TPA, LLC
Preparer's Name: Steve Wukela, Jr. Law Firm: Wukela Law Firm Preparer's Phone #: (843) 669 - 5634

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the (es) at Lines 6; 7, 8, and 9, and file this form in duplicate.
Claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 07/16/10

- ☒ Injury ☐ Illness ☐ Repetitive Trauma
- 1a. The Claimant sustained an injury to low back, legs, neck, left shoulder and left hand on 07/16/10 in Florence County, state of SC.
Body part(s) affected are: low back, legs, neck, left shoulder and left hand.
- 1b. Briefly describe how the accident occurred: Driving down dirt road when vehicle started fishtailing toward a ditch flipped over hitting tractor parked in the field.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 07/16/10 in the following manner: Coworker Garret Brown called the Claimant's supervisor, Anthony Brown.
6. Due to injury, the claimant is in need of (check one):
☒ (a) Medical examination and treatment for: low back, legs, neck, left shoulder and left hand.
☐ (b) Additional medical examination and treatment for: _____.
7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: The Claimant's weekly temporary total disability benefits are current.
8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☒ (1) General Disability: ☒ Total ☒ (2) Specific Disability: ☒ Total ☒ (3) Wage Loss
☐ Partial ☐ Partial
9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____.
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$369.88, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: None.
- 11a. Further grounds or unusual aspects of claim: Failure to provide medial treatment pursuant to the recommendation of the authorized treating physician (see attached); termination of medical treatment without benefit of Commission order; frivolous defense pursuant to §15-36-10 et. seq.
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Anthony Alexander, MD - Pee Dee Orthopaedic Associates
12. To the best of your knowledge, did you have any prior permanent disability? No If yes, describe: _____.
13. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 3a. I am filing a claim. I am not requesting a hearing at this time.
- 3b. I am requesting a hearing. A \$25 fee is required.
4. Estimated time needed for hearing: 30 minutes

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

Preparer's Signature: [Signature] Attorney-At-Law: steve@wukelalaw.com Title: _____ Email: _____
Date: July 7, 2011

SCWCC

JUL 12 2011

JUDICIAL

to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's
Records Department.

WC Form # 50
sed 9/07

50

Employee's Notice of Claim and/or Request for
Hearing

10

SC Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715



WCC File #: 1009259

Carrier File #: 63-77747

Carrier Code #:

Employer FEIN #:

Jeffrey McFadden
Claimant's Name SSN
Address City State Zip
Home Phone Work Phone

City of Lake City
Employer's Name
Post Office Box 1329, Lake City, SC 29560-1329
Address City State Zip
SC Municipal Insurance Trust
Insurance Carrier

Grady L. Beard, Esquire
Preparer's Name

(803) 929-1400
Phone #

Date of Injury or Illness: 07/16/10

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is admitted the employee sustained an injury on or about the date set forth in the Form 50. The reasons for denial are: However, defendants deny claimant sustained compensable injuries to the level claimed in the Form 50 or for all body parts alleged in Form 50. Specifically, defendants admit claimant was injured in a motor vehicle accident with several contusions and lacerations.
2. It is admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: _____
3. It is admitted the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
4. It is admitted at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: _____
5. It is admitted notice of the injury was given to the employer. The reasons for denial are: The defendants only admit being on notice for injuries as set forth in the Form 12A dated 7/16/10. See No. 1 and No. 11.
6. It is denied the employee is entitled to additional medical care as a result of injury. The reasons for denial are: Defendants believe claimant sustained an intervening trauma breaking the causal connection. However, defendants have discovered claimant was treated for nearly identical injuries prior to this accident which he denied under oath at his deposition. Defendants have subpoenaed records from claimant's family doctor regarding same, and intend to depose the doctor as well.
7. It is denied the employee is entitled to temporary total disability for the period(s) of: Claimant is currently on a running award of temporary total disability benefits; however, defendants contend his current medical condition is not causally related to compensable accident (See #6 above) and; therefore, claimant not entitled to temporary total disability. Defendants will seek credit for overpaid temporary total disability due to same.
8. It is denied the employee is permanently disabled. The reasons for denial are: No evidence of same. Defendants demand strict proof of same.
9. It is denied the employee has a serious disfigurement.
10. It is contented that an average weekly wage of \$369.88 and a compensation rate of \$246.60 applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: See attached.
12. Estimated Time Needed for Hearing: 1 hour minimum

I certify that I have served this document pursuant to R. 67-212 by delivering a copy to Ms. Virginia L. Crocker, Judicial Director
South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 Name
and Steve Wukela, Jr., Esquire, Wukela Law Firm, 403 Second Loop Road, Post Office Box 13057, Florence, SC 29504-3057 Address

on the 23rd day of June, 2011 by ☒ first class mail, ☐ certified mail, ☐ personal service.

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

Preparer's Signature

Attorney for The Employer/Carrier
Title

gbeard@sowellgray.com
Email

June 23, 2011
Date

Refer to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

Jeffrey L. McFadden v. City of Lake City

WCC File No.: 1009259

Date of Accident: 07/16/10

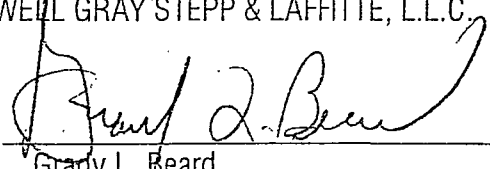
Claim No.: 63-77747

Our File No.: 5682/8114

(Continuation from Form 51)

11. Further contentions or grounds of defense are: pre-existing disability to allegedly injured members; (questionable testimony under oath by claimant regarding same); intervening trauma; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work-related; defendant reserves the right to amend this Answer and plead additional defenses.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Grady L. Beard
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

Attorneys for Employer/Carrier

Columbia, South Carolina

June 23, 2011.

P.O. Box 1715 • 1612 Marion St
Columbia, South Carolina 29202-1715
(803) 737-5700

BULK MAIL

1009259
103-77747
Carrier Code # SP 925
Employer FEIN 57-6061061

Jeffery L. McFadden [REDACTED] City of Lake City
[REDACTED] SSN [REDACTED]
[REDACTED] Address [REDACTED] City [REDACTED] State [REDACTED] Zip [REDACTED]
[REDACTED] Home Phone # [REDACTED] Work Phone # [REDACTED]
Preparer's Name U. Williams Phone # (843) 374-5421
Employer's Name 202 Kelley St. Lake City, SC 2956
Insurance Carrier Companion Third Party Adm. L.L.C.

A. Total Wages Paid

1. Check Applicable Method:

- ☒ Report of earnings of injured employee based on four completed quarters.
☐ Report of earnings of injured employee who did not complete four quarters based on actual time worked.
☐ Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire Date: _____
☐ Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just. (Attach documentation to show how average weekly wage and compensation rate were calculated.)

Date of Injury: 07-16-2010
month day year

2. List total wages paid as reported to Employment Security Commission on the Employer Quarterly Contribution and Wage Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid
1st	9-30-09	\$4566.32
2nd	12-31-09	\$4532.84
3rd	03-31-10	\$4798.81
4th	06-30-10	\$5335.89

Total Paid \$19,233.86

3. List total value of other allowances of any character made in lieu of wages during four quarters above.

3. - 0 -

4. Add lines 2 and 3.

TOTAL WAGES PAID:

\$19,233.86

5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred.

5. 52

B. Average Weekly Wage

6. To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5).

AVERAGE WEEKLY WAGE:

369.88

C. Compensation Rate

7. The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6657.

Estimate compensation rate by multiplying average weekly wage (line 6) by .6657. See part 8 below to determine the actual compensation rate.

7. 246.60

8. The compensation rate is as follows (choose one):

- ☐ When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.
- ☐ When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.
- ☐ When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.
- ☐ Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8- _____
- ☐ The calculated compensation rate (line 7) applies. Enter amount from line 7 on line 8.

WEEKLY COMPENSATION RATE: 8. 246.60

Employees representative shall prepare a Form 20 and serve per R.67-211 a copy on the claimant within thirty days of beginning temporary compensation. See R.67-1803 when no temporary compensation is paid. NOTE: Average weekly wage represents average gross pay before taxes and other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ONLINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803) 737-5723.

WCC FORM # 20 REV. DATE 3/97

20 SENT TO IC

JUL 30 2010

STATEMENT OF EARNINGS
OF INJURED EMPLOYEE

MIC 13

**STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1009259**

Jeffrey L. McFadden,

Claimant,

v.

City of Lake City,

Employer,

and

South Carolina Municipal Insurance Trust,

Carrier,

Defendants.

**DEFENDANTS' RESPONSE TO MOTION
FOR ATTORNEY'S FEES AND COSTS
PURSUANT TO THE S.C. FRIVOLOUS CIVIL
PROCEEDINGS SANCTIONS ACT, S.C. CODE
15-36-10, et. seq.**

TO: MS. VIRGINIA L. CROCKER, JUDICIAL DIRECTOR, SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; HONORABLE G. BRYAN LYNDON, COMMISSIONER, SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; AND STEPHEN J. WUKELA, ESQUIRE, ATTORNEY FOR THE CLAIMANT

The Defendants respond to the frivolous Motion filed by Claimant in this case as follows, and would request costs be assessed against Claimant for filing same:

1. Dr. Anthony Alexander issued a medical report specifically stating Claimant was involved in a subsequent intervening accident and that Claimant had sustained an aggravation or exacerbation of his symptoms and condition following same. Based upon this report, Defendants notified Claimant's counsel they would not authorize any further treatment due to the intervening accident defense.

2. Claimant's counsel then unilaterally scheduled the deposition of Dr. Alexander to presumably attempt to rebut the defense. Defendants believe Dr. Alexander's testimony was less than credible, and have Subpoenaed him to the Hearing to give live testimony before the Hearing Commissioner to assess the credibility issue himself.

3. In the interim, several other doctors have provided medical records regarding not only this intervening motor vehicle accident, but also now have called into question whether Claimant's originally accepted condition was actually the cause of his ongoing problems. In fact, Claimant untruthfully denied such pre-existing treatment during his deposition testimony.

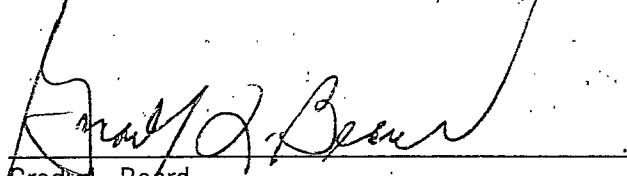
4. The Claimant has the burden of proof regarding his claims, and defendants have a good faith basis for denying same based upon all of the facts which will be presented before the Hearing Commissioner.

5. Furthermore, the SC Appellate Courts have already stated Attorneys' Fees and costs are not allowed in a WC setting as they are not specifically allowed under the Act. Moreover, many of the entries submitted by Mr. Wukela are not only improper as they pertain to his Motion, but require proof, and Defendants request he provide the contemporaneous time sheets showing the time submitted.

6. If the Commissioner believes attorneys fees and costs are allowed, however, they should be assessed against Claimant for his frivolous Motion.

Respectfully Submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



Grady L. Beard
1310 Gadsden Street
Post Office Box 11449 (29211)
Columbia, South Carolina 29201
(803) 929-1400

ATTORNEY FOR DEFENDANTS

Columbia, South Carolina

September 30, 2011

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1009259

Jeffrey L. McFadden,)
)
Employee,)
)
Claimant,)
v.)
)
City of Lake City,)
)
Employer,)
)
and)
)
South Carolina Municipal Insurance Trust,)
)
Self-Insured Trust Fund,)
)
Defendants.)
)

MOTION TO QUASH

TO: HONORABLE G. BRYAN LYNDON, COMMISSIONER; MS. VIRGINIA L. CROCKER, JUDICIAL DIRECTOR, SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; AND STEPHEN J. WUKELA, ESQUIRE, ATTORNEY FOR THE CLAIMANT:

YOU WILL PLEASE TAKE NOTICE that pursuant to Regulation 67-215 of the South Carolina Workers' Compensation Act, the defendants in the above-referenced workers' compensation claim move before the South Carolina Workers' Compensation Commission for an Order quashing the subpoena issued by Stephen J. Wukela, Esquire, to Grady L. Beard, Esquire on October 7, 2011, to produce documents, (attached as Exhibit A), on the following grounds:

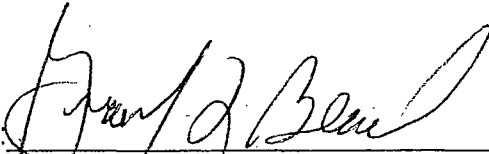
1. This claim involves an admitted workers' compensation claim that occurred on July 16, 2010.
2. The issues currently in dispute are whether the claimant is entitled to additional medical care or whether the claimant's current problems and need for medical care arise from a subsequent intervening accident that broke the causal chain. Sanders v. Wal-Mart Stores, Inc., 379 S.C. 554, 666 S.E.2d 297 (Ct. App. 2008).

3. SCRCP 26(b)(1) provides, in pertinent part, that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party" Nonetheless, the information sought must appear "reasonably calculated to lead to the discovery of admissible evidence."
4. The items requested by opposing counsel, specifically "copies of all billing statements from Grady Beard and Sowell Gray in the representation of the employer/carrier in this matter" are not subject to subpoena as they are privileged as attorney work product prepared in the anticipation of litigation and protected by the attorney client privilege. See Exhibit A.
5. The subpoena is only served for the purpose of annoyance and is not a good faith effort to obtain relevant evidence with regard to the above-captioned workers' compensation claim. The items requested are completely irrelevant to the claim.
6. Pursuant to SCRCP, Rule 11(b), the undersigned certifies his Associate, Gibbs Leaphart, has attempted to contact opposing counsel regarding a resolution to this matter but has yet to receive a response call. Assuming this subpoena is in reference to the counter positions of the parties relative to Motions for Costs, Commissioner Lyndon has already denied each party's request.

Based upon the foregoing, defendants move to quash the above-referenced subpoena in issued by the claimant's attorney on October 7, 2011. Furthermore, defendants believe costs associated with responding to this frivolous subpoena, including but not limited to, being forced to file this Motion, should be assessed against claimant pursuant to § 42-17-80. The defendants contend there is no prejudice to the claimant in granting this Motion.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Grady L. Beard
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants

Columbia, South Carolina

October 14, 2011



Claimant's Name: Jeffrey McFadden SSN: - - - Employer's Name: City of Lake City
Address: [REDACTED] Address: PO Box 1329
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Lake City State: SC Zip: 29560
Home Phone: () - Work Phone: () - Insurance Carrier: SCMIT c/o Companion TPA LLC
Preparer's Name: Stephen J. Wukela Law Firm: Wukela Law Firm Preparer's Phone #: 843-669-5634

SUBPOENA

Re: Grady L. Beard, Esquire, PO Box 11449, Columbia, SC 29211

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

PLACE OF TESTIMONY: _____ ROOM: _____
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: _____

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

LIST OF DOCUMENTS: Copies of all billing statements of Grady Beard and Sowell Gray in the

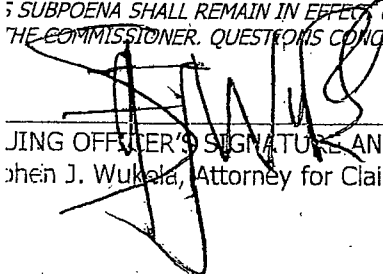
Representation of the Employer/Carrier in this matter.

PLACE: Wukela Law Firm, PO Box 13057, DATE AND TIME: 10/18/11 10:00 AM
Florence, SC 29504

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

PREMISES: _____ DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.


ISSUING OFFICER'S SIGNATURE AND TITLE
Stephen J. Wukela, Attorney for Claimant

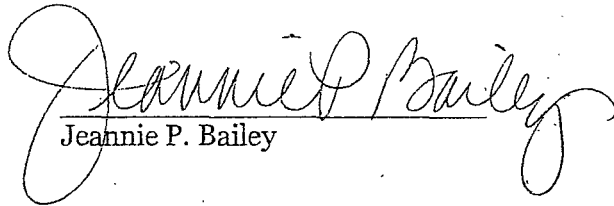
(843-669-5634
PHONE NUMBER

10/18/2011
DATE

CERTIFICATE OF SERVICE

The undersigned, Jeannie P. Bailey, of the Wukela Law Firm, hereby certifies that on the 7 day of October, 2011, she did place in an envelope, with first class postage prepaid, a **Subpoena** in the matter of Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC Municipal Insurance Trust % Companion TPA, LLC, Carrier, WCC File Number: 1009259 and deposited the same in the United States Mail. Said envelope being addressed to the following person(s):

Grady L. Beard, Esquire
Sowell Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia SC 29211


Jeannie P. Bailey

STATE OF SOUTH CAROLINA
 BEFORE THE
 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
 WCC FILE NO: 1009259

Jeffrey McFadden,)
 Employee-Claimant,)
 -vs-) Deposition of
) JEFFREY MCFADDEN
) June 8, 2011
 City of Lake City,)
 Employer,)
 and)
 SC Municipal Insurance)
 Trust,)
 Carrier.)

COPY

Deposition on oral examination of
 JEFFREY MCFADDEN, reported by Jeannette M. King,
 Court Reporter and Notary Public in and for the
 State of South Carolina; said deposition taken
 pursuant to Notice of Deposition and in
 accordance with the South Carolina Rules of Civil
 Procedure at the law offices of the Wukela Law
 Firm, 403 Second Loop Road, Florence, South
 Carolina, commencing on Wednesday, June 8, 2011,
 at the hour of 2:01 p.m.

JEFFREY MCFADDEN 6-8-2011

APPEARANCES

1

2

3

Representing the Claimant:

STEPHEN J. WUKELA, ESQUIRE

4

Wukela Law Firm

Post Office Box 13057

5

Florence, South Carolina 29504-3057

6

7

8

9

Representing the Employer/Carrier:

GRADY L. BEARD, ESQUIRE

10

Sowell Gray Stepp & Laffitte

1310 Gadsden Street

11

Columbia, South Carolina 29201

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ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

CONTENTS

1

2

3 Stipulations 4

4 Examination by Mr. Beard 4

5 Certificate of Court Reporter 67

6

7

8

9

10

11

12

13

14

15

16

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ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 This deposition is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the
4 deponent and respective counsel that the reading
5 and signing of the deposition by the deponent is
6 expressly waived.

7 WHEREUPON:

8 JEFFREY MCFADDEN, after being duly
9 sworn and cautioned to speak the truth, the whole
10 truth and nothing but the truth, testified as
11 follows:

12 EXAMINATION

13 BY MR. BEARD:

14 Q Mr. McFadden, my name is Grady Beard.
15 I represent the City of Lake City and I represent
16 what's called the Municipal Association of South
17 Carolina, and they handle workers' comp for a lot
18 of different towns throughout the state. Lake
19 City being one of those towns. I do a good bit
20 of their work and am defending the workers' comp
21 claim that you have filed.

22 Today is a -- what I call a question
23 and answer session. I know some -- partially
24 some of the answers to some of the questions, but
25 I need a little bit more information. There has

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 been some developments in your case that I need
2 some more information -- to fill in some
3 information for us.

4 I'm going to be asking you questions.
5 A lot of which will require you to say yes or no.
6 Please say the word yes or no. A lot of people
7 have the tendency to say un-huh, um-huh, do this.
8 If you do any of those things, I will prompt you
9 and say, was that a yes or no. I'm not trying to
10 be condescending to you, but as you can see,
11 she's typing what we're saying. She's also got a
12 tape recorder. It's called a backup. And I want
13 to make sure the word yes is yes and the word no
14 is no and there is no un-huh or um-huh because
15 that's hard to understand. Okay?

16 A Understand.

17 Q All right. Second, if you don't
18 understand a question I ask for whatever reason,
19 I talk too fast, use words that you don't
20 understand or whatever the reason be, if you do
21 not understand my question, please tell me you
22 don't understand my question. Okay?

23 A I understand.

24 Q Because if you don't, I'm going to
25 assume you understand my question and later,

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 because it happens from time to time, I don't
2 want you to be able to come back and say, Well, I
3 didn't understand your question, you know, at a
4 hearing or somewhere else when we're beyond that
5 point. So if you answer my question, I'll assume
6 that you understand it; is that fair?

7 A Yes.

8 Q Okay. You promise me that if you don't
9 understand, you'll let me know?

10 A I'll let -- actually no way I can
11 understand it or something.

12 Q That's all right.

13 I know you and Mr. Wukela probably
14 discussed a little bit of what's going to happen.
15 You're not allowed to ask him questions during
16 the deposition. If you have any questions, you
17 have to ask me the questions and I will try to
18 help you the best I can.

19 If for any reason Mr. Wukela objects --
20 he's entitled to say, I object, depends on the --
21 he can only object to the form of the question
22 unless I ask you a privilege question. I will
23 not ask you any questions that you and your
24 attorney talk about. Okay?

25 A I understand.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q If you would, state your full name for
2 the record.

3 A Jeffrey Leron McFadden.

4 Q How do you spell Leron?

5 A L-E-R-O-N.

6 Q And you go by Jeff, Jeffrey?

7 A Jeffrey.

8 Q So if -- City of Lake City, everybody
9 knows you as Jeffrey?

10 A Yes.

11 Q What's your date of birth?

12 A [REDACTED]

13 Q If my calculations are right, that
14 makes you [REDACTED] years old.

15 A Yes, sir.

16 Q Okay. How tall are you?

17 A Five-ten, five-eleven.

18 Q How much do you weigh?

19 A 276 the last time I checked.

20 Q Do you know your social security
21 number, and for the record, she will only type
22 your last four numbers, but I --

23 A [REDACTED]

24 Q Say that one more time.

25 A [REDACTED].

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q Do you have a South Carolina driver's
2 license?

3 A Yes.

4 Q Do you have a regular license, CDL?
5 What kind of license?

6 A Regular.

7 Q Is it valid?

8 A Yes.

9 Q Any restrictions on your license?

10 A No.

11 Q Have you ever had your license
12 suspended for any reason?

13 A Yes.

14 Q Why was it suspended?

15 A By mistake.

16 Q Okay. Any other reason it's ever been
17 suspended?

18 A No.

19 Q Did you drive yourself here today?

20 A No.

21 Q How did you get here?

22 A My wife.

23 Q Okay. And what is your current
24 address?

25 A 216 East Village Road, Lake City, South

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Carolina.

2 Q How long have you lived there?

3 A About -- about nine years.

4 Q So a good while.

5 A Yes.

6 Q Are you originally from Lake City?

7 A Yes.

8 Q Okay.

9 A No. No.

10 Q Where are you originally from?

11 A New York.

12 Q How long have you been in South

13 Carolina?

14 A Most of my life. Can't quite recall
15 the years and numbers, but.

16 Q Did you go to school here?

17 A Yes.

18 Q Did you go to high school?

19 A Yes.

20 Q Okay. Does your wife work?

21 A Yes.

22 Q What does she do?

23 A Booking clerk for Florence County

24 Detention Center.

25 Q Is she considered like a police officer

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 or is a booking clerk --

2 A I'm not sure.

3 Q -- not a police officer?

4 A I'm not sure.

5 Q Did she have to take off work to bring
6 you here?

7 A No.

8 Q All right. What's her name?

9 A Lashona.

10 Q Can you spell that?

11 A L-A-S-H-O-N-A. McFadden.

12 Q How far did you go through school?

13 A 11th grade.

14 Q Did you complete the 11th grade?

15 A No.

16 Q Completed the 10th grade?

17 A Yes.

18 Q Where did you go to school?

19 A Lake City.

20 Q Lake City High School?

21 A Yes.

22 Q Since you left school in the 10th
23 grade, have you had any -- did you ever get a
24 GED?

25 A I'm working on it.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q Currently working on GED?

2 A Yes.

3 Q Have you had any vocational, technical
4 school training?

5 A No.

6 Q Did you have any special training or
7 education from the City? Did they send you for
8 any kind of on-the-job training or where you
9 would go take courses and things of that nature?

10 A Yes.

11 Q Tell me what you did.

12 A We went to a driving course in
13 Columbia, a driving class for safety driving, and
14 also it's -- periodically, they would send us to
15 Myrtle Beach to a census convention to learn
16 about the software and more about working with
17 the water meters and things of that nature.

18 Q Okay. Do you get any kind of diplomas
19 or certificates when you do those things?

20 A No.

21 Q Do you and your wife have any children?

22 A Yes.

23 Q How many children do you have?

24 A All together or just --

25 Q Well, I mean, obviously, you have some

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 together.

2 A Yes.

3 Q How many do you have together?

4 A Two.

5 Q Boy, girl?

6 A Boy and girl.

7 Q Okay. Boy and girl.

8 How old are they?

9 A Four and -- no. Yeah. Four and two.

10 Q Now, obviously, by your answer, one of
11 you or both of you have children with somebody
12 else.

13 A Yes.

14 Q Do you have other children with
15 somebody else?

16 A Yes.

17 Q How many children do you have?

18 A I have two outside kids.

19 Q How old are they?

20 A 16 and 10.

21 Q The 16 year old and 10 year old, were
22 you married to their parent?

23 A No.

24 Q Is it the same parent?

25 A No.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q Do you pay child support to each one of
2 the parents of those children?

3 A Yes.

4 Q Okay. Are your child support payments
5 current?

6 A No.

7 Q Why not?

8 A Because for one, I was arrears when I
9 got out of work. It took me awhile to get caught
10 up with the workman comp checks getting started
11 and everything, so that put me in arrears. And
12 one of them, they took my taxes this year and
13 brought one current. One is still delinquent.

14 Q So the mother had a tax lien against
15 you?

16 A Yes.

17 Q Or the court put a tax lien against
18 you?

19 A Yes.

20 Q Does your wife have children outside of
21 -- with someone else?

22 A Yes.

23 Q Okay. How many children does she have?

24 A Two.

25 Q Do they live with you and your wife?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A Yes.

2 Q So currently living at your house would
3 be you, Lashona McFadden and four children.

4 A Yes.

5 Q Anyone else live there?

6 A No.

7 Q And her two children are how old?

8 A 13 and 9.

9 Q So all four children are dependent upon
10 the two of you for support?

11 A Yes.

12 Q Ever serve in the military?

13 A No.

14 Q Since you've been in South Carolina,
15 have you always lived in the Lake City area?

16 A Yes.

17 Q When did you go to work for Lake City,
18 the City of Lake City?

19 A I can't recall.

20 Q Approximately.

21 A Approximately --

22 Q My records indicate you started in
23 2001. Does that sound about right?

24 A Sounds about right.

25 Q Okay. And when you were hired at Lake

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 City, have you always done the same job or has
2 your job changed?

3 A Job's changed.

4 Q What did you start off as?

5 A Trash collector.

6 Q How long did you do that?

7 A About a year.

8 Q Any injuries or accidents doing that?

9 A I can't recall.

10 Q Did you ever file a workers' comp claim
11 as a trash collector?

12 A I can't recall.

13 Q What was your next job?

14 A Water meter reader.

15 Q Is that what you do now or the last job
16 you had?

17 A Yes.

18 Q So you've done that basically the rest
19 of the time there?

20 A Yes.

21 Q Other than the workers' comp claim that
22 we're here for right now, has the date of
23 accident of July 16, 2010, motor vehicle
24 accident, have you had any other workers' comp
25 claim with the City of Lake City?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A I can't recall.

2 Q Why can't you recall?

3 A Because, I mean, I can't recall
4 actually having one.

5 Q Okay. So is it safe to guess that you
6 didn't have one? I mean, is that something that
7 you would forget?

8 A I wouldn't think I forgot, but, I mean,
9 I'm not sure, so that's why I said that.

10 Q Do you have any kind of memory
11 problems?

12 A I hadn't been diagnosed with one.

13 Q Okay. Who is your supervisor?

14 A Ricky Sims.

15 Q How long has Ricky Sims been your
16 supervisor?

17 A I'm not exactly sure.

18 Q Can you approximate how long he was
19 your supervisor?

20 A No.

21 Q Okay. Who was your supervisor before
22 Ricky Sims?

23 A Cheryl Hanna.

24 Q Cheryl Hanna?

25 A Yes.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q How long was she your supervisor?

2 A I'll say approximately eight years.

3 Q So she was there most of the time?

4 A Yes.

5 Q Did she retire or leave or something?

6 A I'm not sure of the circumstances.

7 She's not there anymore.

8 Q And then Ricky Sims took her spot?

9 A Yes, sir.

10 Q Who is Cheryl Schavers?

11 A Ms. -- she's a Schavers now. Sorry

12 about that.

13 Q So Cheryl Hanna is Cheryl Schavers?

14 A Yes. Yes.

15 Q Okay. Who is Anthony Brown?

16 A He's our outside field supervisor.

17 Q Who is hirer on the chain of command,

18 Cheryl Schavers or Anthony Brown?

19 A Cheryl Schavers.

20 Q Okay. And Mr. Brown is kind of in

21 charge when you're out in the field?

22 A Yes.

23 Q Cheryl Schavers stays at the City?

24 A Yes.

25 Q Or now, Ricky stays at the City?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A I don't know.

2 Q You don't know or he does things
3 differently than she did?

4 A Well, he was -- I don't know his --
5 exactly how he works because he was over the
6 maintenance crew at one point, but he -- but if I
7 recall right, he's -- he was Cheryl's assistant.

8 Q Okay.

9 A And now that she's gone, he's over --
10 he's taken control over the meter readers where
11 Ms. Schavers used to have that control.

12 Q While you were working as a meter
13 reader for City of Lake City, did you have any
14 other jobs at the same time?

15 A No.

16 Q Prior to working for the City of Lake
17 City, what did you do?

18 A Worked at Embers Charcoal.

19 Q Where are they located?

20 A They was located in Conway, South
21 Carolina, at the time.

22 Q Are they out of business?

23 A Yes.

24 Q How long did you work there?

25 A Approximately four years -- three years

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 or four years.

2 Q What was your job there?

3 A Machine operator, forklift driver.

4 Q So are you trained in those things?

5 A Yes.

6 Q You had training?

7 A Yes.

8 Q And to be a forklift operator you have
9 to go through certain classes through OSHA, don't
10 you?

11 A Well, at that time they wasn't doing
12 certain classes, but we did take a class to get
13 our special license or something for the
14 forklift.

15 Q Okay.

16 A Back in that era.

17 Q But you have training as a machine
18 operator and a forklift operator?

19 A Yes.

20 Q Did you ever have any injuries or
21 accidents for Embers Charcoal?

22 A Not that I can recall.

23 Q And did you work anywhere before that?

24 A The rubber plant in Kingstree, South
25 Carolina.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q What was the name of the rubber plant?

2 A I'm not sure.

3 Q Is it still there or is it gone?

4 A It's out of business there. And I used
5 to go there mostly through temp services, Olsten.

6 Q What other temp agency did you go
7 through? Is there one in Lake City?

8 A No. Olsten.

9 Q Here in Florence?

10 A In Florence.

11 Q Okay. And while working at the rubber
12 plant, did you ever have any injuries or
13 accidents there?

14 A No.

15 Q What was your job there?

16 A Pretty much just working on the
17 production line.

18 Q Assembly line?

19 A Yes.

20 Q And how long did you say you did that?

21 A I'm not sure. I'm not sure on the
22 time.

23 Q What other kinds of jobs have you had?

24 A I briefly worked with RH Moore.

25 Q What is RH Moore?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A It's -- they contract to do pipelines
2 and some -- they do some road work.

3 Q Like they do pipe construction?

4 A Right.

5 Q Dig the ditches and put the pipes in
6 and cover it up?

7 A Right.

8 Q Where did you do that?

9 A I did that mostly in the Myrtle Beach,
10 Conway area.

11 Q Okay. Where was the office for RH
12 Moore?

13 A I can't recall.

14 Q And you did the actual putting in the
15 pipes and the -- I'll call it the manual labor of
16 doing all that?

17 A Yes. Yes.

18 Q Did you ever have any injuries or
19 accidents on that job?

20 A No.

21 Q Prior to July 16, 2010, when you had
22 this motor vehicle accident that we're her for,
23 had you ever in your lifetime filed a workers'
24 compensation claim?

25 A Not that I can recall.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q Have you ever sustained an on-the-job
2 injury anywhere where you did not file a workers'
3 compensation claim?

4 A Yes.

5 Q Tell me about that. What kind of
6 injuries that you've had that you didn't file a
7 workers' comp?

8 A Working in the hole, just one time, I
9 hit my hand.

10 Q Which hand?

11 A Right hand.

12 Q Okay. Where, the City?

13 A Yes.

14 Q Why didn't you file a workers' comp
15 claim?

16 A Well, it wasn't that -- I mean, it
17 wasn't serious enough.

18 Q Did you have any medical treatment?

19 A No.

20 Q Anything else?

21 A No. Got stung by a bee. That's about
22 it as far as I can recall.

23 Q Is that -- I assume there are probably
24 bee nest all around in those water meters and
25 places like that?

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JEFFREY MCFADDEN 6-8-2011

1 A Some, not all.

2 Q Have you ever been a party to a
3 lawsuit? By that I mean, has anybody ever sued
4 you or have you every sued anybody for any reason
5 whatsoever, not counting divorce?

6 A Not counting divorce. Okay. That
7 would include like a --

8 Q Car wreck.

9 A -- car wreck or something. Yes.

10 Q Okay. Were you sued or did you sue
11 someone?

12 A I really don't know the answer to that.

13 Q When was the accident?

14 A I can't recall. I can't recall the
15 year, but there was an accident where I was
16 backing -- backing out of a lane in the city
17 truck and a car was coming behind me and it hit
18 the door on the car.

19 Q So you backed into a car?

20 A Yes.

21 Q Did they sue you or sue the city?

22 A I'm assuming the city.

23 Q Okay. Did you have any injuries with
24 that?

25 A No.

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JEFFREY MCFADDEN 6-8-2011

1 Q Do you happen to know what happened
2 with that lawsuit?

3 A No.

4 Q Okay. Did you have to be a witness
5 anywhere or anything?

6 A No.

7 Q Other than that, have you ever
8 personally sued someone for damages or has anyone
9 ever sued you for damages? Not the city, but you
10 personally.

11 A Not that I can recall.

12 Q When you were in high school, did you
13 play any sports?

14 A No.

15 Q When you were in high school, did you
16 ever have any injuries or accidents?

17 A I would think yes.

18 Q Tell me what kind of injuries or
19 accidents in high school.

20 A I mean, I can't recall, but I'm
21 assuming playing ball, different things, maybe a
22 twisted ankle.

23 Q Nothing significant?

24 A Nothing significant, no.

25 Q Have you ever had a slip-and-fall

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JEFFREY MCFADDEN 6-8-2011

1 injury in a grocery store, at a hotel, something
2 like that?

3 A No.

4 Q Have you ever caused a motor vehicle
5 accident other than the one you mentioned earlier
6 where you backed into a car? Have you ever
7 caused a motor vehicle accident where the other
8 driver sued you and your insurance company?

9 A Yes.

10 Q When was that?

11 A I can't recall the year.

12 Q Did you have to get a lawyer?

13 A No.

14 Q Did you have to get a lawyer in the

15 accident where you backed into the car in the
16 city truck?

17 A No.

18 Q Have you ever been in a situation where
19 you had to have a lawyer to defend you or hired a
20 lawyer to represent you to sue somebody else not
21 counting this workers' comp claim?

22 A Rephrase the question again.

23 Q Have you ever been in a situation where
24 you had to hire a lawyer to defend you against
25 somebody suing you or have you ever hired a

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 lawyer to sue somebody else?

2 A Yes.

3 Q Tell me about that.

4 A Real sketchy on those details, but I
5 know I contacted an attorney, Joanne Calvy, at
6 one point.

7 Q For what?

8 A I'm not sure.

9 Q What was the reason that you were --

10 A I'm not sure. I know I had contact
11 with her. Like I say, I'm not sure as to what
12 the matter was.

13 Q How long ago was that? Joanne is in
14 Kingstree?

15 A Yes. I can't really be specific on the
16 years.

17 Q A lot of years, five years?

18 A No. More than five years.

19 Q It's been a long time?

20 A Yes.

21 Q And you don't remember why you had to
22 go see her?

23 A No.

24 Q Let's talk about your motor vehicle
25 accidents. You mentioned at least one of them

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JEFFREY MCFADDEN 6-8-2011

1 and we know you had this one on July 16th. So I
2 know you've had at least two motor vehicle
3 accidents, one where you backed into somebody in
4 the truck and the one we're here for where you
5 flipped the truck over.

6 Other than those two motor vehicle
7 accidents, have you had any other motor vehicle
8 accidents in your life?

9 A Yes.

10 Q What other kind of injuries or what
11 other kind of accidents have you had?

12 A I had another motor vehicle accident
13 during February, this year.

14 Q This year?

15 A This year, 2011.

16 Q Where did that happen?

17 A In Florence.

18 Q Where at in Florence?

19 A Can't be specific on the street name.

20 Q Okay. Did the highway patrol come?

21 A I --

22 Q Or did the county police come or city
23 police come?

24 A I'm not sure. But it -- I think it was
25 county and then -- I think it was county. I'm

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JEFFREY MCFADDEN 6-8-2011

1 not sure.

2 Q Did they do an investigation and fill
3 out a report?

4 A Yes.

5 Q Did they give you a copy?

6 A They give my wife a copy.

7 Q Okay. Do you have that?

8 A Un-huh.

9 Q Not with you today. But is that
10 something that you can obtained and give to your
11 attorney?

12 A Yes.

13 Q Can you do that, please?

14 A Um-huh.

15 MR. BEARD: Stephen, can you --

16 MR. WUKELA: I can give you a copy
17 right now.

18 MR. BEARD: I'd love it. Thank you.

19 MR. WUKELA: At least I'm pretty sure I
20 can.

21 MR. BEARD: Well, if you can't, if
22 you'll just get me a copy, I'd appreciate it.

23 MR. WUKELA: Sure.

24 BY MR. BEARD:

25 Q Okay. While he's looking for that, Mr.

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JEFFREY MCFADDEN 6-8-2011

1 McFadden, did you have any injuries or accidents
2 or claim to have any injuries or accidents from
3 that -- or injuries from that accident?

4 A I'm not sure how to answer that because
5 I didn't have any significant injuries from that
6 incident, so I would say no.

7 Q Did you tell Dr. Alexander that you
8 hurt your back pretty bad in that accident?

9 A I told him my back hit -- was agitated.
10 Yes.

11 Q Did you tell him it got worse?

12 A I told him it was agitated, so -- to a
13 degree, not like -- it threw me out of whack from
14 where I was.

15 Q Did you tell him it made you worse than
16 where you were? That's what his report says.
17 That's why I'm asking you.

18 A Right. I can't recall the specifics of
19 what I said to him. I know I told him that we
20 was in an accident and after the accident, the
21 pain did intensify.

22 Q Okay. Whose fault was that accident?

23 A The other driver.

24 Q Have you hired an attorney to represent
25 you and your -- who else was in the vehicle with

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JEFFREY MCFADDEN 6-8-2011

1 you?

2 A My wife and my daughter.

3 Q Have you hired an attorney to represent
4 the three of you all in case you need an attorney
5 for that?

6 A I think Attorney Wukela is handling
7 that.

8 Q Okay. This Wukela or his dad Wukela?

9 A I'm not sure.

10 Q That's fine.

11 According to, at least, what I'm
12 looking at in this report, it looks like maybe
13 you were sitting still and they ran into the back
14 of you.

15 A Yes.

16 Q Where were you in the car?

17 A Passenger seat.

18 Q Front seat?

19 A Yes.

20 Q Your wife was driving?

21 A Yes.

22 Q Did your wife have any injuries?

23 A She was sore.

24 Q How about your daughter?

25 A No.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q Did you go to the hospital?

2 A My wife took my daughter and she went
3 to our family doctor.

4 Q Okay. Did an ambulance come?

5 A No.

6 Q Did you go to any medical treatment
7 from that accident?

8 A I had -- I had to see Dr. Alexander.

9 Q So you just went to a follow-up with
10 him?

11 A Well, I saw my family doctor. They
12 said just go see him.

13 Q All right. Any other motor vehicle
14 accidents?

15 A Can't recall any. Can't recall
16 nothing.

17 Q Prior to what we're doing right now,
18 today, this deposition, have you ever given a
19 deposition before in your lifetime?

20 A No.

21 Q Have you ever testified live in a
22 courtroom before?

23 A No. Yes. Yes. Child --

24 Q Domestic.

25 A Child care.

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JEFFREY MCFADDEN 6-8-2011

1 Q Family court?

2 A Yeah, family court.

3 Q Other than that, you have never?

4 A No.

5 Q Everybody gets asked the following
6 question, so you don't get off any lighter than
7 anybody else. Do you have a criminal record?

8 A I'm not sure.

9 Q Why would you not be sure if you had a
10 criminal record?

11 A Because there's -- well, I'm -- I was
12 arrested years ago.

13 Q For what?

14 A For shoplifting.

15 Q All right. Were you convicted; pled
16 guilty?

17 A Pled guilty.

18 Q So you do have a criminal record?

19 A Um --

20 Q What was your sentence? What did they
21 do to you, make you pay back the money or pay
22 some money?

23 A Yes.

24 Q Did you have to go to jail?

25 A What do you mean by going to jail?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q Did you go to jail for a day or two?

2 A Yes.

3 Q And you had to pay some restitution to
4 the court?

5 A Yes.

6 Q And I assume that also paid for
7 whatever it was you were accused of stealing?

8 A Yes.

9 Q Is that it?

10 A Yes.

11 Q So one charge?

12 A Yes.

13 Q Prior to this incident that we're here
14 for, did you ever have any other health
15 conditions before this, any kind of health
16 problems? By that I mean like diabetes,
17 arthritis, high blood pressure, heart issues,
18 anything at all.

19 A No, I'm not a diabetic and no sugar,
20 high blood pressure. I mean, normally -- besides
21 a little knick here and there, nothing.

22 Q You mentioned earlier you went to your
23 family doctor. Who is that?

24 A Dr. Morris Brown.

25 Q Where is Dr. Brown?

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JEFFREY MCFADDEN 6-8-2011

1 A Lake City.

2 Q Is he in a practice or is he by
3 himself?

4 A His in a -- well, he's by himself.

5 Q How long has he been your family
6 doctor?

7 A Approximately, ten years.

8 Q What does he treat you for, general
9 aches and pains and --

10 A Yes.

11 Q -- flus and colds and things?

12 A Yes.

13 Q Has he ever treated you for any kind of
14 injuries? Has he treated you for this workers'
15 comp claim?

16 A No.

17 Q Has he ever treated you for any kind of
18 injuries?

19 A Yes.

20 Q What?

21 A Back pains.

22 Q So you've had back pains before?

23 A Yes.

24 Q So you've had prior back pains. How
25 often have you had back pains in the past?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A I mean, besides playing sports and
2 stuff, not a lot.

3 Q I'm guessing in the last ten years you
4 weren't playing sports.

5 A Last ten years, yeah.

6 Q Okay. So are the back pains from
7 playing sports?

8 A Well, I'm not sure where they're from.

9 Q Well, you just told me you had prior
10 back pains.

11 A Right.

12 Q And Dr. Brown treated you. And you
13 said from playing sports and things like that.

14 A Right.

15 Q Is that all the reasons you've had back
16 pains, just from playing sports, in the last ten
17 years, because he's only been your family doctor
18 for the last ten years?

19 A I would think so.

20 Q I mean, you don't know. You don't know
21 what was the reason you had back problems?

22 A No. I really don't.

23 Q When is the last time before this
24 accident in 2010 that you had seen Dr. Brown for
25 back problems?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A I can't recall.

2 Q How bad were the back problems or what
3 were the back problems; do you know? Did you
4 ever have a diagnosis?

5 A Nothing but soreness.

6 Q Backaches?

7 A Yeah.

8 Q Dr. Brown, he's your family doctor, did
9 he ever refer you to any specialist?

10 A No.

11 Q Never once?

12 A Never once.

13 Q Okay. Did he ever run any kind of test
14 on you like x-rays or MRIs or milligrams or CT
15 scans or any of that kind of stuff? Prior to
16 July 2010, have you ever had any of those for
17 your back?

18 A X-rays.

19 Q Just regular x-rays?

20 A That's all I can remember.

21 Q Where were those done?

22 A I'm assuming in Lake City.

23 Q Lake City Hospital?

24 A Yes.

25 Q Is that part of Carolina or --

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A I don't know.

2 Q Just Lake City Hospital.

3 And you don't remember ever having any
4 MRI scans or milligrams? Those are a lot more
5 evasive kind of testing. Do you remember any of
6 those?

7 A Not that I can recall.

8 Q Are you right or left handed?

9 A Right.

10 Q Now, your attorney, Mr. Wukela, has
11 filed what's called a Form 50, and he filed it it
12 looks like about a month ago, coming up on a
13 month ago, and it says that you have the
14 following problems.

15 Well, let me ask you this. You tell me
16 what are the problems that you had in this
17 workers' comp claim. What injuries do you have?

18 A Well, I have pains down my leg,
19 numbness in my feet sometimes, pain when bending
20 and stretching, either/or, can't really get in a
21 comfortable position to sleep a whole lot
22 sometimes, sitting a long time is irritating.

23 Q Tell me the body parts that are
24 injured.

25 A Well, my back.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q Low back?

2 A Well, it's in my lower back, but it
3 comes up in my mid back area. Sometimes I feel
4 it up there. I have had pains in my neck and my
5 left shoulder here, running from mid -- down in
6 my left shoulder, headaches sometimes.

7 Q And this all occurred when you had a
8 motor vehicle accident on July 16, 2010; is that
9 correct?

10 A Yes.

11 Q In a city vehicle?

12 A Yes.

13 Q And as I read the accident report, it
14 looked to me like you were going at a fairly
15 significant rate of speed in a -- about a 25 mile
16 hour zone; is that correct? You were speeding
17 pretty significantly.

18 A I'm not sure.

19 Q Did you tell the police officer you
20 were?

21 A No.

22 Q Okay. Were you aware that they've
23 indicated that you were going almost 2 1/2 times
24 the speed limit on a dirt road?

25 A No. I can't -- to my knowledge, it

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JEFFREY MCFADDEN 6-8-2011

1 says going at a high speed rate. I'm not sure if
2 he specified any.

3 Q Were you wearing a seat belt?

4 A Yes.

5 Q Are you aware that the accident report
6 says you were not wearing a seat belt?

7 A No.

8 Q And then also the medical records
9 indicate that you told them you were not wearing
10 a seat belt when you went to the hospital and to
11 the doctor's office?

12 A No.

13 Q You are not aware of that?

14 A No. Hold on. Repeat that.

15 Q Are you aware that the medical reports
16 indicate that you told them you were not wearing
17 a seat belt when you had this accident?

18 A Yes. Yes. Yes.

19 Q You were not --

20 A I was not wearing a seat belt. Sorry.
21 My mistake. July 16th, no, I was not wearing a
22 seat belt.

23 Q According to the accident report, it
24 says your estimated speed was 60 miles per hour
25 in a 25 mile zone. Were you aware that that's

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JEFFREY MCFADDEN 6-8-2011

1 what the accident report says?

2 A Yes.

3 Q Because of that excessive rate of speed
4 you ended up fishtailing and running off into the
5 ditch.

6 A That's what it says.

7 Q Am I correct?

8 A Well, I don't agree with it because I
9 don't know. As I stated to them in a written
10 report to the officer, I could not tell them a
11 speed rate I was going. Understand I was not
12 paying attention to that.

13 Q How did the state trooper come up with
14 that figure?

15 A When he came -- went out to the scene I
16 was already gone, so I don't know. To be honest
17 with you, I don't.

18 Q Okay. And the vehicle overturned?

19 A Yes.

20 Q On the side I think it was, wasn't it?

21 A Flipped over.

22 Q But you were on the side. The truck
23 was on its side.

24 A Yes.

25 Q Was anybody in the vehicle with you?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A No.

2 Q Did anybody see the accident happen?

3 Do you know of any witnesses who saw what

4 happened?

5 A None that I'm aware of. No.

6 Q And according to this report, it says a

7 coworker named Garret Brown called your

8 supervisor, Anthony Brown, is that correct, and

9 told them what happened?

10 A Yes.

11 Q How did Garret Brown know what happened

12 if he wasn't there?

13 A I called him.

14 Q Okay. Why did you call him instead of

15 calling the office? Why didn't you just call the

16 supervisor?

17 A Because no one was in the office at the

18 time?

19 Q What time did it happened?

20 A Approximately --

21 Q The information that I have says 8:50

22 a.m.

23 A 8:50. I'm not sure.

24 Q And who is Anthony Brown?

25 A The field supervisor.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q I'm sorry. Who is Garret Brown?

2 A Coworker.

3 Q Are Garret and Anthony related?

4 A No. Not that I'm aware of.

5 Q Okay. And so you had the accident.

6 There are no witnesses to your knowledge. Your
7 employer was notified by your coworker, Garret
8 Brown.

9 A Yes.

10 Q Did you call him on your cell phone?

11 A Yes.

12 Q Did you call anybody else on your cell
13 phone? Did you call your wife?

14 A No.

15 Q You didn't try to call any management
16 folks at Lake City, any supervisors or anything?

17 A I'm not quite clear on that.

18 Q Did you ever take any kind of drug test
19 to see if you were intoxicated?

20 A Yes.

21 Q Where did you do that?

22 A At -- over at McLeod.

23 Q By Regional Hospital?

24 A Yes.

25 Q They brought you from Lake City here?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A Yes.

2 Q Were you brought here by ambulance?

3 A Yes.

4 Q And this is the first place you

5 received any medical treatment, was McLeod

6 Regional?

7 A Yes.

8 Q Did they perform x-rays on you?

9 A Yes.

10 Q Do you know the results of the x-rays?

11 A No.

12 Q If I told you all the x-rays were
13 normal, would that -- you wouldn't be surprised
14 by that, would you?

15 A I guess not.

16 Q Do you remember? No one told you
17 whether you had -- let's start over.

18 It looks like they did a CT scan of
19 your face.

20 A Right.

21 Q Do you remember that? It says --
22 apparently you had -- it looks like you may have
23 had a sinus infection going on at the time. They
24 tell us that. Did you have a sinus infection?

25 A Not that I'm aware of.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q Okay. But it says you had no fracture
2 in your face. They did a CT scan of your head.
3 Were you aware of that?

4 A I can't recall.

5 Q It says it was normal.

6 Says they did a CT scan of your neck.

7 Were you aware of that?

8 A Like I say, I can't recall a lot.

9 Q Okay. Says it was normal.

10 You were not unconscious, were you?

11 You didn't lose consciousness, did you?

12 A I'm not really sure.

13 Q Well, the medical says you told them

14 you did not lose consciousness.

15 A Right. And I also -- like I said, I'm

16 not clear on it.

17 Q You had a CT scan of your chest. It

18 was normal. Were you aware of that?

19 A Yes.

20 Q You had a CT scan of your stomach or

21 your abdomen. It says there were no acute

22 changes. So it appears that it was normal in

23 your abdomen and your pelvis. Are you aware of

24 that?

25 A Yes.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q Did you stay in the hospital overnight
2 or were you just --

3 A No.

4 Q Okay. So you did have to stay?

5 A No.

6 Q And you were discharged and went home?

7 A Yes.

8 Q Since the accident, have you ever
9 returned to work?

10 A No.

11 Q Why not?

12 A Because I was placed on suspension at
13 first for 90 days and probation for a year.

14 Q All right. When you say suspension,
15 what does that mean?

16 A They suspended me.

17 Q Told you you couldn't work for 90 days?

18 A Yes.

19 Q And that was for what, breaking some
20 sort of rules on the vehicle?

21 A For the accident.

22 Q Okay. Would it be because you were
23 going 60 miles an hour in a 25 without a seat
24 belt on? I mean, is that what they told you?

25 A I can't recall. They sent me a letter

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 with it, but I can't recall.

2 Q Was your suspension without pay or with
3 pay?

4 A Without pay.

5 Q So 90 days would have been -- taken us
6 into October.

7 A Yes.

8 Q Then you said you were put on probation
9 for a year?

10 A Yeah. All that was --

11 Q Probation, though, doesn't mean you're
12 -- you could have still worked under probation,
13 right?

14 A Yes.

15 Q That just meant if you did something
16 else wrong, you might get fired?

17 A Right.

18 Q Okay. Why didn't return to work after
19 your suspension?

20 A Because of my injuries.

21 Q Do you really want to work?

22 A Do I want to work.

23 Q Yes. Do you have any desire to really
24 work?

25 A Yes.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q You've been out of work now for an
2 accident in July of 2010. We're coming up on a
3 year. You haven't worked at all; is that
4 correct?

5 A Yes.

6 Q Has any doctor recommended any kind of
7 surgery for you in the entire year you've been
8 out?

9 A Dr. Alexander recommended me to see a
10 surgeon.

11 Q Okay. That wasn't my question.

12 A He talked about it. Well, no.

13 Q No doctor at this point has recommended
14 surgery to you, have they?

15 A No.

16 Q After you had the treatment at McLeod
17 Regional, did you then get sent to workers' comp
18 doctors?

19 A Yes.

20 Q Where did you go?

21 A I think it's Lake City Family Practice
22 if I'm not mistaken, Dr. David Moon.

23 Q Okay. PeeDee Family Practice.

24 A PeeDee Family Practice.

25 Q He's in Lake City?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A Yes.

2 Q Is he a company doctor or is he -- is
3 that who they sent you to? The City sent you
4 there?

5 A Yes.

6 Q All right. It looks like you started
7 seeing him about three days later and he gave you
8 some work restrictions, but I guess you couldn't
9 go back to work because you were on suspension,
10 correct?

11 A Well, yes.

12 Q If you hadn't been on suspension, could
13 you have gone back to work under the
14 restrictions?

15 A No.

16 Q How do you know?

17 A Because they told me.

18 Q Who told you?

19 A My supervisor.

20 Q What's your supervisor's name that told
21 you that?

22 A Cheryl Schavers.

23 Q I thought you said the other fellow was
24 your supervisor by then.

25 A He's the outside -- no. You said --

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 that's three days later.

2 Q Right.

3 A Right. She's been there three days
4 after the accident. I told you Cheryl was my
5 supervisor approximately nine years. Ricky, his
6 -- since I been off the job become that.

7 Q Okay.

8 A Head supervisor.

9 Q She was the supervisor while you were
10 still -- the last time you worked.

11 A Yes.

12 Q So she told you that they didn't have
13 any kind of light duty for you?

14 A Yes.

15 Q Okay. And you saw him July 19th, and
16 you saw him again on July the 23rd. He referred
17 you to physical therapy; is that correct?

18 A Yes.

19 Q Did you go?

20 A Yes.

21 Q Did you go to Lake City Community
22 Hospital Rehab?

23 A Yes.

24 Q Did that do any good?

25 A No.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q So physical therapy did no good.

2 All right. Saw you on July 30th. He
3 saw you on August the 9th and it said your pain
4 had decreased by then from what you had rated as
5 an eight level down to a four level; is that
6 correct? So you were getting better in August of
7 2010; is that right?

8 A No.

9 Q That's not correct?

10 A That's not correct.

11 Q So you deny what the report says?

12 A No, I'm not denying what the report
13 says. The reports states what he put as I tell
14 him. It could very well -- with the medication,
15 it could be that right now. It could be a four
16 right now and very well much an eight later on in
17 the day or the next day.

18 Q Okay.

19 A So it's not like the pain just subsided
20 to that level.

21 Q On August 23rd it says you told him
22 your neck pain had completely resolved and it no
23 longer existed and that now you only had some low
24 back pain; is that correct?

25 A On what date?

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q August 23rd of 2010. About a little
2 over a month after the accident.

3 A No.

4 Q That's not true?

5 A No.

6 Q Okay. So if he put that in there,
7 you're denying that you told him that?

8 A Yes.

9 Q Okay. So when we go take his
10 deposition, which we're going to do, put him
11 under oath, and if he says you told him that, are
12 you calling him a liar under oath here today?

13 A Yes.

14 Q Saw him again on September the 7th. He
15 says you told him your cervical spine and your
16 neck was doing well. Is that true or not true?
17 This is the next time you went to see him.

18 A Right.

19 Q Was your neck doing well?

20 A I'm unaware of what I told him, so I
21 won't tell you that I said that.

22 Q He put that in his report. Do you deny
23 it? I'm just reading to you what his report
24 says.

25 A Right. I understand you're reading

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 what the report says.

2 MR. WUKELA: But what the sentence is,
3 He states, The cervical spine is doing well.
4 It's his lumbar spine that's giving him trouble
5 still on medication as before.

6 Not a full statement.

7 MR. BEARD: Stephen, you're not allowed
8 to really talk during a deposition, but you can
9 object to the form if that's what you want to do.

10 MR. WUKELA: Well, if you're going to
11 ask him a question --

12 MR. BEARD: Stephen.

13 MR. WUKELA: -- about the record, ask
14 him the complete statement.

15 MR. BEARD: We're not in the old days
16 of practicing law. Under the rules now, you can
17 object to the form of the question and then I'll
18 move on. You can always straighten out what you
19 want to straighten out.

20 MR. WUKELA: I object to you
21 mischaracterizing with the record.

22 MR. BEARD: So you object to the form
23 of my question.

24 BY MR. BEARD:

25 Q Did you tell the doctor that your

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 cervical spine was doing okay on September 7th of
2 2010?

3 A I can't remember.

4 Q Next time you saw him was on September
5 the 21st, it says you were getting better in both
6 your neck and your low back; is that correct?

7 A Well, no.

8 Q That's not correct.

9 All right. November of 2010, did you
10 tell Dr. Moon that you were doing some things
11 around your house and moving around pretty good,
12 but if you did any kind of major lifting or
13 twisting, that caused you problems?

14 A I can't recall.

15 Q Did you tell Dr. Moon on November the
16 2nd of 2010 that you were out in your yard
17 picking up trash and that you sustained some
18 trouble and ended up hurting your neck again?
19 Did you tell him that?

20 A What day was that again?

21 Q November the 2nd of 2010.

22 A Repeat the statement again.

23 Q Said, He was out in the yard picking up
24 some trash and gotten into some trouble and had
25 some neck pain.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A Yes.

2 Q What were you doing out in the yard
3 picking up trash?

4 A He told me that I needed to get busy,
5 trying to get active, doing things that I could,
6 and so I tried to do the things that -- to try to
7 get back to normal activity.

8 Q Last report I have from him is dated
9 November 30th of 2010. Have you seen Dr. Moon
10 since November 30th of 2010?

11 A I'm not sure when the last date I seen
12 him, but if that's the last report you've got,
13 then I'm assuming that's it.

14 Q How did you get to Dr. Alexander?

15 A I don't know if the referral came from
16 Dr. Moon or through workers' comp. I'm not sure.

17 Q I see where -- the first time you went
18 to Dr. Alexander would have been October the 25th
19 of 2010, so just a little bit of time before you
20 stopped seeing Dr. Moon; is that about right?

21 A I would assume so.

22 Q And he -- either he or Dr. Moon one had
23 a MRI scan done on your back?

24 A Yes.

25 Q And did you also have a MRI scan of

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 your neck?

2 A Yes.

3 Q Were they done at the same place?

4 A Yes.

5 Q Have you ever seen a copy of either one
6 of them? I've got a copy of your back, but I've
7 never seen a MRI scan of your neck.

8 A They should be in the records.

9 Q Okay. Do you have a copy of them?

10 A I have a copy of my back. I don't have
11 the copy of the neck in there. I misplaced my
12 copy.

13 Q When you went to Dr. Alexander, you
14 told him what happened, correct? He took the
15 history from you about how you got hurt.

16 A Yes.

17 Q Then there are places that say, Do you
18 have any past medical history, and you --
19 according to his report it says none.

20 Did you tell Dr. Alexander you had
21 prior back problems?

22 A I'm not aware. I'm not sure.

23 Q He put none on this report, so does it
24 sound like you didn't tell him?

25 A I mean, I'm not sure like I said. I'm

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 not sure how he phrased the question to me, so
2 how I would have -- whatever the answer I gave
3 him, I'm not even sure.

4 Q Did you ever fill out a patient
5 information form and questionnaire?

6 A I think so.

7 Q Did they ask you on that patient
8 information --

9 A I'm not sure.

10 Q Let me finish my question.

11 Did they ask you on that form whether
12 or not you'd ever had any prior back problems?

13 A I'm not sure.

14 Q Did you tell Dr. Alexander when you saw
15 him on February the 22nd of 2011 that you had
16 been in a motor vehicle accident five days
17 earlier and that your lower back pain increased
18 over the time from when you had the accident from
19 when you came to see him and that the rating of
20 your pain went from a Level 6 to 7 before the
21 accident to a Level of 9 to 10 by the time you
22 got to the doctor's office?

23 A Yes.

24 Q And are you aware that Dr. Alexander
25 put as his diagnosis an exacerbation of your

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 preexisting condition, that motor vehicle
2 accident?

3 A Am I aware.

4 Q That that was his diagnosis.

5 A What --

6 Q You had an exacerbation of your
7 preexisting back condition.

8 A He may have put that in the report.

9 I'm not sure.

10 Q Is that correct?

11 A What is an exacerbation?

12 Q You don't know what that means?

13 A No.

14 Q Okay. He did, he being Dr.

15 Alexander -- had done some injections?

16 A Yes.

17 Q How many has he done; do you know?

18 A Three.

19 Q And he's placed you on, at least the
20 last thing I see, is a work restriction of no
21 lifting or carrying over 20 pounds; is that
22 correct?

23 A Yes.

24 Q Have you ever gone back and asked your
25 employer if they had any jobs you could do within

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 that restriction?

2 A I have been back to them and they told
3 me there was nothing for me still yet.

4 Q Who told you?

5 A My supervisor, Cheryl Shavers, at the
6 time.

7 Q Who told you on April the 5th, 2011?
8 That would have been two months ago.

9 A John Wittletom.

10 Q Who is he?

11 A Assistant city administrator.

12 Q And he told you there was no light
13 duty?

14 A He told me there was nothing -- with
15 the restrictions that I had, there was nothing
16 they had for me to do.

17 Q So you went and asked them? You did go
18 ask them?

19 A Well, they called me in -- they called
20 me to work.

21 Q Okay.

22 A They called me to work and I showed
23 him, because I assume he didn't have a copy of
24 it, the paper, or he didn't look at it.

25 Q Right.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A And when he saw the copy of what the
2 doctor had put on the paper, he told me, No,
3 there's nothing for me.

4 Q Okay. Any other doctors treated you
5 for your workers' comp injuries? Any other
6 hospitals or doctors or have I listed everything?

7 A I think you've listed everything.

8 Q Other than -- I know you had physical
9 therapy at the Lake City Community Hospital.
10 Have you had it anywhere else, physical therapy?

11 A Yes.

12 Q Where else?

13 A Oh, I think it's CMP.

14 Q Where is that?

15 A In Lake City also.

16 Q It's called CMP?

17 A I think so.

18 Q And that's over --

19 A It's where Dr. Alexander referred me
20 to.

21 Q Is that a physical therapy place?

22 A Yes.

23 Q Who did -- you said that Dr. Alexander
24 referred you for a surgical evaluation?

25 A Yes.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

- 1 Q Who did he refer you to?
- 2 A Dr. Chokshi.
- 3 Q Same group, PeeDee Orthopedic?
- 4 A I'm assuming so.
- 5 Q Have you been?
- 6 A No.
- 7 Q And you don't have any recollection of
- 8 Dr. Alexander asking you if you'd ever had any
- 9 prior back problems when you went to his office?
- 10 A Not that I recall.
- 11 Q Is Dr. Alexander or any doctor for that
- 12 matter currently prescribing you any medications?
- 13 A Yes.
- 14 Q Who is prescribing you medications?
- 15 A Dr. Alexander.
- 16 Q What is he prescribing you?
- 17 A Nucynta, Celebrex and Lyrica, I
- 18 believe.
- 19 Q Where do you get your prescriptions?
- 20 What pharmacy do you go to?
- 21 A Normally Wal-Mart.
- 22 Q In Lake City?
- 23 A Yes.
- 24 Q Do you have an account?
- 25 A I mean, I don't have a special account.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 That's where I get any medication filled at.

2 Q Okay. Do you take any other kind of
3 medication other than the ones that Dr. Alexander
4 has prescribed?

5 A Yes.

6 Q What do you take?

7 A I mean, I'm taking over-the-counter
8 medicine now.

9 Q Why?

10 A Because the -- workers' comp won't pay
11 for my medication now.

12 Q What are you taking?

13 A Tylenol, extra strength.

14 Q Anything else?

15 A No.

16 Q Have you seen Dr. Alexander since May?
17 I think it was May the 11th.

18 A I'm not sure.

19 Q May 17th would have been about --

20 A May 17th.

21 Q About three weeks ago. Have you seen
22 him in the last three weeks?

23 A I can't recall the date of the last
24 visit, but I have seen him lately.

25 Q Okay. Has Mr. Wukela scheduled you for

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 any appointments to see any doctors?

2 A No.

3 Q And other than Dr. Alexander, did you
4 see any other doctors for the motor vehicle that
5 you had in February?

6 A I can't recall, sir.

7 Q Tell me what currently are your
8 physical limitations. What can you not do now?

9 A I still can't bend like I should, the
10 reaching, walking for long periods of time.
11 Sitting in one position long periods of time
12 irritates real bad.

13 Q How long can you sit before you get
14 irritated?

15 A Fifteen, thirty minutes.

16 Q We've been in this deposition for an
17 hour and five minutes.

18 A And I'm irritated.

19 Q Okay. It took an hour and five minutes
20 to get irritated?

21 A No. I've been irritated, but what can
22 I do? Can I say, let me get up? I mean, I can't
23 stop.

24 Q Sure you can. All you have to do is
25 stand up.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 A Stand up and do what?

2 Q Whatever it is that makes you not
3 irritated.

4 What about standing, how long can you
5 stand or do you have problems standing?

6 A When I stand, I get the pains in my
7 legs very often. And standing, I -- standing
8 still, the pain sits right there, so I mean, I
9 don't do a lot of standing.

10 Q Okay. What other limitations? What
11 about your neck, any problems with your neck now
12 or is the neck gone, the neck resolved?

13 A Right now my neck is doing fine. (

14 Q Left shoulder, you told me about that
15 earlier. Is your left shoulder fine?

16 A I will have pain in there every now and
17 then, but that's about it.

18 Q So your major concern is your low back
19 and you said some pain that runs into your legs
20 or just one leg?

21 A No, both legs. And headaches, I --
22 like I told them, headaches come often, but as
23 Dr. Alexander says, he can't treat me for that
24 because that's not recommend to him.

25 Q Prior to this accident, had you ever

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 had headaches before? Did Dr. Brown ever treat
2 you for headaches?

3 A No.

4 Q Not ever. Not in your entire life did
5 Dr. Brown ever treat you for a headache?

6 A Not that I can recall.

7 Q You said he's in Lake City?

8 A Yes.

9 Q And you have not worked at all since
10 your motor vehicle accident; is that correct?

11 A Right. Yes.

12 Q Have you ever applied for any
13 unemployment benefits since this accident?

14 A Unemployment.

15 Q Yes.

16 A No. I'm not unemployed.

17 Q Did you apply for any short-term or
18 long-term disability benefits? Does the city
19 have that?

20 A Yes.

21 Q You did apply?

22 A No, I can't apply.

23 Q Have you applied for social security
24 disability?

25 A Yes.

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 Q When did you do that?

2 A I'm not sure.

3 Q Somebody from Mr. Wukela's office
4 represent you for that?

5 A Not as of right now.

6 Q Has social security responded? Have
7 they told you no, yes?

8 A Yes.

9 Q What have they told you? Did they
10 deny?

11 A Yes.

12 Q Okay. Did you appeal that?

13 A I'm going to appeal.

14 Q Have you retained a lawyer to do that?

15 A Not yet.

16 Q Have you gone to any vocational
17 rehabilitation?

18 A Besides physical therapy?

19 Q Vocational rehabilitation is where you
20 go to learn to be retrained to do other kinds of
21 work? Have you done that?

22 A No.

23 Q And other than the car wreck that you
24 had in February, have you had any other injuries
25 or aggravations or accidents since the accident

ABC REPORTING SERVICES 803-532-5255

JEFFREY MCFADDEN 6-8-2011

1 we're here for?

2 A No.

3 Q According to our records at the time of
4 this accident your average for the year prior to
5 this accident was approximately \$369.88. Does
6 that sound about right?

7 A I'm not sure because we get paid
8 biweekly. So I'm not sure about the week and how
9 the weekly would come out.

10 Q All right. Are you currently receiving
11 a workers' check?

12 A Yes.

13 Q Do you get \$246.60 every week?

14 A Yes.

15 Q Do they take any money out for child
16 support or do you have to take care of that
17 yourself?

18 A I have to take care of that myself.

19 MR. BEARD: Okay. That's all I have.

20 MR. WUKELA: Free to go.

21 (WHEREUPON, the taking of this sworn
22 deposition was concluded at 3:13 p.m.)

23

24

25

ABC REPORTING SERVICES 803-532-5255

WCC FILE NUMBER: 1009259

Claimant,

DEPOSITION OF:

and

Carrier,

Defendants.

Orthopaedic Associates, 901 East Cheves Street, Suite 100,
Florence, South Carolina, commencing at 6:15 p.m. on the
15th day of June, 2011.

1 COPY

APPEARANCES OF COUNSEL:

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In Attendance:

Jeffrey McFadden

INDEX

	PAGE-LINE
Direct Examination by Mr. Wukela	5-4
Cross Examination by Mr. Beard	26-4
Redirect Examination by Mr. Wukela	81-15
Recross Examination by Mr. Beard	86-21

DEFENDANT'S EXHIBITS

NUMBER	DESCRIPTION	PAGE-LINE
1	MRI Report, March 20, 2008	75-13

Court Reporter's Note:

--Indicates Interruption;

---Indicates Incomplete Phrases or Sentences.

STIPULATIONS

Prior to the giving of any testimony by the witness, it was expressly stipulated and agreed between the parties to this action, through their respective counsel, that:

By Notice and/or Consent, said deposition is being taken in accordance with Section 42-3-160, Code of Laws of South Carolina 1976, and Rule 30 of the South Carolina Rules of Civil Procedure, which shall control the taking of said deposition and its use thereof;

Said deposition shall be taken for the purpose of discovery and/or for use as evidence in the above entitled action, or for both purposes;

That all objections would be reserved until the time of the hearing except as to the form of the question;

Reading and signing of the transcript of testimony by the witness was waived.

Direct examination by Stephen J. Wukela

5

1 ANTHONY W. ALEXANDER, M.D.,
2 after being first duly sworn to tell the truth, was
3 deposed and testified as follows:

4 DIRECT EXAMINATION BY MR. WUKELA:

5 Q. Dr. Alexander, my name is Stephen Wukela.
6 We've met before. I'm here to take your deposition
7 regarding your treatment of my client and your patient,
8 Jeffrey McFadden. In particular, this is a Workers'
9 Compensation claim involving his injuries on July the
10 16th of 2010. Before we get started, will you give me
11 just a very brief rundown of your educational
12 background?

13 A. Okay. I attended medical school -- well,
14 actually I attended undergrad at North Carolina Central
15 University and got a Bachelor's of Science in
16 Biology and Chemistry, and I attended Maharry
17 Medical College for medical school. I attended -- I
18 did my residency at the National Rehab Hospital in
19 Washington, D.C., and I did an internship in General
20 Surgery at the Washington Hospital Center in
21 Washington, D.C.

22 Q. Board certified in any areas?

23 A. Physical Medicine and Rehabilitation.

24 Q. And you've been practicing in those areas
25 here at Pee Dee Orthopaedic?

1 A. Yes, sir.

2 Q. For how long?

3 A. I've been here nine years.

4 Q. Very well. It looks like from the records I
5 have, the first visit you had with Mr. McFadden was on
6 October the 25th, 2010. Does that correspond with your
7 records?

8 A. Yes, sir, that's correct.

9 Q. Tell me -- and this is an admitted accident,
10 Dr. Alexander, so I don't want to get too deep into
11 that, but tell me briefly what he told you about his
12 history?

13 A. He told me that he was driving a vehicle and
14 he lost control of the vehicle on a gravel road and
15 flipped the car and hit a parked tractor on the side of
16 the road and as a result of that sustained severe
17 sharp, stabbing, throbbing pain in his lower back
18 region that radiated down both legs to the level of the
19 knees and he was -- had been experiencing that
20 approximately two times per week. He also experienced
21 numbness and tingling in the left foot and complained
22 of frequent urination. He rated his pain as a seven at
23 that time.

24 Q. And it looks like he had unremarkable
25 radiographs?

1 A. Yes, sir.

2 Q. And he had an MRI of the lumbar spine?

3 A. That's correct.

4 Q. Tell me about the lumbar spine MRI and what
5 that told you?

6 A. Okay. The MRI of the lumbar spine of
7 9/10/2010 revealed moderate lower lumbar spine
8 degenerative changes, which are arthritic-type changes,
9 diffuse disc bulges at the L4-5 and L5/S1 levels with
10 hypertrophic changes resulting in moderate spinal canal
11 narrowing at the L4-5 and L5/S1 levels.

12 Q. All right. Doctor, what did you recommend?

13 A. At that time, I recommended an
14 electrodiagnostic study of the nerves of the bilateral
15 lower extremities and lumbosacral spine to see if he
16 had a pinched nerve in his lower back.

17 Q. All right. And it looks like you gave him
18 restrictions of 20 pounds lifting and carrying, does
19 that sound right?

20 A. And no frequent bending at the waist.

21 Q. All right. EMG and nerve conduction study
22 performed on December the 6th if my records are
23 correct?

24 A. Do you have the study there?

25 Q. Yeah, I do, and I'm looking at Page 57 of my

1 APA, Grady.

2 A. Okay. That's correct.

3 Q. All right. And you can refer to that, too,
4 Doctor. Tell me in layman's terms what did the EMG and
5 nerve conduction study reveal?

6 A. It just revealed a mild chronic L5/S1
7 radiculopathy on the right.

8 Q. All right. Is that consistent with the MRI
9 findings and the complaints he had to you in
10 October?

11 A. Yes, but there's a typo here.

12 Q. Okay. Tell me?

13 A. It says chronic, but it really should be
14 acute.

15 Q. Okay. So, and you're referring to the last
16 paragraph there?

17 A. The diagnosis.

18 Q. Okay. Where it refers to mild chronic L5/S1
19 radiculopathy?

20 A. Right.

21 Q. And it should read acute L5/S1 radiculopathy?

22 A. Uh-huh.

23 Q. And you're indicating the positive for the
24 court reporter? Indicating the affirmative that that's
25 correct?

1 A. That's correct.

2 Q. Okay. I'm sorry.

3 A. No, I'm sorry.

4 Q. No, no, no, that's all right.

5 A. I'm tired.

6 Q. I understand. Now, then he comes back to
7 you. It looks like he rescheduled a December
8 appointment, and then the next time he saw you was in
9 February, February the 2nd, and I'm looking at Page 63,
10 Grady, of my APA.

11 A. That's correct.

12 Q. All right. How is he doing at that point,
13 Doctor?

14 A. Well, he was in physical therapy and he
15 informed me that Dr. Harpell, who is his physical
16 therapist, told him that he was plateauing with his
17 progress. He did not appear to be making any gains and
18 he had increase in lower back pain with prolonged
19 standing and prolonged walking and sitting. He was
20 complaining of severe lower back pain that radiated
21 down the right leg into the foot and on physical
22 examination he had lower back pain with most ranges of
23 motion, especially flexion and extension.

24 Q. Okay. Did you have an opportunity to review
25 the physical therapy progress note, Dr. Alexander, do

1 you recall?

2 A. I didn't look at any her notes, no.

3 Q. All right.

4 A. I had trouble reading her writing.

5 Q. Okay. I do, too. Let me show you Page 90.

6 Does that appear to be her progress note?

7 A. Yeah, that's it.

8 Q. Can you help me translate that?

9 A. "Now patient was progressing..." -- what does
10 that say? I guess that's right, "Now patient was
11 progressing with PT, will" -- no, no, "until 1/19/2011
12 when patient's level" no, "pain levels increased from
13 3/5/2010 in the lower back to an eight" -- oh, "eight
14 out of ten. Now complains of..." -- I told this woman
15 she needs to print or type it or something. I'm going
16 to tell her again. She's an excellent --

17 MR. BEARD: What, what page is that, Stephen?

18 MR. WUKELA: Yeah, I'm looking at Page 90 of
19 my APA.

20 MR. BEARD: 90, okay. Yeah, I thought you
21 said Page 9. I didn't --

22 MR. WUKELA: No, I'm sorry, 9-0.

23 MR. BEARD: I got you.

24 A. "Complains of..." excuse me, excuse me.

25 "Complains of return of radicular pain. Back pain

1 appears to be exacerbated by flexion-based activity
2 and/or a report of doing more in house," and she has
3 "strength is still limited and core stability is poor."

4 Q. Okay. And thank you for that, Doctor. And
5 do you recall, did you have any conversation with the
6 therapist regarding what was going on with him at that
7 point?

8 A. I did throughout the entire time.

9 Q. Okay. And is that -- does that translation
10 of that note you've just done for us consistent with
11 what she was telling you in February?

12 A. Yes.

13 Q. February the 1st, 2011?

14 A. Uh-huh.

15 Q. And if I understand correctly, he -- the
16 physical therapy kind of plateaued, pain was, was
17 increasing and radicular component was increasing, is
18 that correct?

19 A. That's correct.

20 Q. Okay. So what was your plan then at that
21 point?

22 A. To schedule him for a series of lumbar
23 epidural steroid injections and continue with physical
24 therapy and I had -- I switched him, had him
25 discontinue Tramadol and put him on a stronger narcotic

1 which was Nucynta, 50 milligrams, every six hours but
2 only if he had moderate to severe pain. I discontinued
3 his Skelaxin and Naproxen and started him on Lyrica, 50
4 milligrams, one pill every eight hours, and Lyrica is a
5 chronic pain medication and I started him on Celebrex,
6 200 milligrams, one pill per day with food, and
7 Celebrex is a non-steroidal anti-inflammatory medicine
8 like Motrin. I had recommended a Carolina brace to
9 help improve his core strength and stability and
10 advised him to only wear the brace with prolonged
11 standing and walking and advise that he resume the
12 previous restrictions.

13 Q. Okay. And that -- those were your
14 instructions as of February the 2nd, 2011?

15 A. That's correct.

16 Q. Okay. And then it looks like if my records
17 are correct, you performed the first epidural steroid
18 injection on February the 11th, 2011?

19 MR. WUKELA: And, Grady, I'm looking at Page
20 67.

21 A. 2/11/2011, yes.

22 Q. Okay. And just in summary, it looks like he
23 tolerated that injection well, and then you intended to
24 see him back in?

25 A. Two or three weeks.

1 Q. Two or three weeks. Okay. Now, then he
2 returns on February the 2nd, 2011?

3 A. That's correct.

4 Q. All right. And there he tells you that he
5 was in an accident on February the 17th, 2011?

6 A. That's correct.

7 Q. Tell me what he told you?

8 A. He told me that he had stopped at a traffic
9 light and a vehicle rear-ended his vehicle, another
10 vehicle just bumped into the back of his vehicle, and
11 he said that it wasn't very much of a bump, but that it
12 did increase his lower back pain some over the next few
13 days but that his pain had subsided or gone down to the
14 original level that it was prior to the accident. He
15 stated that the lower back pain was a six to a seven
16 before the rear-end collision and after the rear-end
17 collision over those next few days, his pain was around
18 a nine to a ten, but it decreased back to a six to a
19 seven after about three days.

20 Q. Okay. Now, when we looked -- when were
21 looking back at that first note, October 25th, 2010 at
22 Page 52 of the APA, on that first visit on October the
23 25th, what did he tell you his pain was rated at?

24 A. Approximately a seven.

25 Q. Okay. And if I understand your testimony

1 correctly, he indicated to you on the 22nd of
2 February that immediately after the accident on
3 February the 17th, his pain increased to a nine to ten,
4 but then subsided back to that seven area again, is
5 that correct?

6 A. That's correct.

7 Q. Okay. And did you have any other information
8 about this accident of February the 17th?

9 A. He showed me a picture of the car, his car,
10 and the damage that was done to his car.

11 Q. Let me show you what I've marked as APA 10:

12 MR. WUKELA: Which, Grady, are pages 152
13 through 167 of my APA.

14 Q. Do you know if that's the photograph that he
15 showed you?

16 A. It is.

17 Q. Okay. And I'll -- I'm just going to page
18 through these. With regard to the condition of his
19 vehicle, I'm going to represent to you that this, these
20 were photos taken after the accident depicting the
21 condition of his vehicle after the accident.

22 A. Okay.

23 Q. And I'm going to note Page 161 above the
24 exhaust, there is what appears to be, I don't know, a
25 one- to two-inch scuff mark. Okay. Are those photos

1 that --

2 A. That's it. Those are the photos I saw.

3 Q. Okay. And are those consistent with the
4 description of the accident he gave you?

5 A. Yes, sir.

6 Q. Okay. I'm also going to show you and I don't
7 want to burden the record with time here, but I'll show
8 you what I've marked as APA 11, which are Pages 168
9 through 172, and I'll represent to you these are
10 Farm Bureau's property damage estimates and payments
11 for the damage to that vehicle totaling \$21.81, which
12 they itemized for buffing out that, that mark that we
13 referred to. "Buff and polish spot on rear bumper?"

14 A. Okay.

15 Q. Okay. I suspect you haven't seen those
16 before?

17 A. No, sir.

18 Q. And those, again, are, are they consistent
19 with what the description of the accident that he gave
20 you and the photos that you've seen with regard to the
21 damage to the vehicle?

22 A. Yes, sir.

23 Q. Okay. I'm also going to show you what I've
24 marked as APA 9, which is Page 150 of the APA, which is
25 the Accident Report of that accident. I'll refer you

1 to the officer's estimated speed of ten miles an hour
2 for the vehicle that did, did the rear- ending and
3 zero miles per hour for Mr. McFadden's vehicle, as well
4 as the officer's indication that there were no reports
5 of any injuries, and I ask you again if the Accident
6 Report, the photos, the insurance information are all
7 those consistent with what Mr. McFadden told you?

8 A. Yes, they are.

9 Q. Okay. And I want to look at one last thing
10 with regard to this February 17th accident, and I'm
11 looking at Page 95 of the APA, Grady, and this is
12 Mr. McFadden's report to the physical therapist
13 regarding the accident. This is her note of February
14 the 21st, 2011, and I won't burden you with trying to
15 translate that into the record. I'll leave that to the
16 Commissioner, but I want you to review that for me.

17 A. (Deponent complies) Okay.

18 Q. Okay. Now, is her description -- does her
19 description indicate that Mr. McFadden described the
20 accident to her as well?

21 A. Yes, sir.

22 Q. Okay. And the description she had consistent
23 with the description he gave you?

24 A. Yes, it is.

25 Q. Consistent with these other pieces of

1 evidence that I've shown you with regard to the
2 February 17th accident?

3 A. Yes, sir.

4 Q. Okay. And her recommendation area indicates
5 that he had a slight exacerbation of pain. Would you
6 agree with that --

7 A. Yes, sir.

8 Q. -- opinion?

9 A. Yes, sir.

10 MR. BEARD: Well, let me, let me, first, I
11 need to object to the record for, you said her
12 recommendation and I agree with what you read, but
13 I object to the question because Dr. Alexander has
14 already issued his own report that says what the
15 Claimant said and what he said. So, I would object
16 only in that, that his report is not consistent with
17 the physical therapy report.

18 Q. Well, let me ask you your opinion, Doctor.
19 Do you have an opinion to a reasonable degree of
20 medical certainty as to whether that accident of
21 February the 17th of 2011 most probably caused some
22 exacerbation of Mr. McFadden's pain?

23 A. Yes, I do.

24 Q. And what is that opinion, Doctor?

25 A. That the motor vehicle accident -- I don't

1 remember the date.

2 Q. The second one?

3 A. Yeah, the second motor vehicle accident did
4 exacerbate the patient's pain slightly.

5 Q. Okay. And do you have an opinion to a
6 reasonable degree of medical certainty as to whether
7 that slight exacerbation was a permanent one?

8 A. Yes, I do.

9 Q. And tell me your opinion as to that, Doctor?

10 A. It was not a permanent exacerbation.

11 Q. Okay. And, Doctor, do you have an opinion to
12 a reasonable degree of medical certainty as to whether
13 Mr. McFadden has required treatment since that February
14 17th, 2011 accident that was necessary because of the
15 July 16th, 2010 accident?

16 A. Yes, I do.

17 Q. And tell me your opinion?

18 A. I did not treat him any differently from my
19 treatment plan that I had set up prior to the accident
20 after the accident.

21 Q. Okay. So do I understand your testimony
22 correctly that your plan for treatment for Mr. McFadden
23 didn't change at all as a result of the February 17th
24 accident?

25 A. That's correct.

1 Q. Okay. Did his restrictions change at all
2 because of the February 17th accident?

3 A. No, sir.

4 Q. All right. Did that intervening accident
5 change his condition in any permanent way?

6 A. Not permanently, it did not.

7 Q. Okay. And the -- do you recommend treatment
8 as we sit here today for Mr. McFadden?

9 A. I do.

10 Q. Okay. And is that treatment that you
11 recommend necessary because of the first accident, the
12 July 16th, 2010, accident?

13 A. My treatment recommendations --
14 recommendations are because of the injuries sustained
15 in the first motor vehicle accident. I didn't really
16 treat him any differently or even provide any treatment
17 for or even -- yeah, I didn't provide any treatment for
18 the second motor vehicle accident, 'cause he just
19 wasn't that bad.

20 Q. Very well. Now, Doctor, I want to pick back
21 up after that February 22nd, 2011 note. The next note
22 of treatment I have is February the 25th, 2011 where it
23 appears that he had the next of three epidural steroid
24 injections.

25 A. Okay.

1 Q. All right. It looks like he had the second
2 one on February 25th, and then a third one on March the
3 17th, 2011?

4 A. That's correct.

5 Q. All right. And then you continued him under
6 those same restrictions of 20 pounds lifting or
7 carrying and avoiding frequent bending at the waist?

8 A. That's correct.

9 Q. All right. And then he comes back to you on
10 April the 5th? And I'm looking at --

11 A. That's correct.

12 Q. -- APA 5, Page 74. All right. And tell me
13 where he was on April the 5th, Doctor?

14 A. On April the 5th, 2011, the patient followed
15 up in my office following his third epidural steroid
16 injection and reported that over the past week, he had
17 continued to experience moderately severe pain in his
18 lower back that radiated down into both of his legs to
19 the level of his calves. He rated his pain at that
20 time as approximately a seven in the lower back region
21 and a four to a five in his leg.

22 Q. Okay. Now, Doctor, that back pain rating of
23 seven, is that consistent with the rating of pain that
24 he gave you the first time he saw you?

25 A. It is.

1 Q. Okay. And there's a mention in there that,
2 at that point, he's still not -- had not received that
3 Carolina brace, is that right?

4 A. That's correct.

5 Q. Okay. And did you have an opinion at that
6 point as to whether he continued to need that brace?

7 A. He did.

8 Q. Okay. What was your plan at that point for
9 treatment, Doctor?

10 A. I informed him that in light of the fact that
11 he did have moderate spinal canal stenosis at two
12 different levels and he was failing conservative
13 treatment, I recommend an orthopaedic spine surgery
14 evaluation of the lumbar spine, and I had ordered the
15 Carolina brace again.

16 Q. Okay.

17 A. I advised him to hold physical therapy,
18 because he was not responding to the physical therapy
19 and he was to follow up with me two weeks after the
20 orthopaedic spine consultation, and I told him that
21 I would like a repeat MRI of his lumbar spine to
22 compare with the old MRI.

23 Q. Doctor, what is your opinion to a reasonable
24 degree of medical certainty as to whether that surgery
25 consult and the repeat of the lumbar MRI is necessary

1 as a result of the July 16th, 2010 rollover automobile
2 accident?

3 A. I think in light of the fact that he did not
4 respond to conservative treatment and that he's
5 possibly looking at surgical intervention an MRI, a
6 repeat MRI of the lumbar spine is very reasonable and
7 medically necessary.

8 Q. Okay. And you indicated that it is
9 reasonably and medically necessary, do you have an
10 opinion to a reasonable degree of medical certain as to
11 whether it's necessary because of his injuries in this
12 July the 16th, 2010 accident?

13 A. That's the first accident?

14 Q. Yes, sir.

15 A. Yes, my, my opinions are based on that
16 accident.

17 Q. Okay. Now, you have seen him again since
18 that April the 5th visit, it looks like on May the
19 17th, 2011?

20 A. That's correct.

21 Q. Now, had anything changed at that point?

22 A. No, nothing had changed. He is still waiting
23 to get approval to be evaluated by the orthopaedic
24 spine surgeon and according to him, he was still
25 waiting for the Carolina brace and the repeat MRI.

1 Q. Okay. Have you seen him again since then?

2 A. I saw him, I think, last week.

3 Q. May the 17th is the last note I have, so I --
4 that's --

5 A. I don't have that note here with me.

6 Q. Okay. Do you remember what was done?

7 A. Yes. Uh-huh.

8 Q. Tell me about it?

9 A. We basically talked and nothing had really
10 changed. He still suffers from the leg pain and the
11 back pain, and he's still waiting on approval for the
12 brace and for the repeat MRI and for the orthopaedic
13 spine surgery consultation.

14 Q. Your recommendations the same as they were on
15 April the 5th with regard to the need for the spinal
16 surgeon consult and the MRI?

17 A. They are.

18 Q. All right. Dr. Alexander, Defense took Mr.
19 McFadden's deposition the other day, and I want to ask
20 you some questions, hypothetical questions based on
21 what I'm going to represent to you is his testimony.

22 A. Okay.

23 Q. I want you to assume that Mr. McFadden
24 testified that in his history from time to time he has
25 had periodic backaches but that they had never been for

1 any prolonged period of time, they've improved with
2 rest and that he's never had any kind of significant
3 treatment for it. He also testified that he remembered
4 having been involved in automobile accidents in the
5 past, but that his testimony with regard to his
6 condition of his back prior to this July 6, 2010
7 accident, was the same. Assuming that and, of course,
8 Counsel will examine you on that and the Commissioner
9 will have his opportunity to review that testimony as
10 well. I know you don't have that before you. But is it
11 unusual for you to treat patients who have had back
12 pain from time to time in their history?

13 MR. BEARD: Let me just -- you'll be able to
14 answer it, but let me interpose an objection. I think
15 that misrepresents a little bit the testimony but,
16 again, we don't have the transcript yet to show to you
17 what he actually said and I'll go into more detail on
18 that in my cross examination, which will be very short
19 I hope, but just for the record, because this is what
20 we call a de bene esse deposition, I'll just have to
21 object to the -- not a misrepresentation, but it does
22 not accurately represent or reflect I believe what the
23 testimony actually was. With that, you can answer his
24 question. I'm sorry.

25 A. I forgot the question.

1 Q. Well, I was going to ask you first, have you
2 treated patients who or is it unusual for you to treat
3 patients who have had pain from time to time, back pain
4 from time to time in their history?

5 A. No. Most patients at some point in their
6 life suffered with lower back pain or neck pain or some
7 type of back pain.

8 Q. Is it unusual for folks to suffer back pain
9 and strain that resolves itself without the necessity
10 of any kind of intervention?

11 A. That's very common.

12 Q. Okay. Assuming that Mr. McFadden had
13 suffered back pain from time to time in his past that
14 has resolved itself without the necessity of any kind
15 of intervention, would that change any of your opinions
16 today?

17 A. No.

18 Q. Assuming that he has been in automobile
19 accidents in the past and, again, suffered back pain
20 from time to time that it didn't require any kind of
21 intervention and it resolved itself, would that change
22 any of your opinions?

23 A. No.

24 Q. Doctor, I think those are all of the
25 questions I have for you. Please answer any questions

Cross examination by Grady L. Beard

1 Mr. Beard might have for you.

2 MR. BEARD: Thank you, Stephen.

3 MR. WUKELA: Thank you.

4 CROSS EXAMINATION BY MR. BEARD:

5 Q. Dr. Alexander, again, my name is Grady Beard.

6 We've never actually met. I have deposed pretty much
7 the rest of the guys over here, but I've never had an
8 opportunity to meet or depose you or to be a part of a
9 deposition with you. I represent the City of Lake City
10 and the Municipal Association, and I represent the
11 Municipal Association throughout the State of South
12 Carolina. Lake City is just one of those towns and
13 that's what this Workers' Comp case is about. My
14 questions will be a little, a little bit more off the
15 beaten path. I assume you've heard of -- what's the
16 guy's name who used to say, and now the rest of the
17 story?

18 A. Yeah, I know who you're talking about.

19 Q. Well, I'm going to give you a little bit more
20 of the story, I think.

21 A. Okay.

22 Q. And it may or may not change any of your
23 opinions, but let's go just briefly, you said your
24 specialty is, and I think you said you were certified
25 in Physical Medicine and Rehabilitation, is that

1 correct?

2 A. That's correct.

3 Q. All right. Are you considered an orthopaedic
4 doctor? I mean, would you be -- if I came to you,
5 would I call you an orthopaedic?

6 A. No.

7 Q. Okay.

8 A. I'm an interventional physiatrist.

9 Q. All right. Why -- well, who referred Mr.
10 McFadden to your office?

11 A. I think it was Dr. Morris Brown.

12 Q. Okay. Who is -- and, and I hear you
13 reference him as Dr. Morris Brown, but then on the
14 first report I see, it says, "Referral reply letter,"
15 and this is dated the 10/25/10 report, Page 3 of your
16 report, and that's that very first one, it says at the
17 bottom, "Morris Brown, III, Specialty, FNP." What does
18 FNP mean?

19 A. It's Family Practice.

20 Q. Okay. Does it not mean Family Nurse
21 Practitioner?

22 A. FMP?

23 Q. FN.

24 A. NP.

25 Q. Specialty.

1 A. Oh?

2 Q. Or is that a -- does that supposed to mean a
3 family doctor?

4 A. That's a misprint.

5 Q. Okay.

6 A. He's a family doctor.

7 Q. Got you. Is he in Lake City?

8 A. Yes, sir.

9 Q. All right. Do you know Dr. Brown?

10 A. Yes, I do.

11 Q. Okay. Does he refer lots of people to you
12 or?

13 A. To this practice, he does.

14 Q. All right. Why would Mr. McFadden need to
15 see a physical rehabilitation doctor as opposed to an
16 actual orthopaedic at the early stages of the case?

17 A. Why not?

18 Q. I don't know, I'm asking you. I, I don't
19 know the answer to the question, that's why I'm asking
20 it, 'cause it's kind of unusual to me --

21 A. Oh, really? Okay.

22 Q. -- in the, in the stream of cases. Yes, sir.

23 A. Oh, okay. Well, let me tell you this, I'm an
24 interventional physiatrist and I practice pain
25 management, so I treat predominately spine patients,

1 and I treat conservatively and non- surgically. So if
2 someone such as Mr. McFadden who doesn't come in with
3 dropped reflexes and muscle weakness or bowel/bladder
4 problems, he would normally in a pain center see
5 someone like me for conservative treatment. He would
6 undergo extensive conservative treatment and the only
7 way that he would really get to see one of the surgeons
8 is if he had one of the problems that I outlined in the
9 beginning or if he failed conservative treatment.

10 Q. Okay.

11 A. Because my background is in Neurology and
12 Non-Operative Orthopaedics and conservative spine care.

13 Q. All right. The only complaint that I see Mr.
14 McFadden made the first time he saw you on 10/25 of
15 '10, it says chief complaint low back pain and I think
16 you said he claimed he had pain radiating into both
17 lower extremities at that time?

18 A. Yes, sir.

19 Q. Okay. Rated his pain as a seven, correct?

20 A. That's correct.

21 Q. All right. Then there's an entry that says,
22 "Past Medical History," and the word "None" is typed on
23 your report. First of all, what does Past Medical
24 History mean on a report that comes out of your --
25 generated from your office?

1 A. Past Medical History means the history of
2 medical problems in the past.

3 Q. Okay. Do you, as a spine doctor, you said
4 you treat primarily spine injuries, do you specifically
5 ask your patients when they come in have you ever
6 injured your back, spine, ever before the treatment
7 that you're here for today? Do y'all ask those
8 questions?

9 A. We do.

10 Q. Do you ask those questions?

11 A. We do.

12 Q. Did you ask Mr. McFadden that question?

13 A. There's usually a form that they fill out.
14 Let me see if it's in here.

15 Q. Do you have that?

16 A. Probably not. It's probably still on the
17 computer, because it's not -- prior to the medical
18 record that you actually flip through when you're --
19 after the initial visit. During the initial visit,
20 there's a form where we ask the patients if they've
21 suffered any type of traumatic event, any type of
22 trauma, do they have an attorney, that type of thing.

23 Q. Uh-huh.

24 A. But as I was going through the records, I
25 didn't have a copy of that, so I didn't review that for

1 this deposition but --

2 Q. Okay. If -- I'm sorry, go ahead.

3 A. Usually it does exist.

4 Q. All right. Is that a form, 'cause I think we
5 need the form and I think both of our offices have
6 subpoenaed your records. I don't know if Stephen has
7 got the form and I -- but I didn't get that form, and
8 so I would like to -- if there is such a form, is that
9 something you can provide to the attorneys?

10 A. Medical Records can try to provide.

11 Q. Okay.

12 A. Yes, sir.

13 Q. All right. Will you remember that or do we
14 need to kind of maybe send you an email or a letter to
15 your nurse and remind her that we need to get a copy of
16 that?

17 A. You better send a letter.

18 Q. Okay. Who, who is the person we need to
19 contact?

20 A. I would contact Kay Taylor.

21 Q. Kay?

22 A. Uh-huh.

23 Q. Taylor?

24 A. Taylor.

25 Q. Okay.

1 A. She's the nurse administrator.

2 Q. All right. I think she's actually the one
3 who sets up the depositions, is she not?

4 A. No.

5 Q. She's not?

6 A. No.

7 Q. Okay.

8 A. Debbie Martin actually sets up the deposition
9 for you.

10 Q. All right.

11 A. Or you could -- you know what, contact Debbie
12 Martin. She's my secretary. She can do that for you.

13 Q. Okay. All right. And do you have a
14 recollection in this case? I know Mr. Wukela
15 represented to you that Mr. McFadden testified in his
16 deposition that he had had some minor backaches like,
17 you know, I think Mr. Wukela represented that like
18 everybody kind of has, the minor backaches that don't
19 really require any medical treatment, and I want you to
20 assume that what Mr. McFadden actually said, I believe
21 what he said in his deposition was, he had never
22 received any type of significant medical treatment for
23 his back or his spine that required any type of x-rays,
24 MRI scans, myelograms or things of that nature?

25 MR. WUKELA: And I'm going to interpose the

1 same objection. We don't have the transcript or I
2 don't think we have a transcript yet.

3 MR. BEARD: I have not got it yet.

4 MR. WUKELA: So we're both using our
5 memories.

6 MR. BEARD: Right.

7 MR. WUKELA: And I'm not, of course,
8 suggesting that that Counsel is making any sort of
9 misrepresentation but as to the record will speak for
10 itself as to his testimony.

11 MR. BEARD: All right.

12 Q. Do you have a recollection of whether you
13 asked Mr. McFadden prior to this motor vehicle accident
14 that I'm seeing you for, did you have any kind of
15 problems that were ongoing before that? Did y'all have
16 that discussion?

17 A. Usually, I do. I don't remember the exact
18 discussion but usually as I'm going through the chart,
19 I have that note and I go through the note and ask
20 them, you know, have you had any problems before and
21 that type of thing.

22 Q. And if he had told you, well, yeah, I have
23 had back problems pretty bad and almost the same kind
24 that I'm having from this car accident at Lake City,
25 and I've actually had radiological or MRI scans before,

1 is that something that you would have reported on your
2 medical report by past medical history?

3 A. Yes, sir.

4 Q. Okay. And it's pretty clear that he must not
5 have told you that during your conversation, 'cause it
6 says none on the report, correct?

7 A. That's not really the -- I hate to tell you
8 this, but this isn't really the past medical history.
9 When they -- when the patients come in, they fill out a
10 bunch of forms and I don't have that form here. That's
11 a form that you can request.

12 Q. Okay.

13 A. But it's a handwritten form and they check,
14 you know, where they have problems, have they had any
15 problems before and that type of thing.

16 Q. Okay. So --

17 A. Even though that says none, we don't really -
18 - I don't even look at that. What I really go by is
19 those forms that he fills out.

20 Q. Okay. Well, when you say you don't look at
21 that, is this not the dictation that you do from those
22 forms and from your interview with the patient? Is
23 this not like dictated and then somebody comes and
24 transcribes what you did take?

25 A. Part of this and part of it isn't.

1 Q. Okay.

2 A. This is, this is more of a template --

3 Q. Uh-huh.

4 A. -- and if anything varies, then we, then we
5 change it and so forth. This is my dictation here.

6 Q. Okay.

7 A. And the physical exam is, is a template and
8 if anything varies then we change it, basically.

9 Q. Okay.

10 A. But do I personally sit there and dictate all
11 of this, no.

12 Q. Okay. So everything is always negative
13 unless you say otherwise?

14 A. Yes, sir.

15 Q. All right. Would it be the same way under
16 past medical history, is it always going to say none
17 unless you dictate otherwise?

18 A. No. That, to be honest with you, that really
19 depends on whether the medical assistant that's taking
20 his history puts it down there or not and whether she
21 looks at the form and says okay, he's already filled
22 that out, so I'm not going to do anything with that
23 'cause I've got this here. They have the form.

24 Q. Okay. So the best evidence of whether he
25 told Pee Dee Orthopaedic the first time he came in on

1 October 25th, 2010 of whether or not he had prior
2 significant back problems would be that patient
3 questionnaire form?

4 A. Yes, sir.

5 Q. Correct?

6 A. Yes, sir.

7 Q. If it says no -- this is a clearly a purely
8 hypothetical question.

9 A. Uh-huh.

10 Q. If the document says no and he puts I've
11 never had any problems, then the document would speak
12 for itself, either way, yes or no?

13 A. That's, that's correct. Yes.

14 Q. Okay. And that would be what he told your
15 office?

16 A. That's correct.

17 Q. Okay. Now, when Dr. Brown, and I'll relate
18 to you Dr. Brown is not an authorized treating doctor
19 in this case, but when Dr. Brown treated or referred
20 Mr. McFadden over here, did he send any current or old
21 medical records to you?

22 A. Not that I recall.

23 Q. Okay. Now, we don't have his records yet.
24 We've subpoenaed them, but we don't have his records
25 yet either because we found out about him in a

1 deposition, and I'm going to show you some information
2 in a moment regarding that. But in the -- and I'll
3 look through your evaluation. In the focused exam,
4 that part is called a focused exam on your report, is
5 that correct?

6 A. That's correct.

7 Q. All right. Focused exam meaning you were
8 very specific to the spine and various findings of the
9 spine?

10 A. That's correct.

11 Q. Okay. In that first focused examination on
12 10/25, can you tell me what was negative in that
13 examination or abnormal?

14 A. Well, if it's abnormal it's positive.

15 Q. Okay. What, what findings -- of all of the
16 examination that was done, what findings on that
17 focused examination would be considered abnormal or
18 positive, whatever you want to call it? What did you
19 find on that particular exam that was of any
20 significance?

21 A. Number one, that he complained of lower back
22 pain with all ranges of motion.

23 Q. Okay.

24 A. Palpation was unremarkable.

25 Q. What is palpation?

1 A. Touch, feeling, pressing.

2 Q. Okay. Unremarkable meaning that that's okay?

3 A. Right.

4 Q. Okay.

5 A. He had a positive bilateral straight-leg
6 raise test.

7 Q. Okay.

8 A. And that's it.

9 Q. Okay. Now, you said he complained of lower
10 back pain with all ranges of motion, correct?

11 A. Yes, sir.

12 Q. Is that an objective or a subjective finding?

13 A. It's both.

14 Q. Okay. How is it objective?

15 A. It's objective from the standpoint that you
16 are going to watch him and you're going to help him go
17 through range of motion and so forth to see if he's
18 consistent.

19 Q. Okay.

20 A. You're going to see if he has pain behavior.

21 I watch my patients when they hit the door and when
22 they walk to the chair. I make them walk in the room
23 to see if they have pain and watch them when they get
24 out of the car and when they sit in the chair. I watch
25 them as they go through the range of motion to see if

1 they grimace or have any pain behaviors whatsoever.

2 Q. Uh-huh.

3 A. They stop to rub their back or if they move
4 fluidly but complain of pain but you don't see any pain
5 behavior --

6 Q. Uh-huh.

7 A. -- I mean, that's not believable. But if the
8 patient has obvious pain behaviors when he's going
9 through the range of motion and when he's doing things
10 that you're not even asking him to do, you can see that
11 he's grimacing and has pain behaviors and so forth,
12 that's more objective than just him voicing that he
13 hurts.

14 Q. Okay. Does it, though, require a subjective
15 response or subjective something from the patient as
16 opposed to some actual objective something you can see
17 and when I say see, I'm talking about see inside. Does
18 it require you to rely upon a patient, the range of
19 motion?

20 A. Well, just the range of motion, yes.

21 Q. Uh-huh. That's all we're talking about right
22 now.

23 A. Uh-huh.

24 Q. The next thing you said that was what you
25 considered to be either negative or abnormal or you

1 said a positive would be, a positive bilateral
2 straight-leg raise test is noted. How is that
3 objective?

4 A. It's objective from the standpoint that
5 unless he knows medicine, usually his complaints are
6 not going to be that of a positive test. Usually, if
7 you ask -- if you pick their leg up and you ask them,
8 unless they, they know medicine, he's not going to know
9 the appropriate response to give you.

10 Q. Okay. Now, I have deposed orthopaedic spinal
11 surgeons in this very building, in this very practice
12 who say the reason they do the sitting straight leg
13 test is to confirm whether the standing straight-leg
14 test was actually legitimate.

15 A. Right.

16 Q. Is that correct or not correct? Is that a
17 reason that you do a sitting straight-leg test?

18 A. Yes. Uh-huh.

19 Q. Okay. If the sitting straight-leg test, all
20 of them that were done are negative, versus a standing
21 positive bilateral straight-leg test, doesn't that show
22 and or lying on your back rather, doesn't that show an
23 inconsistency in the patient?

24 A. Well, this really doesn't. When I dictate
25 this report and I say that he has a positive bilateral

1 straight-leg raise test, the secretary that's typing
2 this in should have taken out the negative and just
3 left the positive bilateral straight-leg raise test,
4 and she didn't. She just put it under special tests
5 and put that there.

6 Q. Did you do sitting straight-leg tests?

7 A. Yes. Yes, I did.

8 Q. Okay. What were the findings of the sitting
9 straight-leg test?

10 A. They were positive.

11 Q. Where is that on a report that we can see --

12 A. It's right here.

13 Q. -- other than the report that -- well, this
14 report says negative?

15 A. Well, I just told you why it says negative.

16 Q. Okay. So what I'm hearing then is a lot of
17 what we read on the reports, now I don't know if this
18 is everybody over here at Pee Dee, but at least on
19 yours, if it says negative next to sitting straight-leg
20 test, that doesn't necessarily mean what it means, is
21 that correct?

22 A. No. What I, what I just told you was that
23 the secretary that typed this made a mistake.

24 Q. Okay.

25 A. She should have taken out the words negative

1 and put a positive bilateral straight-leg raise test,
2 but she did not.

3 Q. Okay.

4 A. She, she didn't know to do that. She didn't
5 think to do that, I guess, and so she left that in
6 there and just put what I dictated and told her to put
7 under straight-leg raise test. She put what I told
8 her.

9 Q. Uh-huh.

10 A. But she did not change this at all.

11 Q. Do you have written reports for all of these
12 dates? Do you have written documentation of what we're
13 reading in the typewritten report?

14 A. Usually I do.

15 Q. Okay. Do you have one for 10/25 that shows
16 the focused exam?

17 A. Yes, I believe I do. I should. I don't see
18 it.

19 Q. Okay. Where would something like that be if
20 it's not in the chart, would it be anywhere else?

21 A. It could possibly be in the chart under a
22 different -- it's not going to be in the main chart.
23 It'll be in there under old medical records and things
24 like that.

25 Q. Okay. Did you perform, perform what we call

1 Waddell signs?

2 A. No.

3 Q. Do you ever do that?'

4 A. No. A Waddell sign is kind of inconsistent.

5 It's a way of checking for malingering and so forth,
6 but it really has not been proven to be that credible.

7 Q. Okay.

8 A. A lot of people have gotten way from using
9 it.

10 Q. Okay. Well, I'm glad to hear you say that,
11 'cause our Workers' Comp Commissioners for the most
12 part seem to think that it's the gospel, so that's kind
13 of important to know. All right. And your initial
14 diagnosis on the very first day was, "acute low back
15 pain," correct?

16 A. That's correct.

17 Q. All right. And then you requested the EMG
18 and nerve conduction studies for both, to include both
19 lower extremities. You gave the restrictions that
20 Mr. Wukela mentioned earlier, no frequent bending at
21 the waist and no lifting greater than 20 pounds and you
22 referred Mr. McFadden to Dr. -- you call her Dr.
23 Harpell. Is Mary Harpell a doctor?

24 A. She's a physical therapist and a
25 chiropractor.

1 Q. Okay. All right.

2 A. So yes.

3 Q. What doe TIW mean?

4 A. Three times a week.

5 Q. Got you. Okay. All right. And then you
6 performed -- did you yourself perform the EMG and nerve
7 conduction study or does someone else actually do that?

8 A. I have techs that actually perform the nerve
9 conduction study portion of it, but then I go over that
10 portion of the test and ask them to redo any portion
11 that I'm not convinced is accurate, and I do the
12 electromyography portion of it and I do the final
13 interpretation of it.

14 Q. Okay. And I'm reviewing your report of
15 12/6/2010, and it says, "All nerve conduction studies
16 is indicated in the following tables were within normal
17 limits. All left versus right side differences were
18 within normal limits." What does that mean?

19 A. It means that when you look at the norms for
20 the nerves in the bilateral lower extremities, that the
21 conduction velocities, the latencies and so forth were
22 within a certain range, they're known as the normal
23 range for those nerves from side to side.

24 Q. Okay. Does that mean no abnormalities?

25 A. No, it doesn't mean that they're no

1 abnormalities. It means that it's within normal limits.
2 It's within what you would expect it to be.

3 Q. Okay. Within what you would expect it to be
4 for?

5 A. A normal person.

6 Q. Okay. So Mr. McFadden is a normal person and
7 that's what you would have expected his findings to be,
8 what you saw on this test?

9 A. That's correct.

10 Q. Okay. What -- of this report, I mean, I have
11 a hard time understanding what all of it means, but
12 what is the abnormality that is referenced at the
13 bottom where it says, "The study reveals?"

14 A. It doesn't show. But, these block -- this
15 doesn't copy well. I tried to tell those people how to
16 do it, but they don't ever do it right.

17 Q. Uh-huh.

18 A. But anyway, this is the electromyography
19 portion of the test and this, this is where you're
20 examining the muscles that are enervated by the
21 particular nerves coming out of the lumbar or
22 lumbosacral spine --

23 Q. Uh-huh.

24 A. -- for any signs of membrane instability, and
25 these shaded areas are areas where we are grading or

1 rating positive shock waves and fibrillation potentials
2 which are signs of membrane instability which are signs
3 that a nerve root has been comprised or a nerve supply
4 to a particular muscle has been compromised by
5 compression or some type of disease process and that's
6 how we came up with the diagnosis by looking at the
7 nerve conduction study portion of it to see if he had
8 any type of really bad disease process going on which
9 would give us the same type of finding, and if not,
10 then looking at the electromyography to see if any of
11 the muscles are showing signs of nerve compromise.

12 Q. Okay.

13 A. Or nerve supply compromise.

14 Q. All right. So, then if I understand
15 correctly, and please correct me if I'm wrong, on the
16 nerve portion, there were no abnormalities, correct?

17 A. No, that was pretty normal.

18 Q. Okay. And on the muscle portion, does that
19 mean he's having muscle -- muscular-type problems as
20 opposed to neurologic, or some sort of nerve damage in
21 his spine or herniated disc type of symptoms? Is this
22 more muscular?

23 A. No, it's neuromuscular.

24 Q. Okay. All right. We talked about the report
25 of February the 2nd of '11. We talked about he told

1 you his therapist said he was not making any gains at
2 that point?

3 A. Right.

4 Q. You prescribed new medications, Celebrex,
5 Lyrica and Nucynta. However, the restrictions actually
6 were better, 'cause now you just say no lifting or
7 carrying over 20 pounds. There is no longer a bending
8 restriction or is there?

9 A. It's right there.

10 Q. Okay. So restrictions are unchanged?

11 A. Yes, sir.

12 Q. Okay. Does that mean if the City of Lake
13 City offers to Mr. McFadden a job requiring less than
14 20 pounds of lifting or if they offer him a sedentary
15 position, cashier, is that a job he could perform?

16 A. Yes.

17 Q. And he could have been performing that job,
18 if that job has been offered to him, since the
19 beginning of his time treating with you, is that fair?

20 A. That's fair.

21 Q. Okay. We then get to the 2/22/11 report,
22 which is five days after he had the second motor
23 vehicle accident, and my first question before I go
24 into this report is, you said during direct questioning
25 by Mr. Wukela that you felt like this was an

1 exacerbation, wasn't permanent, meaning it was a
2 temporary exacerbation of his problem and, essentially,
3 he returned to the level he was before the motor
4 vehicle accident, is that correct?

5 A. That's correct.

6 Q. How do you know that that's not the same
7 thing that happened in the motor vehicle accident he
8 had in the very first accident, that he had a pre-
9 existing problem that was exacerbated and he's not at
10 the same level he was before that, how do you know
11 that?

12 A. Well, first of all, you have to believe your
13 patient.

14 Q. Okay.

15 A. You have to rely on your patient's history
16 and according to Mr. McFadden, he was not having any
17 problems of that nature. Before the, before the motor
18 vehicle accident, he was gainfully employed. He was
19 supporting his family and he was going to work and
20 everyday and doing his daily activities and so forth.
21 He wasn't really having any problems according to him.
22 He did say that yes, he, he had some periods where, you
23 know, he did have a little soreness and a little
24 backache and so forth, but nothing that was making him
25 unemployable.

1 Q. Okay. In your practice, have you treated
2 patients much like the question Mr. Wukela asked you
3 that have occasional back problems but work on through
4 it and things like that? Have you treated patients who
5 have significant back problems and because they have to
6 put food on the table and take care of their family,
7 they work through that kind of pain? Have you treated
8 patients like that?

9 A. Sure.

10 Q. Okay.

11 A. Farmers usually.

12 Q. But Mr. McFadden represented to you that was
13 not the issue with him, correct? He was not that
14 person, meaning he never had those kind of problems
15 like you saw or like he told you occurred in this
16 accident back in 2010, correct?

17 A. He told me that he had some problems but they
18 were not significant enough that he was missing work
19 significantly or that it, it was keeping him from being
20 gainfully employed.

21 Q. Did he tell you that he had had prior MRI
22 scans for his low back before this motor vehicle
23 accident, in fact, not too before this motor vehicle
24 accident, meaning within a year or so?

25 A. I don't think so.

1 Q. Okay. And would that be significant to you?

2 A. Sure.

3 Q. Okay. And why would that be significant?

4 A. An MRI scan of the spine is always
5 significant.

6 Q. Okay. And just if you do just a sheer
7 calculation, he told you that before the accident, his
8 pain level was a six or seven? I'm talking about the
9 second accident?

10 A. Correct.

11 Q. The one that we're, that we're -- that we've
12 had a little bit of dispute about. That after the
13 accident --

14 MR. WUKELA: It's the February 17th car
15 accident.

16 MR. BEARD: Correct.

17 Q. Accident number 2, I think is what you called
18 it?

19 A. Uh-huh.

20 Q. And I think that's a good way to describe so
21 we can kind of stick with the same terminology. And
22 then he went to a nine or ten. Now, would you agree
23 that that's at least a 50 percent increase in pain
24 level from a six to a nine or from a seven to a ten?

25 A. I'd say 40.

1 Q. Okay. My calculation, six to nine, would be
2 -- three is half of six, so that would be 50 percent,
3 but maybe that's just my lawyer adding or calculations.

4 But --

5 A. He actually, he actually said seven.

6 Q. Okay. Well, why did they put six or seven?

7 A. Huh?

8 Q. Why does it say it was a six or seven?

9 A. Because you're looking at a follow-up
10 examination, and I'm talking about the initial
11 examination.

12 Q. It says prior to this accident -- I'm just
13 talking about this day, and I'm talking about on this
14 particular day.

15 A. Right, but I'm referring to the initial, the
16 history of the initial note where he rated his pain as
17 a seven --

18 Q. Correct.

19 A. -- on 10/25/2010.

20 Q. Correct. So it must have been, by February
21 22nd, it must have gotten down to a six, is that fair?
22 Before this second motor vehicle accident, it must have
23 gotten down to a six? Is that what he historically
24 told your office?

25 A. No. What, what he told me and what patients

1 usually tell you is nobody really has a pain that's a
2 nine all the time or a ten all the time. They have
3 exacerbations of their pain and it usually depends on
4 their activity level, and so they'll usually give you a
5 range of numbers. They don't usually just say my pain
6 is always a ten. It stays at a ten. They'll usually
7 say it's somewhere between a five and a eight or six to
8 seven or something like that.

9 Q. Okay. My question is very simple.

10 A. Uh-huh.

11 Q. This report says "History of Present
12 Illness," correct?

13 A. Right. That's correct.

14 Q. Is that a report that is taken directly from
15 the mouth of the patient?

16 A. It is.

17 Q. Okay. This report says, and I'm quoting the
18 report, "Prior to the accident, his lower back pain was
19 a six or seven." I assume we're referring to the
20 second motor vehicle accident, is that correct or is he
21 telling you he had a six or seven pain before the first
22 Workers' Comp accident?

23 A. He's telling me his pain was a six to a seven
24 after the first accident.

25 Q. Okay. And before this second motor vehicle

1 accident, correct?

2 A. That's correct.

3 Q. And then as a result of the second motor
4 vehicle accident, it increased at least for a period of
5 time up to a nine or a ten, is that correct?

6 A. That's correct.

7 Q. Is that the highest that it had ever been
8 reported to your office?

9 A. Yes, sir.

10 Q. Okay. Diagnosis, who typed or who dictated
11 this diagnosis?

12 A. I did.

13 Q. Okay. What does the second part of this
14 diagnosis say after "moderate spinal canal stenosis
15 L4-5/L5-S1." That was your original diagnosis,
16 correct?

17 A. That's correct.

18 Q. All right. What does the second part of that
19 diagnosis say?

20 A. Extension, exacerbation of a pre-existing
21 condition.

22 Q. Okay. Those are the exact words you
23 dictated?

24 A. Yes, sir.

25 Q. Okay. All right. This is not to be

1 demeaning in any way, --

2 A. Uh-huh.

3 Q. -- you're not an attorney and you, I assume
4 as most doctors tell me they're glad they're not
5 attorneys, so --

6 A. Uh-huh.

7 Q. -- you just try to treat the patients and you
8 let the law take care of itself, is that fair?

9 A. That's fair.

10 Q. Okay. If Mr. McFadden had not been a
11 Workers' Comp patient when he came to see you on
12 February the 22nd of '11 and said I had this motor
13 vehicle accident five days ago, would you have then
14 related all of his problems to the motor vehicle
15 accident that he came to see you about?

16 A. Yes.

17 Q. Okay. Work restrictions, I think, are
18 exactly the same?

19 A. Yes.

20 Q. I really don't see them on this one, but --

21 A. They are.

22 Q. Okay. Have the work restrictions ever
23 changed?

24 A. No, sir.

25 Q. Okay. Then we have -- well, let me, let me

1 just make sure I understand this, too. This report of
2 2/20/2011, that's the date that he came to see you and
3 I assume you dictate -- actually, it says DOS. What
4 does that mean?

5 A. Date of service.

6 Q. Okay. So that would be date he came in to
7 see you?

8 A. Yeah.

9 Q. 2/20?

10 A. Uh-huh.

11 Q. Report date, what does that mean? Is that
12 the date this was dictated or the date that it was
13 transcribed? March 9th of '11?

14 A. I couldn't tell you.

15 Q. Okay.

16 A. It could be, because in the past, we have up
17 to four weeks to get all of our notes completed from
18 the previous month so it's --

19 Q. All right.

20 A. So that could be the date that she actually
21 typed it 'cause she usually has a lot.

22 Q. Okay. Assuming that's correct and it's March
23 9th of '11, --

24 A. Uh-huh.

25 Q. -- I assume those are the documents that you

1 then forward to employers or attorneys or nurse case
2 managers or whoever may be working on the case, is that
3 fair? That's, that's when they would -- they couldn't
4 get the report before it's typed, correct?

5 A. Right. That's correct.

6 Q. All right. So this report actually would not
7 have been sent to anyone before he had at least the
8 next epidural steroid injection on 2/25, correct,
9 because it wasn't type until March 9th?

10 A. That's correct.

11 Q. All right.

12 A. That's correct.

13 Q. And then he has it looks like the third and
14 the last. Why do you do three epidural steroid
15 injections, is that just a norm or, I mean, do they
16 always come in series of three?

17 A. No.

18 Q. Why is that?

19 A. No, they don't. Normally, I do anywhere
20 between one and three depending on the patient. Some
21 people get better with one injection. Some people, it
22 takes two. Because I practice conservative medicine,
23 most of my patients are trying to avoid surgery.

24 Q. Okay.

25 A. And usually if I do two and they're no

1 better, I'll try to steer them in the way of the
2 surgeons and tell them if you're not better by two,
3 then, you know, you really need to consider surgery,
4 but a lot of people do not want to be cut, and so a lot
5 of those people will beg me to give them the third one
6 thinking the third one is a charm and in a lot of
7 cases, you know, who's to say they're wrong.

8 Q. Uh-huh.

9 A. Because in some cases, the third one is the
10 charm so if they really are trying to avoid surgery, I
11 will.

12 Q. All right. Prior to the accident, and I'm
13 talking about accident number two, the motor vehicle
14 accident February of '11, prior to that accident, the
15 pain level was a six or seven, correct?

16 A. Correct.

17 Q. Now, you've already testified it had subsided
18 back to that level shortly after this accident,
19 correct?

20 A. Correct.

21 Q. All right. But, then I go to the epidural
22 steroid injections the first one being again, 2/25/11,
23 that would have been three days later. It says here
24 his pain is an eight out of ten. Now, that's higher
25 than it was before the accident of February the 17th,

1 correct? It's an eight --

2 A. Correct.

3 Q. -- out of ten?

4 A. Correct.

5 Q. All right. And then I go to the third
6 epidural steroid injection, which was March 17th and
7 that's a month later?

8 A. Uh-huh.

9 Q. And it still says his -- he rates his pain as
10 an eight out of ten. Again, that's higher than what it
11 was before that car accident, correct?

12 A. That's correct.

13 Q. So that's really not consistent is it with
14 the statement in your report or at least in your
15 testimony that it had subsided back to the same level
16 as before the accident, because it actually is higher
17 all the way up at least a month later, correct, and
18 after two epidural steroid injections, it's still
19 higher, correct?

20 A. That's not really correct.

21 Q. Okay.

22 A. What you are looking at and what you're
23 trying to imply is that he's always an eight. He's not
24 always an eight. I'll tell you again, most patients
25 have a range of pain and that range of pain could be

1 three, three numbers, it could be four numbers and when
2 the patients come in what I usually ask them is what is
3 your pain on the average. With the, with the spinal
4 injections, when I do the spinal injections, that
5 causes trauma to the soft tissue in the spine and that
6 increases their pain. If they have Myofascial Pain
7 Syndrome or painful muscle spasms in the area of their
8 back and I put that needle in their back and do what I
9 do as far as doing the injections, that in itself is
10 going to raise their pain level. So to say his pain is
11 up one number from a seven to an eight isn't really
12 significant, because I'm causing some of that when I do
13 the epidural steroid injections, plus this same patient
14 is turning around after I do the spinal injection that
15 increases pain, he's asked to go back into physical
16 therapy and to do therapy and to do exercises and so
17 forth and most of the patients get better but for some
18 of them, that worsens their pain.

19 Q. Okay. So if I understand that testimony, are
20 we really to just disregard all these numbers the six,
21 the seven, the eight, the nine, the ten? Does it mean
22 anything --

23 A. It does.

24 Q. -- to folks, lay people who are reading this
25 and who are going to judge on a case?

1 A. No, it does mean something and that's why I
2 went through the long draw out speech of telling you
3 what it does mean. It does mean that he has had a
4 slight increase in pain, but that's not much of an
5 increase. If he said that his pain was a six or a
6 seven, and then after the epidural he came in and says
7 oh, my pain is a fifteen now, then that would be way
8 significant because you -- that would, that would be a
9 sign of malingering.

10 Q. Why would he say fifteen if your scale only
11 goes to ten?

12 A. Because patients --

13 Q. I mean, you're the one who gave us a zero to
14 ten scale?

15 A. Because patients say that all the time and
16 they don't care what number scale you give them. You
17 ask them, what's your pain level zero to ten. Someone
18 will come in and say it's a twelve.

19 Q. Okay.

20 A. It's way above your scale.

21 Q. All right. Carolina brace, what is that?

22 A. It's a brace. It's a fitted back brace. It
23 helps to increase the core pressure or the spinal
24 pressure to give support to the spine, especially in
25 someone like Mr. McFadden.

1 Q. Okay. Do you actually believe to within a
2 reasonable degree of medical certainty that the
3 Carolina brace is going to serve any purpose whatsoever
4 in making him more able to work or less able to work or
5 is it going to have any impact on his ability to work
6 or not work?

7 A. I'm not prescribing the back brace so that he
8 can go to work or not work. My job is to decrease his
9 pain level, provide him with something that's going to
10 increase his core stability and decrease his pain
11 level. That's what I'm trying to do. I'm practicing
12 medicine. I'm not practicing law.

13 Q. You recommended a second MRI scan to the
14 lumbar spine you said because it had been over six
15 months and that's --

16 A. Right.

17 Q. -- something that's within the norm of
18 medical treatment?

19 A. Especially if you're considering spine
20 surgery.

21 Q. Okay. Well, are you actually considering
22 that or are you just referring him to someone else to
23 decide whether they would consider that?

24 A. I'm referring him to the -- he has moderate
25 spinal canal stenosis which is pretty significant and

1 he's failed conservative treatment. So the first thing
2 one of my partners is going to do is order another, a
3 repeat MRI to see if anything has been missed, to see
4 exactly what's going on, has anything changed, if he's
5 going to consider doing surgery on this guy. So to
6 expedite things and not make the patient have to show
7 up for the first visit, and then my partner turns
8 around and says, oh, you need an MRI, and then we have
9 to wait on Workers' Comp to approve it, 'cause I know
10 what he's going to say 'cause he always does, they
11 always do, and to stretch things out and make this
12 patient wait even longer is, you know, ridiculous. So
13 if I know in the beginning that he's going to need
14 another MRI for the spine surgeons to evaluate him, why
15 not have that material, those studies right there so
16 when they see the patient, they can tell him right away
17 whether they think he needs surgery or he doesn't need
18 surgery and get him scheduled for surgery or not.

19 Q. If the MRI scan comes back different and it's
20 worse than the last MRI scan, what caused it? What
21 caused the worsening of his condition?

22 MR. WUKELA: Now, I've got to insert an
23 objection, Grady. It just cause for a rank speculation,
24 but my objection is noted for the record.

25 Q. What would have caused it -- other than this

1 other car accident, what would have caused the change
2 in the MRI scan?

3 A. That's a question I'll have to ask you. I
4 don't know. I wouldn't know.

5 Q. Okay.

6 A. I'm just ordering it so that my partners can
7 thoroughly assess the patient and give him some good
8 medical advice.

9 Q. Okay. If I understood your testimony earlier
10 when Mr. Wukela questioned you about to within a
11 reasonable degree of medical certainty, the findings on
12 the MRI scan, the treatment that you recommended, you
13 related it all to the car accident on the job, correct?
14 All of the findings on that MRI scan, did you relate
15 that to the car accident?

16 A. No, I did not.

17 Q. Okay. What is the cause of those findings on
18 that original MRI scan?

19 A. This gentleman has inherited a bad spine,
20 spine problems. He has a bad spine. Some people
21 inherit diabetes as a disease or hypertension or
22 whatever, asthma. He happens to have, have inherited
23 spine disease and because he does have spine disease, I
24 mean, he had moderate spinal canal stenosis before the
25 accident and being tossed around in the car and jarred

1 and manipulated and so forth by the accident, that has
2 exacerbated his lumbar spine.

3 Q. Okay.

4 A. But the accident itself did not cause the
5 moderate spinal canal stenosis. He has hypertrophy of
6 the ligament flavum. That didn't happen in the car
7 accident. That's genetics. He inherited that from
8 someone. But it's been exacerbated by the motor
9 vehicle accident.

10 MR. WUKELA: And for the record, I'm sorry to
11 interject, but we've used -- the Doctor used the phrase
12 motor vehicle accident, and I want to make sure whether
13 he's referring to that on-the-job accident of July,
14 2010?

15 MR. BEARD: I assume that's what he meant.

16 Q. I assume that's what you meant?

17 A. Yes.

18 Q. The on-the-job?

19 A. Yes, sir, the first accident.

20 MR. WUKELA: Sorry.

21 MR. BEARD: Sure.

22 Q. And then the second accident, you diagnosed
23 him with an exacerbation of the pre-existing condition,
24 I assume, the pre-existing condition meaning the
25 condition he first came to see you with was exacerbated

1 or aggravated by his second accident, is that correct?

2 A. That's correct.

3 Q. Is pretty much any kind of trauma going to
4 aggravate or exacerbate someone who has a back like
5 Mr. McFadden had before this first accident?

6 A. It depends on the degree of trauma. If he --
7 if I had been shown pictures of an accident where the
8 rear-end of the car was ripped out, then there is no
9 way I would say that there wasn't some carry over or
10 there wasn't some cause by the second accident that
11 exacerbated his problem that probably carried over.
12 But when you show me a crayon mark on a bumper, you
13 know, and the cop says ten, ten miles an hour and zero
14 miles an hour and you don't see any, any bumps, you
15 don't see any lumps and all you see is just a little
16 crayon mark, a little bit of pain, I mean, it's
17 stretching it to try to say that the majority of this
18 patient's problems are because of the second accident
19 and not the first, especially when in the first
20 accident, he toppled over in a car and the car rolled
21 and hit a tractor.

22 Q. Uh-huh.

23 A I mean, if you look at a crayon mark and you
24 look at a car that rolls, those, those are two
25 different accidents. I mean, any doctor is going to

1 say that most likely he suffered his injuries in the
2 first accident.

3 Q. Why did his pain level increase from a six to
4 a nine or a ten or a six or a seven to a nine or a ten
5 if it, if it really is kind of a meaningless motor
6 vehicle accident and all it has is a crayon mark on
7 the, on the bumper?

8 A. I didn't say it was meaningless.

9 Q. Okay.

10 A. I didn't say it was meaningless.

11 Q. All right. In fact, you've diagnosed it as
12 an exacerbation of a pre-existing condition, correct?

13 A. That's correct.

14 Q. Okay. It was an intervening trauma, correct?

15 A. That's correct.

16 Q. All right. Now, this problem that he had
17 before the Workers' Comp claim, is that something Mr.
18 McFadden would have known?

19 A. No.

20 Q. Or is that MRI scan that was done after the
21 fact going to be the first time he knows about that?

22 A. Which MRI are you referring?

23 Q. The MRI scan that he had after the first
24 Workers' Comp accident?

25 A. If Mr. McFadden received an MRI of the

1 lumbar spine prior to the first accident and the
2 physician went over that with him, then yes, he would
3 know that he has moderate spinal canal stenosis, but he
4 would know that he has an abnormal back or an abnormal
5 spine.

6 Q. Okay. And if he testified in the deposition
7 under oath that he didn't have any kind of problems
8 like that including no radiological testing, no MRI
9 scans and no myelograms in the past and if, in fact, he
10 did have those, would you have reason to question
11 whether he's---

12 MR. WUKELA: Now, again, I'm --

13 MR. BEARD: Let me finish my question,
14 Stephen.

15 MR. WUKELA: I know, Grady, but I got to
16 object 'cause you're asking him to assume --

17 MR. BEARD: You have to let me finish my
18 question, Stephen.

19 MR. WUKELA: You've got -- you're asking him
20 to assume both things.

21 MR. BEARD: No, I'm asking -- I'm going to
22 prove to him something.

23 MR. WUKELA: Okay.

24 Q. If he has revealed under oath that he didn't
25 have those problems, he's never had an MRI scan or a

1 myelogram and I will swear on any stack of Bibles
2 that's his testimony, and I'll be able to present it to
3 you later if I need to and I'll bring you to the
4 hearing if we have to if that's what Mr. Wukela wants
5 to do. If he did that, do you have questions then or
6 do you have reason to then question whether he's being
7 authentic and honest with you if, in fact, he's had
8 pre-existing problems that he did not reveal?

9 MR. WUKELA: The same objection.

10 Q. And, in fact, withheld?

11 MR. WUKELA: And I understand Counsel's
12 desire to create a credibility issue here, but I insert
13 the same objection.

14 Q. Would you have any reason to question his
15 credibility and whether he's been honest with you
16 throughout this case?

17 A. I would want to see that information. I
18 would want to see how valid it is. I would want to see
19 the actual MRI and see the reports and that type of
20 thing, and then I'd want to know if the gentleman has
21 some memory problems.

22 Q. Has what?

23 A. Memory problems.

24 Q. Okay. Why would you want to know if he has
25 memory problems?

1 A. Because he was tossed around during the first
2 motor vehicle accident and it's shown, studies have
3 shown that during motor vehicle accidents, lots of
4 patients suffer minor closed-head injuries and they
5 have memory problems as a result of that and in most
6 cases, those accidents or those injuries go
7 undiagnosed. In a, in a lot of cases the patients
8 don't know about it.

9 Q. Okay. How long does it take to develop
10 spinal stenosis?

11 A. It really depends on the person. Some people
12 develop it over a number of years and some people
13 develop it over twenty years. Some people develop it
14 over three or four years, but it's not something that's
15 developed overnight or within a month's time and
16 something like that, unless the spinal stenosis is due
17 to a huge disc herniation or something like that, but
18 that's not the case with him.

19 Q. Okay. I'm going to show you an MRI scan
20 taken on March the 20th of 2008 for Mr. McFadden at the
21 Carolinas Hospital, I believe, is where this came from
22 and it indicates on there that, I believe, it was
23 requested by Dr. Morris Edward Brown, III. Do you see
24 that down at the bottom cc, at the very bottom of the
25 report?

1 A. Yes, sir.

2 Q. I assume that means that that's the doctor
3 that probably requested this document?

4 A. That's correct.

5 Q. That's the doctor who referred him to you, is
6 that correct?

7 A. That's correct.

8 Q. March 20th, 2008, would you agree is before
9 the Workers' Compensation accident?

10 A. Yes, sir.

11 Q. This is an MRI scan of the lumbar spine?

12 A. Yes, it is.

13 Q. What is the history given on the MRI scan at
14 the top?

15 A. Chronic back pain and right leg pain.

16 Q. What does chronic back pain mean?

17 A. It's meaning -- it means that he's had back
18 pain for -- a history of back pain for more than three
19 to six months.

20 Q. Something that he clearly would be able to --
21 would have been able to represent during a deposition
22 if I asked that question?

23 A. Yes, sir.

24 Q. Okay. Right leg pain, is that the leg that
25 he's been complaining to you about throughout most of

1 this as being the most extensive problem he had?

2 A. Yes, sir.

3 Q. Okay. And the findings are at exactly the
4 same levels of where you had findings on your EMG and
5 nerve conduction study, is that correct, L4-5 and
6 L5/S1?

7 A. That's correct.

8 Q. Okay. Did Mr. McFadden ever tell you or
9 anyone at Pee Dee Orthopaedic about this problem?

10 A. Not that I know of.

11 Q. Based upon a review of this MRI scan, can you
12 still state within a reasonable degree of medical
13 certainty that the problems that Mr. McFadden is
14 experiencing or complaining about are related to car
15 accident at Workers' Comp, a car accident in February
16 or more importantly, are they related to these prior
17 problems that were chronic and ongoing as far back as
18 March of 2008?

19 A. The question that you just asked me was so
20 extensive, I'm not sure where you want me to start. By
21 the time you finished the question, I didn't realize
22 what you were asking me.

23 Q. Okay. I'm asking you can you still state
24 within a reasonable degree of medical certainty that
25 the problems that Mr. McFadden is complaining about

1 today now that you have an opportunity to review
2 another MRI scan are related to what you thought was
3 the original problem or are they related to something
4 that pre-existed that or can you even answer that
5 question?

6 A. I can. Just looking at -- excuse me, just
7 looking at an MRI scan from 2008 doesn't mean that this
8 patient had ongoing pain problems continuously from
9 2008 all the way up through 2011. It just means that
10 yes, at some point in time he did have some back pain
11 and yes, at some point in time he probably had some leg
12 pain. He might have forgotten that he had leg pain,
13 but he did tell us that he did have a problem off and
14 on, but he said he did not have a problem just before
15 the accident. This MRI is not the same as the MRI of
16 2010. This MRI shows a very mild problem. It doesn't
17 show moderate spinal canal stenosis. As a matter of
18 fact, it shows mild, a mild central disc protrusion,
19 but it doesn't show any spinal stenosis. It just shows
20 a disc protrusion which are disc bulges.

21 Q. Okay. This type of condition that's seen on
22 this MRI scan of March 2008, what is the natural
23 progression of that type of problem?

24 A. It depends on the person and the type of work
25 they do, that type of thing. But, I guess, what, what

1 I'm trying to get you to see is that although there's
2 some findings on this MRI, this is not a bad MRI. It
3 just shows that he has some mild disc bulges at L4-5
4 and L5/S1. It doesn't show that he has moderate spinal
5 canal stenosis in those areas. His spine has, has
6 become progressively worse since the time that this MRI
7 was taken.

8 Q. Okay. But you said that that spinal stenosis
9 would have pre-existed that accident and the Workers'
10 Comp claim, as well, correct?

11 A. What, what I was stating was that he had that
12 degree of spinal stenosis a day before the accident or
13 two days before the accident or a month or six months
14 before the accident. This is what, two years or three
15 years before the accidents.

16 Q. It's two years before the one we're here for.

17 A. Okay. Two years.

18 Q. Okay.

19 A. So his pain -- his spine changed as far as
20 the hypertrophic thickening of the ligamentum flavum
21 between the time that this MRI was taken and by the
22 time the first accident happened.

23 Q. Okay. And you testified that those findings
24 on that MRI scan in September of 2010 would have been
25 because of a condition that he inherited, correct?

1 A. Right. Correct.

2 Q. Why is that not on this MRI scan on '08 if he
3 inherited that problem?

4 A. Because it had not progressed to the point
5 that it is now. As I was telling you with thickening
6 of the ligamentum flavum that's not something that
7 happens overnight. It happens over years. For some
8 people it might take ten years, twenty years. For some
9 people it might take a year or two or three years.

10 Q. Okay.

11 A. But it doesn't happen in a week's time or a
12 day's time.

13 Q. If when we receive Dr. Brown's medical
14 records, if it shows that he continued to treat with
15 Dr. Brown after March of 2008 on a fairly frequent and
16 regular basis with back pain and problems and things of
17 that nature, would that have an affect on your opinion
18 as to what was causing his problems today?

19 A. If I saw Dr. Brown's records and Dr. Brown's
20 records indicated that, that the patient had
21 exacerbations of lower back pain, he had periods of
22 time where he did have back pain but he had other
23 periods of time where the pain resolved and he led a
24 normal life, that's one thing. But if I look at
25 Dr. Brown's records and Dr. Brown's records show that

1 the back pain never did subside, the back pain remained
2 constant and he was in constant treatment from the time
3 that Dr. Brown first diagnosed him as having a back
4 problem up through the accident, that's a different
5 thing and then I would think differently.

6 Q. Okay. So you -- basically, you need to see
7 those records kind of like we all do?

8 A. Yes, sir.

9 Q. All right. And since we've talked about it,
10 Doctor, I'm going to add that as an -- and that's for
11 you, Stephen. You can keep that. As an exhibit to
12 your deposition.

13 MRI REPORT DATED MARCH 20, 2008, MARKED FOR
14 IDENTIFICATION AS DEFENDANT'S EXHIBIT NUMBER ONE(1).

15 Q. Regardless of all of the questions that
16 either one of us have asked you and I think I asked you
17 this earlier, but honestly, I can't remember now. If a
18 sedentary position is offered to Mr. McFadden within
19 the restrictions that have been indicated; i.e., no
20 frequent bending at the waist, and when you say that,
21 what does that mean, when you say no frequent bending
22 at the waist. Does that mean like--

23 A. It means don't take a job where you are
24 constantly having to bend over and pick up items out of
25 a box and don't take a job where you have to do a lot

1 of bending at the waist, you know.

2 Q. A sedentary position as a cashier is
3 something that he could do?

4 A. As long as he's allowed to go from sitting to
5 standing.

6 Q. As he wants to?

7 A. As he wants to, yes.

8 Q. But you have never really restricted him from
9 sitting or standing, have you?

10 A. No.

11 Q. Okay. Would a Functional Capacity Evaluation
12 serve any purpose as far as you're concerned at this
13 point?

14 A. No.

15 Q. Okay. Mr. McFadden testified during his
16 deposition that he hired Mr. Wukela to represent him in
17 this February 11th motor vehicle accident case.

18 A. The first accident?

19 Q. No, sir, the second accident.

20 A. The second accident.

21 Q. The one that I think you've described and, I
22 guess, Mr. Wukela has also described as being fairly
23 innocuous.

24 A. Uh-huh.

25 Q. Okay. Were you aware of that, that he had

1 hired an attorney to represent him in that car wreck
2 case, the second car wreck case?

3 A. I was aware that Mr. Wukela is his attorney.

4 Q. Okay.

5 A. And that he represents him. I knew that he
6 represented him for the first accident, so I was sure
7 that he was representing him for the second accident.
8 Most patients don't go out and get another attorney,
9 they just use the same one.

10 Q. Why do you think he would need a lawyer for
11 the second accident given your description of the
12 accident?

13 MR. WUKELA: I'm going to object to that.
14 That is flatly irrelevant and I don't know that it has
15 any bearing on this case at all but with that
16 objection.

17 Q. You can answer the question. Why would he
18 need an attorney to represent him in that second car
19 accident case?

20 A. I can't really answer that question.

21 Q. In your treatment of patients, have there
22 been many cases that have come before you where they
23 appear to be innocuous, yet the patient contends and
24 will argue to a jury or a Commissioner or a judge that
25 it's a lot more significant than you think it should

1 be?

2 A. In some cases.

3 Q. Mr. Wukela represented to you during the
4 initial part of the deposition that Mr. McFadden may
5 have had back pain in the past and testified at his
6 deposition that he had "no intervention." That was the
7 term he used. What does that mean to you when someone
8 represents to you that someone testified that they had
9 occasional backaches but no intervention, what would
10 that mean?

11 A. It means that he probably saw his family
12 practice doc. His family practice doc saw him and
13 treated him for sprain/strain type back injury, but he
14 probably didn't have like epidural steroid injections
15 or surgery.

16 Q. What about an MRI scan, is that intervention?

17 A. No. That's a diagnostic test.

18 Q. All right. What about medication,
19 prescriptions?

20 A. That's not intervention. Everybody gets
21 medications.

22 Q. Okay.

23 A. You can get medications for a cold.

24 Q. So tell us again what is intervention to you?

25 A. Intervention to me when I hear it, it means

1 that he's had an extensive back work up by a
2 specialist. He probably has had physical therapy
3 coupled with epidural steroid injections or spinal
4 injections or perhaps he's even had surgical
5 intervention.

6 Q. Do you find that a lot of patients when
7 they're Workers' Compensation patients tend to get more
8 medical treatment because it's a 100 percent paid for
9 by someone as opposed to someone who doesn't have a
10 Workers' Comp claim as far as intervention and
11 treatment types of things.

12 MR. WUKELA: The same objection. Go ahead.

13 MR. BEARD: The same objection as -- what is
14 that objection.

15 MR. WUKELA: I think it's entirely irrelevant
16 and speculative, but go ahead.

17 Q. You can answer it.

18 A. Okay. I don't really look at that. My job
19 is to treat patients and treat illnesses and so forth,
20 and I try to stay out of the Workers' Comp arena. The
21 only time I stick my nose in it is to get studies
22 approved and that type of thing. How much money is
23 being put out by the Workers' Comp people for their
24 patients as opposed to automobile accidents or personal
25 injury accidents and so forth, I don't ever look at

1 that. My job is to treat and that's what I do. Your
2 job is to look at money and claims, what's legal and
3 that type of thing, and I'm not a lawyer, so I never
4 look at that.

5 Q. All right. Are you aware of any research
6 that indicates -- well, strike that. Is there anything
7 objective that supports Mr. McFadden's complaints to
8 this level for this long even after all of the
9 treatment that you've provided to him?

10 A. He has a positive EMG and nerve conduction
11 study which shows that obviously he does. He has
12 suffered some nerve compression in his spine that is
13 affecting the muscles in his legs and his lower back.
14 He has a moderate -- he has an MRI which supports
15 moderately spinal canal stenosis at two separate
16 levels. His history is pretty consistent with what you
17 would see with spinal canal stenosis so unless he's
18 very smart and he reads a lot of medical books and so
19 forth, he's pretty consistent.

20 Q. Did you actually review the MRI scan or did
21 you just review the radiology report?

22 A. Both.

23 Q. Okay. So you've got a copy of the scan or
24 you -- you actually --

25 A. We have a --

Re-Direct examination by Stephen J. Wukela

81

1 Q. -- took and reviewed the scan?

2 A. We have a computerized medical record and we
3 have two screens in each room and one screen, we review
4 x-rays and MRI scans and the other is for Chart
5 Logic and that's basically the patient's chart. So
6 whenever they come in with a diagnostic study, we look
7 at both the radiological interpretation and the scan
8 and I show the scans, the MRI scans to the patient and
9 point out the level or the areas of abnormality.

10 Q. Do you have any appointments scheduled to see
11 Mr. McFadden again at this point?

12 A. I think we see him again in about two or
13 three weeks.

14 Q. That is all I have.

15 REDIRECT EXAMINATION BY MR. WUKELA:

16 Q. Dr. Alexander, Counsel asked you that how it
17 came to pass that Mr. McFadden came to see you, and I'm
18 looking at Page 52 of the APA, your first report, it
19 indicates that he was referred by Workers' Comp. Do you
20 remember whether the Workers' Compensation carrier sent
21 him over here?

22 A. I don't, but usually if they do send him,
23 he's referred by a physician and usually on that form,
24 it says referring physician and that's where we usually
25 get our information from so even if he is from Workers'

1 Comp, there's always a physician that's been asked to
2 refer him.

3 Q. Up until recently, has Workers' Comp been
4 paying your bills?

5 A. Do you want to be honest -- me to be honest,
6 I have no idea.

7 Q. It's not your area?

8 A. No, it's not my area.

9 Q. Okay.

10 A. If they had not been paying the bills, then
11 my people probably would have said, well, don't keep
12 treating this guy, Workers' Comp is not covering him
13 and so forth. I assume that it's being covered, but I
14 don't look at that.

15 Q. We know that they're not paying it now,
16 because he hasn't gotten the MRI and hasn't gotten the
17 referral to the spine surgeon. Is that right?

18 A. Right. That's correct.

19 Q. But, I think you made mention of that in your
20 last note of May the 17th of 2011. It's Page 79. Let
21 me ask you this, let me -- I'm going to look at
22 Page 83 of the APA which is a note from the physical
23 therapist where on December the 30th, 2010, she asked
24 him about his previous history and I'm going to ask you
25 if you can tell me what she recorded his response was?

1 A. It says, "Previous History, occasional lower
2 back pain that's usually stopped with rest."

3 Q. Is that consistent with what he told you?

4 A. Yes.

5 Q. Doctor, do you have an opinion as to whether
6 Mr. McFadden had a pre-existing spinal condition before
7 this work-related accident of July of 2010?

8 A. I think he did have a pre-existing spine
9 problem before the first motor vehicle accident, but --

10 Q. I'm sorry, I didn't mean to cut you off.

11 A. That's all right.

12 Q. Please continue.

13 A. But according to what he has told me and the
14 information that I have seen, it doesn't appear that it
15 was an active ongoing problem that was being treated at
16 the time of the motor vehicle accident, the first motor
17 vehicle accident according to what he's telling me.

18 Q And tell me your opinion to a reasonable
19 degree of medical certainty as to whether this accident
20 of July 16th, 2010 on the job in which his vehicle
21 rolled over and hit a parked tractor aggravated that
22 pre-existing condition?

23 A. I believe it did.

24 Q. Okay. Doctor, Counsel has showed you a prior
25 MRI of his back from March the 20th, 2008. Is that

1 consistent with your opinion that he had a pre-
2 existing condition in his back prior to that rollover
3 accident?

4 A. It is consistent.

5 Q. All right. And is it -- is that MRI
6 different from the MRI that was performed after his
7 rollover accident on September, some date, 2010? Okay.
8 Let's see if I can find that second MRI so I make
9 sure--

10 A. Here you go.

11 Q. Oh, sure. Okay. Are those two MRIs
12 different, Doctor?

13 A. Yes, sir, they are.

14 Q. Tell me how?

15 A. The first MRI shows mild findings of bulging
16 disc at L4-5 and L5/S1, and it doesn't show any spinal
17 canal stenosis. It doesn't show a lot of degenerative
18 changes of the lumbar spine on the 3/20/2008 MRI scan.
19 But on the 9/10/2010 MRI scan, it shows that he has
20 moderate spinal canal narrowing at the L4-5 and L5/S1
21 levels related to large diffuse posterior disc bulges
22 with extension hypertrophic ligamentum flavum and facet
23 joint reaction, which means he has a lot of
24 degenerative changes that have occurred between the
25 time of the first MRI scan that we discussed and the

1 second MRI scan which would put him at high risk for
2 having back problems if he suffered trauma.

3 Q. Doctor, are those reports consistent with
4 your opinion that Mr. McFadden suffered an aggravation
5 of his pre-existing condition in this work-related
6 accident?

7 A. Yes. Yes, sir.

8 Q. All right. Counsel asked you about,
9 extensively about Mr. McFadden's rating of his pain on
10 the pain scale during his visits with you.

11 A. Uh-huh.

12 Q. And I want to go through those one more time.
13 It looks like on October the 25th, 2010, I'm looking at
14 Page 52, he rates his pain as a seven. This is after
15 the rollover accident. Is that right?

16 A. That's correct.

17 Q. All right. And then Page 69, he sees you
18 after this second accident on February 17th, 2011, and
19 he tells you that his pain was a six to a seven and
20 after the second accident, it sent up a nine or a ten,
21 and then it subsided back to the previous level. Is
22 that right?

23 A. That's correct.

24 Q. All right. And then on Page 72, on March the
25 17th, 2011, Counsel pointed out to you that when he

Re-Cross-examination by Grady L. Beard

86

1 came in for an epidural steroid injection, he rated his
2 pain as an eight out of ten?

3 A. That's correct.

4 Q. All right. And then a month later on April
5 the 5th, 2011, I'm looking at Page 74, he sees you on
6 April the 5th and he rates his lower back pain as a
7 seven, is that correct?

8 A. That's correct.

9 Q. All right. And then he sees you a month
10 later or thereabouts on May the 17th, 2011, that's Page
11 79, and you say, "He continues to suffer from lower
12 back pain which he rates on the average as a seven to
13 eight." Is that right?

14 A. That's correct.

15 Q. Now, Doctor, as rating of pain on pain scales
16 go by patients you see, would you describe Mr.
17 McFadden's complaints as consistent or inconsistent?

18 A. Consistent.

19 Q. Doctor, those are all of the questions I have
20 for you. Thank you for your time.

21 RE-CROSS EXAMINATION BY MR. BEARD:

22 Q. I have to assume you've never seen the actual
23 MRI scan itself from the report of February or March
24 the 8th of 2010 -- March the 20th of 2010, is that
25 correct?

1 A. That's correct.

2 Q. Okay. And having reviewed all of the
3 terminology on both of these MRI scans, would you agree
4 that terminology used by radiologists and even
5 orthopaedic surgeons a lot of times they use different
6 words for different -- for what they mean to be the
7 same thing? In other words, herniations and
8 protrusions and words of that nature sometimes are
9 intermingled in this profession?

10 A. Herniation and protrusion are not
11 intermingled. Disc bulges and protrusions are
12 intermingled but a herniated nucleus pulposus is not
13 intermingled with a disc bulge.

14 Q. And no indication on any MRI scan you've seen
15 that he has a herniated disc, is that correct?

16 A. That's correct.

17 Q. Okay. Both scans indicated disc protrusions?

18 A. Or disc bulges, yes, sir.

19 Q. Okay. And the word stenosis, I mean I know
20 what it is, but the radiologists nowhere used the word
21 stenosis in the September 2010 MRI scan, did he?

22 A. He did.

23 Q. No, I'm talking about this one. I'm talking
24 about the one after the car wreck. Is the word
25 stenosis ever even mentioned?

1 A. It is.

2 Q. Okay.

3 A. It is.

4 Q. Where is that?

5 A. Right here. As you and I both --

6 Q. I'm just asking you to show me where the word
7 stenosis is on that report?

8 A. As you and I previously said, radiologists
9 use words interchange -- interchangeably. The word
10 stenosis means canal narrowing. It means narrowing.
11 And he says moderate spinal canal narrowing. That
12 means moderate spinal canal stenosis.

13 Q. Am I correct, Dr. Alexander, that the word
14 stenosis, and that's all I'm asking you, --

15 A. Uh-huh.

16 Q. -- is not anywhere listed on the report of
17 September 10th, 2010 by the radiologist who did this
18 MRI scan? The word stenosis is nowhere on that report,
19 is that correct?

20 A. No, I do not see the word stenosis.

21 Q. Okay. But the report does say that the
22 posterior disc bulges and hypertrophic changes, those
23 are degenerative changes, correct, hypertrophic?

24 A. Yes. That's correct.

25 Q. Okay. Those changes are what has resulted in

1 the moderate spinal canal narrowing or stenosis is what
2 you said that is at L4-5 and L5/S1, correct?

3 A. That's correct.

4 Q. Those are the findings because he was having
5 disc protrusions at L4-5 and L5/S1 at that time in
6 March of '08, correct, and that's the natural
7 progression of that problem, it gets worse, doesn't it,
8 over time, naturally without any kind of trauma?

9 A. What you're saying isn't true.

10 Q. It's not true?

11 A. No.

12 Q. Okay.

13 A. Because what you are -- what you're saying is
14 -- they did research, they did MRIs on the spines of
15 medical students, the lumbar spines of medical students
16 and what they found was that 40 percent of those
17 medical students had bulging discs, but none of those
18 medical students had any pain whatsoever. So unless you
19 can demonstrate that a bulging disc is putting pressure
20 on some neural tissue or nerve roots or nerves that
21 bulging disc, just because it isn't a pathological
22 problem, unless it's compromising some type of neural
23 tissue. So to say that someone has a bulging disc and
24 because they have a bulging disc, they're going to --
25 their spine is going downhill from there, it's just

1 going to continue to degenerate is a stretch of the
2 imagination.

3 Q. Well, then why in the world, and I'll ask you
4 this one more time, why in the world would this
5 gentleman have received an MRI scan, that's an
6 expensive test, why would he have received an MRI scan
7 in March of 2008 if he didn't have some fairly
8 significant problems going on with his low back?

9 A. You'll have to, you'll have to ask Dr. Morris
10 that. He ordered it.

11 Q. Well, I'm asking you why. Why would someone
12 request an MRI scan? I mean you do this for a living.

13 A. Yeah, I do, but the family practice docs in a
14 lot of cases, they will get MRI scans for just about
15 anything and whether Dr. Morris thought he had a really
16 significant problem or not, I don't know, but I can
17 tell you some of the insurance companies will refuse to
18 allow them to even order the study and they'll say we
19 want a specialty evaluation. You send him to a spine
20 specialist and then if he says that he wants an MRI,
21 we'll pay for it but you as a family practice doc, if
22 you order it, we're not going to pay for it.

23 Q. That's all I have.

24 A. Okay.

25 MR. WUKELA: Thank you for your time.

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MR. BEARD: Thanks, Doctor.

DR. ALEXANDER: Thank you.

(DEPOSITION CONCLUDED AT 7:55 P.M.)

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF DARLINGTON) CERTIFICATE

3 I, Laura W. Little, Verbatim Reporter and Notary
4 Public in and for the State of South Carolina, certify
5 that I did have Anthony W. Alexander, M.D., appear
6 before me at 6:15 p.m. on the 15th day of June, 2011 at
7 Pee Dee Orthopaedic Associates, 901 East Cheves Street,
8 Suite 100, Florence, South Carolina; that the witness
9 was duly sworn and cautioned to tell the truth, the
10 whole truth, and nothing but the truth; that the
11 foregoing pages constitute a true and accurate
12 transcript of his testimony given at that time and
13 place.

14 I certify that I am not of counsel or kin to any
15 of the parties, nor am I interested in any manner in
16 its outcome.

17 IN WITNESS WHEREOF I have hereunto set my hand and
18 seal this the 18th day of June, 2011.

19 Laura W Little
20 Laura W. Little, Verbatim Reporter
21 Notary Public, State of South Carolina
22 Commission Expires September 21, 2015.
23
24
25

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1009259

JEFFERY L. MCFADDEN)

CLAIMANT,)

VS.)

CITY OF LAKE CITY)

EMPLOYER,)

AND)

SC MUNICIPAL INSURANCE)
TRUST FUND)

CARRIER.)

SC WORKERS' COMPENSATION COMMISSION

FULL BOARD HEARING OF

JEFFERY L. MCFADDEN

VS

CITY OF LAKE CITY

This is the Transcript of the South Carolina Workers' Compensation Hearing of Jeffery L. McFadden versus City of Lake City, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 3:00 P.M., Monday, March 19, 2012, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY**REPORTED****BY****GLORIA DAVIS**

PALMETTO COURT REPORTING
321 Mac Circle Lexington, SC 29073
(803) 358-0515
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APPEARANCES

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FOR THE RESPONDENT:
Grady L. Beard, Esquire
Sowell, Gray, Stepp & Laffitte
1310 Gadsden Street
P.O. Box 11449
Columbia, SC 29211

COMMISSIONERS PRESENT:
T. Scott Beck, Chairman
Andrea Pope Roche
Avery Wilkerson

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

**This is an Official Transcript governed by 25A S.C. Code ANN. Regs 67-615 D (Supp. 2000). The unauthorized copying of this document is deemed to be conversion of an asset belonging to the Court Reporter.

I N D E X

WITNESSES

All witnesses:	Page
for Plaintiff	
Argument for the Appellant by Mr. Wukela	4:20
Argument for the Respondent by Mr. Beard	8:8
Reply for the Appellant by Mr. Wukela	14:22
Certificate	22

STIPULATIONS

Commissioner Beck: All right. Please call the case.

Court Reporter: Today is Monday, March 19th, 2012. This is South Carolina Worker's Compensation case number 1009259. This is the case of Jeffrey L. McFadden, Claimant, versus City of Lake City, Employer and South Carolina Municipal Insurance Trust was the Carrier. The Appellant is the Claimant represented by Stephen J. Wukela. The Respondent is represented by Grady L. Beard. Each side is allowed ten (10) minutes for oral argument and the Appellant three (3) minutes in reply. You are requested to argue the grounds of exception and stay within the record. The Single Hearing Commissioner was Commissioner Lyndon.

Commissioner Beck: Mr. Wukela.

ARGUMENT FOR THE APPELLANT

By Mr. Wukela:

Good morning Commissioners. May it please the Commission? This is an admitted accident. July 16th, 2010, the Claimant was driving a company vehicle, lost control and rolled over, crashed into a parked tractor. Had back pain

1 radiating into his legs. The Carrier admitted it,
2 paid him temporary total, sent him to Dr.
3 Alexander in Florence who noted radiate -- pain
4 radiating into his legs; numbness, tingling,
5 frequent urination; kind of text book back injury
6 case, did an MRI September of 2010, which showed
7 bulges with spinal canal narrowing at L4-5 and
8 S-1. Dr. Alexander ordered physical therapy,
9 ordered an EMG and a nerve conduction study, which
10 confirmed radiculopathy, started a series of
11 epidural steroid injections. February 17th, 2011,
12 Claimant is a passenger in a vehicle with his wife
13 sitting at a stop light and is rear ended. It is
14 a minor accident by any definition. The Highway
15 Patrolman at the scene reported that there was
16 maybe a ten (10) mile an hour collision and it was
17 about a one and one half (1 ½) inch scratch on the
18 bumper and that was the total amount of the
19 damages. Farm Bureau, I think, estimated the
20 damages at twenty-one dollars and fifty cents
21 (\$21.50) but the Carrier started refusing
22 treatment from that point. And, in fact,
23 subsequently in April Dr. Alexander recommended
24 surgical consultation, which the Carrier refused
25 and I filed a Form 50. In June we deposed Dr.

1 Alexander and unequivocally he said there wasn't
2 any change in his course of treatment whatsoever
3 as a result of the accident and that the surgical
4 referral was necessary because of the accident.
5 Still the Carrier refused and now that the
6 intervening accident didn't seem to bear any
7 refute they issued twenty-nine (29) subpoenas to
8 ever treating physician they could find, including
9 Dentists, in an effort to find some other cause
10 for this injury that the Claimant sustained. In
11 fact, they did turn up a lumbar MRI that had been
12 done two (2) years before. They questioned Dr.
13 Alexander about that and he indicated actually the
14 MRI reinforced his opinion about the change in the
15 Claimant's condition. Also, Dr. Brown, who is the
16 family doctor who had ordered that MRI two (2)
17 years before, had a note in April of 2008, where
18 -- where he said the Claimant was back to fine
19 with his -- with regard to back pain in 2008, and
20 that there was no intervening claim of back pain
21 in the two (2) years between that date and the
22 date of the accident. Still they refused to
23 authorize his care. We had a hearing set in
24 October. Commissioner Lyndon called us in before
25 the hearing, frankly, because the Defendants had

1 subpoenaed Dr. Alexander to trial and Dr. Brown,
2 the family doctor, to trial and both had indicated
3 problems with attending that hearing. We went in
4 and talked to Commissioner Lyndon and Commissioner
5 Lyndon ordered that the Claimant be evaluated and
6 treated if necessary by Dr. Holbrook. And I
7 requested interest and penalties for all this
8 stuff. Commissioner Lyndon refused and so I'm
9 here today. You all don't hear me arguing about
10 interest and penalties -- not interest and
11 penalties -- penalties and sanctions a lot but,
12 you know, we get a law with the Claimant's bar and
13 in 2005 we got a law with the Claimant's bar that
14 talked about malingering, frivolous prosecution of
15 cases and that kind of thing. As a result the
16 Legislature passed 15-36-10 and when they did that
17 they said if you prosecute or defend a claim
18 without reasonable belief of the defense support
19 and fact of law then you could be sanctioned
20 Attorneys fees and costs. I have spent numerous
21 hours on this case that should never have been
22 spent on it. We've spent costs on this case that
23 never should have been spent on it and that's why
24 I seek these sanctions from the Commission. I'd
25 be happy to answer any questions the Commission

1 may have.

2 Commissioner Beck: Any questions? Thank
3 you, sir.

4 Mr. Wukela: Thank you, Commissioner.

5 Commissioner Wilkerson: Thank you, sir.

6 Commissioner Beck: Mr. Beard?

7 ARGUMENT FOR THE RESPONDENT

8 By Mr. Beard:

9 Thank you, Commissioners. It's interesting
10 because in the -- obviously you don't have a
11 hearing transcript because Commissioner Lyndon
12 didn't do a hearing transcript in the -- in the
13 event before him but Mr. Wukela probably talked
14 about five (5) times that long during that event.
15 And I handed up to you what is APA's 49 and 50;
16 that is how this all started. And in pages 49 and
17 50 this gentleman had gone back to Dr. Alexander,
18 not for the workers' comp claim, but he had been
19 referred by Morris Brown, his family doctor, as he
20 testified in his deposition, following the
21 accident and all you've got to do is look at what
22 the report says. It says he was in an accident.
23 The accident increased his pain from a six (6) to
24 a nine (9) or a ten (10); well, that's a fifty
25 percent (50%) increase in pain. And the very last

1 diagnosis, assessment, diagnosis, exacerbation of
2 a pre-existing condition. Well, that is the
3 definition of an accident or a new accident in
4 South Carolina and that was not a Workers' Comp
5 claim that was an unrelated incident. Now, what
6 we did then is -- it isn't anything like Mr.
7 Wukela just tried to spill it out, as he filed a
8 Form 50 and all -- no he didn't. We filed a
9 petition for a hearing because we couldn't file a
10 stop pay because we didn't have MMI. We filed a
11 petition for a hearing; we filed that as soon as
12 we got this report. Mr. Wukela objected to our
13 having an opportunity to go in front of the
14 Commission for a hearing. He filed a response
15 saying that was contrary to the Act and we
16 couldn't come in and file a petition for a hearing
17 and pursue our defense of this claim even though
18 he had seen it, I assume, before we did but we're
19 seeing it for the first time. He files a
20 response; we got an order. We got an order from
21 Commissioner Barden that said we're entitled to a
22 hearing; he didn't appeal that, he didn't object
23 to that. He then filed the Form 50 after that and
24 he sought penalties, sanctions and all those
25 things. Well, then, we didn't schedule Dr.

1 Alexander's deposition; Mr. Wukela scheduled Dr.
2 Alexander's deposition and it's nowhere near what
3 he just said that Dr. Alexander said. In fact,
4 what we found out is, the Claimant did not
5 truthfully represent to Dr. Alexander his history
6 because the Claimant, in his deposition five (5)
7 days before Dr. Alexander's deposition, told us,
8 I've never had an MRI scan, I've never had an EMG
9 or those types of diagnostic tests in my life. We
10 then get Dr. Brown, his family doctor's records,
11 and there is an MRI scan from 2008, a year and a
12 half before this accident that is admitted. And
13 guess what? The levels that are injured in that
14 MRI scan are the exact same levels that we have
15 for our admitted accident. Now, there had been no
16 discovery before that because my clients accepted
17 the claim, put him on a running award, were paying
18 the medical benefits. The only reason this ever
19 came to light is because he had another car wreck
20 where Dr. Alexander said it was an aggravation of
21 a pre-existing condition. And he can call it --
22 it was minimal at best. I'm -- I'm here to tell
23 you I've been in a hundred thousand (100,000)
24 workers' Comp -- well, I'm embellishing, I've been
25 in thousands of workers' Comp claims and lots of

1 them have nothing for a description of an injury
2 that this Workers' Comp Commission finds
3 compensable. I would cite you Creech versus
4 Ducane where the Claimant testified, I was lifting
5 less than a one (1) ounce piece of wire down in
6 Barnwell County and that was found to be a
7 Worker's Comp claim and that's kind of where we
8 started a lot of the progeny of it doesn't matter
9 what you were doing; it's the result that counts.
10 He told his doctor I'm worse, I'm exacerbated.
11 The doctor diagnosed him with an exacerbation.
12 Everything that happened thereafter is just part
13 in parcel of the defense of a Worker's Comp claim.
14 We certainly have a defense in South Carolina for
15 intervening trauma, case law from the South
16 Carolina Supreme Court that says we've got it and
17 that's what we were pursuing at that time. We
18 deposed -- or they deposed Dr. Alexander. If you
19 read his deposition it's all over the place. What
20 you'll find out is if you read Dr. Alexander's
21 deposition you will see that Dr. Alexander admits
22 that what you get, Commissioners, in his reports
23 doesn't necessarily mean what it says because they
24 just have a template and apparently everything
25 that's said is negative if he doesn't say

1 otherwise; even though it may be otherwise and you
2 found all that out in his deposition. Also, in
3 his deposition he acknowledges that actually I
4 dictated something that apparently is not showing
5 up properly in my dictation that we were all
6 relying on. Then we -- I asked him in his
7 deposition, do you have -- what you're saying
8 right now, that you dictated a report, where is
9 the handwritten notes that would correspond that
10 is the opposite of your type written report? It
11 should be here. It should be here. I can't find
12 it. I can't find it. He never found it. He
13 never found the type written report. Dr.
14 Alexander had zero (0) credibility, unfortunately.
15 And we didn't send this Claimant to Dr. Alexander;
16 Morris Brown sent him to Dr. Alexander, his family
17 doctor. We ended up paying for it and at some
18 point Dr. Alexander did make the referral for a
19 surgical evaluation. We came to the meeting here
20 in this office -- in this building before
21 Commissioner Lyndon back in October and at that
22 time we were instructed to send the Claimant to
23 Dr. Holbrook for an evaluation; that wasn't
24 appealed and that was done. The only issue before
25 you, the one (1) lone issue, is the denial of

1 sanctions to them. We asked for sanctions too.
2 We asked for sanctions against them for bringing
3 us to a frivolous motion hearing and the
4 Commissioner also denied those. We didn't appeal
5 that because I don't think it's proper to do that.
6 I think if the hearing Commissioner makes a
7 decision that's fine; we move on. This is nothing
8 more than an attempt to bully. This is a bullying
9 attempt to get benefits from an Employer who has
10 never, ever, stopped paying temporary total
11 disability benefits. The only thing we stopped
12 doing was paying medical treatment until we got an
13 answer to our questions and since that time the
14 case is kind of back on track. There are still
15 some issues; this is one of those issues that's
16 left over. They have not met their burden of
17 whatever 15-36-10 is but it's our position that
18 our courts have already discussed whether you get
19 Attorney's fees in a Worker's Compensation claim
20 and they've pretty much made it clear that because
21 our Act didn't provide for such things you don't
22 get those. And they certainly have not met the
23 15-36-10 elements to -- to receive any sort of
24 benefits. The case I'm talking about on
25 Attorney's fees in Worker's Comp was the Baxter

1 versus Martin Brothers case, which is a 368 S.C.
2 510 2006 Supreme Court opinion. In short,
3 Commissioner Lyndon did the right thing by denying
4 them benefits, I don't think he did the right
5 thing by denying us penalties and sanctions; we
6 didn't appeal it because, again, I don't think
7 it's proper to just keep pushing that button
8 because we were making the case move along as were
9 they with regards to everything else. The denial
10 of medical care at the time was appropriate, I
11 still think it's appropriate and it may become an
12 issue at a later point; it's not now before you
13 but things have happened and are happening since
14 then that may or may not play into that. But as
15 far as we're concerned this is nothing more than
16 bullying and there's no -- absolutely no basis for
17 it.

18 Commissioner Beck: All right.

19 Mr. Beard: Thank you.

20 Commissioner Beck: Mr. Wukela, your reply?

21 REPLY FOR THE APPELLANT By Mr. Wukela:

22 Commissioners, the photos of the car are in
23 the record; I ask that you look at those. The
24 Defense would indicate that somehow the Claimant's
25 credibility was in question and that was a source

1 of defense in this thing and that he lied to them
2 about whether he had any back pain, he lied to
3 them about whether he'd ever had an MRI.

4 Commissioner Beck: Did -- did your client
5 refute that he told Dr. Alexander that it went
6 from a six (6), seven (7) to a nine (9), ten (10)?

7 Mr. Wukela: No, sir. In fact, he went right
8 to Dr. Alexander after the accident; he told him
9 about the accident. He told him it got worse
10 after the accident and -- and --

11 Commissioner Roche: Then why on earth are
12 the Defendants not allowed to come and bring that
13 in front of a Commissioner?

14 Mr. Wukela: They certainly were,
15 Commissioner. They went to Dr. Alexander and they
16 asked him, their authorized treating physician.

17 Commissioner Roche: What -- no, to the
18 Commission; I didn't say to a doctor. Why are
19 they not allowed to bring this thing -- regardless
20 of what Dr. Alexander says in his deposition.
21 This is -- this is -- this is -- I'm not saying it
22 does prove it but this is enough to prove it; this
23 makes it not frivolous.

24 Mr. Wukela: Commissioner, look at the
25 photographs.

1 Commissioner Roche: I don't care what the
2 photographs say, Mr. Wukela; there could have been
3 no spots at all on that car.

4 Mr. Wukela: Commissioner --

5 Commissioner Roche: If the -- if the
6 Claimant was in a car accident -- I'm tempted to
7 -- to fine you for a frivolous appeal.

8 Mr. Wukela: -- Commissioner, they offered no
9 evidence whatsoever, to this Commission to
10 contradict the opinion --

11 Commissioner Roche: What is this
12 (indicating)?

13 Mr. Wukela: -- of their authorized treating
14 physician.

15 Commissioner Roche: What is this
16 (indicating)?

17 Mr. Wukela: They offered that evidence to
18 Dr. Alexander, their authorized treating
19 physician, and Dr. Alexander said, and I quote,
20 "Is there treatment you recommended necessary
21 because of the accident? He's absolutely" -- he
22 said, "My treatment recommendations are because of
23 the accident sustained in the first motor vehicle
24 accident. I didn't treat him differently
25 providing other treatment" --

1 Commissioner Roche: That's probably why they
2 won't win at a hearing but for you to say they
3 don't have the right to come in front of a
4 Commissioner --

5 Mr. Wukela: -- no --

6 Commissioner Roche: -- is wrong.

7 Mr. Wukela: -- Commissioner, the standard is
8 not if there is any justification at all the
9 Defense can come up with for delaying a Claimant's
10 treatment and requesting a hearing; that's not the
11 standard. The standard is frivolousness. The
12 standard is would any reasonable Attorney find
13 that there was any basis in law or fact and,
14 Commissioner --

15 Commissioner Roche: This is an --

16 Mr. Wukela: -- I can't imagine --

17 Commissioner Roche: -- Mr. Wukela, I can't
18 see how you can't look at this accident and
19 understand that -- I mean, this -- this report
20 from this doctor and not understand that this is
21 enough.

22 Mr. Wukela: -- Commissioner, if you look at
23 this --

24 Commissioner Roche: And I have fined
25 Defendants before for bringing stuff --

1 Mr. Wukela: -- Commissioner --

2 Commissioner Roche: -- before me.

3 Mr. Wukela: -- if you look at this testimony
4 of this authorized treating physician and these
5 records there isn't a Commissioner anywhere that
6 would find that this treatment was not necessary
7 and related and recommended and ordered by the
8 authorized treating physicians; the Defendants
9 knew that. They knew that in June when Dr.
10 Alexander gave his deposition and instead they
11 drug their feet until October until we could have
12 a hearing.

13 Commissioner Roche: Once there is an
14 understanding that there is -- they can try to
15 prove an intervening causal related, intervening
16 accident, and -- and this is proof enough. Now,
17 would they win without Dr. Alexander saying what
18 he said? Probably not but it's enough to prove
19 that -- that there's something that occurred
20 there.

21 Mr. Wukela: Commissioner, not only is it
22 probably not; it's no reasonable Judge or
23 reasonable Attorney would think they were going to
24 win on that evidence.

25 Commissioner Roche: I would have brought it

1 as an Attorney.

2 Mr. Beard: Why didn't Commissioner Lyndon
3 rule that way if that's what he -- he's a
4 reasonable Commissioner?

5 Commissioner Beck: All right.

6 Mr. Wukela: All right. Commissioner, if the
7 standard is you can defend any case, if you can
8 come up -- they had an MRI that was two (2) years
9 old with no intervening complaints of pain.

10 Commissioner Roche: And that's another
11 thing; they have an MRI with your guy denying ever
12 having one. So, that's --

13 Mr. Wukela: Well, let me ask you this.
14 Commissioner, if I had come to this Commission and
15 that had been an on the job accident, the
16 intervening accident, and I came to this
17 Commission and I tried to prove my client had a
18 compensable injury based on that evidence and the
19 testimony --

20 Commissioner Roche: You --

21 Mr. Wukela: -- of that authorized treating
22 physician --

23 Commissioner Roche: -- that -- I would not
24 have found that frivolous and I bet -- I can
25 guarantee you if you had that you'd have come and

1 you would have gotten some other doctor to say
2 that it was causally related. Just like Mr. Beard
3 was probably going to go out and get some other
4 doctor to say that -- that -- and to -- to rebut
5 what Dr. Alexander had to say; he's got the right
6 to do that. I'm not saying he would have won
7 that, Stephen, of course he probably wouldn't have
8 won that.

9 Mr. Wukela: -- he didn't offer -- ever
10 present any evidence --

11 Commissioner Roche: But he had the right.

12 Mr. Wukela: -- similar to that.

13 Commissioner Roche: I mean, you all were not
14 at a hearing. You all were not --

15 Mr. Wukela: We did come to a hearing --

16 Commissioner Roche: -- at the proper
17 hearing.

18 Mr. Wukela: -- Commissioner, and there was
19 no evidence presented at that point.

20 Commissioner Roche: You all were not at the
21 evidentiary hearing, so.

22 Commissioner Beck: All right. That will
23 conclude this proceeding. Thank you gentlemen.

24 Commissioner Roche: Thank you all.

25 Commissioner Wilkerson: Thank you all.

1 (There being no further discussion, the hearing concluded
2 at 3:19 P.M.)
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September 16, 2011

**Re: Jeffrey McFadden, Claimant vs. City of Lake City, Employer and
SC Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259**

Dear Commissioner Lyndon:

Enclosed please find the Pre-Hearing Brief on behalf of the Claimant in the above-entitled matter. I am by copy of this letter forwarding the attorney for the Defendants a copy of the same.

Also enclosed is a Notice of Witnesses and Written Reports/Physician or Other Evidence to be introduced as Direct Evidence on Behalf of Claimant in support of our position at the hearing. This document includes a list of any witnesses who may be called and is submitted pursuant to the provision of the South Carolina Administrative Procedures Act. Copies of medical reports referenced in the Notice of Submission will be presented to you at the hearing. I am also by copy of this letter to the Defendant's attorney notifying him of this filing and serving a copy of the notice upon him, along with copies of all APAs.

With kind regards,

Yours truly,

WUKELA LAW FIRM

STEPHEN J. WUKELA

SJW:jpb

Enclosures

cc: Grady L. Beard, Esquire



Claimant's Name: Jeffrey McFadden Employer's Name: City of Lake City
Address: [REDACTED] Address: PO Box 1329
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Lake City State: SC Zip: 29560
Home Phone: () - Work Phone: () - Carrier: SCMIT c/o Companion TPA LLC
Preparer's Name: Stephen J. Wukela Preparer's Phone #: 843-669-5634

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 246.60 2. AWW: 369.90 Date of Injury: 07/16/10
3. Type of injury and body part(s): Low back, legs, neck, left shoulder and left hand
4. Facts in controversy: See attached
5. Legal issues involved: See attached
6. Unusual aspects: None
7. Witnesses (designate if expert):* See attached
8. Exhibits: See attached
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached
10. Name, address, and specialty, if any, of the treating physician: Dr. Anthony Alexander, orthopaedist, Pee Dee Orthopaedic;
Dr. David Moon, family practitioner, Pee Dee Family Practice
11. Impairment rating(s); body part(s); physician and date of opinion: The Claimant has not reached maximum medical improvement.
12. I am amending my Form 50/51 in the following manner: No amendment

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

Signature: [Signature] Email: Stephen@wukelalaw.com
Date of hearing: October 4, 2011 Time needed for hearing: 30 minutes
On behalf of ☒ Claimant ☐ Employer

This form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
Commissioners reserve the right to admit expert witnesses at hearings.

**Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC
Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259
Page 1**

Claimant sustained an injury by accident to his low back, legs, neck, left shoulder and left hand on Friday, July 16, 2010, arising out of and in the course of his employment, while driving a vehicle on behalf of the Employer. Claimant lost control of the vehicle when the vehicle fish-tailed while coming around a curve, traveled toward a ditch on the opposite side of the road, and flipped over.

The Carrier admitted the accident, assigned Anthony Alexander, MD as the authorized treating physician, and commenced payment of temporary total disability benefits to the Claimant effective July 24, 2010.

The Carrier paid the temporary total disability benefits in a timely fashion until September 24, 2010 when, without benefit of a Form 15 or a properly documented Form 21, the Carrier terminated Claimant's weekly benefits. A Form 50 was filed on October 22, 2010 seeking penalties for failure to pay benefits. A Form 51 was filed on November 19, 2010 on behalf of the Carrier. The Carrier has never advised the Commission or the Claimant why he was not paid his weekly benefits between September 24, 2010 and October 15, 2010. A check was ultimately issued by the Carrier for the unpaid benefits on October 21, 2010, and weekly payments were resumed.

A hearing was scheduled for January 13, 2011 for penalties. On January 6, 2011, the Claimant accepted a partial payment for the penalties in lieu of the hearing scheduled for January 13, 2011.

In the meantime, the Claimant treated with the authorized treating physician, Dr. Anthony Alexander.

On October 25, 2010, the Claimant saw Dr. Alexander who noted his injury of July 16, 2010 as well as his complaints of pain in his low back radiating down to the level of his knees at least two times a week with numbness and tingling in his left foot and frequent urination. (APA No. 5, p. 000052). Dr. Alexander reviewed an MRI of the Claimant's spine which was completed on September 10, 2010 that revealed, "moderate lower lumbar spine degenerative changes, diffuse posterior disc bulges at L4-5 and L5-S1 levels with hypertrophic changes resulting in moderate spinal canal narrowing at the L4-5 and L5-S1 levels". (APA No. 5, p. 000053). Dr. Alexander recommended electrodiagnostic study of the bilateral lower extremities and lumbosacral spine, ordered a cycle of physical therapy and placed the Claimant at restrictions of no lifting greater than twenty (20) pounds and no frequent bending at the waist. (APA No. 5, p. 000054).

The EMG/NCS examination of the Claimant's bilateral lower extremities and lumbar spine was completed on December 6, 2010 with resulting impression of "lumbar radiculopathy and/or spinal stenosis at L5-S1 on the right". (APA No. 5, p. 000056).

The Claimant returned to Dr. Alexander on February 2, 2011 with complaints of severe lower back pain radiating down the right leg into his foot. (APA No. 5, p. 000063). Dr. Alexander scheduled a series of lumbar epidural steroid injections and prescribed anti-inflammatory medication and a "Carolina" brace. Dr. Alexander also continued the Claimant's physical therapy and work restrictions. (APA No. 5, p. 000064).

On February 11, 2011, the Claimant received the first of three epidural steroid injections. (APA No. 5, p. 000067).

**Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC
Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259
Page 2**

On February 17, 2011, the Claimant was involved in a second motor vehicle accident in which the Claimant was a passenger in a vehicle that was stopped for traffic and a second vehicle rear-ended the Claimant's vehicle. (APA No. 9, p. 000150). The highway patrolman who responded estimated that the Claimant's vehicle was sitting still and that the other driver's vehicle was driving at an estimated speed of ten (10) miles per hour. (APA No. 9, p. 000150). The Claimant's low back pain increased slightly over the next few days after the second accident but then subsided back to where it was before the second accident.

Claimant's APA No. 10 contains photographs of the Claimant's vehicle taken on shortly after the accident. These photos demonstrate the Claimant's vehicle sustained no damage with the exception of an approximately 1½ inch scuff mark in the proximity of the vehicle's left exhaust pipe. In fact, the other driver's insurance company, Farm Bureau, paid the Claimant a grand total of \$21.50 for buffing and polishing to remove the scuff mark from the rear bumper. (APA No. 11, p. 000172).

The Claimant reported to his family doctor after the second accident but was instructed to continue seeing Dr. Alexander. The Claimant returned to Dr. Alexander on February 22, 2011, five (5) days after the motor vehicle accident of February 17, 2011. The Claimant reported the second accident to Dr. Alexander and Dr. Alexander instructed him to continue with physical therapy and continue with the epidural steroid series that was currently underway. (APA No. 5, p. 000069).

Dr. Alexander continued the Claimant under the same restrictions and under his same course of treatment. On April 5, 2011, Dr. Alexander recommended that the Claimant consult with Dr. Rakesh Chokshi, the spine surgeon within his practice, to evaluate the Claimant for lumbar spinal stenosis. (APA No. 5, p. 000074). Dr. Alexander also requested a repeat MRI of the Claimant's lumbar spine as the present one was over six months old. (APA No. 5, p. 000075).

The Carrier has refused to provide any further treatment since the second motor vehicle accident of February 17, 2011. (APA No. 5, p. 000081). This, in spite of the fact that when the second accident occurred, the Claimant was already under the care of Dr. Alexander for the admitted, compensable and very serious roll-over accident of July 16, 2010.

Further, before the second accident, the Claimant had already undergone an MRI of his lumbar spine on September 10, 2010 which Dr. Alexander previously reviewed revealing disc bulges at L4-5 and L5-S1 levels resulting in moderate spinal canal narrowing, had already undergone nerve conduction studies confirming L5-S1 radiculopathy. The Claimant was already under restrictions that did not change after the second accident, and was already involved in a cycle of physical therapy and receiving epidural steroid injections as a result of the first motor vehicle accident.

Nevertheless, the Carrier has refused to provide treatment recommended by the authorized treating physician; citing the second motor vehicle accident of February 17, 2011, in spite of the fact that the only damage caused by the second accident is a 1 ½ inch scuff mark on the Claimant's rear bumper.

Claimant took Dr. Anthony Alexander's deposition on June 15, 2011, and asked:

Q. Well, let me ask you your opinion, Doctor. Do you have an opinion to a reasonable degree of medical certainty as to

**Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC
Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259**

Page 3

- whether that accident of February the 17th of 2011 most probably caused some exacerbation of Mr. McFadden's pain?
- A. Yes, I do.
- Q. And what is that opinion, Doctor?
- A. That the motor vehicle accident – I don't remember the date.
- Q. The second one?
- A. Yeah, the second motor vehicle accident did exacerbate the patient's pain slightly.
- Q. Okay. And do you have an opinion to a reasonable degree of medical certainty as to whether that slight exacerbation was a permanent one?
- A. Yes, I do.
- Q. And tell me your opinion as to that, Doctor?
- A. It was not a permanent exacerbation.
- Q. Okay. And, Doctor, do you have an opinion to a reasonable degree of medical certainty as to whether Mr. McFadden has required treatment since that February 17th, 2011 accident that was necessary because of the July 16, 2010 accident?
- A. Yes, I do.
- Q. And tell me your opinion.
- A. I did not treat him any differently from my treatment plan that I had set up prior to the accident after the accident.
- Q. Okay. So do I understand your testimony correctly that your plan for treatment for Mr. McFadden didn't change at all as a result of the February 17th accident?
- A. That's correct.
- Q. Okay. Did his restrictions change at all because of the February 17th accident?
- A. No, sir.
- Q. All right. Did that intervening accident change his condition in any permanent way?"
- A. Not permanently, it did not.
- Q. Okay. And the – do you recommend treatment as we sit here today for Mr. McFadden?
- A. I do.
- Q. Okay. And is that treatment that you recommend necessary because of the first accident, the July 16th, 2010, accident?
- A. My treatment recommendations – recommendations are because of the injuries sustained in the first motor vehicle accident. I didn't really treat him any differently or even provide any treatment for or even – yeah, I didn't provide any treatment for the second motor vehicle accident, 'cause he just wasn't that bad.

(Alexander dep. p. 17, line 19 - p. 19, line 20).

Dr. Alexander further testified that he recommended that the Claimant have an evaluation from one

**Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC
Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259
Page 4**

of the orthopaedic surgeons in his practice and that he undergo an MRI in preparation of that evaluation. (Alexander dep. p. 21, lines 11-23). He further testified:

- Q. Doctor, what is your opinion to a reasonable degree of medical certainty as to whether that surgery consult and the repeat of the lumbar MRI is necessary as a result of the July 16th, 2010 rollover automobile accident?
- A. I think in light of the fact that he did not respond to conservative treatment and that he's possibly looking at surgical intervention an MRI, a repeat MRI of the lumbar spine is very reasonable and medically necessary.
- Q. Okay. And you indicated that it is reasonably and medically necessary, do you have an opinion to a reasonable degree of medical certain as to whether it's necessary because of his injuries in this July the 16th, 2010 accident?
- (Alexander dep. p. 21, line 24 - p. 22, line 17).

Thus, given Dr. Alexander's unequivocal testimony that the treatment he recommended was necessary from the compensable work accident, the Defendants shifted their position and argued instead that the Claimant's condition was not a result of the compensable and admitted accident but from a pre-existing condition. In support of this contention, defense counsel presented Dr. Alexander with a lumbar MRI which had been taken of Claimant's lumbar spine on March 20, 2008, over two (2) years before the admitted accident. Dr. Alexander testified that the prior MRI did not affect his opinion. In fact, he testified:

- Q. And tell me your opinion to a reasonable degree of medical certainty as to whether this accident of July 16th, 2010 on the job in which his vehicle rolled over and hit a parked tractor aggravated that pre-existing condition?
- A. I believe it did.
- Q. Okay. Doctor, Counsel has showed you a prior MRI of his back from March the 20th, 2008. Is that consistent with your opinion that he had a pre-existing condition in his back prior to that rollover accident?
- A. It is consistent.
- Q. All right. And is it – is that MRI different from the MRI that was performed after his rollover accident on September, some date, 2010? Okay. Let's see if I can find that second MRI so I make sure–.
- A. Here you go.
- Q. Oh, sure. Okay. Are those two MRIs different, Doctor?
- A. Yes, sir, they are.
- Q. Tell me how?
- A. The first MRI shows mild findings of bulging disc at L4-5 and L5/S1, and it doesn't show any spinal canal stenosis. It doesn't show a lot of degenerative changes of the lumbar

**Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC
Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259
Page 5**

spine on the 3/20/2008 MRI scan, it shows that he has moderate spinal canal narrowing at the L4-5 and L5/S1 levels related to large diffuse posterior disc bulges with extension hypertrophic ligamentum flavum and facet joint reaction, which means he has a lot of degenerative changes that have occurred between the time of the first MRI scan that we discussed and the second MRI scan which would put him at high risk for having back problems if he suffered trauma.

Q. Doctor, are those reports consistent with your opinion that Mr. McFadden suffered an aggravation of his pre-existing condition in this work-related accident?

A. Yes. Yes, sir.

(Alexander dep. p. 83, line 19 - p. 85, line 8).

In the intervening months, the Defendants have not approved the treatment recommended by their authorized treating physician in spite of his unequivocal testimony and instead have gone on a fishing expedition and issuing some 29 subpoenas to every physician, hospital, or insurance company that came to mind, including the Claimant's dentist, the relevance of which escapes comprehension. In spite of requests by the Claimant, the Defendants have produced only two (2) of those 29 Subpoena responses. In fact, by letter dated August 31, 2011, Claimant's counsel wrote the defense indicating:

... if there is some other basis in evidence for the carrier to continue to refuse medical treatment at the hands of Dr. Alexander, I would like to know it.

Please provide me your subpoena responses and direct me to any evidence in the record that supports the carrier's continued denial. Short of that, if I am forced to go forward at this hearing on October 4, 2011, I will have no alternative but to seek sanctions and attorney's fees, costs, and penalties for the carrier's refusal to provide Mr. McFadden treatment in this admitted case at the hands of his authorized treating physician.

(08/31/11 letter from Claimant's counsel to defense counsel, APA No. 13, pp. 000237-000241).

As of the date of this filing, Claimant has yet to receive any response.

It is not surprising that the Defendants have not produced the responses received to their Subpoenas. The Defendants subpoenaed the records of the Claimant's family physician, Dr. Morris Brown who ordered the MRI of the Claimant's low back in March of 2008. They did not produce the response they received to that Subpoena so the Claimant requested Dr. Brown's records which reveal that while the Claimant did complain of low back pain to Dr. Brown in March of 2008 and Dr. Brown did order a lumbar MRI, the Claimant saw Dr. Brown again on March 2, 2008 and Dr. Brown indicated "current symptoms: back pain: improved" and further indicated "A: low back pain resolved with normal activity tolerance... pt advised to resume normal activities. Work restrictions:

**Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC
Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259
Page 6**

none.” (APA No. 12, pp. 000173-000236). Dr. Brown’s records further reflect the fact that in the intervening months between that April 2, 2008 note and the instant accident of July 16, 2010, the Claimant made absolutely no further complaints of back pain.

In sum, for the second time in this case, the defense has refused the Claimant benefits in an accepted compensable accident. On this occasion they have done so in spite of having accepted the case and paid Claimant benefits for over a year. They elected to cease doing so because the Claimant was in an intervening automobile accident in which he was rear-ended by a vehicle traveling approximately 10 miles per hour and suffering only a 1½” scuff mark on his bumper. The Claimant’s authorized treating physician testified that the intervening accident had no effect on the doctor’s opinion that the Claimant required an MRI and surgical consultation because of the first accident. The Defendants then changed tactics arguing for the first time in the year long history of the case, that the Claimant’s treatment was necessary, not because of the admitted accident, but because of a pre-existing condition; citing a lumbar MRI from two (2) years before the accident. When the physician indicated that the prior MRI did not change but, in fact, supported his opinion that the Claimant’s back was injured in the compensable accident the Defendants still did not authorize treatment but instead went on a fishing expedition issuing 29 subpoenas to every medical provider, including Claimant’s dentist and then failed to produce to the Claimant the responses they received.

For these reasons, the Claimant files the companion Motion for Sanctions for the Defendants’ denial of Claimant’s claim for medical treatment without any reasonable belief that their claim was valid.

Claimant requests the Commission order that the Defendants pay for the treatment recommended by Claimant’s authorized treating physician, Dr. Anthony Alexander, including a lumbar MRI and referral to orthopaedic surgeon Dr. Rakesh Chokshi. Moreover, Claimant seeks attorney’s fees and costs pursuant to S.C. Code §15-36-10 based on the defense of this claim without any reasonable belief that the defense was valid.

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 1009259

Jeffrey McFadden, Employee,)
)
Claimant,)
)
vs.)
)
City of Lake City, Employer,)
)
and)
)
SC Municipal Insurance Trust)
% Companion TPA, LLC, Carrier,)
)
Defendants.)

NOTICE OF WITNESSES AND
WRITTEN REPORTS/PHYSICIAN OR
OTHER EVIDENCE TO BE
INTRODUCED AS DIRECT EVIDENCE
ON BEHALF OF CLAIMANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND GRADY L. BEARD, ESQUIRE, ATTORNEY FOR EMPLOYER/ CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE CLAIMANT, Jeffrey McFadden, pursuant to the provisions of Rule 67-30 of the South Carolina Workers' Compensation Commission and Chapter 23, Article 1, Section 1-23-330(1), Code of Laws of South Carolina, 1976, As Amended, herewith submits the following reports/physician or other evidence as direct evidence on behalf of the Claimant to wit:

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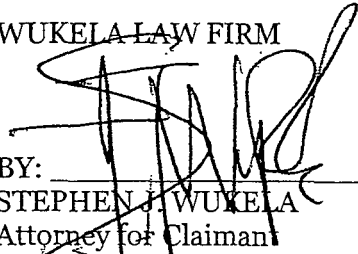
YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians whose reports are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, are being forwarded to the South Carolina Workers' Compensation Commission for insertion in their file and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:

Claimant, Jeffrey McFadden
LaShonda McFadden

WUKELA LAW FIRM

BY: 
STEPHEN J. WUKELA
Attorney for Claimant
PO Box 13057
Florence SC 29504-3057
843-669-5634

September 16th, 2011

WUKELA LAW FIRM

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
Patrick J. McLaughlin
Pheobe A. Clark
April S. Purvis
Michael T. Miller
Frank C. Swaggard

403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

(843) 669-5634
FAX (843) 669-5150

October 4, 2011

**Re: Jeffrey McFadden, Claimant vs. City of Lake City, Employer and
SC Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259**

Dear Commissioner Lyndon:

Enclosed please find a **Supplemental** Notice of Witnesses and Written Reports/Physician or Other Evidence to be introduced as Direct Evidence on Behalf of Claimant in support of our position at the hearing. I have also enclosed a **Supplemental Affidavit of Attorney's Fees and Costs** in support of the Motion for Attorney's Fees and Costs filed on September 20, 2011. By copy of this letter to the Defendants' attorney, I am notifying him of this filing and serving a copy of the notice and the Supplemental Affidavit of Attorney's Fees and Costs upon him, along with copies of all APAs.

With kind regards,

Yours truly,

WUKELA LAW FIRM

STEPHEN J. WUKELA

SJW:jpb

Enclosures

cc: Grady L. Beard, Esquire

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 1009259

Jeffrey McFadden, Employee,)
)
Claimant,)
)
vs.)
)
City of Lake City, Employer,)
)
and)
)
SC Municipal Insurance Trust)
% Companion TPA, LLC, Carrier,)
)
Defendants.)

SUPPLEMENTAL
NOTICE OF WITNESSES AND
WRITTEN REPORTS/PHYSICIAN OR
OTHER EVIDENCE TO BE
INTRODUCED AS DIRECT EVIDENCE
ON BEHALF OF CLAIMANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND GRADY L. BEARD, ESQUIRE, ATTORNEY FOR EMPLOYER/ CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE CLAIMANT, Jeffrey McFadden, pursuant to the provisions of Rule 67-30 of the South Carolina Workers' Compensation Commission and Chapter 23, Article 1, Section 1-23-330(1), Code of Laws of South Carolina, 1976, As Amended, herewith submits the following reports/physician or other evidence as direct evidence on behalf of the Claimant to wit:

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17	Letter from Defense counsel to Hon. Virginia Crocker filing a Petition for Hearing Letter from Defense counsel to Hon. Virginia Crocker filing a Petition for Hearing	04/07/11 04/29/11	000246- 000250 000251- 000254
18	Claimant's Return to Carrier's Petition for Hearing	04/14/11	000255- 000258
19	Commission Order granting Petition for Hearing	05/06/11	000259- 000260
20	Hearing Notice Email from Commission Email from defense counsel to Commission Email from Commission to defense counsel Email from defense counsel to Commission Email from Commission to defense counsel Email from defense counsel to Commission Email from defense counsel to Commission Email from Commission to defense counsel Email from Commission to defense counsel	05/12/11 06/08/11 06/09/11 06/09/11 06/09/11 06/15/11 06/20/11 06/20/11 06/20/11	000261- 000266
21	Letter from Claimant's counsel to Hon. Virginia Crocker re service of Form 50	07/01/11	000267- 000295
22	Hearing notice in the matter of <u>Vaughn v.</u> <u>Lexington Medical Center</u>	08/10/11	000296- 000297
23	Hearing Notice for October 4, 2011 Reset Hearing Notice for October 20, 2011 Corrected Hearing Notice for October 20, 2011	08/11/11 09/21/11 09/21/11	000298- 000300
24	Claimant's Motion for Attorney's Fees and Costs and attached Affidavit Supplemental Affidavit of Attorney's Fees and Costs	09/20/11 10/04/11	000301- 000310
25	Letter from Defense counsel to Claimant's counsel enclosing Subpoena responses	09/23/11	000311- 000312
26	Defendants' Form 58 Pre-hearing Brief	09/21/11	000313

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians whose reports are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

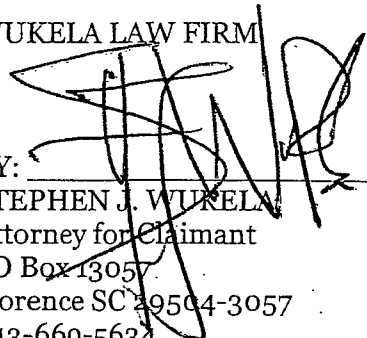
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YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:

Claimant, Jeffrey McFadden
LaShonda McFadden

October 4th, 2011

WUKELA LAW FIRM

BY: 

STEPHEN J. WUKELA

Attorney for Claimant

PO Box 13057

Florence SC 29504-3057

843-669-5634



PRE-HEARING BRIEF
WCC File No: 1009259
SUPPLEMENTAL

Claimant's Name: Jeffrey McFadden Employer's Name: City of Lake City
Address: [REDACTED] Address: PO Box 1329
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Lake City State: SC Zip: 29560
Home Phone: () - Work Phone: () - Carrier: SCMIT c/o Companion TPA LLC
Preparer's Name: Stephen J. Wukela Preparer's Phone #: 843-669-5634

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 246.60 2. AWW: 369.90 Date of Injury: 07/16/10
3. Type of injury and body part(s): Low back, legs, neck, left shoulder and left hand
4. Facts in controversy: See attached
5. Legal issues involved: See attached
6. Unusual aspects: None
7. Witnesses (designate if expert):* See attached
8. Exhibits: See attached
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached
10. Name, address, and specialty, if any, of the treating physician: Dr. Anthony Alexander, orthopaedist, Pee Dee Orthopaedic;
Dr. David Moon, family practitioner, Pee Dee Family Practice
11. Impairment rating(s); body part(s); physician and date of opinion: The Claimant has not reached maximum medical improvement
12. I am amending my Form 50/51 in the following manner: No amendment

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

Signature: [Signature] Email: Stephen@wukelalaw.com
Date of hearing: October 4, 2011 Time needed for hearing: 30 minutes
on behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
Commissioners reserve the right to admit expert witnesses at hearings.

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15	Deposition of Jeffrey McFadden		06/08/11	
16	Deposition of Anthony Alexander, MD		06/15/11	
17	Letter from Defense counsel to Hon. Virginia Crocker filing a Petition for Hearing Letter from Defense counsel to Hon. Virginia Crocker filing a Petition for Hearing		04/07/11 04/29/11	000246- 000250 000251- 000254
18	Claimant's Return to Carrier's Petition for Hearing		04/14/11	000255- 000258
19	Commission Order granting Petition for Hearing		05/06/11	000259- 000260

20	Hearing Notice Email from Commission	05/12/11	000261-
	Email from defense counsel to Commission	06/08/11	000266
	Email from Commission to defense counsel	06/09/11	
	Email from defense counsel to Commission	06/09/11	
	Email from Commission to defense counsel	06/09/11	
	Email from defense counsel to Commission	06/15/11	
	Email from defense counsel to Commission	06/20/11	
	Email from Commission to defense counsel	06/20/11	
	Email from Commission to defense counsel	06/20/11	
21	Letter from Claimant's counsel to Hon. Virginia Crocker re service of Form 50	07/01/11	000267- 000295
22	Hearing notice in the matter of <u>Vaughn v. Lexington Medical Center</u>	08/10/11	000296- 000297
23	Hearing Notice for October 4, 2011	08/11/11	000298-
	Reset Hearing Notice for October 20, 2011	09/21/11	000300
	Corrected Hearing Notice for October 20, 2011	09/21/11	
24	Claimant's Motion for Attorney's Fees and Costs and attached Affidavit	09/20/11	000301- 000310
	Supplemental Affidavit of Attorney's Fees and Costs	10/04/11	
25	Letter from Defense counsel to Claimant's counsel enclosing Subpoena responses	09/23/11	000311- 000312
26	Defendants' Form 58 Pre-hearing Brief	09/21/11	000313

STATEMENT OF THE CASE

This is an admitted accident in which the Employer has refused to provide treatment at the hands of Claimant's authorized treating physician in spite of the physician's testimony that the treatment is necessary and related to the admitted accident. (APA No. 16, dep. Alexander p. 17, line 19 - p. 19, line 20; p. 21, line 24 - p. 22, line 17).

That is where this inquiry (and this brief) should end.

Instead, however, over the last five months the Employer has continued to refuse treatment; asserting a series of different theories to justify their denial. In the brief that follows, the Claimant will systematically refute each of those new theories. What will be left will be the simple fact that the Employer refuses medical treatment that the authorized treating physician recommends as necessary and related.

Claimant will then request that this Commission award attorney's fees and costs in sanction for the Employer's persistence in the unreasonable defense of this claim.

FACTUAL BACKGROUND

Claimant sustained an admitted injury by accident to his low back, legs, neck, left shoulder and left hand on Friday, July 16, 2010 when, while driving the Employer's vehicle, Claimant lost control, flipped over, and crashed into a parked tractor.

The Carrier assigned Anthony Alexander, MD as the authorized treating physician, and commenced payment of temporary total disability benefits to the Claimant effective July 24, 2010.¹

On October 25, 2010, the Claimant saw Dr. Alexander who noted his injury of July 16, 2010 as well as his complaints of pain in his low back radiating down to the level of his knees at least two times a week with numbness and tingling in his left foot and frequent urination. (APA No. 5, p. 000052). Dr. Alexander reviewed an MRI of the Claimant's spine which was completed on September 10, 2010 that revealed, "moderate lower lumbar spine degenerative changes, diffuse posterior disc

¹The Carrier paid the temporary total disability benefits in a timely fashion until September 24, 2010 when, without benefit of a Form 15 or a properly documented Form 21, the Carrier terminated Claimant's weekly benefits. A Form 50 was filed on October 22, 2010 seeking penalties for failure to pay benefits. A Form 51 was filed on November 19, 2010 on behalf of the Carrier. The Carrier has never advised the Commission or the Claimant why he was not paid his weekly benefits between September 24, 2010 and October 15, 2010. A check was ultimately issued by the Carrier for the unpaid benefits on October 21, 2010, and weekly payments were resumed.

A hearing was scheduled for January 13, 2011 for penalties. On January 6, 2011, the Claimant accepted a partial payment for the penalties in lieu of the hearing scheduled for January 13, 2011.

Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259

Page 2

bulges at L4-5 and L5-S1 levels with hypertrophic changes resulting in moderate spinal canal narrowing at the L4-5 and L5-S1 levels". (APA No. 5, p. 000053). Dr. Alexander recommended electrodiagnostic study of the bilateral lower extremities and lumbosacral spine, ordered a cycle of physical therapy and placed the Claimant at restrictions of no lifting greater than twenty (20) pounds and no frequent bending at the waist. (APA No. 5, p. 000054).

The EMG/NCS examination of the Claimant's bilateral lower extremities and lumbar spine was completed on December 6, 2010 with resulting impression of "lumbar radiculopathy and/or spinal stenosis at L5-S1 on the right". (APA No. 5, p. 000056).

The Claimant returned to Dr. Alexander on February 2, 2011 with complaints of severe lower back pain radiating down the right leg into his foot. (APA No. 5, p. 000063). Dr. Alexander scheduled a series of lumbar epidural steroid injections and prescribed anti-inflammatory medication and a "Carolina" brace. Dr. Alexander also continued the Claimant's physical therapy and work restrictions. (APA No. 5, p. 000064). On February 11, 2011, the Claimant received the first of three epidural steroid injections. (APA No. 5, p. 000067).

On February 17, 2011, the Claimant was involved in a second motor vehicle accident in which the Claimant was a passenger in a vehicle that was stopped for traffic and a second vehicle rear-ended the Claimant's vehicle. (APA No. 9, p. 000150). The highway patrolman who responded estimated that the Claimant's vehicle was sitting still and that the other driver's vehicle was driving at an estimated speed of ten (10) miles per hour. (APA No. 9, p. 000150). The Claimant's low back pain increased slightly over the next few days after the second accident but then subsided back to where it was before the second accident.

Claimant's APA No. 10 contains photographs of the Claimant's vehicle taken shortly after the accident. These photos demonstrate the Claimant's vehicle sustained no damage with the exception of an approximately 1½ inch scuff mark in the proximity of the vehicle's left exhaust pipe. In fact, the other driver's insurance company, Farm Bureau, paid the Claimant a grand total of \$21.50 for buffing and polishing to remove the scuff mark from the rear bumper. (APA No. 11, p. 000172).

The Claimant reported to his family doctor after the second accident but was instructed to continue seeing Dr. Alexander. The Claimant returned to Dr. Alexander on February 22, 2011, five (5) days after the motor vehicle accident of February 17, 2011. The Claimant reported the second accident to Dr. Alexander and Dr. Alexander instructed him to continue with physical therapy and continue with the epidural steroid series that was currently underway. (APA No. 5, p. 000069).

Dr. Alexander continued the Claimant under the same restrictions and under his same course of treatment. On April 5, 2011, Dr. Alexander recommended that the Claimant consult with Dr. Rakesh Chokshi, the spine surgeon within his practice, to evaluate the Claimant for lumbar spinal stenosis.

Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC Municipal Insurance Trust % Companion TPA, LLC, Carrier
WCC File Number: 1009259
Page 3

(APA No. 5, p. 000074). Dr. Alexander also requested a repeat MRI of the Claimant's lumbar spine as the present one was over six months old. (APA No. 5, p. 000075).

The Carrier has refused to provide any further treatment since the second motor vehicle accident of February 17, 2011. (APA No. 5, p. 000081). This, in spite of the fact that when the second accident occurred, the Claimant was already under the care of Dr. Alexander for the admitted, compensable and very serious roll-over accident of July 16, 2010.

Further, before the second accident, the Claimant had already undergone an MRI of his lumbar spine on September 10, 2010 which Dr. Alexander previously reviewed revealing disc bulges at L4-5 and L5-S1 levels resulting in moderate spinal canal narrowing, had already undergone nerve conduction studies confirming L5-S1 radiculopathy. The Claimant was already under restrictions that did not change after the second accident, and was already involved in a cycle of physical therapy and receiving epidural steroid injections as a result of the first motor vehicle accident.

Moreover, Dr. Alexander testified at deposition that the treatment he recommended was necessary because of the first accident. (dep. Alexander, p. 17, line 19 - p. 19, line 20; p. 21, line 24 - p. 22, line 17).

PROCEDURAL BACKGROUND

On April 7, 2011, Defendants filed a document captioned "Petition for Hearing" seeking a hearing to stop payment of temporary total disability benefits and medical care on the grounds that "... the claimant's current condition is not related to the admitted accident; rather a subsequent intervening cause." (APA No. 17, p. 000248; 000252). Claimant opposed that Petition by Return dated April 14, 2011, (APA No. 18, pp. 000255-000258), arguing that S.C. Code §42-9-260(f) governed the method by which benefits may be suspended or terminated after 150 days of payments have been paid and further arguing that, pursuant to §42-9-260 and Commission Regulations R.67-505 and R.67-506, benefits could only be terminated after 150 days upon filing of a Form 21, and on the basis set out in the Form 21 and R.67-505 and 67-506; none of which include the denial of compensability. Moreover, Claimant argued that Defendants are well aware of §42-9-260 and R.67-505 and R.67-506 and were simply filing the Motion in an attempt to circumvent the clear ruling of law without hearing.

By Order dated May 6, 2011, (APA No. 19, p. 000259-260), Commissioner Barden granted the Defendants' Petition for Hearing and on May 12, 2011, the Commission issued a Notice of Hearing before Commissioner Barden, for a subject to be determined, to be held June 23, 2011 in Columbia. (APA No. 20, p. 000265-000266).

Thereafter, on May 19, 2011, Claimant filed a Form 50 seeking medical benefits refused by the Defendants.

On May 24, 2011, after significant effort, Claimant was able to arrange the deposition of Dr. Anthony Alexander on June 15, 2011, before the hearing scheduled for June 23, 2011. Also, on June 8, 2011, Claimant filed a Pre-hearing Brief setting out the extremely slight nature of the intervening accident and the records of Dr. Anthony Alexander setting out the necessity of the recommended treatment.

At that point the Defendants raised, by email from Mr. Beard's office to Commissioner Beck's staff, an objection to the hearing being set in Columbia. (APA No. 20, p. 000265). The Commission responded that the Claimant "has filed his Pre-hearing Brief and has stated no objection to the hearing being set in Columbia", (APA No. 20, p. 000265). The defense responded that his "clients oppose a hearing in Columbia as they are Municipal officials who cannot be that far away from the Town". (APA No. 20, p. 000264). Of course, Claimant's counsel is a municipal official himself and has found his way to Columbia on numerous occasions, but that is beside the point. Ultimately, after numerous emails throughout the month of June, the Commission cancelled the hearing set for June 23. (APA No. 20, p. 000261).

In the meantime, Claimant continued without the medical treatment recommended by his authorized treating physician.

Dr. Alexander's deposition was taken on June 15, 2001, and he unequivocally testified that the treatment he recommended was necessary as a result of the compensable work accident.

Defendants did not then authorize the treatment recommended by their treating physician, but instead apparently having come to the conclusion that their intervening accident theory was to no avail, they went on a fishing expedition issuing no fewer than 29 Subpoenas to every physician the Claimant ever saw in his life, including his dentist.

On August 11, 2011, the Commission reset the hearing to determine the issues set forth in the Claimant's Form 50 and the Form 51 for October 4, 2011, at 12:00 in Florence before your Honor.

The day before, on August 10, 2011, the Commission also issued a Notice of Hearing for defense counsel to appear in an unrelated matter captioned Sandell Vaughn v. Lexington Medical Center on October 4, 2011 at 2:00 in the afternoon in Columbia. (APA No. 22, p. 000297). Defense did not notify the Commission or Claimant's counsel of this potential conflict at that time, nor did they respond to Claimant's repeated requests that they produce responses they received to their Subpoenas. Thus, Claimant prepared and filed a Pre-hearing Brief on September 16, 2011, in

anticipation of the hearing on October 4, 2011.

Only then, on September 23, 2011, after the Claimant's brief had been filed for a week, and six weeks after they had received notice of the hearing in Columbia, only then did defense counsel advise the Commission that they could not appear at the October 4, 2011 McFadden hearing because of a scheduling conflict with the Vaughn case.

Thus, at the request of defense, the hearing was again delayed, this time to the new hearing date of October 20, 2011.

Finally, after Claimant filed his Pre-hearing Brief on September 16, 2001, for the October 4, 2011 hearing, and after the Claimant sent a Subpoena to Defendants, the Defendants finally, on September 23, 2011, produced the responses they received to their Subpoenas.

On September 20, 2011, Claimant filed a Motion for Sanctions as a result of the defense's persistence in defending Claimant's claim for benefits. (APA No. 24, pp. 000301-000310).

ARGUMENT

Claimant is entitled to medical treatment recommended by his authorized treating physician. Claimant is also entitled to sanctions of attorney's fees and costs given the Employer/Carrier's defense of his claim for such benefits over a period of five months without reasonable basis in law or fact.

Defendants' refusal to provide these benefits has been based on a varying set of theories. The Claimant will take each here in turn.

I. DEFENDANTS' REFUSAL TO PROVIDE MEDICAL BENEFITS BASED ON AN INTERVENING ACCIDENT IS WITHOUT BASIS IN LAW OR FACT.

The Carrier has refused to provide treatment recommended by the authorized treating physician; citing the second motor vehicle accident of February 17, 2011.

Claimant took Dr. Anthony Alexander's deposition on June 15, 2011, and asked:

- Q. Well, let me ask you your opinion, Doctor. Do you have an opinion to a reasonable degree of medical certainty as to whether that accident of February the 17th of 2011 most probably caused some exacerbation of Mr. McFadden's pain?
- A. Yes, I do.

- Q. And what is that opinion, Doctor?
- A. That the motor vehicle accident – I don't remember the date.
- Q. The second one?
- A. Yeah, the second motor vehicle accident did exacerbate the patient's pain slightly.
- Q. Okay. And do you have an opinion to a reasonable degree of medical certainty as to whether that slight exacerbation was a permanent one?
- A. Yes, I do.
- Q. And tell me your opinion as to that, Doctor?
- A. It was not a permanent exacerbation.
- Q. Okay. And, Doctor, do you have an opinion to a reasonable degree of medical certainty as to whether Mr. McFadden has required treatment since that February 17th, 2011 accident that was necessary because of the July 16, 2010 accident?
- A. Yes, I do.
- Q. And tell me your opinion.
- A. I did not treat him any differently from my treatment plan that I had set up prior to the accident after the accident.
- Q. Okay. So do I understand your testimony correctly that your plan for treatment for Mr. McFadden didn't change at all as a result of the February 17th accident?
- A. That's correct.
- Q. Okay. Did his restrictions change at all because of the February 17th accident?
- A. No, sir.
- Q. All right. Did that intervening accident change his condition in any permanent way?"
- A. Not permanently, it did not.
- Q. Okay. And the – do you recommend treatment as we sit here today for Mr. McFadden?
- A. I do.
- Q. Okay. And is that treatment that you recommend necessary because of the first accident, the July 16th, 2010, accident?
- A. My treatment recommendations – recommendations are because of the injuries sustained in the first motor vehicle accident. I didn't really treat him any differently or even provide any treatment for or even – yeah, I didn't provide any

treatment for the second motor vehicle accident,
'cause he just wasn't that bad.

(APA No. 16, Alexander dep. p. 17, line 19 - p. 19, line 20).

Dr. Alexander further testified that he recommended that the Claimant have an evaluation from one of the orthopaedic surgeons in his practice and that he undergo an MRI in preparation of that evaluation. (APA No. 16, dep. Alexander p. 21, lines 11-23). He further testified:

Q. Doctor, what is your opinion to a reasonable degree of medical certainty as to whether that surgery consult and the repeat of the lumbar MRI is necessary as a result of the July 16th, 2010 rollover automobile accident?

A. I think in light of the fact that he did not respond to conservative treatment and that he's possibly looking at surgical intervention an MRI, a repeat MRI of the lumbar spine is very reasonable and medically necessary.

Q. Okay. And you indicated that it is reasonably and medically necessary, do you have an opinion to a reasonable degree of medical certain as to whether it's necessary because of his injuries in this July the 16th, 2010 accident?

A. That's the first accident?

Q. Yes, sir.

A. Yes, my, my opinions are based on that accident.

(APA No. 16, Alexander dep. p. 21, line 24 - p. 22, line 17).

II. DEFENDANTS' REFUSAL BASED ON THE DEFENDANTS' CONTENTION THAT THE CLAIMANT'S CONDITION WAS NOT THE RESULT OF THE COMPENSABLE ACCIDENT BUT FROM A PRE-EXISTING CONDITION IS BOTH NOT PROPERLY BEFORE THE COMMISSION AND WITHOUT BASIS IN FACT OR LAW.

A. The compensability of Claimant's injury is res judicata in this case, given that the Defendants have paid temporary total disability benefits well beyond 150 days.

As the defense is well aware, pursuant to S.C. Code §42-9-260 and R.67-505 and R.67-506, an Employer may pay temporary compensation for up to 150 days "without waiver of any grounds for good faith denial." See §42-9-260(a). However, after 150 days of benefits have been paid, the Rule provides that the Employer and Carrier may only terminate temporary compensation on certain

grounds (i.e., the authorized healthcare provider's report that Claimant is able to return to work or has reached maximum medical improvement or the Claimant has refused medical treatment). These alternate bases are set out in the Commission's Form 21, the filing of which is required in order to request a hearing to stop payment of benefits.

The Employer has paid benefits well beyond 150 days. None of the bases for stopping benefits after 150 days have been met, nor have Defendants filed a Form 21. In fact, they could not because there is simply no box for them to check.

Instead, the Employer/Carrier attempts to circumvent the well-established 150 day rule by filing a "Petition" to stop payment. This is not allowed under our law. The defense knows this is not allowed under the law, and the issue of Claimant's entitlement to temporary compensation is not properly before this Commission.

- B. Even if the Issue were Properly before the Commission, the Medical Reports and the Clear Testimony of the Authorized Treating Physician sets out the Fact that the Claimant had a Pre-existing Condition of his Spine which had been Asymptomatic at Least 2 years before the Compensable Accident which was Aggravated and made Symptomatic by the Work-related Accident.**

Given Dr. Alexander's unequivocal testimony that the treatment he recommended was necessary as a result of the compensable work accident, the Defendants shifted their position and argued instead that the Claimant's condition was not a result of the compensable and admitted accident but from a pre-existing condition. In support of this contention, defense counsel presented Dr. Alexander with a lumbar MRI which had been taken of Claimant's lumbar spine on March 20, 2008, over two (2) years before the admitted accident. Dr. Alexander testified that the prior MRI did not affect his opinion. In fact, he testified:

- Q. And tell me your opinion to a reasonable degree of medical certainty as to whether this accident of July 16th, 2010 on the job in which his vehicle rolled over and hit a parked tractor aggravated that pre-existing condition?
- A. I believe it did.
- Q. Okay. Doctor, Counsel has showed you a prior MRI of his back from March the 20th, 2008. Is that consistent with your opinion that he had a pre-existing condition in his back prior to that rollover accident?
- A. It is consistent.

Q. All right. And is it – is that MRI different from the MRI that was performed after his rollover accident on September, some date, 2010? Okay. Let's see if I can find that second MRI so I make sure—.

A. Here you go.

Q. Oh, sure. Okay. Are those two MRIs different, Doctor?

A. Yes, sir, they are.

Q. Tell me how?

A. The first MRI shows mild findings of bulging disc at L4-5 and L5/S1, and it doesn't show any spinal canal stenosis. It doesn't show a lot of degenerative changes of the lumbar spine on the 3/20/2008 MRI scan, it shows that he has moderate spinal canal narrowing at the L4-5 and L5/S1 levels related to large diffuse posterior disc bulges with extension hypertrophic ligamentum flavum and facet joint reaction, which means he has a lot of degenerative changes that have occurred between the time of the first MRI scan that we discussed and the second MRI scan which would put him at high risk for having back problems if he suffered trauma.

Q. Doctor, are those reports consistent with your opinion that Mr. McFadden suffered an aggravation of his pre-existing condition in this work-related accident?

A. Yes, Yes, sir.

(APA No. 16, dep. Alexander p. 83, line 19 - p. 85, line 8).

In the intervening months, the Defendants have not approved the treatment recommended by their authorized treating physician in spite of this testimony and instead have gone on a fishing expedition and issuing some 29 subpoenas to every physician, hospital, or insurance company that came to mind, including the Claimant's dentist. In spite of requests by the Claimant, the Defendants initially produced only two (2) of those 29 Subpoena responses. In fact, by letter dated August 31, 2011, Claimant's counsel wrote the defense indicating:

... if there is some other basis in evidence for the carrier to continue to refuse medical treatment at the hands of Dr. Alexander, I would like to know it.

Please provide me your subpoena responses and direct me to any evidence in the record that supports the carrier's continued denial. Short of that, if I am forced to go forward at this hearing on October 4, 2011, I will have no alternative but to seek sanctions and attorney's

fees, costs, and penalties for the carrier's refusal to provide Mr. McFadden treatment in this admitted case at the hands of his authorized treating physician.
(08/31/11 letter from Claimant's counsel to defense counsel, APA No. 13, pp. 000237-000241).

The Defendants did not produce any responses and on September 16, 2011, Claimant prepared his Pre-hearing Brief for the October 4, 2011 hearing and subpoenaed from the Defendants all the documents they had received from their Subpoenas. Defendants still did not produce the Subpoenaed responses and instead filed their responsive Pre-hearing Brief on September 21, 2011, and requested that the October 4, 2011 hearing be delayed. It was not until September 23, 2011 that the Defendants produced over 400 pages of documents they received in response to their Subpoenas to numerous medical providers. (APA No. 25, p. 000311-000312).

Given the contents of the Subpoena responses, it is no surprise that Defendants have delayed producing the responses received to their Subpoenas. For example, the Defendants subpoenaed the records of the Claimant's family physician, Dr. Morris Brown who ordered the MRI of the Claimant's low back in March of 2008. When they did not initially produce the response they received to that Subpoena, the Claimant requested Dr. Brown's records. The records reveal that while the Claimant did complain of low back pain to Dr. Brown in March of 2008 and Dr. Brown did order a lumbar MRI, the Claimant saw Dr. Brown again on March 2, 2008 and Dr. Brown indicated "current symptoms: back pain: improved" and further indicated **"A: low back pain resolved with normal activity tolerance... pt advised to resume normal activities. Work restrictions: none."** (APA No. 12, pp. 000173-000236)(emphasis added). Dr. Brown's records further reflect the fact that in the intervening months between that April 2, 2008 note and the instant accident of July 16, 2010, the Claimant made absolutely no further complaints of back pain.

III. Defendants' Refusal of Medical Treatment Based on Their Contention that "claimant's deposition testimony serves to estop his further pursuit of claim as he denied treatment for similar injuries or receiving any diagnostic treatment in the past in his deposition which was not truthful, therefore, calling causation into question, and ... Claimant's credibility" is without basis in fact or law.

Having refused the Claimant medical treatment for five months based on a minor intervening rear-end collision which the Claimant's authorized treating physician testified had no effect on his recommendation, the defense then went on a fishing expedition Subpoenaing every doctor under the sun in search for a pre-existing condition with which to challenge compensability, (which was already accepted as they had paid beyond 150 days), that has proved, unsuccessful.

Defense now "goes home to mama" and challenges the Claimant's credibility; contending that the

Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC Municipal Insurance Trust % Companion TPA, LLC, Carrier

WCC File Number: 1009259

Page 11

Claimant "... denied treatment for similar injuries or receiving any diagnosis treatment in the past..." (APA No. 26, p. 000313).

Of course, even if that was true, it is hard to see how it matters since the defense questioned Dr. Alexander with the prior MRI and Dr. Alexander testified that the prior MRI, when viewed with the post accident MRI, supported his opinion that Claimant's pre-existing condition was aggravated by the compensable accident.

However, the Defendants' contention that the Claimant "denied treatment for similar injuries" is simply false. In fact, in his deposition under examination by the defense, Claimant testified:

Q. What does he [Dr. Morris Brown] treat you for, general aches and pains and —

A. Yes.

Q. — flus and colds and things?

A. Yes.

Q. Has he [Dr. Morris Brown] ever treated you for any kind of injuries? Has he [Dr. Morris Brown] treated you for this workers' comp claim?

A. No.

Q. Has he [Dr. Morris Brown] ever treated you for any kind of injuries?

A. Yes.

Q. What?

A. Back pains.

Q. So you've had back pains before?

A. Yes.

(APA No. 15, dep. Claimant, p. 34, lines 8-23)

CONCLUSION

In sum, for the second time in this case, the defense has refused the Claimant benefits in an accepted compensable accident. On this occasion they have done so in spite of having accepted the case and paid Claimant benefits for over a year. They elected to cease doing so because the Claimant was in an intervening automobile accident in which he was rear-ended by a vehicle traveling approximately 10 miles per hour and suffering only a 1½" scuff mark on his bumper. The Claimant's authorized treating physician testified that the intervening accident had no effect on the doctor's opinion that the Claimant required an MRI and surgical consultation because of the first accident. The Defendants then changed tactics arguing, for the first time in the year long history of the case, that the Claimant's treatment was necessary, not because of the admitted accident, but because of a pre-

Jeffrey McFadden, Claimant vs. City of Lake City, Employer and SC Municipal Insurance Trust % Companion TPA, LLC, Carrier

WCC File Number: 1009259

Page 12

existing condition; citing a lumbar MRI from two (2) years before the accident. When the physician indicated that the prior MRI did not change but, in fact, supported his opinion that the Claimant's back was injured in the compensable accident, the Defendants still did not authorize treatment but instead went on a fishing expedition issuing 29 subpoenas to medical providers, including Claimant's dentist. When these documents only supported the Claimant's case, the defense still did not pay for the Claimant's treatment, but instead sought to generate a credibility issue.

Nothing, however, changes the fact that this is an admitted accident in which the Employer has refused to provide treatment at the hands of the Claimant's authorized treating physician in spite of the physician's testimony that the treatment is necessary and related to the admitted accident. (APA No. 16, dep. Alexander p. 17, line 19 - p. 19, line 20; p. 21, line 24 - p. 22, line 17).

For these reasons, the Claimant has filed the companion Motion for Sanctions for the Defendants' denial of Claimant's claim for medical treatment without any reasonable belief that their defense had support in fact or law.

Claimant requests the Commission order that the Defendants pay for the treatment recommended by Claimant's authorized treating physician, Dr. Anthony Alexander, including a lumbar MRI and referral to orthopaedic surgeon Dr. Rakesh Chokshi.

Moreover, Claimant seeks attorney's fees and costs pursuant to S.C. Code §15-36-10 based on the defense of this claim without any reasonable belief that the defense was valid.

1		Florence County EMS	07/16/10	1-2
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Chart Summary

Page 1 of 1

Patient Information		Details															
Florence County EMS Base: Station 5 (Lake City) Unit: M51 PRID: 9648018 Date/Time: 07/16/2010 09:01 CAD Number: 201092041 Patient: McFadden, Jeffery		Chief Complaint: headache and soreness HPI: YO MALE/1 CAR MVC ROLLOVER. PT WAS DRIVER OF VEH. HE HAD SELF EXTRICATED HIMSELF FROM VEH PRIOR TO EMS ARRIVAL. PT ADV HE WAS NOT WEARING A SEATBELT. PT C/O HEADACHE AND SORENESS. VEH APPEARED TO HAVE COMPLETELY ROLLED OVER 1 TIME. PT WAS PLACED ON LSB C-COLLA AND HEADBED. PT COA X3. DENIED LOC. PT HAD SMALL LAC TO HIS CHIN. NO OTHER TRAUMA NOTED TO BODY. VITALS AND ASSESSMENT DONE. PT HAD GOOD PMS X4. SKIN WARM AND DRY. PT XPORTED TO MRMC E/R W/O INCIDENT AND PLACED IN CARE OF E/R NURSING STAFF															
Times: Dispatch: 09:01 EnRoute: 09:03 At Ref: 09:09	Lv Ref: 09:28 At Rec: 10:00 Available: 10:15	Scene Description: dirt rd near farm Destination Basis: Diversion Last NPP Given: Handed to Patient - 2010 Given This Trip?: Yes Consent Signed?: No CMN Obtained?: No CMS Cond. Code: None given. ICD9 - PMHX: None given. ICD9 - Injury: (819.1) Motor Vehicle Traffic Accident, General, Passenger Injured ICD9 - Diagnosis: None given. Other EMS: None given. Med Consults: None given. ALS Assessment: Not Required															
Crew: Crew 1: Ivey (EMT-B) Crew 2: *Brunson (EMT-P) Crew 3: * ALS Provider																	
Referring: Street < 50 MPH 445 MOULDS RD LAKE CITY, SC 29560																	
Zip Code: 29560																	
Receiving: McLeod Regional Medical Center Emergency Department 555 East Cheves Street PO Box 100551 Florence, SC 29501 (843) 777-2000																	
Patient: McFadden, Jeffery [REDACTED] [REDACTED] [REDACTED] Sex: M Race: [REDACTED] DOB: [REDACTED] Tx Age: [REDACTED] Subscriber: No																	
Pt Category: Traffic Accident																	
Outcome: Treated, Transported by EMS																	
<table border="1"> <thead> <tr> <th colspan="3">Insurance</th> </tr> <tr> <th>Company</th> <th>Group</th> <th>ID</th> </tr> </thead> <tbody> <tr> <td>Workers Comp</td> <td></td> <td></td> </tr> </tbody> </table>				Insurance			Company	Group	ID	Workers Comp							
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<table border="1"> <thead> <tr> <th colspan="2">Odometer</th> </tr> <tr> <th>Start:</th> <th>At Ref:</th> </tr> <tr> <th>At Rec:</th> <th>End:</th> </tr> <tr> <th colspan="2">Mileage</th> </tr> <tr> <th>Loaded:</th> <th>Total:</th> </tr> <tr> <th>28</th> <th>OOC:</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> </tbody> </table>				Odometer		Start:	At Ref:	At Rec:	End:	Mileage		Loaded:	Total:	28	OOC:		
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Ground Mileage	28 miles																
Cervical Collar																	

FLORENCE COUNTY EMS

180 N. IRBY STREET, MSC-GG
(843)665-3011

FLORENCE, SC 29501
Federal Tax ID: 57-6000351
FAX (843)676-8795

Insurance:

JEFFERY MCFADDEN
[REDACTED]
[REDACTED]

Patient Name: JEFFERY MCFADDEN

Patient Number: 6758791

Call Number: 9648018

Date Of Call: 07/16/2010

Call Time: 08:59 AM

Caller:

From Location: 445 MOULDS RD

To Location: HOSPITAL-MCLEOD REGIONAL

Reason(s) 784.0

For 780.96

Transport E812.0

<u>DESCRIPTION OF CHARGES</u>	<u>HCPC</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
BLS BASE-EMERGENCY	A0429	1.0	350.00	350.00
MILEAGE	A0425	28.0	8.00	224.00
DISPOSABLE SUPPLIES		1.0	35.00	35.00

Total Charges 609.00

Total Credits 0.00

PLEASE PAY THIS AMOUNT => **\$609.00**

^DETACH ALONG ABOVE LINE AND RETURN STUB WITH YOUR PAYMENT^

Patient Name: MCFADDEN, JEFFERY
Patient Number: 6758791

Call Number: 9648018
Current Date: 07/19/2010

Amount Due: \$609.00

Amount
Enclosed \$ _____

Thank You For Using Florence County EMS. If you have insurance, please provide us with a copy of the front and back of your insurance card, otherwise we will expect your payment.

000002

2	Peter Hyman, MD	McLeod Regional Medical	07/16/10	3-28
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* 0 H 0 0 0 5 *

McLeod Health

The Choice for Medical Excellence

Admission/Outpatient Conditions

117822486 01-02-93-52
MCFADDEN JEFFERY07/16/10 M
MRSA: VRE:
ER, PHY UNASSIGNED

Consent for Admission or Outpatient Treatment: I hereby give my consent for the admission or Outpatient Treatment considered necessary to McLeod Regional Medical Center (McLeod) for the patient whose name appears below under the care of the attending physician, his associates, partners, assistants or designees. I consent to the hospital care, which may encompass necessary laboratory, diagnostic or medical treatment and procedures; prescribed medication information, if available; or recordings and/or filmings for internal purposes, which my physician, his associates, partners, assistants or designees may deem necessary or advisable during my stay. Physicians, members of the house staff and employees of the hospital will perform this care.

Teaching programs: I understand this facility may enter into agreements with medical, nursing and allied health programs. Various health profession students may participate in my care. I agree to participate, but have the right to limit my participation at any time.

Assignment of Insurance Benefits and Third Party Claims: I/we hereby authorize payment directly to McLeod of hospital benefits otherwise payable to me, including major medical insurance benefits, PIP benefits, sick benefits or injury benefits due because of any insurance policy and the proceeds of all claims resulting from the liability of the third party payable by any person, employer or insurance company to or for the patient unless we pay the account in full upon discharge. I also authorize payment of surgical or medical, including major medical benefits, directly to attending physicians, but not to exceed charges for these services. I also authorize payment of hospital and medical benefits otherwise payable to me for professional services performed by the Medical Anesthesia Consultants, LLC, and/or Florence Radiological Associates, PA, and/or Pee Dee Pathology, PA, and/or any other physician on the active staff of McLeod. I understand that I am financially responsible to the hospital and physicians for charges, whether or not covered by this assignment. Should the account be referred to an attorney for collection, the undersigned shall pay reasonable attorney's fees and collection expense. All delinquent accounts may bear interest at the legal rate. I further agree that in the event hospital benefits exceed charges of McLeod for its services in connection with this hospitalization, that any such excess amount be first applied to the payment of any other indebtedness due by me for my own hospitalization or any for which I am responsible to the hospital on account of other admissions, and the balance, if any remains, paid to me. I further authorize refund of overpaid insurance benefits in accordance with my policy conditions where my coverages are subject to the coordination of benefits clause. I further agree that the hospital is authorized to act in my behalf in the endorsement of benefit checks made payable to me and/or the hospital. If I am a participant/beneficiary of an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001 et seq., I designate McLeod as my authorized representative and grant to McLeod the authority to act on my behalf in pursuing and appealing a benefit determination under the plan. Such authority shall include the right to request and receive a copy of the plan description and/or summary plan description.

Medicare-Medicaid Patient's Certification: Payment Request: I assign payment for the unpaid charges for certain in-house physician services furnished by specialists, and physicians for whom the hospital is authorized to bill. I understand that I am responsible for any health insurance deductibles and coinsurance. I certify that the information given by me in applying for payment under Title XVIII and XIX of the Social Security act is correct. I request that payment of authorized benefits be made on my behalf.

Payment Guarantee: I/we hereby jointly and severally agree to pay all charges for service received by the patient named below during this "episode of care."

☒ **Personal Property:** Upon request the hospital will hold on deposit any money or valuables and is not responsible for personal property retained in the patient's room or with the patient.

Also, I/we understand that a personal physician is to be selected, by or on behalf of the patient within 24 hours if hospitalization or further treatment is required, or immediately if complications arise.

Also, I/we have read the above authorization and understand the same and certify that no guarantee or assurance has been made as to the results that may be obtained.

☒ Initial this box if you received information regarding the Hospital Patient Safety Act and a copy of the Patient Rights and Responsibilities.

Jeffery McFadden
Patient's (Grantor's) Signature

Date

Patient's Name

Account Number

Witness

Admission Date

Acknowledgement of the Notice of Privacy Practices

☐ NPP on file.

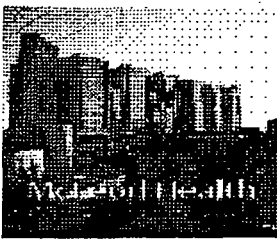
I hereby acknowledge that I received a paper copy of the McLeod Health Notice of Privacy Practices which sets forth the way in which my protected health information may be used or disclosed by McLeod Health and outlines my rights with respect to such information. I also acknowledge that I have been allowed to ask questions. If I am not the patient, I represent that I am authorized by law to act for and on the patient's behalf.

Signature of Patient or Authorized Agent

Date

Seq. # MH2155 Rev. 4/03; 11/03; 10/04; 01/06; 10/07; 5/08; 6/08; 3/08; 10/09

000003



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 57 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 59294

ED Medical Chart

Demograph	Address: [REDACTED]	Phone # [REDACTED]	SS#: [REDACTED]
Triage	Priority: 3 - Urgent		
	Chief Complaint: MVA		
	Stated Complaint: MVA		
	Arrival Date: 07/16/10 10:04	WC: N	
	Triage Date: 07/16/10 10:14		
	To Room: 07/16/10 10:15	Language: English	
	Mode of Arrival: Ambulance	Transport: Florence County EMS	
Bed	EM12	In: 07/16 10:15	07/16 10:16 K.
		Out: 07/16 12:01	07/16 12:01 K.
Providers	KRYSTAL LAIRD RN	Start: 07/16 10:14	07/16 10:16 K.
		End:	
	PETER HYMAN MD	Start: 07/16 10:29	07/16 10:29 PDH
		End:	
Allergies	Allergic To: No Known Allergies		07/16 10:16 K.
Current Meds	None	<u>Continue</u> <u>Discontinue</u>	07/16 10:16 K.
	Freq:		1
Past Med Hist	*None		07/16 10:16 K.
Past Surgery Hist	*None		07/16 10:16 K.
Past Social Hist	**Accompanied to Hospital by: Self		07/16 10:16 K.
	**Needs transportation home: no		07/16 10:16 K.
	**Lives with family or significant other		07/16 10:16 K.
	**Valuables: Pt./ Family informed that hospital is not responsible for valuables		07/16 10:16 K.
Immunizations	*Immunizations current		07/16 10:16 K.

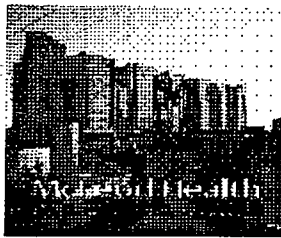
NURSING ASSESSMENT

07/16 10:36 DG: Secondary General Trauma

07/16 10:40 KL

History Source: patient. note: pt was driving his work truck down a dirt road and lost control, truck fishtailed and he flipped over once; presents to er boarded and c collar, complaining of back and neck pain

000004



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 45 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 59284

ED Medical Chart

sternal chest pain and lac to chin

Mechanism of Injury, Motor Vehicle Accident Type: loss of control off road.

Mechanism of Injury, Motor Vehicle Accident Forces: rolling impact forces.

MVA Position in vehicle: driver.

Mechanism of Injury, Motor Vehicle Accident Extrication: self.

MVA Restraints: unrestrained.

Circumstance: street.

Occurred: 1 hour(s) ago.

Location: location: anterior head & necklocation: anterior chest.

Pain Quality: pressure-like throbbing.

Pain Severity Scale 1-10: now: now: 9 Pain Scale Type Verbal Scale.

Pain Duration: onset: onset: 1 hour(s) ago.

Timing: continuous.

Appearance: linear.

Circulation: normal active bleeding.

Condition: clean.

Ligaments/Tendons: intact.

Motor Status: normal movement of involved area.

Sensory Status: normal.

Learning/Communication Barriers: NONE.

Patient/Family Observations: Observed Signs and Symptoms of abuse/neglect : no.

Latex Allergy Screen: reaction to use or handling of latex products such as rubber products : no.

Latex Allergy Band Applied? : no.

Triage Fall Assessment: Fall within last 3 months? : no. Appropriate armband applied? : no. Was falls prevention education provided to patient/family? : no.

Stroke Screening: Patient Over 18 years of age.

Sepsis/Infection Screening: Temp greater than 100.4 : no. Temp less than 96.8 : no. HR: greater than 90bpm : no. Resp Rate greater than 20 : no.

Pneumonia Screening: Fever : no. Cough : no. Chills : no. Shortness of breath/Tachypnea : no. SpO2 less than 94% : no.

Cough Screening: Persistent cough of at least 2 - 3 weeks. Continue evaluation if positive. : no.

Significant weight loss, more than 10 lbs : no. Compromised status (alcoholism, transplant, chemotherapy) : no. Sputum production/Hemoptysis : no. Foreign born : no.

Travel History: contact with a person who has traveled outside the country within the last 30 days: no.

Suicide Screening: Pt expresses feelings of Helpless : no. Hopeless : no. Plan for Suicide : no.



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 54 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 59294

ED Medical Chart

Initiate Suicide Precautions? : no..

Influential Factors: Aggravating Factor(s): none..

Chronic Condition(s) None..

Associated Sign(s)/Symptoms(s) none..

Neurologic Assessment: affect: appropriate behavior: appropriate level of consciousness: Alert and oriented to person, place and time. motor response: obeys commands motor strength: moves all extremities pupillary reaction: PERRLA speech: clear.

Cardiovascular Assessment: calf tenderness: Normal capillary refill: Capillary refill less than 2 seconds cardiac rate: Cardiac rate within normal range cardiac rhythm: Cardiac rhythm normal cardiac sounds: Cardiac sounds normal, no gallop, murmur or rub noted edema: No edema noted pulses: Pulses palpable.

Respiratory Assessment: airway: Airway is patent breath sounds: Normal chest wall: Normal cough productivity: Normal respirations: Normal respiratory effort: Normal.

Gastrointestinal Assessment: appearance: Abdomen is soft, non-distended. bowel sounds: Bowel sounds present to all quadrants with normal frequency. complaints: Denies complaints of nausea, vomiting or diarrhea. guarding: No pain to palpation. intake of liquids and solids: Tolerates solids and liquids without difficulty. palpation: Normal. tenderness: Abdomen is nontender..

Genitourinary Assessment: genital complaints: Denies genital complaints urinary complaints: Denies complaints of burning, frequency, hematuria, urgency, nocturia and retention. urinary characteristics: Denies complaints of burning, frequency, hematuria, urgency, nocturia and retention. urine odor: Denies urine odor. urinary catheter: No urinary catheter..

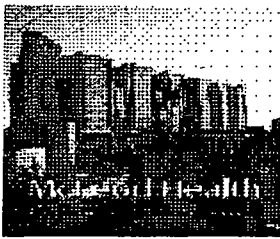
Musculoskeletal Assessment: abnormalities: No deformity, swelling, tenderness, muscle wasting or amputation noted gait: Gait steady movement of extremities: Moves all extremities without difficulty

ROM: Range of motion intact to affected area.

Integumentary Assessment: fingernails and toenails: Fingernails and toenails normal skin abnormalities:(Required for Present on Admission) laceration: skin color: Skin color is within patient's normal skin moisture: Skin is dry skin temperature: Skin is warm skin turgor: Skin intact with normal turgor.

EENT Assessment: eyes: No drainage, discharge, or foreign body. ears: No drainage, discharge, or foreign body. nose: No drainage, discharge, or foreign body. throat/mouth: No pain or difficulty swallowing.

Assess Notes RN	07/16 11:05	was informed by pcs christi wiggins that lake city called and stated they did need a urine drug screen and to send pt to our occupational health upon d/c	07/16 11:52 K.
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McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 5yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 59294

ED Medical Chart

	07/16 10:40	called Occupational Health about pt involved in one car MVA while working for city of lake city; spoke to Kim McCracken about drug screen for job; she stated there is no contract with city of lake city and he will not need to present to occupational health upon discharge for this	07/16 10:41 K.
Treatments	7/16 10:23	**Nurse /General Procedures - Xray - simple / Nurse Assist	07/16 10:34 K.
	7/16 10:15	**Arrival IN / Decision-making, general time requirements - *Triage Level 3	07/16 10:35 K.
	7/16 10:15	**Cardiac/Monitoring/Point of Care Testing - *Cardiac Monitor - Non CPC patient Cardiac Rhythm Normal Sinus Rhythm	07/16 10:35 K.
	7/16 10:15	**Cardiac/Monitoring/Point of Care Testing - *Noninvasive BP Monitoring (Continuous)	07/16 10:35 K.
	7/16 10:15	**Cardiac/Monitoring/Point of Care Testing - *Pulse Oximetry (Continuous)	07/16 10:35 K.
	7/16 10:20	**Nurse /General Procedures - Long spine board removed per order Dr. Hyman	07/16 10:35 K.
	7/16 11:01	**Nurse /General Procedures - IV clean, dry, intact without redness or swelling noted. Flushes well without swelling.	07/16 11:01 K.
	7/16 11:01	**Patient Education - Purpose/Use Medication discussed with patient/Pt. verbalizes understanding.	07/16 11:01 K.
	7/16 11:05	**Cardiac/Monitoring/Point of Care Testing - *Phlebotomy (by nurse/tech)	07/16 11:05 K.
	7/16 11:40	**Nurse /General Procedures - IV site discontinued/ catheter intact/ dressing applied/ pt. tolerated well.	07/16 11:51 K.
	7/16 11:40	**Patient Education - Patient educated on dc instructions , verbalized understanding.	07/16 11:51 K.
	7/16 11:25	**Nurse /General Procedures - Cervical collar removed per order Dr. Hyman	07/16 11:51 K.
Medications	7/16 10:59	Med:TORADOL 30MG IV Inf Amt(ml): 0 Site: antecubita - left education provided; allergies reviewed	07/16 11:00 K.

Continue Discontinue



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 57 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 58294

ED Medical Chart

7/16 11:00 Med: Tetanus Toxoid (Booster) Solution for
Injection IM
Site: deltoid - right
education provided; allergies reviewed

07/16 11:00 KL

IV Fluid S 07/16 11:00 *Normal Saline at 100 ml/hr in antecubit

07/16 11:50 KL

Line #: 1 *Normal Saline
Rate: 100 ml/hr Location: antecubital - left
Ndl Gauge: 20.0 # Attempts: 1
started in Radiology for CT

D 07/16 11:50 *Normal Saline at 100 ml/hr in antecubit

07/16 11:50 KL

Line #: 1 *Normal Saline
Rate: 100 ml/hr Location: antecubital - left
Ndl Gauge: 20.0 # Attempts: 1

Intake 07/16 11:50 *I.V. (ml)

Amt: 100.0

07/16 11:50 KL

VS-Routine

Time	B/P	Pulse	Resp	SaO2	Temp
07/16 10:14	127/82 *Lying **Right Upper Arm - Machine	79 **Monitor	18	97 **Room Air	99.20 F TA
07/16 10:18	117/66	72		98 **Room Air	F
07/16 11:41	126/70	63		97 **Room Air	F

07/16 10:16 KL

07/16 11:50 KL

07/16 11:50 KL

VS-Pain

VS-HT/WT 07/16 10:14 HT: 71.0 in. | Stated

WT: 255.0 lbs | Stated

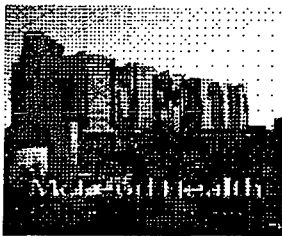
07/16 10:16 KL

PHYSICIAN ASSESSMENT

ECFORM MVA

07/16 10:29PDH

000008



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 45 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 58284

ED Medical Chart

PATIENT INFORMATION:

Time of Physician's visit: 10:23 AM
Provider Name: HYMAN, PETER
Patient Name: MCFADDEN, JEFFERY
Chief Complaint: MVA
Patient's Primary Care Physician is: -
Medical Record Number: 000001029352
Date Of Birth: [REDACTED]
The history and physical was performed by Physician
Patient is 255 lbs
Patient is a 45 old Male

Vitals Signs From Triage: Temperature: 99.2F. Blood Pressure: 127/82. Heart rate: 79. Respiratory rate: 18. Weight: 255 lbs. Pulse Oxymetry: 97 %.

Historian: Information was gathered from patient.

Onset: The patient was the driver. Restraints: The patient was not wearing a seatbelt and no airbags were deployed. Other: just PTA.

Context: The accident was a single car event. The vehicle rolled over during the accident.

PreHospital: Prior to arrival, the patient was placed in cervical immobilization.

Quality: The patient describes the pain as aching. The patient has a laceration.

Severity: The symptoms are moderate.

Injury Location: The patient has injuries to the face.

Associated Signs/Symptoms: The patient feels sore. Loss of consciousness: there was no loss of consciousness. The patient has pain in the back, chest, face and neck.

Past Medical History: The patient denies any significant past medical history.

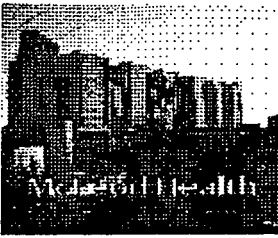
Social History: The patient admits to smoking no.

Allergies: No Known Allergies.

Medications: None.

REVIEW OF SYSTEMS:

Constitution: The patient is negative for fever.



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 35 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 58294

ED Medical Chart

Respiratory: The patient is negative for cough and dyspnea.

Cardiovascular: The patient is positive for chest pain.

Gastrointestinal: The patient is negative for nausea and vomiting.

Musculoskeletal: The patient is positive for back pain.

Neurologic: The patient is negative for paresthesias and weakness.

PHYSICAL EXAMINATION:

Eyes: Normal Findings: pupils are equal, round, and reactive to light and accommodation and extraocular movements are intact.

Head, Ears, Nose, Throat: Normal Findings: no Battle's sign and no racoon eyes. Other: superficial laceration to chin.

Neck: Normal Findings: supple neck and trachea midline.

Respiratory: Normal Findings: normal inspection and bilateral breath sounds are normal, clear and equal.

Cardiac: Normal Findings: no murmurs rubs or gallop and regular heart rate and rhythm.

Abdominal: Normal Findings: soft and non-tender abdomen.

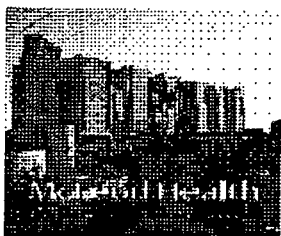
Musculoskeletal: Normal Findings: Thoracic spine: stable. Lumbar spine: stable. Pelvis: stable. Ribs: stable. C-spine: stable. Right Upper Extremities: atraumatic. Right Lower Extremities: atraumatic. Left Upper Extremities: atraumatic. Left Lower Extremities: atraumatic.

Skin: Normal Findings: no rash. Other: laceration to chin.

Neurology: Normal Findings: cranial nerves functioning as expected and normal motor skills.

Lymphatic: Normal Findings: no adenopathy.

Psychiatric: Normal Findings: normal mood.



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

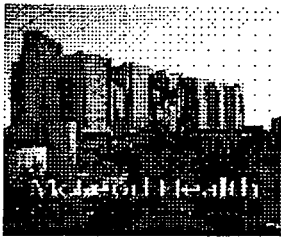
Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 45yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 58294

ED Medical Chart

Orders	Discharge Patient			07/16 11:37 PCH
	Protocol			
	Ordered	07/16 11:37	By	PHYMAN
	Completed	07/16 11:38	By	SDAVIS



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 5 yr
SEX: M
Priority: 3 - Urgent

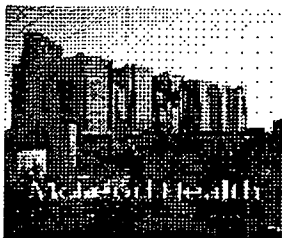
DOB: [REDACTED]
ED #: 58284

ED Medical Chart

EXTERN ORDER:CT HEAD/FACE/CERVICAL WO CON

07/16 10:23

Ordered		By	
Noted:	07/16 11:19	By	USystem
Completed	07/16 11:19	By	USystem
Reviewed:	07/16 11:28AM	By	PHYMAN
Result:	07/16 11:19		



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 45 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 59284

ED Medical Chart

ORDER DR: PETER D. HYMAN JR M.D.
ATTEND DR: PETER D. HYMAN JR M.D.
TRANSCRIBED D/T: Jul 16 2010 11:14AM
PROCEDURE: CT HEAD/FACE/CERVICAL WO CON / ORD #: 90002 Accession#:
4411918 CPT: 70450 70486 72125
ORDERED FOR: Jul 16 2010 10:15AM COMPLETED: Jul 16 2010 10:26AM
INDICATIONS/COMMENTS: TRAUMA

Facial CT.

History MVA laceration to chin

RESULT: There is mild mucosal thickening in the maxillary and ethmoid sinuses. No fluid levels. The mandible and zygomatic arches and nasal bone are intact. No facial fracture identified.

CONCLUSION: Mild maxillary and ethmoid sinus mucosal thickening. No facial fracture seen.

Head CT

Ventricles are normal in size. No mass effect. No hemorrhage.

CONCLUSION: Negative head CT.

Cervical spine CT.

Vertebral body height and alignment are maintained. No fracture or dislocation. Odontoid is intact.

CONCLUSION: Negative cervical spine CT.

VE

READING DR: CHENEY M MEIERE JR M.D.
READING DATE: Jul 16 2010 11:12AM

Final Result

ELECTRONICALLY SIGNED BY:
CHENEY M MEIERE JR, M.D.
On: Jul 16 2010 11:14AM



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 5yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 58284

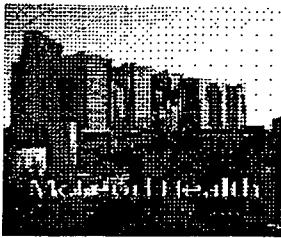
ED Medical Chart

Tetanus Toxoid (Booster) Solution for Injection IM
HYMAN, P

07/16 10:21 PDH

Ordered 07/16 10:19 By PHYMAN
Completed 07/16 11:00 By KLAIRD

education provided; allergies reviewed



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 45 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 58284

ED Medical Chart

CT CHEST/ABD/PELVIS W
HYMAN, P

07/16 10:21 PCH

Ordered	07/16 10:19	By	PHYMAN
Noted:	07/16 11:27	By	USystem
Completed	07/16 11:27	By	USystem
Reviewed:	07/16 11:28AM	By	PHYMAN

RAD - Isolation? - Standard

07/16 10:19 PCH

Result: 07/16 11:27



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 55 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 59284

ED Medical Chart

ORDER DR: PETER D. HYMAN JR M.D.
ATTEND DR: PETER D. HYMAN JR M.D.
TRANSCRIBED D/T: Jul 16 2010 11:23AM
PROCEDURE: CT CHEST/ABD/PELVIS W U / ORD #: 90003 Accession#: 4411919
CPT: 71260 74160 72193
ORDERED FOR: Jul 16 2010 10:15AM COMPLETED: Jul 16 2010 10:38AM
INDICATIONS/COMMENTS: TRAUMA

Chest CT.

History MVA chest pain left shoulder pain.

RESULT:

Scans were done after 120 mL Optiray-320 20 ; the aorta and great vessels are intact. There is a small triangular density anterior mediastinum probably representing thymus. No hilar mass the thoracic spire and sternum are intact. No definite rib fracture. Lungs are clear.

CONCLUSION: Negative chest CT.

Abdomen CT

There is a 1.6 cm area of enhancement in the upper portion of the liver probably a hemangioma. The spleen pancreas and kidneys are unremarkable. No free fluid or free air. The appendix is normal.

Pelvis CT:

bladder and distal ureters are unremarkable. No pelvic mass or free fluid.

CONCLUSION: No acute changes in the abdomen or pelvis.

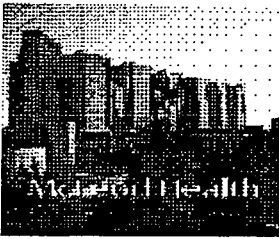
Small enhancing lesion in the liver probably an incidental hemangioma.

VE

READING DR: CHENEY M MEIERE JR M.D.
READING DATE: Jul 16 2010 11:20AM

Final Result

ELECTRONICALLY SIGNED BY:
CHENEY M MEIERE JR, M.D.
On: Jul 16 2010 11:23AM



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

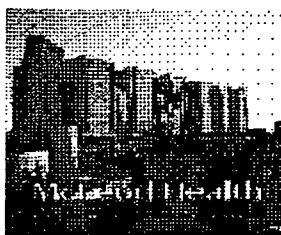
AGE: 59 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 59284

ED Medical Chart

RAD - Reason for Order (CHS): TRAUMA
Result: 07/16 11:27

07/16 10:19 PCH



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 44 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 59284

ED Medical Chart

ORDER DR: PETER D. HYMAN JR M.D.
ATTEND DR: PETER D. HYMAN JR M.D.
TRANSCRIBED D/T: Jul 16 2010 11:23AM
PROCEDURE: CT CHEST/ABD/PELVIS W U / ORD #: 90003 Accession#: 4411919
CPT: 71260 74160 72193
ORDERED FOR: Jul 16 2010 10:15AM COMPLETED: Jul 16 2010 10:38AM
INDICATIONS/COMMENTS: TRAUMA

Chest CT.

History MVA chest pain left shoulder pain.

RESULT:

Scans were done after 120 mL Optiray-320 20 ; the aorta and great vessels are intact. There is a small triangular density anterior mediastinum probably representing thymus. No hilar mass the thoracic spine and sternum are intact. No definite rib fracture. Lungs are clear.

CONCLUSION: Negative chest CT.

Abdomen CT.

There is a 1.6 cm area of enhancement in the upper portion of the liver probably a hemangioma. The spleen pancreas and kidneys are unremarkable. No free fluid or free air. The appendix is normal.

Pelvis CT:

bladder and distal ureters are unremarkable. No pelvic mass or free fluid.

CONCLUSION: No acute changes in the abdomen or pelvis.

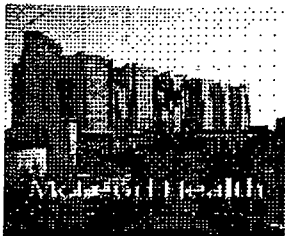
Small enhancing lesion in the liver probably an incidental hemangioma.

\\E\

READING DR: CHENEY M MEIERE JR M.D.
READING DATE: Jul 16 2010 11:20AM

Final Result

ELECTRONICALLY SIGNED BY:
CHENEY M MEIERE JR, M.D.
On: Jul 16 2010 11:23AM



McLeod Emergency Department
555 East Cheves Street, PO Box 100551
Florence, SC 29501-0551
843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 44 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 59284

ED Medical Chart

~~CT HEAD/CERVICAL WO CONTRAST~~

~~07/16 10:21 PCH~~

~~HYMAN, P~~

~~Ordered 07/16 10:19 By PHYMAN~~

~~Cancelled: 07/16 10:23 By USystem~~

~~Reason: Order Cancelled Externally~~

~~7/16/10 10:23 US~~

~~RAD Isolation? Standard~~

~~07/16 10:19 PCH~~

~~RAD Reason for Order (SKL): TRAUMA~~

~~07/16 10:19 PCH~~

~~CT FACIAL WO~~

~~07/16 10:21 PCH~~

~~HYMAN, P~~

~~Ordered 07/16 10:19 By PHYMAN~~

~~Cancelled: 07/16 10:23 By USystem~~

~~Reason: Order Cancelled Externally~~

~~7/16/10 10:23 US~~

~~RAD Isolation? Standard~~

~~07/16 10:19 PCH~~

~~RAD Reason for Order (SKL): TRAUMA~~

~~07/16 10:19 PCH~~

BMP-Basic Metabolic Panel

07/16 10:21 PCH

HYMAN, P

Ordered 07/16 10:19 By PHYMAN

Noted: 07/16 11:07 By USystem

Completed 07/16 11:25 By USystem

Reviewed: 07/16 11:27AM By PHYMAN

Result: 07/16 11:25

Test Name	Results	Flag	Units	Ref Range
SODIUM	137		MMOL/L	135-145
POTASSIUM	4.2		MMOL/L	3.5-5.0
CHLORIDE	110	H	MMOL/L	98-109
CO2	26	L	MMOL/L	27-32
GLUCOSE	95		MG/DL	75-110
BUN	9		MG/DL	9-20
CREATININE, SERUM	0.78		mg/dl	0.66-1.25
CALCIUM	9.1		MG/DL	8.4-10.2
GFR RATE	>60		ml/min NBS	>60



McLeod Emergency Department
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843-777-2000

Patient Name: JEFFERY MCFADDEN
Reg Date/Time: 7/16/10 10:04
Account #: 117822486
MRN: 000001029352

AGE: 54 yr
SEX: M
Priority: 3 - Urgent

DOB: [REDACTED]
ED #: 58294

ED Medical Chart

CBC with Diff

07/16 10:21 PDH

HYMAN, P

Ordered 07/16 10:19 By PHYMAN
Noted: 07/16 11:07 By USystem
Completed 07/16 11:10 By USystem
Reviewed: 07/16 11:27AM By PHYMAN
Result: 07/16 11:10

Test Name	Results	Flag	Units	Ref Range
WBC	5.63		THOU	4.8-10.8
RBC	4.87		XMIL	4.7-6.1
HGB	14.5		GM/DL	14-18
HCT	42.0		%	42-52
MCV	86.2		FL	80-95
MCH	29.8		PG	27-32
MCHC	34.5		GM/DL	32-36
RDW	13.2		%	11.5-14.5
PLT	171		THOU	150-450
ABS NEUT	3.61		THOU	1.9-7.6
ABS LYMPH	1.41		THOU	1.1-4.8
ABS MONO	0.51		THOU	0.2-1.5
ABS EOS	0.08		THOU	0.0-0.5
ABS BASO	0.01		THOU	0.0-0.2
NEUT	65	H	%	40-64
LYMPH	25		%	22-44
MONO	9		%	4-14
EOS	1		%	0-5
BASO	0		%	0-2

TORADOL 30MG IV

07/16 10:21 PDH

HYMAN, P

Ordered 07/16 10:19 By PHYMAN
Completed 07/16 10:59 By KLAIRD
education provided; allergies reviewed

Normal Saline at 100ml/hr IV

07/16 10:21 PDH

HYMAN, P

Ordered 07/16 10:19 By PHYMAN
Completed 07/16 11:20 By KLAIRD