

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2019-000359

RECEIVED

MAR 06 2020

SC Court of Appeals

David Miller,.....Appellant,

v.

ENT & Face PA, and Brian Wilson, MD,.....Respondents.

RECORD ON APPEAL

Volume I

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ATTORNEYS FOR APPELLANT

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5) Was Dr. Wilson's conduct reckless or grossly negligent to a level of clear and convincing evidence?

_____ No. If not, sign below and deliberate no further.

_____ Yes. If yes, go to question 6.

6) Should punitive damages be awarded against Dr. Wilson?

_____ No. If no, sign below and deliberate no further.

_____ Yes. If yes, go to question 7.

7) Punitive damages are awarded in _____ amount.

February 1 , 2019
York, SC



Signature of Foreperson

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2017CP4600302

David Miller		ENT & FACE PA	Brian Wilson
--------------	--	---------------	--------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: SEE ATTACHED VERDICT FORM

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

David G. Hill

Circuit Court Judge

2753

Judge Code

1-31-19

Date

ELECTRONICALLY FILED - 2019 Feb 04 10:20 AM - YORK - COMMON PLEAS - CASE#2017CP4600302

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Chad Alan McGowan 1539 Health Care Dr. Rock Hill, SC 29732

Eve Schafer Goodstein 1539 Health Care Drive Rock Hill, SC 29732

Hutson S. Davis Jr. 10 Pinckney Colony Rd. Victoria Bldg., Ste. 200 Bluffton, SC 29909

Stephen Harrison Williams 10 Pinckney Colony Road The Victoria Bldg., Ste. 200 Bluffton, SC 29909

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Shirley Broom

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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

ELECTRONICALLY FILED - 2019 Feb 04 10:20 AM - YORK - COMMON PLEAS - CASE#2017CP4600302

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4600302

David Miller
PLAINTIFF(S)

ENT & FACE PA et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

After consideration, the Court denies Plaintiff's Motion for a JNOV, it is so ordered.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/20/2019 .

Thomas Porcher Stoney, II

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Feb 20 1:59 PM - YORK - COMMON PLEAS - CASE#2017CP4600302

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: David Miller VS ENT & FACE PA

Case Number: 2017CP4600302

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-02-20 13:55:30 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

David Miller
Plaintiff,

Civil Action No: ~~16-EP-~~ 2017CP4600303

v.

ENT & FACE, PA and Brian Wilson, MD
Defendants.

SUMMONS
DAVID HANCOCK
C.C. C.P. 16-03
YORK COUNTY, SC
2017 FEB -6 PM 3:00
FILED-RECEIVED

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to the Complaint on the subscriber at his office at 1539 Health Care Drive, Rock Hill, South Carolina, 29732, within thirty (30) days of service, exclusive of the date of service; and if you fail to Answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

MCGOWAN HOOD & FELDER, LLC



Chad A. McGowan
Ashley White Creech
McGowan, Hood, & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29730
(803) 327-7800
(803) 324-1483 Facsimile
cmcgowan@mcgowanhood.com

February 3, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

David Miller

Plaintiff,

v.

ENT & FACE PA, Brian Wilson, MD.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No:

2017CP4600302

COMPLAINT FOR DAMAGES
Jury Trial Demanded

FILED-RECEIVED
2017 FEB 6 PM 3:00
DAVID HAMILTON
C.C.P. & C.S.
YORK COUNTY, SC

The Plaintiff, by and through her undersigned counsel, for a Complaint against the Defendants, does hereby allege as follows:

PARTIES

Plaintiff

1. The Plaintiff David Miller is a citizen and resident of York County, SC.

Defendants

2. Defendant ENT & FACE, PA is upon information a belief, a South Carolina corporation of some kind with its principal place of business in York County, SC. ENT & FACE a medical practice that employed Defendant Brian Wilson, MD and others. At all times relevant hereto, Defendant Wilson was working within the scope and course of his employment with ENT & FACE, PA. Defendant Wilson held himself out to the world as a specialist in the field of ENT medicine.

FACTUAL ALLEGATIONS

3. On March 26, 2013, Mr. Miller went to Dr. Wilson to have a nodule in his tonsil evaluated. Dr. Wilson found a small, firm discolored nodule on Mr. Miller's right tonsil. Dr. Wilson ordered an MRI and in that MRI order wrote "neoplasm m tonsil." As the reason for the test.

4. The MRI was unrevealing of any issues. Based on this, Dr. Wilson told Mr. Miller that he did not have cancer and had no need to worry about the nodule in his throat.

5. The problem was that cancer is NOT ruled out, nor are nodules evaluated, by way of an MRI scan. The medically accepted standard of care to determine if a nodule like this is cancer is a biopsy. MRI and reliance thereupon is NOT the standard of care as the MRI will not show cancer like this.

6. Nevertheless, Dr. Wilson relied upon an MRI to tell Mr. Miller he did not have cancer. Mr. Miller believed Dr. Wilson. Over the next 3 years, the nodule persisted. Finally, Mr. Miller was sent to another ENT at the VA where the nodule was tested and found to be cancer. Moreover, the cancer had spread over the 3 year interim to be stage 4.

7. The cancer was diagnosed in 2016, and this led to surgery, chemo, and radiation for Mr. Miller. Given that the cancer is stage 4, Mr. Miller is very likely to die early from this cancer.

8. Dr. Wilson deviated and departed from the prevailing and accepted standards of medical care in many ways, any or all of which proximately caused the injuries to Ms. Scott.

9. Had Defendants acted within the standard of care, Mr. Miller's injuries and stage 4 cancer would have been prevented.

10. The injuries to Mr. Miller were the direct and proximate result of and were caused and occasioned by the negligence, carelessness, recklessness, willfulness, and wantonness on the part of Defendants, in failing to possess and exercise that degree of medical training, competency, and skill ordinarily and customarily possessed and exercised by physicians under similar circumstances and thereby rendered inappropriate medical care to Mr. Miller by deviating from and falling below the prevailing and acceptable standards of care in one or more particulars:

- a. In failing to biopsy the nodule in 2013
- b. In failing to diagnose cancer in 2013
- c. In failing to refer Mr. Miller out to another competent physician
- d. In failing to inform Mr. Miller of the risk he had of having cancer
- e. In failing to perform the proper tests
- f. And in such other ways as may be shown at trial.

Attached as **Exhibit A** is an affidavit of qualified expert who will testify to one or more deviations from the standard of care by the Defendants.

**FOR A FIRST CAUSE OF ACTION
(PERSONAL INJURY ACTION)**

11. Plaintiff reiterates paragraphs 1-10 above as if set forth verbatim herein.
12. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by

Defendants, Mr. Miller suffered from severe debilitating injuries which resulted in his permanent injury and disability, and conscious pain and suffering, as a result of which Mr. Miller is entitled to recover a sum to compensate him for his conscious pain and suffering, medical expenses, mental anguish, loss of earnings capacity, loss of enjoyment of life, and other damages. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these defendants and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this Court deems just and proper. Plaintiff specifically avers that the damages at issue in this case are more than \$100,000, such averment made to allow all manner of discovery under South Carolina Law.

MCGOWAN HOOD & FELDER, LLC



Chad A. McGowan
Ashley White Creech
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800
(803) 328-5656 Facsimile
Rock Hill, South Carolina

2-3, 2017

EXHIBIT

A

AFFIDAVIT of DAVID MYSSIOREK, M.D., F.A.C.S.

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY SWORN, SAYS AS FOLLOWS:

1. I am board certified in Otolaryngology by the American Board of Otolaryngology. My education, training, and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care rendered to David Miller in this case.

2. My medical practice is primarily located in New York, New York. I have been practicing for more than thirty (30) years.

3. I am familiar with the standard of care of what a reasonably prudent physician would do or not do in treating a patient such as Mr. Miller. I am familiar with the potential complications that derive from failing to properly care for a person such as in David Miller's case.

4. I have reviewed the medical records of David Miller, which consisted in part of records from Brian Wilson, MD, SC diagnostic Imaging and Dorn VA records. The records I have reviewed are the type of documents, which I would consider in rendering an expert medical opinion in this case.

5. It is my opinion, within a reasonable degree of medical certainty that the Defendants and/or their employees, nurses and/or agents committed negligent acts or omissions in their care and treatment of David Miller. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by the Defendants and/or their employees, nurses and/or agents, are as follows:

- In failing to maintain proper medical records;
- In failing to biopsy and/or perform a tonsillectomy when the lesion was first noticed
- In failing to rule out cancer in light of a suspicious lesion; and
- In failing to order close monitoring of Mr. Miller at least every three (3) months in light of the failure to biopsy the lesion initially.

6. Further, it is my opinion to a reasonable degree of medical certainty, more likely than not, that the Defendants' deviations from the standard of care contributed to David Miller's injuries, damages, pain and suffering.

7. My opinions regarding Defendants' breaches of the standard of care, at the current time, are based on David Miller's medical records. The factual basis of my opinions may

be supplemented at a later time. I hereby reserve the right to amend, supplement, or withdraw my opinion based on discovery and depositions of the relative parties.

8. This affidavit is given in compliance with Sections 15-36-100 and 15-79-125 of the South Carolina Code Ann. (1976) which does not require me to state all negligent acts or omissions by any defendant.

David Myssiorek
DAVID MYSSIOREK, M.D., F.A.C.S

Sworn to and signed before me
this 27 day of September 2016.

Elizabeth Soto Muniz
Notary Public

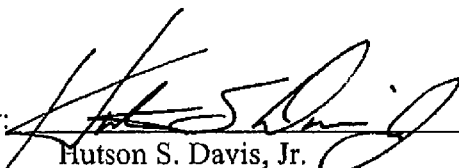
My Commission expires: 11/17/18

ELIZABETH SOTO-MUNIZ
Notary Public - State Of New York
No. 01906316082
Qualified in Orange County
My Commission Expires November 17, 2018

6. As to the allegations contained in Paragraph 6 of the Complaint, these Defendants admit that Dr. Wilson relied on the MRI as part of his work up of Mr. Miller. Dr. Wilson denies that he told Mr. Miller that he did not have cancer. These Defendants lack information sufficient to form a belief as to the remaining allegations of Paragraph 6 of the Complaint and therefore deny same and demand strict proof thereof.
7. The Defendants lack information sufficient to form an opinion or belief as to the allegations contained in Paragraph 7 of the Complaint and therefore deny same and demand strict proof thereof.
8. The Defendants deny the allegations contained in Paragraphs 8, 9 and 10 of the Complaint.
9. As to the allegations contained in Paragraph 11 of the Complaint, the Defendants repeat and reallege all previous answers to the paragraphs stated as if fully set forth herein verbatim.
10. The Defendants deny the allegations contained in Paragraph 12 of the Complaint.

WHEREFORE, having fully answered all allegations of the Complaint herein, the Defendants pray that the Complaint be dismissed with costs to be paid by the Plaintiff.

JOHNSON & DAVIS, PA

By: 
Hutson S. Davis, Jr.
10 Pinckney Colony Road, Ste. 200
Bluffton, SC 29909
(843) 815-7121
Buster@jd-pa.com

Bluffton, SC

3-16, 2017.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing document by delivering a copy to the following counsel/parties on the 16th day of March, 2017, by first class mail:

Chad A. McGowan, Esquire
McGowan Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732

By: Deborah A. Clisham
Deborah A. Clisham, Paralegal for Hutson S. Davis, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

David Miller,

Plaintiff,

v.

ENT & FACE, PA and Brian Wilson, M.D. ,

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No: 2017-CP-46-302

**PLAINTIFF'S MOTION &
MEMORANDUM
IN SUPPORT OF MOTION
FOR JUDGMENT
NOTWITHSTANDING THE VERDICT
AND NEW TRIAL ABSOLUTE**

Plaintiff David Miller, pursuant to Rules 50, 59, and all other applicable rules of the South Carolina Rules of Civil Procedure and South Carolina common law moves for a judgment notwithstanding the verdict as to liability on the negligence claim, and in the alternative a new trial absolute. As explained herein, the jury's finding that Defendants Brian Wilson and ENT & FACE, PA were not negligent in their care of Plaintiff is unsupported by the evidence and testimony presented at trial. The testimony from both experts, along with Defendant Wilson's own admissions, established that the only way to rule out cancer is to perform a biopsy, which did not occur in this matter. The admitted failure to order a biopsy and a complete disregard of the standard of care caused Plaintiff's progression of Stage 1 to Stage 4 cancer amounts to negligence. Moreover, at a minimum, a directed verdict should have been granted as to breach based on Defendant Wilson's acknowledged deviations from the standard of care.¹ For these reasons,

¹ Any grounds asserted prior to, during, and after the trial in this matter not herein listed are adopted and incorporated the same as if fully set forth below. Moreover, all arguments set forth in any written motions, including any supporting memoranda and exhibits, as well as all arguments made during oral argument before this Court in support of motions limine, motions for summary judgment, and motions for directed verdict are incorporated herein.

Plaintiff requests entry of judgment in his favor as to liability, notwithstanding the verdict, and in the alternative a new trial absolute.

Background/Procedural History

At the close of Defendants' case, Plaintiff moved for a directed verdict on the negligence/medical malpractice cause of action on the grounds that every element had been proven by a preponderance of the evidence. Included within this motion, Plaintiff moved for a directed verdict as to two distinct deviations in the standard of care—as supported by Defendant Wilson's own admissions. As to the first deviation, Plaintiff argued the standard of care was violated by Defendant Wilson's failure to inform Plaintiff there was cancer in his deferential diagnosis and that the MRI did not rule out cancer. Plaintiff argued this failure warranted a directed verdict as to breach. Additionally, as to the second deviation, Plaintiff argued Defendant Wilson breached the standard of care by failing to perform a biopsy to rule cancer in or out. Further, Plaintiff argued the damages suffered by Plaintiff including Stage 4 cancer were a direct and proximate cause of the breach. Additionally, Plaintiff requested an instruction that the events rose to the level of gross negligence, recklessness, and misrepresentation as a matter of law. These motions were denied.

The matter proceeded to the jury, which found Defendants were not negligent. This motion followed.

STANDARD OF REVIEW

A motion for judgment notwithstanding the verdict should be granted if the evidence presented at trial does not support the verdict. *See Watson v. Ford Motor Co.*, 389 S.C. 434, 455, 699 S.E.2d 169, 180 (2010). In ruling on a motion for judgment notwithstanding the verdict, the trial court shall "view the evidence and the inference that reasonably can be drawn and in the light

most favorable to the non-moving party. *McMillian v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564 626 S.E.2d 884, 886 (2006).

Pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure, a new trial may be granted “in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted, in the courts of the State.” Rule 59(a), SCRPC. South Carolina courts have previously recognized that a new trial is warranted in a myriad of circumstances, including when the verdict was inconsistent with the facts.

Additionally, the thirteenth juror doctrine permits a judge to grant a new trial when the court concludes the evidence does not justify the verdict. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (“The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict.”); *Youmans ex rel. Elmore v. S.C. Dept't of Transp.*, 380 S.C. 263, 272 670 S.E.2d 1, 5 (Ct. App. 2008). It is well-settled that this doctrine provides the trial court with broad discretionary power to grant a new trial. *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 258, 217 S.E.2d 778, 781 (1975) (explaining a trial judge has “discretionary power to grant a new trial absolute or Nisi in a law case upon his disapproval of the verdict on factual grounds, and in this role he has been recognized and designated as the thirteenth juror.”); *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313-14 195 S.E. 638, 641 (1938) (describing a trial judge, when acting as thirteenth juror, as “possessing the veto power to the Nth degree,” and held “it must be presumed . . . [that the trial judge] recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality.”).

ARGUMENTS

I. The Verdict is Unsupported by the Evidence and Testimony Presented at Trial.

The jury's finding as to negligence is unsupported by the evidence and testimony presented at trial. As explained herein, it is undisputed by both parties' experts and Defendant Wilson that a biopsy is the only test that rules out cancer and that test was not performed. A review of the evidence and testimony demonstrates that Plaintiff proved negligence by a preponderance of the evidence and the jury's verdict should be set aside.

As this Court is aware, a doctor commits medical malpractice by not exercising the degree of skill and learning that is ordinarily possessed and exercised by members of the profession in good standing acting in the similar circumstances. *Durham v. Vinson*, 360 S.C. 639, 650–51, 602 S.E.2d 760, 766 (2004). In proving a malpractice case, Plaintiff must demonstrate: (1) the generally recognized and accepted practices and procedures that would be followed by a reasonable practitioner in similar circumstances and (2) that the Defendants departed from the generally recognized and accepted standards. *Pederson v. Gould*, 288 S.C. 141, 143–44, 341 S.E.2d 633, 634 (1986); *Cox v. Lund*, 286 S.C. 410, 414, 334 S.E.2d 116, 118 (1985). Additionally, the Plaintiff must show Defendants' "departure from such generally recognized practices and procedures was the proximate cause of his alleged injuries and damages." *Melton v. Medtronic, Inc.*, 389 S.C. 641, 655, 698 S.E.2d 886, 893 (Ct. App. 2010).

At trial, the parties agreed, Plaintiff presented to Defendants with a firm spot on the back of this throat. *See* Plaintiff's Exhibit 1, p. 1-2. To visualize the spot, Defendant Wilson testified he first attempted to stick a mirror in the back of Plaintiff's throat, which caused him to gag. *Id.* at 1. He then performed a flexible laryngoscopy, in which a camera was placed down Plaintiff's nose to visualize the spot. *Id.*

It is also undisputed by the parties that on Plaintiff's first appointment with Defendant Wilson there was a concern the spot was cancerous. *See* Plaintiff's Exhibit 1, p. 6 (handwritten diagnosis of "sign/symptom" written and signed by Defendant Wilson). Specifically, Defendant Wilson admitted he listed "neoplasm m tonsil" in his deferential diagnosis, which was later explained by all experts to mean cancer. *Id.*; *see also*, Plaintiff's Exhibit 1, p. 4-5 (noting that the radiologist report states the reason for the scan was "? neoplasm m tonsil"). Defendant Wilson testified at the time of that appointment—at trial and in his deposition—that he had a "conscious concern" about Plaintiff having cancer. Defendant's expert Joshua Hornig, M.D., echoed these concerns; agreeing they were "concrete" in his deposition. Notably, Defendant Wilson admitted he did not tell Plaintiff about his deferential diagnosis, which he agreed was required by the standard of care.

Defendant Wilson testified he ordered an MRI at the first appointment and after receiving the results told Plaintiff, at the third appointment, to return as needed. Significantly, Defendant Wilson admitted to never informing Plaintiff that the MRI did not rule out cancer, which he agreed was required by the standard of care. Defendants' position throughout trial was Plaintiff's spot cleared up and no further action was needed.²

² Notably, the basis of Defendant Wilson's opinion that the spot was clearing up was based on two entries in the Plaintiff's chart. Specifically, on April 2, 2013, Defendant Wilson charted that the "[h]ypopharynx is unchanged" and on April 23, 2013, that "hypopharynx is grossly clear." Plaintiff's Exhibit 1, p. 1. Significantly, Defendant's expert, Dr. Hornig, testified it would be "very difficult" to make that finding without using a mirror or performing a flexible laryngoscopy. Neither test was charted for either visit. Plaintiff's Exhibit 1, p. 1. Nor was Plaintiff billed for the procedure on either visit. Plaintiff's Exhibit 1, at p. 26. The absence of these tests is further supported by Plaintiff's own testimony that the tests were only performed on March 26, 2013, and he would remember if the mirror or camera were used a second or third time because of how unpleasant they were.

Plaintiff established through the testimony of Dr. Myssiorek that the only accepted way to rule out cancer, within the context of an ENT, is through a biopsy. Put simply, the standard of care for an ENT requires a biopsy. Defendants' expert Dr. Hornig, agreed with this standard. He further testified at trial that an MRI gets pictures of the body, but a really small cancer would not be picked up by an MRI, i.e. an MRI could not rule out cancer. *See* Hornig Deposition at p. 12. (Q: Is it the accepted—the only accepted way in the ENT world to rule out or rule in cancer is by way of biopsy; is that true? A: True.”). There is no dispute that a biopsy was never ordered. Defendant Wilson's failure to order a biopsy of Plaintiff's spot is a clear breach of the standard of care rising to the level of negligence. Additionally, by his own admission, Defendant Wilson breached the standard of care in failing to inform Plaintiff that (1) cancer was in the deferential diagnosis and (2) the MRI did not rule out cancer.

Biopsy: Summary of Standard of Care & Admissions

	Dr. Myssiorek Plaintiff's Standard of Care Expert	Dr. Hornig Defendant's Expert	Defendant Wilson
Standard of Care: only way to rule out cancer is to order a biopsy?	Yes.	Yes, testified it was the only way to know there was no cancer.	Admitted, the only way to conclusively know is to perform a biopsy.
Violation: Did Defendants violate the standard of care?	Yes.	Admitted, Defendant Wilson did not order a biopsy	Admitted, he did not order a biopsy

Duty to Inform: Summary of Standards of Care & Admissions

	Dr. Myssiorek Plaintiff's Standard of Care Expert	Defendant Wilson
Standard of Care: Requires doctor to inform a patient of a deferential diagnosis.	Yes.	Admitted, the standard of care requires him to inform a patient.
Violation: Did he violate the standard of care to inform patient of deferential diagnosis?	Yes.	Admitted, he did not inform Plaintiff.
Standard of Care: Inform Patient MRI does not rule out cancer?	Yes.	Admitted, the standard of care requires him to inform a patient.
Violation: Did he violate the standard of care to inform patient that MRI did not rule out cancer?	Yes.	Admitted, he did not inform Plaintiff.

Additionally, Plaintiff’s expert Ronald Blum, M.D., addressed causation and damages. Specifically, he explained in his opinion the spot Plaintiff presented to Defendants with in 2013 was the same spot that he received treatment for in 2016. As such, Dr. Blum testified that by leaving Plaintiff’s cancer untreated Defendants allowed Plaintiff’s cancer to progress from Stage 1 to Stage 4 cancer. Because of this progression, Plaintiff was not able to have the cancer cells surgically removed. Instead, he was required to undergo both chemotherapy and radiation, which he described as “the real deal.” Dr. Blum further explained the impact on Plaintiff including indefinite effects on Plaintiff’s speech, taste, and tongue, along with acute effects including skin burns, wet burns, dry mouth, and sores. Additionally, Dr. Blum explained because of Plaintiff’s cancer treatments he now has an increased risk of leukemia and a continued risk of his throat cancer reoccurring.

Negligence: Summary of Evidence and Testimony Presented

	Established	Source
Standard of Care	Yes.	<ul style="list-style-type: none"> • Biopsy: Myssiorek, Hornig, and Wilson’s admission • Deferential Diagnosis: Myssiorek and Wilson’s admission • MRI: Myssiorek and Wilson’s admission
Breach	Yes.	<ul style="list-style-type: none"> • Biopsy: Myssiorek, Hornig, and Wilson’s admission • Deferential Diagnosis: Myssiorek and Wilson’s admission • MRI: Myssiorek and Wilson’s admission
Causation	Yes.	Dr. Blum

For these reasons, Plaintiff contends negligence was proven by a preponderance of the evidence and requests this Court grant a judgment notwithstanding the verdict and/or to invoke

the thirteenth juror doctrine to conform the verdict with evidence and testimony presented at trial.

II. JNOV as to Deviations in the Standard of Care.

In addition to renewing his Motion for Directed Verdict made at the close of Defendants' case, at a minimum a directed verdict should have been granted as to duty and breach based on the acknowledged deviations in the standard of care by Defendant Wilson and the experts.

As set forth in the Motion for a Directed Verdict and discussed *supra*, there are two distinct deviations in the standard of care, as admitted by Defendant Wilson that warranted a directed verdict as to breach. First, Defendant Wilson failed to perform a biopsy to rule cancer in or out. Both experts and Dr. Wilson agreed the only way to rule out cancer is to perform a biopsy, which was not done here. This alone warranted a directed verdict as to breach.

Second, Defendant Wilson testified that the standard of care requires a doctor to inform a patient: (1) cancer is in the differential diagnosis and (2) an MRI did not rule out cancer. Specifically, Defendant Wilson stated he would rely on his deposition testimony, which states in part:

Q: Does the standard of care require an ENT to inform his patient that cancer is on the differential diagnosis?

A: I'll say yes.

Brian Wilson, Deposition at p. 51.

Q: Does the standard of care require an ENT to inform his patient that MRI does not rule out cancer?

A: Yes.

Id. Defendant Wilson admitted he breached the standard of care when he testified that he did not inform Plaintiff that (1) the differential diagnosis was cancer and (2) the MRI did not rule out

cancer. These admissions coupled with Dr. Myssiorek's testimony establishing the standard of care warranted a directed verdict as to breach.

CONCLUSION

For these reasons, Plaintiff respectfully requests this Court enter judgment in favor of Plaintiff as to liability and against Defendants notwithstanding the jury's verdict. In the alternative, Plaintiff respectfully requests this Court enter an Order granting a new trial.

Respectfully submitted,

s/ Whitney B. Harrison

Chad A. McGowan, S.C. Bar No. 9943
Eve S. Goodstein, S.C. Bar No. 101211
Whitney B. Harrison, S.C. Bar No. 100111
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Rock Hill, SC 29732
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cmcgowan@mcgowanhood.com
egoodstein@mcgowanhood.com
wharrison@mcgowanhood.com

Attorneys for Plaintiff

Rock Hill, SC

**Excerpts from
Plaintiff's Trial Exhibit 1**

ENT FACE

BRIAN C. WILSON, MD

Person taking history

Referred by

Patient David Miller Age 62 Date 3/26/13
 Chief Complaint spot in back of throat x 3 weeks
 History - dysphagia - odynophagia + snoring
- hoarseness LF-C-5
- acid reflux

PREVIOUS SURGERY
 Medications clonidine, pravastatin, Amitriptyline, HCTZ

Medication Allergies (rxn) NKA

Operations Back x 3, stents x 3 (4/18/13) SW 4/23/13
FOOT DROP

System Review PT
 Family History bleeding tendencies anesthetic complications HTN CVD Asthma diabetes AIDS seizures cancer reflux

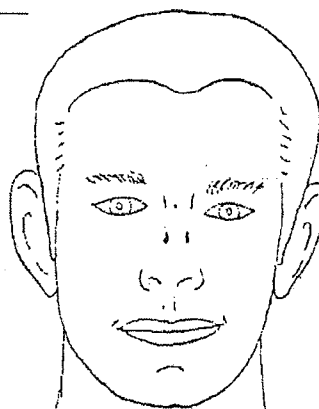
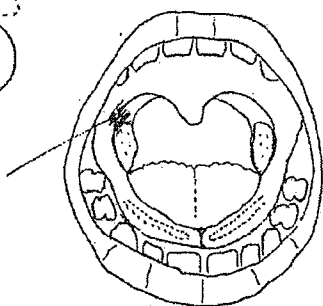
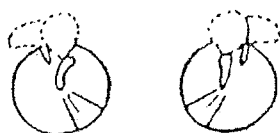
Social History 6-10-40-40-105 former smoker alcohol/drugs occ her lives with mother father legal gaurdian
 tobacco no

Physical Exam:

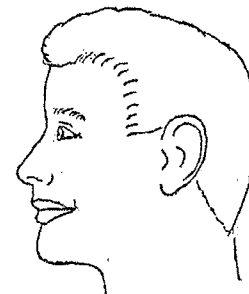
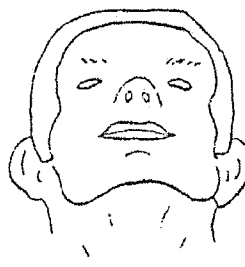
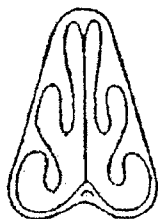
Heart _____ Impression _____

Lungs _____ Plan _____

hearing aid



6'0"
 235 lbs
 163
 89



- I
- II
- III
- IV
- V
- VI
- VII
- VIII
- IX
- X
- XI
- XII

Differential Diagnosis
 Tests recommended
 Old records requested
 Risks discussed

Neuro
 Nystagmus
 Rhomberg

Counseling
 Coordination of Care
 Severity/Morbidity
 Time

Photos
 Video watched
 Post-op instructions

BRIAN C. WILSON, MD

ENT FACE

EAR, NOSE, THROAT & FACIAL PLASTIC SURGERY

Date: 3-26-13

MEDICAL HISTORY

D.O.B. 10-26-50 Age: 62

Patient Name: David A. Miller

How did you find out about us? Yellow Pages

MEDICAL HISTORY

- | Do YOU have? | Does anyone in your family have? WHO? |
|--|---------------------------------------|
| Yes No | |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Bleeding Disorders |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Anesthesia Problems |
| <input checked="" type="checkbox"/> <input type="checkbox"/> | High Blood Pressure |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Stroke |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Heart Trouble |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Asthma |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Diabetes |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | HIV/AIDS |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Seizures |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Cancer |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Hereditary Issues |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Recent Hospitalizations |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Nose & Face Injuries |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Reflux |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Snoring or Apnea |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Thyroid Trouble |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Other Illnesses |

Explain all YES answers:

Take Blood Pressure Medication

CURRENT MEDICINES

Medicine & Dose:	Medicine & Dose:
<u>Clonidine</u>	
<u>Provasatin</u>	
<u>Amlodipine Besyl</u>	
<u>Hydrochlorothiazide</u>	

Medicine?	mild	moderate	severe	Reaction?
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

MEDICINE ALLERGIES

SURGERY HISTORY

- | | | | | |
|-------------------------------------|-----------------------------------|-------------------------------------|-----------------------------------|--------------------------------------|
| <input type="checkbox"/> T&A | <input type="checkbox"/> Nose Job | <input type="checkbox"/> Middle Ear | <input type="checkbox"/> Parotid | <input type="checkbox"/> Brain |
| <input type="checkbox"/> Ear Tubes | <input type="checkbox"/> Facelift | <input type="checkbox"/> Mastoid | <input type="checkbox"/> Salivary | <input type="checkbox"/> Knee |
| <input type="checkbox"/> Tonsils | <input type="checkbox"/> Eyelids | <input type="checkbox"/> Voice Box | <input type="checkbox"/> Facial | <input type="checkbox"/> Foot |
| <input type="checkbox"/> Adenoids | <input type="checkbox"/> Heart | <input type="checkbox"/> Neck | <input type="checkbox"/> Hernia | <input type="checkbox"/> Hip |
| <input type="checkbox"/> Septum | <input type="checkbox"/> Stomach | <input type="checkbox"/> Thyroid | <input type="checkbox"/> Kidney | <input type="checkbox"/> Shoulder |
| <input type="checkbox"/> Turbinates | <input type="checkbox"/> Lung | <input type="checkbox"/> PacerMaker | <input type="checkbox"/> Prostate | <input type="checkbox"/> GallBladder |

REVIEW OF SYSTEMS

Have you recently had or do you now have:

- | | | |
|---|---|---|
| <input type="checkbox"/> Throat Infections | <input type="checkbox"/> Nasal Obstruction | <input type="checkbox"/> Snoring |
| <input type="checkbox"/> Multiple Antibiotics | <input type="checkbox"/> Post Nasal Drip | <input type="checkbox"/> Apnea |
| <input type="checkbox"/> Hard to Swallow | <input type="checkbox"/> Nasal Deformity | <input type="checkbox"/> CPAP or BIPAP |
| <input type="checkbox"/> Pain Swallowing | <input type="checkbox"/> Nosebleeds | <input type="checkbox"/> Oxygen |
| <input type="checkbox"/> Chills or Fever | <input type="checkbox"/> Sinus Congestion | <input type="checkbox"/> Jaw Positioning Device |
| <input type="checkbox"/> Night Sweats | <input type="checkbox"/> Dry Mouth | <input type="checkbox"/> Skin Lesions/Cancer |
| <input type="checkbox"/> Recent Weight Change | <input type="checkbox"/> Prior Nasal Surgery | <input type="checkbox"/> Rashes |
| <input type="checkbox"/> Poor Appetite | <input type="checkbox"/> Teeth Pain | <input type="checkbox"/> Pain Chewing |
| <input type="checkbox"/> Fatigue | <input type="checkbox"/> Poor Smell | <input type="checkbox"/> Muffled Voice |
| <input type="checkbox"/> Blurry Vision | <input type="checkbox"/> Poor Taste | <input type="checkbox"/> Bad Breath |
| <input type="checkbox"/> Double Vision | <input type="checkbox"/> Hoarseness | <input type="checkbox"/> Difficulty Breathing |
| <input checked="" type="checkbox"/> Glasses or Contacts | <input type="checkbox"/> Wheezing | <input type="checkbox"/> Bruises Easy |
| <input type="checkbox"/> Hearing Loss | <input type="checkbox"/> Coughing up blood | <input type="checkbox"/> Blood Transfusion |
| <input type="checkbox"/> Ringing/Buzzing in Ears | <input type="checkbox"/> Spitting up blood | <input type="checkbox"/> Easy Bleeding |
| <input type="checkbox"/> Ear Pain | <input type="checkbox"/> Heartburn | <input type="checkbox"/> Frequent Headaches |
| <input type="checkbox"/> Spinning | <input type="checkbox"/> Indigestion | <input type="checkbox"/> Seizures/Blackouts |
| <input type="checkbox"/> Ear Drainage | <input type="checkbox"/> Nausea/Vomiting | <input type="checkbox"/> Tremors |
| <input type="checkbox"/> Ear "Popping" | <input type="checkbox"/> Frequent Belching | <input type="checkbox"/> Numbness/Tingling |
| <input type="checkbox"/> Hearing Aid | <input type="checkbox"/> Itchy Eyes or Nose | <input type="checkbox"/> Insomnia |
| <input type="checkbox"/> Face Pain/Pressure | <input type="checkbox"/> Watery Eyes | <input type="checkbox"/> Anxiety/Panic |
| <input type="checkbox"/> Chest Pain/Discomfort | <input type="checkbox"/> Clear Nasal Drainage | <input type="checkbox"/> Depression |
| <input type="checkbox"/> Abnormal Heartbeat | <input type="checkbox"/> Excessive Sneezing | <input type="checkbox"/> ADD or ADHD |
| <input type="checkbox"/> Shortness of Breath | <input type="checkbox"/> Allergy Shots | <input type="checkbox"/> Speech Difficulties |
| <input type="checkbox"/> Bronchitis | <input type="checkbox"/> Hot or Cold Spells | <input type="checkbox"/> Are you Pregnant? |
| <input type="checkbox"/> Neck pain or lump | <input type="checkbox"/> Thyroid Issues | <input type="checkbox"/> Are You Nursing? |
| <input type="checkbox"/> Swollen Glands | <input type="checkbox"/> Immune Deficiency | |
| <input type="checkbox"/> Radiation or Chemotherapy | | |

SOCIAL HISTORY

Married Single Divorced

If child, lives with:

Mom dad Guardian

Lives independently

assisted living nursing home

Smokes Cigarettes : Never

1 1/2 packs/day for 8 years

Cigars Chew Tobacco

Alcohol:

Never Moderate Weekly

Heavy Daily Occasional Social

Drug Overuse:

None

Presently Past Problem



SOUTH CAROLINA DIAGNOSTIC IMAGING

Palmetto Imaging - Rock Hill
175 Amendment Avenue, Suite 101
Rock Hill, SC 29732
p: (803) 547-1137 f: (803) 547-1137

PATIENT: MILLER, DAVID
DOB: 10/26/1950
MRN: 904441
PHYSICIAN: BRIAN WILSON, MD
EXAM DATE: 03/28/2013

EXAM: MR Soft Tissue Neck With and Without Contrast

REASON FOR EXAM: deviated septum/ ? neoplasm tonsil

TECHNIQUE: Multisequence, multiplanar MR images were obtained of the neck pre and post contrast.

CONTRAST: 20 mL of Magnevist.

FINDINGS: Signal intensity in the naso-, oro- and hypopharynx is normal. Specifically, in the tonsil region, I see no evidence of mass or abnormal enhancement.

No cervical lymphadenopathy with only normal-size, and normal-appearing nodes in expected cervical spaces.

Visualized parotid and submandibular glands appear unremarkable. Sublingual space and tongue appear within normal limits.

Thyroid gland is unremarkable.

CONCLUSION: No definite evidence of mass or abnormal enhancement in the tonsils.

Greg Joseph, MD

GJ/llh

DD: 03/29/2013 02:07 P

DT: 03/29/2013 04:38 P

Accession#: 08-1601173 VS#: 11281224 CS#: 256407

cc:

BW
4-9-13

Electronically Signed and Reviewed by Greg Joseph, MD 04/09/2013 10:05 A

SCANNED

ELECTRONICALLY FILED - 2019 Feb 07 10:44 AM - YORK - COMMON PLEAS - CASE#2017CP4600302



Prelim Report

Palmetto Imaging-Rock Hill

*** FORMATTING EDITS DO NOT SAVE - EDIT TEXT ONLY ***

PATIENT: Miller, David
DOB: 10/26/1950
MRN: 0000904441

PHYSICIAN: Wilson^Brian^^MD
EXAM DATE: 03/28/2013 01:00 P
EXAM: MR Soft Tissue Neck With and Without Contrast
REASON FOR EXAM: deviated septum/ ? neoplasm tonsil

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Greg Joseph, MD

GJ/llh
DD: 03/29/2013 02:07 P
DT: 03/29/2013 04:38 P
Accession#: 08-1601173 VS#: 11281224 CS#: 256407
cc:

BW
4-2-13

Unreviewed



PALMETTO IMAGING

ROCK HILL

www.SCDIAG.com

Fax Scheduling
803-547-1137
 Call Patient to Schedule
"Excellence in Radiology"

Scheduling: 803-547-1100
Front Desk: 803-547-1133

175 Amendment Avenue, Suite 101 | Rock Hill, SC 29732
Tax ID# 57-1121114 | One Call Medical: SC604

ELECTRONICALLY FILED - 2019 Feb 07 10:44 AM - YORK - COMMON PLEAS - CASE#2017CP4600302

Patient Name: David Miller

DOB: 10/26/50 Phone (H): 803-684-0078 (W): _____

PLEASE FAX FRONT AND BACK OF PATIENT'S INSURANCE CARD ALONG WITH ANY CLINICAL INFORMATION.

Appt. Date: 3/28/13 Arrival Time: 12:45 PM Appt. Time: _____

Copy of Exam: CD Comparison Study Film Location: _____

Reports: Within 24 hours
 STAT Fax _____
 Call Report _____

MRI	CT	Ultrasound	Bone Densitometry
<input type="checkbox"/> without <input type="checkbox"/> with/without <input type="checkbox"/> Radiologist Discretion	<input type="checkbox"/> without <input type="checkbox"/> with/without <input type="checkbox"/> with <input type="checkbox"/> Radiologist Discretion	General <input type="checkbox"/> Abdomen <input type="checkbox"/> Right Upper Quadrant (Liver, Gallbladder, Rt Kidney, Pancreas) <input type="checkbox"/> Pelvis (Transvaginal as indicated) <input type="checkbox"/> Renal <input type="checkbox"/> Aorta <input type="checkbox"/> OB (LMP: _____) <input type="checkbox"/> Thyroid <input type="checkbox"/> Scrotum <input type="checkbox"/> with Doppler <input type="checkbox"/> w/out Doppler <input type="checkbox"/> Other _____	<input type="checkbox"/> DEXA
<input type="checkbox"/> Brain <input type="checkbox"/> MRA of _____ <input type="checkbox"/> IAC <input type="checkbox"/> TMJ R L <input type="checkbox"/> Soft Tissue Neck <input type="checkbox"/> Cervical Spine <input type="checkbox"/> Thoracic Spine <input type="checkbox"/> Lumbar Spine <input type="checkbox"/> Sacrum / Coccyx <input type="checkbox"/> MRCP <input type="checkbox"/> MR Arthrogram <input type="checkbox"/> Shoulder R L <input type="checkbox"/> Elbow R L <input type="checkbox"/> Wrist R L <input type="checkbox"/> Hand R L <input type="checkbox"/> Pelvis R L <input type="checkbox"/> Hip R L <input type="checkbox"/> Knee R L <input type="checkbox"/> Foot R L <input type="checkbox"/> Ankle R L <input type="checkbox"/> Other <u>MRI</u> <u>base of skull</u> <u>to base of neck</u> <u>and without contrast</u>	<input type="checkbox"/> Head <input type="checkbox"/> Orbits <input type="checkbox"/> Full Sinus <input type="checkbox"/> Limited Sinus <input type="checkbox"/> Facial Bones <input type="checkbox"/> Abdomen & Pelvis <input type="checkbox"/> Abdomen <input type="checkbox"/> Pelvis <input type="checkbox"/> Chest <input type="checkbox"/> Soft Tissue Neck <input type="checkbox"/> Lumbar Spine <input type="checkbox"/> Cervical Spine <input type="checkbox"/> Thoracic Spine <input type="checkbox"/> Stealth Sinus <input type="checkbox"/> Brain Lab <input type="checkbox"/> CT Angiography <input type="checkbox"/> Cardiac Score <input type="checkbox"/> Other: _____	Vascular <input type="checkbox"/> Carotid Doppler <input type="checkbox"/> Lower Venous Doppler R L Bilat <input type="checkbox"/> Upper Venous Doppler R L Bilat	X-ray Please Specify: _____ _____ _____ _____ _____ _____ _____

Sign/Symptom: septal deviation, neoplasm in tonsil

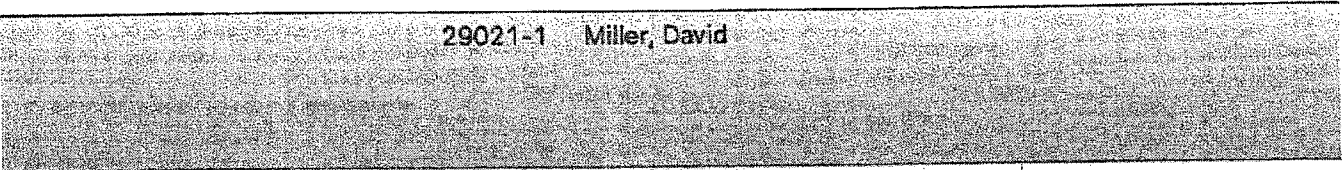
Office Contact: Name: Janet Phone: 803-366-9000

Physician Signature: (PRINT) Brian C. Wilson (SIGN) Brian C. Wilson MD

Bring this order with you to your scheduled exam

Rev. 07/2012

29021-1 Miller, David



Account	Patient	Clinical
---------	---------	----------

Charges	Payments	Other
---------	----------	-------

Posted Date	Code	Description	Provider	Debit	Credit	Balance
03/25/2013	Appt. Pending	01:45 PM	RHNO			0.00
03/26/2013	Appt. Pending	02:45 PM	RHNO			0.00
03/26/2013	Vitals	Vitals; Weight: 235.0 lbs ; Height: 6 ft 0.0 in ; BM				0.00
03/26/2013	99204.25	new comprehensive moderate	RHNO	175.00		175.00
03/26/2013	31575.59	Laryngoscopy, flexible	RHNO	175.00		350.00
03/26/2013	Electronic Claim	Medicare - Rec'd 210.64	RHNO			350.00
03/28/2013	EMR Form	2013 ENT&Face H&P				350.00
03/28/2013	Active Med list	clonidine 0.3 mg tablet --				350.00
03/28/2013	Active Med list	pravastatin 20 mg tablet --				350.00
03/28/2013	Active Med list	amlodipine 5 mg tablet --				350.00
03/28/2013	Active Med list	hydrochlorothiazide 25 mg tablet --				350.00
04/02/2013	Appt. Pending	02:15 PM	RHNO			350.00
04/02/2013	Active Med list	Koflex 500 mg capsule --				350.00
04/11/2013	Medicare Write-Of	Medicare Write-Off			20.83	329.17
04/11/2013	Medicare Write-Of	Medicare Write-Off			65.87	263.30
04/11/2013	Insurance Payment	Medicare (210.64)	RHNO		210.64	52.66
04/11/2013	99213	established expanded low-complex	RHNO	110.00		162.66
04/11/2013	Electronic Claim	Medicare - Rec'd 53.52	RHNO			162.66
04/23/2013	Vitals	Vitals; Weight: 235.0 lbs ; Height: 6 ft 0.0 in ; BM				162.66
04/23/2013	99213	established expanded low-complex	RHNO	110.00		272.66
04/23/2013	Cash Payment	Cash # (52.66)	RHNO		52.66	220.00
04/23/2013	Electronic Claim	Medicare - Rec'd 53.52	RHNO			220.00
05/03/2013	Medicare Write-Of	Medicare Write-Off			42.83	177.17
05/03/2013	Insurance Payment	Medicare (53.52)	RHNO		53.52	123.65
05/14/2013	Medicare Write-Of	Medicare Write-Off			42.83	80.82
05/14/2013	Insurance Payment	Medicare (53.52)	RHNO		53.52	27.30
05/21/2013	Cash Payment	Cash # (27.30)	RHNO		27.30	0.00
	Problem List	Deviated nasal septum (470)				0.00
	Problem List	Other diseases of nasal cavity and sinuses (478)				0.00
	Problem List	Other voice and resonance disorders (784.49)				0.00
	Problem List	Malignant neoplasm of tonsil (146.0)				0.00
	Problem List	Unspecified essential hypertension (401.9)				0.00
	Problem List	Nasal bones, closed fracture (802.0)				0.00
	Problem List	Acute tonsillitis (463)				0.00
	Total			570.00	570.00	0.00

**Excerpts from
Hornig Deposition**

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
 2 COUNTY OF YORK
 3 DAVID MILLER,
 4 Plaintiff,
 5 vs. CASE NO. 2016-CP-46-00302
 6 ENT & FACE, PA; BRIAN WILSON, MD,
 7 Defendants.

8
 9 DEPOSITION OF: JOSHUA HORNIG, M.D.
 10 DATE: December 7, 2018
 11 TIME: 11:09 AM
 12 LOCATION: AWR
 13 234 Seven Farms Dr.
 14 Ste. 210
 15 Charleston, SC
 16 TAKEN BY: Counsel for the Plaintiff
 17 REPORTED BY: MARIE MCCOLLUM, Court Reporter

18 A. WILLIAM ROBERTS, JR., & ASSOCIATES
 19 Fast, Accurate & Friendly

20
 21 Charleston, SC Hilton Head, SC Myrtle Beach, SC
 (843) 722-8414 (843) 785-3263 (843) 839-3376
 22 Columbia, SC Greenville, SC Charlotte, NC
 (803) 731-5224 (864) 234-7030 (704) 573-3919
 23
 24 Asheville, NC
 (828) 785-5699
 25



1 Q. What is well-accepted in the ENT field?

2 A. If I was going to do a biopsy of a
3 lesion, then -- sorry -- if I was -- if there
4 was -- if I had a suspicion of a lesion, then I
5 would follow a time, and if I was still suspicious,
6 then I would get a biopsy.

7 Q. Is it the accepted -- the only accepted
8 way in the ENT world to rule out or rule in cancer
9 is by way of biopsy; is that true?

10 A. True.

11 Q. And we know that Dr. Wilson had a
12 concrete concern for cancer in Mr. Miller, right?

13 A. I don't want to speak for Dr. Wilson,
14 but assuming what he ordered, I think that's a
15 reasonable thought. But I can't speak to what he
16 actually was thinking.

17 Q. Well, did you read his deposition?

18 A. I did. And so he had a suspicion for
19 cancer, I think, in that deposition.

20 Q. Okay. So if what Dr. Wilson saw in,
21 on, or within Mr. Miller's right tonsil --

22 (The proceedings were interrupted.)

23 BY MR. MCGOWAN:

24 Q. If what Dr. Wilson saw in or on
25 Mr. Miller's right tonsil gave Dr. Wilson a

**Excerpts from
Wilson Deposition**



Transcript of the Testimony of:

Brian Wilson, M.D.

Date: October 16, 2017

Case: David Miller v. ENT & Face, PA, Brian Wilson, MD

16-CP-46-00302

Queen City Court Reporting
Phone: (704) 300-9770
Email: office@queencitycourtreporting.com
Internet: www.queencitycourtreporting.com

1 A. I'm not going to dispute one way or the other. I'm not
2 familiar with those records enough to speak to them.

3 Q. Okay. So in this circumstance does the standard of
4 care require an ENT to inform his patient that they
5 might have cancer based upon your findings on March 26,
6 2013? In other words, that it's in the differential
7 diagnosis?

8 A. That's why I've done the flexible laryngoscopy and
9 ordered the MRI.

10 Q. That's not my question, doctor. Does the standard of
11 care require an ENT to inform his patient that cancer
12 is on the differential diagnosis?

13 A. I'll say yes.

14 Q. Does the standard of care require an ENT to inform his
15 patient that the MRI did not rule out cancer?

16 A. I've told him that.

17 Q. I appreciate that, not my question. Does the standard
18 of care require an ENT to inform his patient that an
19 MRI does not rule out cancer?

20 A. Yes.

21 Q. Does the standard of care require an ENT to inform his
22 patient that the only way to determine if cells are
23 abnormal or not is to look at them under a microscope
24 by way of a tissue sample?

25 A. If he still has something abnormal, yes.

565, 568, 503 S.E.2d 712, 713 (1998)). When deciding a directed verdict or JNOV motion, the trial court does not have “the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.” *Id.* at 569, 787 S.E.2d at 513 (citing *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (2000)).

ARGUMENT

Plaintiff’s Motion should be denied because the evidence presented at trial unequivocally supports the jury’s verdict that Dr. Wilson did not breach the standard of care in his medical treatment of the Plaintiff, Mr. Miller. The Plaintiff’s Motion attempts to persuade this Court to become the finder of fact, a role reserved for the jury in this case.

The Plaintiff’s argument is that the evidence establishes a breach in the standard of care in three distinct respects: (1) the testimony shows that a biopsy was the only way to rule out cancer, and because a biopsy was not performed on the spot of Mr. Miller’s tonsil, the standard of care was breached; (2) Dr. Wilson did not inform Mr. Miller that cancer was on the differential diagnosis, which was required by the standard of care; and (3) Dr. Wilson did not tell Mr. Miller that the MRI taken did not rule out cancer. Plaintiff’s arguments in support of its motion are an overly restrictive view of the evidence presented at trial.

Specifically, Plaintiff’s arguments rely solely on the assumption that cancer was present in 2013 when Mr. Miller was treated by Dr. Wilson. It is clear that the jury in this case determined that cancer was not present in Mr. Miller’s tonsil when he was treated by Dr. Wilson, as shown below, the evidence presented supports the jury’s conclusion. As such, the standard of care arguments in Plaintiff’s memorandum are inapplicable because the arguments are based on the assumption that cancer was present at the time of treatment in 2013, which was rejected by the jury. Even though Plaintiff’s experts opined that Mr. Miller had cancer in 2013—and one of

Plaintiff's experts, Dr. Blum, was instructed by the Plaintiff to assume a missed diagnosis in reaching his opinions—Defendants' expert opined that Mr. Miller did not have cancer in 2013, and it was the jury's role to make a determination as to the credibility of the testimony and make their findings of fact based on the testimony they found credible. It is clear that the jury came to a verdict based on the evidence presented, and the jury clearly concluded that Dr. Wilson did not breach the standard of care in his treatment of Mr. Miller. Further, Dr. Wilson could not have breached the standard of care in his treatment of Mr. Miller based on the jury's finding that cancer was not present in Mr. Miller's tonsil in 2013. The Plaintiff now asks this Court to step in and usurp the jury's role in this case and decide credibility issues, and resolve conflicts in the testimony and evidence, which is not this Court's role. *See Id.*

When the evidence is viewed in its entirety, as the jury did, the verdict in this case is supported by the evidence presented. Therefore, a judgment notwithstanding the verdict, or a new trial are not appropriate.

I. The Evidence Shows that a Biopsy was Not Required, nor was it Appropriate.

The testimony at trial demonstrated that Mr. Miller's complained of spot went away by the third visit to Dr. Wilson, and, thus, a biopsy was not appropriate at any time during Mr. Miller's three visits to Dr. Wilson. As evidenced by the testimony of Dr. Wilson, Dr. Hornig, and Dr. Myssiorek, the treatment of a patient by an ENT is a process. The standard of care requires an ENT to follow a patient to see if their presenting symptoms improve, and the changes in the patient's symptoms inform the physician's ongoing differential diagnosis. Dr. Hornig testified that cancer would have been on any ENT's differential diagnosis when a patient with Mr. Miller's symptoms presented to an ENT, but that as the physician monitors Mr. Miller's symptoms over a period of time, and sees an improvement of the symptoms, cancer begins to fall down in terms of

importance on the differential diagnosis, and so does the need for a biopsy. This is exactly what the evidence shows happened in this case.

Plaintiff's argument is that the only way to rule out cancer is to order a biopsy, and that Dr. Wilson's failure to order a biopsy is a breach of the standard of care. Plaintiff's memorandum cites to Dr. Hornig's deposition testimony wherein Dr. Hornig testified that the only accepted way to rule out cancer is with a biopsy. (Pl.'s Mem. 6). Plaintiff's use of Dr. Hornig's deposition is taken out of context, as Plaintiff fails to include the deposition testimony one page before wherein Dr. Hornig testified that in ruling in or ruling out cancer the process is more complicated than just whether you take a biopsy. (Hornig Dep. 11:1-10).¹ Furthermore, Plaintiff fails to include in their quotation of Dr. Hornig that Plaintiff's counsel was asking Dr. Hornig about the "generalities" of what the purpose of a biopsy is with regard to cancer, and "what is well-accepted in the ENT field." (Hornig Dep. 11:24-12:1). The question quoted by Plaintiff in their memorandum is not with regard to the specific case of Dr. Wilson's treatment of Mr. Miller and is taken out of context. When the subject quote of Dr. Hornig is read within the context of the question, the testimony demonstrates that ruling out cancer in a patient is a process, it is not black and white. Dr. Hornig reiterated this testimony and opinion in his testimony at trial. The standard of care requires an ENT to examine a patient, observe the presenting symptoms, order tests judiciously, and to follow the patient to see if the symptoms improve with treatment. A biopsy is a test that would be ordered if a suspicious symptom persists, and a biopsy is not required in every case when a presenting symptom of a patient gives a physician a suspicion of cancer.

Further, Plaintiff's theory regarding a need for a biopsy fails by way of Mr. Miller's third visit to Dr. Wilson. Both Dr. Hornig and Dr. Myssiorek testified that based on Dr. Wilson's chart,

¹ A copy of the relevant portions of Dr. Hornig's deposition testimony is attached hereto as "Exhibit A."

showing that Mr. Miller's spot had cleared up by the third visit, there would be nothing to biopsy on Mr. Miller. Dr. Myssiorek's criticism, when asked to base his opinion on the findings at the third visit, was that Dr. Wilson should have followed the patient, but it is undisputed that Dr. Wilson told Mr. Miller to come back if anything changed or his symptoms got worse. Thus, based on the evidence presented, it was reasonable for the jury to conclude that a biopsy was inappropriate during Dr. Wilson's treatment of Mr. Miller.

Plaintiff's experts, Dr. Myssiorek and Dr. Blum, both testified in their depositions and at trial that they had to ignore Dr. Wilson's findings in his chart as to Mr. Miller's third visit to reach their conclusions. Dr. Myssiorek testified that he simply did not believe Dr. Wilson's chart as to the third visit. Dr. Blum was instructed by Plaintiff's counsel when he was hired to ignore Dr. Wilson's findings as to the third visit in order to reach his conclusions as to causation. (Blum Dep. 17:11-17).² It was the jury's role at trial to base their determination of credibility on this disregard of the facts by Plaintiff's experts. Obviously, the jury did not ignore Dr. Wilson's findings in his chart as to the third visit by Mr. Miller.

Plaintiff attempts to argue in his memorandum that Dr. Wilson's chart as to the second and third visits by Mr. Miller was incorrect based on Dr. Wilson's recorded findings of the hypopharynx. (Pl.'s Mem. n.2). However, Plaintiff fails to recognize that the tonsils are not in the hypopharynx, and, thus, the findings regarding the hypopharynx are not relevant to this case. Further, Plaintiff's attempt to allege that Dr. Wilson was for some reason inaccurately charting Mr. Miller's visits relies on Mr. Miller's testimony at trial that Mr. Miller would have remembered any examination involving a mirror or flexible laryngoscopy. However, Plaintiff fails to note that Mr. Miller did not remember ever seeing Dr. Wilson for a third time during his deposition. (Miller

² A copy of the relevant portions of Dr. Blum's deposition testimony is attached hereto as "Exhibit B."

Dep. 19:20–20:10).³ But, at trial, Mr. Miller testified he very much remembered his third visit with Dr. Wilson, testifying as to the very room the visit took place, the lack of an exam, and the discussion that he had with Dr. Wilson. It was reasonable for the jury to find that Dr. Wilson’s chart, taken at the time of the three visits with Mr. Miller, was more credible than the testimony of Mr. Miller himself. The jury’s verdict clearly reflects this determination of credibility of the evidence and testimony presented.

II. The Standard of Care did not Require Dr. Wilson to Inform Mr. Miller that Cancer was on the Differential Diagnosis, nor that the MRI did not Rule Out Cancer.

The jury clearly found that based on the testimony of the four physicians who testified at trial, the standard of care of an ENT does not require the ENT to inform a patient that cancer was on their differential diagnosis or that an MRI does not rule out cancer. The Plaintiff’s argument cherry picks the deposition testimony of Dr. Wilson that is in Plaintiff’s favor. The simple fact is, Dr. Wilson does not set the standard of care of an ENT. Furthermore, Dr. Wilson’s deposition testimony cited by the Plaintiff is taken out of context, in yet another attempt by the Plaintiff to use only evidence and testimony favorable to their case and ignore everything else. On the same page of Dr. Wilson’s deposition testimony cited by the Plaintiff, the question prior gives a completely different answer to the one cited by the Plaintiff in their Motion. (Wilson Dep. 51:3–9).⁴ Dr. Wilson explained in his deposition and at trial that he is going through his treatment process with Mr. Miller and explaining the steps to him, and why certain tests are being performed. It is through this process that Dr. Wilson explained his concerns to Mr. Miller. However, this testimony is omitted from Plaintiff’s argument because it fails to support Plaintiff’s one-sided view of the facts and ignores Dr. Wilson’s testimony at trial.

³ A copy of the relevant portions of Mr. Miller’s deposition testimony is attached hereto as “Exhibit C.”

⁴ A copy of the relevant portions of Dr. Wilson’s deposition testimony is attached hereto as “Exhibit D.”

Additionally, Plaintiff's argument ignores Dr. Hornig's testimony at trial that the standard of care does not require an ENT to inform their patient that cancer is on their differential diagnosis, and that an MRI does not rule out cancer. It was the jury's role to resolve this conflict in the testimony at trial, which role the jury performed. The verdict clearly shows that the jury accepted the testimony of Dr. Hornig as to the standard of care. Thus, Plaintiff's argument fails in its attempt to make this Court usurp the jury's role as the finder of fact.

CONCLUSION

Plaintiff's theory of the case is that as soon as Mr. Miller presented to Dr. Wilson, with what Mr. Miller testified was a bump in his throat, Dr. Wilson had an obligation to immediately take a biopsy and failing to do so was a breach of the standard of care. Further, Plaintiff's argument is based on an assumption as to the presence of cancer in 2013, and a manipulation of the testimony to establish the Plaintiff's version of the standard of care. Plaintiff's Motion simply fails to look at the evidence as a whole, and instead presents a one-sided view of the evidence, with cherry picked citations that are only in favor of the Plaintiff's theory of the case. Plaintiff's argument does not meet Plaintiff's burden for a JNOV or a new trial. Plaintiff inappropriately asks this Court to supplant the jury's role and to resolve conflicts in the testimony and evidence. *Maybank*, 416 S.C. at 568, 787 S.E.2d at 513 (citations omitted). Further, when the evidence yields more than one reasonable inference, JNOV or a new trial is inappropriate. Simply put, viewing all evidence and the inferences in the light most favorable to the Defendants, Plaintiff's Motion must fail because the evidence clearly supports the jury's verdict in this case.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

JOHNSON & DAVIS, PA

s/ S. Harrison Williams

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Bluffton, SC 29909

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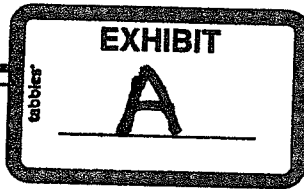
(843) 815-7122- facsimile

buster@jd-pa.com

harrison@jd-pa.com

*Attorneys for Defendants ENT & Face PA
and Brian Wilson, MD*

Bluffton, South Carolina
February 14, 2019



In the Matter Of:

David Miller vs.
ENT & Face, PA, et al

Joshua Hornig, M.D.

December 07, 2018



A. William Roberts, Jr. & Associates

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11
1 Q. Is it accepted in the ENT field that in
2 order to rule in or rule out cancer of a suspicious
3 lesion that you would look at that tissue and
4 biopsy it?

5 A. It's -- it's more complicated than
6 that. But there is two ways of looking at lesions.
7 There's -- the most important one is -- is making
8 sure something happens, meaning following up,
9 ordering tests. And then if the suspicion still
10 persists, then you would proceed to a biopsy.

11 Q. Okay.

12 A. But there's no reason to biopsy every
13 single thing that comes into your office.

14 Q. Well, and I appreciate the rhetorical
15 flourish, but nobody is saying that everything has
16 to be biopsied on every patient when they come into
17 the office. Okay.

18 You understand that's not the
19 Plaintiff's position; do you understand that?

20 A. Yes.

21 Q. So is it accepted in the ENT field that
22 the way an ENT rules out cancer is to biopsy the
23 lesion for which that ENT has suspicion?

24 A. Are we talking generalities or in this
25 case in particular?

1 Q. What is well-accepted in the ENT field? ¹²

2 A. If I was going to do a biopsy of a
3 lesion, then -- sorry -- if I was -- if there
4 was -- if I had a suspicion of a lesion, then I
5 would follow a time, and if I was still suspicious,
6 then I would get a biopsy.

7 Q. Is it the accepted -- the only accepted
8 way in the ENT world to rule out or rule in cancer
9 is by way of biopsy; is that true?

10 A. True.

11 Q. And we know that Dr. Wilson had a
12 concrete concern for cancer in Mr. Miller, right?

13 A. I don't want to speak for Dr. Wilson,
14 but assuming what he ordered, I think that's a
15 reasonable thought. But I can't speak to what he
16 actually was thinking.

17 Q. Well, did you read his deposition?

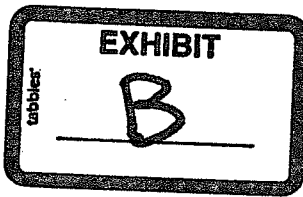
18 A. I did. And so he had a suspicion for
19 cancer, I think, in that deposition.

20 Q. Okay. So if what Dr. Wilson saw in,
21 on, or within Mr. Miller's right tonsil --

22 (The proceedings were interrupted.)

23 BY MR. MCGOWAN:

24 Q. If what Dr. Wilson saw in or on
25 Mr. Miller's right tonsil gave Dr. Wilson a



DAVID MILLER vs ENT & FACE
CP-46-00302 - RONALD H. BLUM, M.D.

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

-----X	*	
DAVID MILLER,	*	
	*	
PLAINTIFF,	*	
	*	Civil Action
vs.	*	2017
	*	CP-46-00302
ENT & FACE, PA, and	*	
BRIAN WILSON, MD,	*	
	*	
DEFENDANTS.	*	
-----X	*	

VIDEOTAPED DEPOSITION OF RONALD H. BLUM, M.D.
New York, New York
Wednesday, June 27, 2018

Reported by:
Mary Agnes Drury

1 with reasonable medical certainty, because the
2 lesion clearly is in the same location that was
3 an abnormality, which is consistent with what
4 one would expect with an early head and neck
5 cancer; in the same location three years later,
6 there is a larger lesion.

7 And another factor in my formulation is
8 that Mr. Miller described in his deposition,
9 persistence of the lesion over time; and, in
10 fact, progression of the lesion over time.

11 Q Is it true, Dr. Blum, that in order to
12 support the opinions you're going to give today,
13 that you have to disregard the finding of Dr.
14 Wilson on April the 23rd of '13, that there is
15 no visual or palpable pathology in the oral
16 cavity or the oropharynx; is that correct?

17 A That's correct.

18 Q Did you examine Mr. Miller?

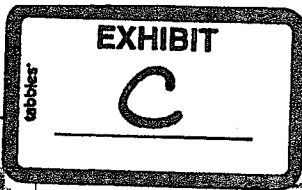
19 A No.

20 Q Have you talked with Mr. Miller?

21 A No.

22 Q Do you find in your review of the
23 records any significant presentations to any
24 medical providers between April the 23rd of 2013
25 and May the -- and May -- excuse me, and October





QUEEN CITY
COURT REPORTING

Transcript of the Testimony of

David Alan Miller

Date: June 8, 2018

Case: David Miller v. ENT & Face, PA; Brian Wilson, MD.

2017-CP-46-00302

Queen City Court Reporting
Phone: (704) 300-9770
Email: office@queencitycourtreporing.com
Internet: www.queencitycourtreporing.com

ELECTRONICALLY FILED - 2019 Feb 14 1:51 PM - YORK - COMMON PLEAS - CASE#2017CP4600302

1 thing I did, we reviewed the MRI.

2 Q. Okay. What did he tell you about the MRI?

3 A. Well, we're sitting there looking at it and, you know,
4 when he called me in his office, he just looked through
5 it. And he said, "Well," he said, "I don't see
6 anything that would concern me about the C-word." And
7 I said, "The C-word?" I said, "Yeah." And he said,
8 "Well, cancer." And I said, "Okay." And that was our
9 last conversation we had.

10 Q. You came back to see him one other time; is that
11 correct?

12 A. Well, no, I don't think I did. After he told me that
13 he didn't see anything about the C-word, I don't think
14 we -- I don't know if we did or not. I can't remember
15 seeing him.

16 Q. The records reflect that you would have seen him on the
17 2nd of April when he would have gone over the MRI with
18 you.

19 A. Uh-huh.

20 Q. And then you followed up with him in three weeks, which
21 would have been April the 23rd?

22 A. I'll tell you, I -- I'll be honest with you, I don't
23 remember that one.

24 Q. All right. Would you dispute the third visit if he's
25 got a record fo it?

1 A. Well, I do not remember that. I really think that as
2 soon as he said, "I don't see anything that would make
3 me worry about the C-word," I think that was pretty
4 much it. When I said, "The C-word?" and he said,
5 "Yeah, cancer."

6 Q. So if his records reflect that he had a visit from you
7 on April the 23rd of '13, you would not agree with
8 that; is that correct?

9 A. I do not remember that, after that last meeting of his.
10 I do not.

11 Q. All right. Now, the second time you saw him was April
12 the 2nd of '13, but some time around, let's see, April
13 the 18th and 19th, you were seen at the Dorn VA, I
14 think it's in Columbia, right?

15 A. That is correct. Yes, somewhere in that time I did.
16 Yes.

17 Q. And that was from an angina situation? It was cardiac?

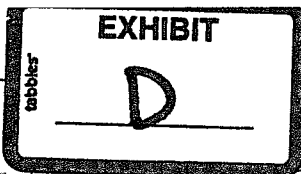
18 A. Yeah. A cardiology -- cardiac situation.

19 Q. You had a stent, right?

20 A. That is -- I had -- well, actually, I had three stents
21 put in in Charleston. That's right.

22 Q. Okay. Now, prior to seeing Dr. Wilson on March the
23 26th of 2013, do you recall, when was the last time you
24 had seen a physician for any reason before you saw him?

25 A. Well, at the VA, let's see here, I'd been going to like



QUEEN CITY

COURT REPORTING

Transcript of the Testimony of:

Brian Wilson, M.D.

Date: October 16, 2017

Case: David Miller v. ENT & Face, PA, Brian Wilson, MD

16-CP-46-00302

Queen City Court Reporting
Phone: (704) 300-9770
Email: office@queencitycourtreporting.com
Internet: www.queencitycourtreporting.com

- 1 A. I'm not going to dispute one way or the other. I'm not
2 familiar with those records enough to speak to them.
- 3 Q. Okay. So in this circumstance does the standard of
4 care require an ENT to inform his patient that they
5 might have cancer based upon your findings on March 26,
6 2013? In other words, that it's in the differential
7 diagnosis?
- 8 A. That's why I've done the flexible laryngoscopy and
9 ordered the MRI.
- 10 Q. That's not my question, doctor. Does the standard of
11 care require an ENT to inform his patient that cancer
12 is on the differential diagnosis?
- 13 A. I'll say yes.
- 14 Q. Does the standard of care require an ENT to inform his
15 patient that the MRI did not rule out cancer?
- 16 A. I've told him that.
- 17 Q. I appreciate that, not my question. Does the standard
18 of care require an ENT to inform his patient that an
19 MRI does not rule out cancer?
- 20 A. Yes.
- 21 Q. Does the standard of care require an ENT to inform his
22 patient that the only way to determine if cells are
23 abnormal or not is to look at them under a microscope
24 by way of a tissue sample?
- 25 A. If he still has something abnormal, yes.

ENT FACE

BRIAN C. WILSON, MD

Person taking history SD

Referred by _____

Patient David Miller Age 62 Date 3/26/13

Chief Complaint spot in back of throat x 3 weeks

History - dysphagia - odynophagia + snoring
- hoarseness L F-C-5
- acid reflux

PROVIN'S BOXER

Medications clonidine, pravastatin, Amlodipine, HCTZ

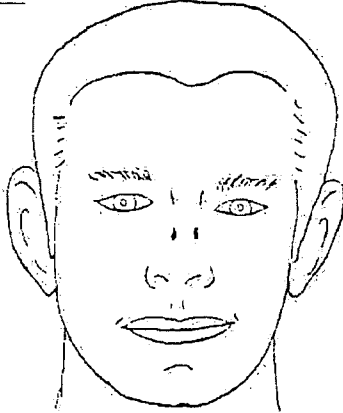
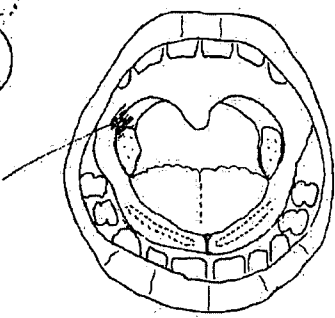
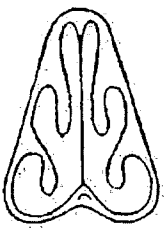
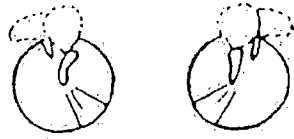
Medication Allergies (rxn) NKA

Operations Back x 3, spines x 3 (4/18/13) SW 4/23/13

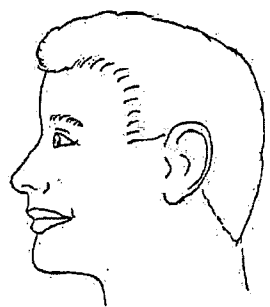
System Review FT
 Family History bleeding tendencies anesthetic complications HTN CVD Asthma diabetes AIDS seizures cancer reflux

Social History 60-90 tabs tobacco former smoker alcohol/drugs occ her lives with mother father legal gaurdian

Physical Exam:
 Heart _____ Impression _____
 Lungs _____ Plan _____
 hearing aid _____



6'0"
235 lbs
163
89



- I
- II
- III
- IV
- V
- VI
- VII
- VIII
- IX
- X
- XI
- XII

Differential Diagnosis
 Tests recommended
 Old records requested
 Risks discussed

Neuro
 Nystagmus
 Rhomberg

Counseling
 Coordination of Care
 Severity/Morbidity
 Time

Photos
 Video watched
 Post-op instructions

Date: 3-26-13

MEDICAL HISTORY

D.O.B. 10-26-50 Age: 62

Patient Name: David A. Miller

How did you find out about us? Yellow Pages

MEDICAL HISTORY

- | Do YOU have? | Does anyone in your family have? WHO? |
|--|---------------------------------------|
| Yes No | |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Bleeding Disorders |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Anesthesia Problems |
| <input checked="" type="checkbox"/> <input type="checkbox"/> | High Blood Pressure |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Stroke |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Heart Trouble |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Asthma |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Diabetes |
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| <input type="checkbox"/> <input checked="" type="checkbox"/> | Recent Hospitalizations |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Nose & Face Injuries |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Reflux |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Snoring or Apnea |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Thyroid Trouble |
| <input type="checkbox"/> <input checked="" type="checkbox"/> | Other Illnesses |

Explain all YES answers:

Take Blood Pressure Medication

CURRENT MEDICINES

Medicine & Dose:	Medicine & Dose:
<u>Clonidine</u>	
<u>Vas vas tatin</u>	
<u>Amiodipine Beryl</u>	
<u>Hydrochlorothiazide</u>	

Medicine?	mild	moderate	severe	Reaction?
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

SURGERY HISTORY

- | | | | | |
|-------------------------------------|-----------------------------------|-------------------------------------|-----------------------------------|--------------------------------------|
| <input type="checkbox"/> T&A | <input type="checkbox"/> Nose Job | <input type="checkbox"/> Middle Ear | <input type="checkbox"/> Parotid | <input type="checkbox"/> Brain |
| <input type="checkbox"/> Ear Tubes | <input type="checkbox"/> Facelift | <input type="checkbox"/> Mastoid | <input type="checkbox"/> Salivary | <input type="checkbox"/> Knee |
| <input type="checkbox"/> Tonsils | <input type="checkbox"/> Eyelids | <input type="checkbox"/> Voice Box | <input type="checkbox"/> Facial | <input type="checkbox"/> Foot |
| <input type="checkbox"/> Adenoids | <input type="checkbox"/> Heart | <input type="checkbox"/> Neck | <input type="checkbox"/> Hernia | <input type="checkbox"/> Hip |
| <input type="checkbox"/> Septum | <input type="checkbox"/> Stomach | <input type="checkbox"/> Thyroid | <input type="checkbox"/> Kidney | <input type="checkbox"/> Shoulder |
| <input type="checkbox"/> Turbinates | <input type="checkbox"/> Lung | <input type="checkbox"/> PaceMaker | <input type="checkbox"/> Prostate | <input type="checkbox"/> GallBladder |

REVIEW OF SYSTEMS

Have you recently had or do you now have:

- | | | |
|---|---|---|
| <input type="checkbox"/> Throat Infections | <input type="checkbox"/> Nasal Obstruction | <input type="checkbox"/> Snoring |
| <input type="checkbox"/> Multiple Antibiotics | <input type="checkbox"/> Post Nasal Drip | <input type="checkbox"/> Apnea |
| <input type="checkbox"/> Hard to Swallow | <input type="checkbox"/> Nasal Deformity | <input type="checkbox"/> CPAP or BiPAP |
| <input type="checkbox"/> Pain Swallowing | <input type="checkbox"/> Nosebleeds | <input type="checkbox"/> Oxygen |
| <input type="checkbox"/> Chills or Fever | <input type="checkbox"/> Sinus Congestion | <input type="checkbox"/> Jaw Positioning Device |
| <input type="checkbox"/> Night Sweats | <input type="checkbox"/> Dry Mouth | <input type="checkbox"/> Skin Lesions/Cancer |
| <input type="checkbox"/> Recent Weight Change | <input type="checkbox"/> Prior Nasal Surgery | <input type="checkbox"/> Rash(es) |
| <input type="checkbox"/> Poor Appetite | <input type="checkbox"/> Teeth Pain | <input type="checkbox"/> Pain Chewing |
| <input type="checkbox"/> Fatigue | <input type="checkbox"/> Poor Smell | <input type="checkbox"/> Muffled Voice |
| <input type="checkbox"/> Blurry Vision | <input type="checkbox"/> Poor Taste | <input type="checkbox"/> Bad Breath |
| <input type="checkbox"/> Double Vision | <input type="checkbox"/> Hoarseness | <input type="checkbox"/> Difficulty Breathing |
| <input checked="" type="checkbox"/> Glasses or Contacts | <input type="checkbox"/> Wheezing | <input type="checkbox"/> Bruises Easy |
| <input type="checkbox"/> Hearing Loss | <input type="checkbox"/> Coughing up blood | <input type="checkbox"/> Blood Transfusion |
| <input type="checkbox"/> Ringing/Buzzing in Ears | <input type="checkbox"/> Spitting up blood | <input type="checkbox"/> Easy Bleeding |
| <input type="checkbox"/> Ear Pain | <input type="checkbox"/> Heartburn | <input type="checkbox"/> Frequent Headaches |
| <input type="checkbox"/> Spinning | <input type="checkbox"/> Indigestion | <input type="checkbox"/> Seizures/Blackouts |
| <input type="checkbox"/> Ear Drainage | <input type="checkbox"/> Nausea/Vomiting | <input type="checkbox"/> Tremors |
| <input type="checkbox"/> Ear "Popping" | <input type="checkbox"/> Frequent Belching | <input type="checkbox"/> Numbness/Tingling |
| <input type="checkbox"/> Hearing Aid | <input type="checkbox"/> Itchy Eyes or Nose | <input type="checkbox"/> Insomnia |
| <input type="checkbox"/> Face Pain/Pressure | <input type="checkbox"/> Watery Eyes | <input type="checkbox"/> Anxiety/Panic |
| <input type="checkbox"/> Chest Pain/Discomfort | <input type="checkbox"/> Clear Nasal Drainage | <input type="checkbox"/> Depression |
| <input type="checkbox"/> Abnormal Heartbeat | <input type="checkbox"/> Excessive Sneezing | <input type="checkbox"/> ADD or ADHD |
| <input type="checkbox"/> Shortness of Breath | <input type="checkbox"/> Allergy Shots | <input type="checkbox"/> Speech Difficulties |
| <input type="checkbox"/> Bronchitis | <input type="checkbox"/> Hot or Cold Spells | <input type="checkbox"/> Are you Pregnant? |
| <input type="checkbox"/> Neck pain or lump | <input type="checkbox"/> Thyroid Issues | <input type="checkbox"/> Are You Nursing? |
| <input type="checkbox"/> Swollen Glands | <input type="checkbox"/> Immune Deficiency | |
| <input type="checkbox"/> Radiation or Chemotherapy | | |

SOCIAL HISTORY

Married Single Divorced

If child, lives with:

Mom dad Guardian

Lives independently

assisted living nursing home

Smokes Cigarettes.: Never

1 1/2 packs/day for 8 years

Cigars Chew Tobacco

Alcohol:

Never Moderate Weekly

Heavy Daily Occasional Social

Drug Overuse:

None

Presently Past Problem



SOUTH CAROLINA DIAGNOSTIC IMAGING

Palmetto Imaging - Rock Hill
175 Amendment Avenue, Suite 101
Rock Hill, SC 29732
p: (803) 547-1137 f: (803) 547-1137

PATIENT: MILLER, DAVID
DOB: 10/26/1950
MRN: 904441
PHYSICIAN: BRIAN WILSON, MD
EXAM DATE: 03/28/2013

EXAM: MR Soft Tissue Neck With and Without Contrast

REASON FOR EXAM: deviated septum/ ? neoplasm tonsil

TECHNIQUE: Multisequence, multiplanar MR images were obtained of the neck pre and post contrast.

CONTRAST: 20 mL of Magnevist.

FINDINGS: Signal intensity in the naso-, oro- and hypopharynx is normal. Specifically, in the tonsil region, I see no evidence of mass or abnormal enhancement.

No cervical lymphadenopathy with only normal-size, and normal-appearing nodes in expected cervical spaces.

Visualized parotid and submandibular glands appear unremarkable. Sublingual space and tongue appear within normal limits.

Thyroid gland is unremarkable.

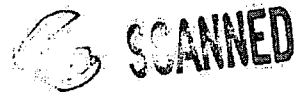
CONCLUSION: No definite evidence of mass or abnormal enhancement in the tonsils.

Greg Joseph, MD

GJ/llh
DD: 03/29/2013 02:07 P
DT: 03/29/2013 04:38 P
Accession#: 08-1601173 VS#: 11281224 CS#: 256407
cc:

BW
4-913

Electronically Signed and Reviewed by Greg Joseph, MD 04/09/2013 10:05 A.



Prelim Report

Palmetto Imaging-Rock Hill

*** FORMATTING EDITS DO NOT SAVE - EDIT TEXT ONLY ***

PATIENT: Miller, David
DOB: 10/26/1950
MRN: 0000904441

PHYSICIAN: Wilson^Brian^^MD

EXAM DATE: 03/28/2013 01:00 P

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GJ/llh

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Accession#: 08-1601173 VS#: 11281224 CS#: 256407

cc:

EW
4-2-13

Unreviewed



PALMETTO IMAGING

ROCK HILL

www.SCDIAG.com

Fax Scheduling
803-547-1137
 Call Patient to Schedule
"Excellence in Radiology"

Scheduling: 803-547-1100
Front Desk: 803-547-1133

175 Amendment Avenue, Suite 101 | Rock Hill, SC 29732
Tax ID# 57-1121114 | One Call Medical: SC604

Patient Name: David Miller

DOB: 10/26/50 Phone (H): 803-684-0078 (W): _____

PLEASE FAX FRONT AND BACK OF PATIENT'S INSURANCE CARD ALONG WITH ANY CLINICAL INFORMATION.

Appt. Date: 3/28/13 Arrival Time: 12:45 PM Appt. Time: _____

Copy of Exam: CD Comparison Study Film Location _____
Reports: Within 24 hours
 STAT Fax _____
 Call Report _____

MRI

CT

Ultrasound

Bone Densitometry

- without
- with/without
- Radiologist Discretion

- Brain
- MRA of _____
- IAC
- TMJ R L
- Soft Tissue Neck
- Cervical Spine
- Thoracic Spine
- Lumbar Spine
- Sacrum / Coccyx
- MRCP
- MR Arthrogram
- Shoulder R L
- Elbow R L
- Wrist R L
- Hand R L
- Pelvis R L
- Hip R L
- Knee R L
- Foot R L
- Ankle R L

Other MRI

*base of skull
to base of
neck
with and without
contrast*

- without
- with/without
- with
- Radiologist Discretion

- Head
- Orbits
- Full Sinus
- Limited Sinus
- Facial Bones
- Abdomen & Pelvis
- Abdomen
- Pelvis
- Chest
- Soft Tissue Neck
- Lumbar Spine
- Cervical Spine
- Thoracic Spine
- Stealth Sinus
- Brain Lab
- CT Angiography

- Cardiac Score
- Other: _____

Advanced Imaging

- 3D Reconstruction

General

- Abdomen
- Right Upper Quadrant (Liver, Gallbladder, Rt Kidney, Pancreas)
- Pelvis (Transvaginal as indicated)
- Renal
- Aorta
- OB (LMP: _____)
- Thyroid
- Scrotum
 - with Doppler
 - w/out Doppler
- Other: _____

Vascular

- Carotid Doppler
- Lower Venous Doppler
 - R L Bilat
- Upper Venous Doppler
 - R L Bilat

*3/26/13
SW*

- DEXA

X-ray

Please Specify:

Sign/ Symptom: septal deviation, neoplasm in tonsil

Office Contact: Name: Juan Phone: 803-366-9000

Physician Signature: (PRINT) Brian C. Wilson (SIGN) _____

Bring this order with you to your scheduled exam

Patient: David Miller
DOB: 10/26/1950 Age: 62y

Date: 03/26/2013
Referring Physician:

Chief Complaint and History of Present Illness:

David is a 62y old Male who presents with a primary complaint of "Spot in back of throat". He has an erythematous, firm spot on the right posterior pharynx near the superior pole of the tonsil for the past 3 weeks. He does snore. He has nasal obstruction and was previously a boxer. He quit smoking 40 years ago. He denies other tobacco products. He denies unexplained weight loss. He denies odynophagia, dysphagia, hemoptysis, or hematemesis.

Location: throat

Severity: Mild **Timing:** Constant. **Onset:** Acute initial onset **Duration:** 3 weeks

Other Modifying Factors: "previous boxer"

Associated Symptoms include, snoring.

Denied Associated Symptoms include, dysphagia, odynophagia, hoarseness.

Past Medical History includes, Hypertension:

Operations: Back x 3 are the operations the patient declares.

Medications: Current Meds:

- * clonidine 0.3 mg tablet (every day By Mouth) Recorded 03/28/2013
- * pravastatin 20 mg tablet (every day By Mouth) Recorded 03/28/2013
- * amlodipine 5 mg tablet (every day By Mouth) Recorded 03/28/2013
- * hydrochlorothiazide 25 mg tablet (every day By Mouth) Recorded 03/28/2013

Dosages on above medicines may not be accurate.

Allergies: Allergies Reviewed

Patient has no allergies

Social History: Tobacco History: FORMER Smoker, Alcohol Usage: Occasional social, Drug Usage: Never, Living Arrangements: Divorced.

Family Medical History: no significant family medical history.

Review of Systems: Glasses or Contacts, , are the pertinent positives the patient declares.

Physical Exam: Height: 6' 0" Weight: 235 lbs. Blood Pressure: 163/89

Ear canals are clear. TMs are intact. Anterior rhinoscopy shows nasal obstruction with severe septal deviation in this previous boxer. He has erythematous, buried right superior tonsil firm region compared to the left. I do not feel any abnormal neck masses. He gags with the mirror. Flexible laryngoscopy was done. Piriform sinus, epiglottis, and vallecula are clear. True vocal cord mobility is intact.

Impression:

Suspicious right, firm tonsil region.

Recommendations:

Schedule MRI base of skull and base of neck. He will follow-up in one week. BCW:scs (03/26) 21642709

Problem List:

- Carried over diagnosis of Septal Deviation
- Carried over diagnosis of Obstruction, Nasal
- Carried over diagnosis of Hoarseness/Dysphonia
- Carried over diagnosis of Malignant neoplasm tonsil
- Carried over diagnosis of Hypertension

Signed Electronically By Brian C. Wilson, M.D.

McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)
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John G. Felder, Jr.
W. Jones Andrews, Jr.
Jordan C. Calloway
Susan F. Campbell
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Daniel "Ernie" Peagler
Robert V. Phillips
Seth Rose
James Stephen Welch* (SC,OK)
Joseph G. Wright, III*
Of Counsel*

FAX COVER SHEET

TO: Brian C. Wilson, MD
 Medical Records Dept. Billing Dept. Radiology Dept.
FROM: Becky Miskelly
DATE: ~~4-18-2016~~ 6-28-16
FAX #: 803-366-9200
PAGES including COVER SHEET: 6 pages

Patient Name	David Miller
First Request Sent On	4-18-2016
Second Request Sent On	6-28-16 <i>fax</i>
Third and Final Request Sent On	<i>fax</i>

Thank you in advance for your help in this matter and for allowing me to fax this request to you. Enclosed, please find a medical records request as well as a HIPAA authorization. Please let me know if you need anything further from me to facilitate this request as quickly as possible. I can be reached at 803-327-7800 should you have any questions. **If the records can be faxed please use the number below. If they are too voluminous please mail.**
Thanks again. 6-28-16

Comments:
Please fax/send records to:
McGowan, Hood & Felder, LLC
1539 Health Care Dr.
Rock Hill, SC 29732
Attn: Becky Miskelly
Legal Assistant
803-327-7800 PHONE
803-324-1483 FAX Alternate Fax 803-328-5656
bmiskelly@mcgowanhood.com

checking status as I have not received any MR as of yet. Thanks! (BM)

1539 Health Care Drive, Rock Hill, SC 29732 • Tel: 803-327-7800 • Fax: 803-324-1483
Rock Hill • Columbia • Anderson • Sumter • Georgetown
www.mcgowanhood.com

*6-29-16
Records faxed again - BM
324-1483*

MEMORY TRANSMISSION REPORT

TIME : 04-18-2016 13:07
 FAX NO.1 : 8033285656
 NAME :

FILE NO. : 221
 DATE : 04.18.13:06
 TO : 8033669200
 DOCUMENT PAGES : 5
 START TIME : 04.18.13:06
 END TIME : 04.18.13:07
 PAGES SENT : 5
 STATUS : OK

SUCCESSFUL TX NOTICE

McGowan, Hood & Felder, LLC

Chad A. McGowan (SC, GA, NC)
 S. Enoch H. Hood
 John G. Felder, Jr.
 W. James Andrews, Jr.
 Jordan C. Calloway
 Susan F. Campbell
 Deborah G. Choozy (NC)
 Ashley White Coach
 Shawn B. Deacy
 Ruskin C. Postor



Loan Petties Horvath
 Whitney Klusman
 Patrick M. Kellan
 Anne E. Maguire
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 Daniel "Eddie" Fogler
 Robert V. Phillips
 Beth Ross
 James Stephen Welch* (SC, OK)
 Joseph G. Wright III*
 Of Counsel*

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 FROM: Becky Mistakelly
 DATE: 4-18-2016
 FAX #: 803-366-9200
 PAGES including COVER SHEET: 5 pages

Patient Name	David Miller
First Request Sent On	4-18-2016
Second Request Sent On	
Third and Final Request Sent On	

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 bmistakelly@mcgowanhood.com

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 www.mcgowanhood.com

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James Stephen Welch* (SC,OK)
Joseph G. Wright, III*
Of Counsel*

Writer's Email: bmiskelly@mcgowanhood.com

April 18, 2016

Brian C. Wilson, MD
197 S. Herlong Ave.
Rock Hill, SC 29732
803-366-9000
Attn: Medical Records Department

Re: Patient: David Miller
DOB: 10-26-1950
SSN: 243-82-8073

Dear Medical Records Custodian:

The above patient requests a copy of his or her medical record. Please find enclosed a Medical Records authorization allowing us to make this request on their behalf. I am hereby requesting **A COPY OF THE FULL MEDICAL CHART INCLUDING BUT NOT LIMITED TO all electronic medical records (either through HIPAA or HI-TECH ACT), any and all reports, records, narratives audit trails, and event logs and from initial visit through the present date.**

The audit trail of this medical chart is considered part of the electronic medical record. HIPAA rules give right of access to a medical chart of a patient to the patient or specified representative. 45 C.F.R. Section 164.524(a)(1) states:

"(1) Right of access. Except as otherwise provided ... an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set ..."

Further, 45 C.P.R. § 164.525(c)(2) addresses the form of access:

"(ii) Notwithstanding paragraph (c)(2)(i) of this section, if the protected health information that is the subject of a request for access is maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, the covered entity must provide the individual with access to the protected information.

1539 Health Care Drive, Rock Hill, SC 29732 · Tel: 803.327.7800 – Fax: 803.324.1483
Rock Hill · Columbia · Anderson · Sumter · Georgetown
www.mcgowanhood.com

Under South Carolina Law, pursuant to S.C. Code Ann. section 44-115-30, "a patient or his legal representative has a right to receive a copy of his medical record, or have the record transferred to another physician, upon request, when accompanied by a written authorization from the patient or his legal representative to release the record."

This requires you to release a copy of all medical records in your possession. Medical records under the HI-TECH ACT includes the audit trail for the patient's medical record.

If your office does not include a copy of the entire medical record (including audit trail), we will have no other option than to institute suit against you or your practice for records that are required to be provided by you to patient by federal and state law.

If there is a charge for the copying of these documents, please contact my office and payment will be forwarded to you. HITECH Act provides for certain guidelines for copy charges¹. HITECH allows individuals to obtain all changes, deletions, modifications and supplements to a person's electronic medical record, identifying the person who made any changes and the time the electronic medical record was accessed. This is considered part of the medical record. Please contact me if you should have any questions.

I look forward to receiving the above records within 30 days as specified under HIPAA, unless other arrangements with my office have been made. If my request cannot be honored within 30 days, please inform me of this by letter; kindly include a date of when I can expect the records.

Sincerely,



Becky Miskelly
Legal Assistant

Enclosures

¹CFR §164.524(c) (4) Specifically provides that only the actual cost may be charged. This charge can only include copying and postage. Electronic copies have neither and thus should be provided with only actual charges. This federal statutory scheme specifically preempts state law on this and is of no application.

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION
(HIPAA and HITECH Compliant)

Patient Name: David Miller

Date of Birth: 10-26-1950

Social Security No.: 243-82-8073

The following health provider is authorized to provide medical records and disclose patient identifiable health information:

Name: Brian C. Wilson, MD

Address: 197 S. Herlong Ave.

Rock Hill, SC 29732

Dates of Service: Initial Visit

to April 18, 2016

The above named health provider is authorized to discuss my medical treatment and health information with my attorneys, McGowan, Hood, & Felder, LLC. The above named health provider is NOT authorized to discuss the medical records requested, medical treatment in the medical record or health information with any person or entity other than the patient, their representative or their legal representative.

The scope of the health information (HIPAA and HITECH compliant) to be provided or disclosed is as follows:
All medical records for all dates of service for all medical conditions and treatment from the above named health care provider, as well as all medical records for all dates of service for all medical conditions and treatment from other health care providers and facilities. This is including all diagnostic testing including but not limited to radiological films. All billing records regarding the referenced incident. All medical release authorizations, notes, memoranda, correspondence, claim forms, reports and insurance documents regarding the referenced incident. A medical provider should maintain an audit trail/event log that specifies Logon Events, Account Log-ons, Object Access, Process Tracking, Policy Change, Account Management, Directory Service Access, System Events, any addition, changes or deletions to an electronic medical record and the designation of the person making any changes to a medical record. We are hereby requesting any audit trail /event log pursuant to the HITECH act and HIPAA for the medical record requested pursuant to this authorization.

The above patient requests a copy of his or her medical record for the time period noticed. This Medical Records authorization allows this law firm to make the medical records request on behalf of the patient (through the patient themselves or their representative). I am hereby requesting **A COPY OF THE FULL MEDICAL CHART INCLUDING BUT NOT LIMITED TO** all electronic medical records (either through HIPAA or HI-TECH ACT), any and all reports, records, narratives, audit trails, and event logs for the time period noted above.

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If your office does not include a copy of the entire medical record (including audit trail), we will have no other option than to institute suit against you or your practice for records that are required to be provided by you to patient by federal and state law.

The health information is authorized to be provided to:

McGowan, Hood, & Felder, LLC or their agent:

1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800 Telephone
(803) 328-5656 Facsimile

1517 Hampton Street
Columbia, SC 29201
(803) 779-0100 Telephone
(803) 787-0750 Facsimile

P.O. Drawer 1778
Anderson, SC 29622-1778
(864) 225-6228 Telephone
(864) 225-7928 Facsimile

28 North Main Street
Sumter, SC 29150
(803) 774-5026 Tel.
(803) 774-5028 Fax

304 Church Street
Georgetown, SC 29440
(843) 833-8082 Telephone
(843) 833-8092 Facsimile

Additionally, this authorization allows any employee of the law firm of McGowan, Hood, & Felder, LLC, including nurse Christina Hedges, to speak with any employee of the above-named medical provider. My attorneys and their employees are authorized to act on my behalf regarding all insurance and legal matters. The patient identifiable health information received pursuant to this release authorization is to be used for the following purpose: No-fault (PIP) insurance claims, liability claims, underinsured motorist claims, workers-compensation claims and all other insurance or legal matters related to my injuries or health condition.

RIGHT OF REVOCATION: I have the right to revoke this release authorization at any time. The revocation must be in writing and be delivered to MCGOWAN, HOOD, & FELDER, LLC. The revocation will not apply to records and information that have already been provided.

EXPIRATION: Unless earlier revoked, this authorization will expire upon the termination of the representation by MCGOWAN, HOOD, & FELDER, LLC.

PATIENT RIGHTS: I have the right to inspect or copy the information to be disclosed, to inspect and amend my medical records, and to an accounting of the use and disclosure of my health information to any third party, as provided in CFR 164.524. My treatment, payment, enrollment or other eligibility for benefits may not be affected by, or conditioned upon, my signing or my failing to sign, this authorization. I further understand the information in my medical record may include information relating to sexually transmitted diseases, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may include information about behavioral or mental health services and treatment for alcohol and drug abuse.

RE-DISCLOSURE: I understand that there is a potential for unauthorized re-disclosure of the information and that the re-disclosed information may not be protected by federal confidentiality rules.

PHOTOCOPIES OF THIS RELEASE ARE VALID AND MAY BE USED IN LIEU OF THE ORIGINAL.

DATE: 4-18-2016

SIGNATURE: Paul A. Miller

FAX

To: 1(803) 366-9200

From: See Included Confidential Medical Report(s)
Medical Records

Fax:
Phone:

Date and time of transmission: 6/28/2016 5:05:22 PM

Number of pages (including cover): 2

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The documents accompanying this telecopy transmission contain confidential information belonging to the sender that is legally privileged. This information is intended for the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to any other party and is required to destroy the information after its stated need has been fulfilled, unless otherwise required by State or Federal Law.

If you are not the intended recipient, you are hereby notified that any disclosure, copying, distributing, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this telecopy in error, please notify the sender immediately to arrange for the return of these documents.

McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)
S. Randall Hood
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FROM: Becky Miskelly
DATE: 4-18-2016
FAX #: 803-366-9200
PAGES including COVER SHEET: 5 pages

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Rock Hill, SC 29732
Attn: Becky Miskelly
Legal Assistant
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803-324-1483 FAX Alternate Fax 803-328-5656
bmiskelly@mcgowanhood.com

*done 4-20-16
BWS*

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Rock Hill · Columbia · Anderson · Sumter · Georgetown
www.mcgowanhood.com

McGowan, Hood & Felder, LLC

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James Stephen Welch* (SC,OK)
Joseph G. Wright, III*
Of Counsel*

Writer's Email: bmiskelly@mcgowanhood.com

April 18, 2016

Brian C. Wilson, MD
197 S. Herlong Ave.
Rock Hill, SC 29732
803-366-9000
Attn: Medical Records Department

Re: Patient: David Miller
DOB: 10-26-1950
SSN: 243-82-8073

Dear Medical Records Custodian:

The above patient requests a copy of his or her medical record. Please find enclosed a Medical Records authorization allowing us to make this request on their behalf. I am hereby requesting **A COPY OF THE FULL MEDICAL CHART INCLUDING BUT NOT LIMITED TO all electronic medical records (either through HIPAA or HI-TECH ACT), any and all reports, records, narratives audit trails, and event logs and from initial visit through the present date.**

The audit trail of this medical chart is considered part of the electronic medical record. HIPAA rules give right of access to a medical chart of a patient to the patient or specified representative. 45 C.F.R. Section 164.524(a)(1) states:

"(1) Right of access. Except as otherwise provided ... an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set ..."

Further, 45 C.P.R. § 164.525(c)(2) addresses the form of access:

"(ii) Notwithstanding paragraph (c)(2)(i) of this section, if the protected health information that is the subject of a request for access is maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, the covered entity must provide the individual with access to the protected information.

1539 Health Care Drive, Rock Hill, SC 29732 · Tel: 803.327.7800 - Fax: 803.324.1483
Rock Hill · Columbia · Anderson · Sumter · Georgetown
www.mcgowanhood.com

Under South Carolina Law, pursuant to S.C. Code Ann. section 44-115-30, "a patient or his legal representative has a right to receive a copy of his medical record, or have the record transferred to another physician, upon request, when accompanied by a written authorization from the patient or his legal representative to release the record."

This requires you to release a copy of all medical records in your possession. Medical records under the HI-TECH ACT includes the audit trail for the patient's medical record.

If your office does not include a copy of the entire medical record (including audit trail), we will have no other option than to institute suit against you or your practice for records that are required to be provided by you to patient by federal and state law.

If there is a charge for the copying of these documents, please contact my office and payment will be forwarded to you. HITECH Act provides for certain guidelines for copy charges¹. HITECH allows individuals to obtain all changes, deletions, modifications and supplements to a person's electronic medical record, identifying the person who made any changes and the time the electronic medical record was accessed. This is considered part of the medical record. Please contact me if you should have any questions.

I look forward to receiving the above records within 30 days as specified under HIPAA, unless other arrangements with my office have been made. If my request cannot be honored within 30 days, please inform me of this by letter, kindly include a date of when I can expect the records.

Sincerely,



Becky Miskelly
Legal Assistant

Enclosures

¹CFR §164.524(c) (4) Specifically provides that only the actual cost may be charged. This charge can only include copying and postage. Electronic copies have neither and thus should be provided with only actual charges. This federal statutory scheme specifically preempts state law on this and is of no application.

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION
(HIPAA and HITECH Compliant)

Patient Name: David Miller

Date of Birth: 10-26-1950

Social Security No.: 243-82-8073

The following health provider is authorized to provide medical records and disclose patient identifiable health information:

Name: Brian C. Wilson, MD

Address: 197 S. Herlong Ave.

Rock Hill, SC 29732

Dates of Service: Initial Visit

to April 18, 2016

The above named health provider is authorized to discuss my medical treatment and health information with my attorneys, McGowan, Hood, & Felder, LLC. The above named health provider is NOT authorized to discuss the medical records requested, medical treatment in the medical record or health information with any person or entity other than the patient, their representative or their legal representative.

The scope of the health information (HIPAA and HITECH compliant) to be provided or disclosed is as follows:

All medical records for all dates of service for all medical conditions and treatment from the above named health care provider, as well as all medical records for all dates of service for all medical conditions and treatment from other health care providers and facilities. This is including all diagnostic testing including but not limited to radiological films. All billing records regarding the referenced incident. All medical release authorizations, notes, memoranda, correspondence, claim forms, reports and insurance documents regarding the referenced incident. A medical provider should maintain an audit trail/event log that specifies Logon Events, Account Log-ons, Object Access, Process Tracking, Policy Change, Account Management, Directory Service Access, System Events, any addition, changes or deletions to an electronic medical record and the designation of the person making any changes to a medical record. We are hereby the requesting any audit trail /event log pursuant to the HITECH act and HIPAA for the medical record requested pursuant to this authorization.

The above patient requests a copy of his or her medical record for the time period noticed. This Medical Records authorization allows this law firm to make the medical records request on behalf of the patient (through the patient themselves or their representative). I am hereby requesting **A COPY OF THE FULL MEDICAL CHART INCLUDING BUT NOT LIMITED TO** all electronic medical records (either through HIPAA or HI-TECH ACT), any and all reports, records, narratives audit trails, and event logs for the time period noted above.

The audit trail of this medical chart is considered part of the electronic medical record. HIPAA rules give right of access to a medical chart of a patient to the patient or specified representative. 45 C.F.R. Section 164.524(a)(1) states:

"(1) Right of access. Except as otherwise provided ... an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set ..."

Further, 45 C.P.R. § 164.525(e)(2) addresses the form of access:

"(ii) Notwithstanding paragraph (c)(2)(i) of this section, if the protected health information that is the subject of a request for access is maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, the covered entity must provide the individual with access to the protected information.

Under South Carolina Law, pursuant to S.C. Code Ann. section 44-115-30, "a patient or his legal representative has a right to receive a copy of his medical record, or have the record transferred to another physician, upon request, when accompanied by a written authorization from the patient or his legal representative to release the record."

This requires you to release a copy of all medical records in your possession. Medical records under the HI-TECH ACT includes the audit trail for the patient's medical record.

If your office does not include a copy of the entire medical record (including audit trail), we will have no other option than to institute suit against you or your practice for records that are required to be provided by you to patient by federal and state law.

The health information is authorized to be provided to:

McGowan, Hood, & Felder, LLC or their agent:

1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800 Telephone
(803) 328-5656 Facsimile

1517 Hampton Street
Columbia, SC 29201
(803) 779-0100 Telephone
(803) 787-0750 Facsimile

P.O. Drawer 1778
Anderson, SC 29622-1778
(864) 225-6228 Telephone
(864) 225-7928 Facsimile

28 North Main Street
Sumter, SC 29150
(803) 774-5026 Tel.
(803) 774-5028 Fax

304 Church Street
Georgetown, SC 29440
(843) 833-8082 Telephone
(843) 833-8092 Facsimile

Additionally, this authorization allows any employee of the law firm of McGowan, Hood, & Felder, LLC, including nurse Christina Hedges, to speak with any employee of the above-named medical provider. My attorneys and their employees are authorized to act on my behalf regarding all insurance and legal matters. The patient identifiable health information received pursuant to this release authorization is to be used for the following purposes: No-fault (PIP) insurance claims, liability claims, underinsured motorist claims, workers-compensation claims and all other insurance or legal matters related to my injuries or health condition.

RIGHT OF REVOCATION: I have the right to revoke this release authorization at any time. The revocation must be in writing and be delivered to MCGOWAN, HOOD, & FELDER, LLC. The revocation will not apply to records and information that have already been provided.

EXPIRATION: Unless earlier revoked, this authorization will expire upon the termination of the representation by MCGOWAN, HOOD, & FELDER, LLC.

PATIENT RIGHTS: I have the right to inspect or copy the information to be disclosed, to inspect and amend my medical records, and to an accounting of the use and disclosure of my health information to any third party, as provided in CFR 164.524. My treatment, payment, enrollment or other eligibility for benefits may not be affected by, or conditioned upon, my signing or my failing to sign, this authorization. I further understand the information in my medical record may include information relating to sexually transmitted diseases, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may include information about behavioral or mental health services and treatment for alcohol and drug abuse.

RE-DISCLOSURE: I understand that there is a potential for unauthorized re-disclosure of the information and that the re-disclosed information may not be protected by federal confidentiality rules.

PHOTOCOPIES OF THIS RELEASE ARE VALID AND MAY BE USED IN LIEU OF THE ORIGINAL.

DATE: 4-18-2016

SIGNATURE: Paul A. Miller

ENT FACE

EAR, NOSE, THROAT & FACIAL PLASTIC SURGERY
BRIAN C. WILSON, MD

PATIENT'S FULL NAME <i>David Alan Miller</i>				TODAY'S DATE <i>3-26-13</i>	
ADDRESS <i>2510 Creekside Dr</i>		APARTMENT #	CITY <i>Sharon</i>	STATE <i>S.C.</i>	ZIP <i>29742</i>
OCCUPATION <i>Retired</i>		LANGUAGE		SOCIAL SECURITY # <i>243-82-8073</i>	
SEX	BIRTHDATE	AGE	RACE	HOME PHONE	CELL
ALLERGIES <i>None</i>				EMAIL <i>David Miller 192659 @gmail</i>	
SINGLE	DIVORCED <input checked="" type="checkbox"/>	MARRIED		REFERRED BY	
SPOUSE'S NAME <i>NA</i>		SPOUSE'S SS #		SPOUSE'S BIRTHDATE	
PATIENT'S EMPLOYER <i>NA</i>			WORK ADDRESS	WORK PHONE	
SPOUSE'S EMPLOYER <i>NA</i>			WORK ADDRESS	WORK PHONE	
CLOSEST RELATIVE OR FRIEND (NOT LIVING WITH YOU)					
RELATIONSHIP <i>Friend</i>			ADDRESS		HOME PHONE <i>704-822-8801</i>

IF PATIENT IS A MINOR, PLEASE COMPLETE THIS SECTION

FATHER'S NAME	EMPLOYER	WORKPHONE
FATHER'S SOCIAL SECURITY #	BIRTHDATE	
MOTHER'S NAME	EMPLOYER	WORKPHONE
MOTHER'S SOCIAL SECURITY #	BIRTHDATE	

INSURANCE INFORMATION

PRIMARY INSURANCE COMPANY		ADDRESS
CONTRACT #	GROUP #	INSURED'S NAME
SECONDARY INSURANCE COMPANY		ADDRESS
CONTRACT #	GROUP #	INSURED'S NAME

AUTHORIZATION AND ASSIGNMENT FOR INSURANCE PURPOSES (PLEASE SIGN BOTH)

I authorize ENT & FACE to give me reasonable and proper medical care by today's standards, and to furnish information to insurance carriers concerning my illnesses and treatments.


SIGNATURE *David A. Miller* DATE *3-26-13*

I assign to ENT & FACE all payment for medical services rendered to me or to my dependents. I understand that I am responsible for any amount not covered by assigned insurance.

SIGNATURE _____ DATE _____

A copy of this authorization and assignment shall be considered as valid as the original.

PAYMENT FOR OFFICE VISITS IS EXPECTED AT THE TIME OF SERVICE

MEDICARE  **HEALTH INSURANCE**
HEALTH CARE FINANCING ADMINISTRATION

NAME OF BENEFICIARY
DAVID A MILLER

MEDICARE CLAIM NUMBER
243 82-8073-A

SEX
MALE

IS ENTITLED TO:

HOSPITAL	(PART A)	05-01-1996
MEDICAL	(PART B)	07-01-2001

SGN
SRE → *David A. Miller*

3 COANNED



Notice of Privacy Practices

Our Commitment to your Privacy

ENT & FACE is committed to maintaining the privacy of your health information. We are required by law to maintain the confidentiality of your health information. This notice describes how health information about you, as a patient of this practice, may be used and disclosed; and how you can get access to your health information. This is required by the Privacy Regulations created as a result of the Health Insurance Portability and Accountability Act of 1996 (HIPPA). We realize that these laws are complicated, but we must provide you with the following important information:

Use and disclosure of your health information in certain special circumstances

The following circumstances may require us to use or disclose your health information:

1. To public health authorities and health oversight agencies that are authorized to collect information.
2. Lawsuits and similar proceedings in response to a court or administrative order.
3. If required to do so by a law enforcement official.
4. When necessary to reduce or prevent a serious threat to your health and safety or the health and safety of another individual or the public. We will only make disclosures to a person or organization able to help prevent the threat.
5. If you are a member of US or foreign military forces (including veterans) and if required by the appropriate authorities.
6. To federal officials for intelligence and national security activities authorized by law.
7. To correctional institutions or law enforcement officials if you are an inmate or under the custody of a law enforcement official.
8. For Workers compensation and similar programs.

Your rights regarding your health information

1. Communications. You can request that our practice communicate with you about your health and related issues in a particular manner or at a certain location. For instance, you may ask that we contact you at home, rather than work. We will accommodate reasonable requests.



Financial Policy

Thank you for choosing **ENT & FACE** as your healthcare provider. We are committed to providing you the highest quality medical care. We also strive to keep our fees as reasonable as possible. In order to keep high quality care at a reasonable cost to our patients, we must require all patients to pay their co-pays, deductibles, and non-covered services at the time of service. Thank you for the opportunity to serve you.

Insured Patients

We would appreciate you providing our receptionist with all your current health insurance information. If we have a contract with your insurance company, we will gladly file your claim; but please remember you are ultimately responsible for all charges. You are also responsible for knowing whether a referral or prior authorization is needed from your Primary Care Physician. You must obtain this referral/authorization PRIOR to your appointment. If a referral is not obtained, you will be expected to pay the full amount at the time of service, or reschedule your appointment.

If we are not contracted with your insurance company, you are expected to pay for your visit in full at the time of service. If you have insurance but do not have your card at the time of service, you will need to be prepared to pay for your visit in full that day. When you bring your card back in, we will be pleased to file your claim for you at that time.

We ask that all co-pays, deductibles and any other non-insurance covered services be paid when checking in with our receptionist.

Uninsured Patients

If you do not have insurance, payment in full is required at the time of service. If you are unable to pay at the time of service, please let us know and we will gladly reschedule your appointment.

Medicaid Patients

A copy of your Medicaid card must be presented to our receptionist at the time of service. Your eligibility will be verified. If coverage is not in effect, or if there are no ambulatory visits available, you will be asked to pay in full or reschedule your appointment. Our office accepts straight South Carolina Medicaid. We do not accept Managed Care Programs or HMO Programs such as Unison, First Choice, or Total Carolina Care. If you have one of these or similar programs, you may still be seen as a patient, however, you will be expected to pay for your visit in full at the time of service.

Cosmetic Consults and Procedures

Cosmetic consultations are to be paid in full at the time of service. Insurance is not filed for these services. **Dr. Brian Wilson is the only Board Certified Facial Plastic surgeon** in the area. All procedures that are cosmetic in nature, such as facelifts, eyelifts, or rhinoplasty are to be paid in full two days prior to the scheduled procedure date with cash or credit card. There are no exceptions to this policy.

Botox or Restylane injections are to be paid in full at the time of service by cash or credit card only. We gladly accept Visa or MasterCard.

2. You can request a restriction in our use or disclosure of your health information for treatment, payment or health care operations. Additionally, you have the right to request that we restrict our disclosure of your health information to only certain individuals involved in your care or the payment of your care, such as family members and friends. We are not required to agree to your request; however, if we do agree, we are bound by our agreement except when otherwise required by law, in emergencies, or when the information is necessary to treat you.
3. You have the right to inspect and obtain a copy of the health information that may be used to make decisions about you, including patient medical records and billing records. You must submit your request in writing to ENT & FACE, 197 South Herlong Avenue, Rock Hill, South Carolina 29732.
4. You may ask us to amend your health information if you believe it is incorrect or incomplete, for as long as the information is kept by or for our practice. To request an amendment, your request must be made in writing and submitted to ENT & FACE, 197 South Herlong Avenue, Rock Hill, South Carolina 29732.
5. Right to a copy of this notice. You are entitled to receive a copy of this Notice of Privacy Practices. You may ask us to give you a copy of this Notice at any time. To obtain a copy of this notice, contact our front desk receptionist.
6. Right to file a complaint. If you believe your privacy rights have been violated, you may file a complaint with our practice or with the Secretary of the Department of Health and Human Services. To file a complaint with our practice, contact ENT & FACE, 197 South Herlong Avenue, Rock Hill, South Carolina 29732. All complaints must be submitted in writing. You will not be penalized for filing a complaint.
7. Right to provide an authorization for other uses and disclosures. Our practice will obtain your written authorization for uses and disclosures that are not identified by this notice or permitted by applicable law.

If you have any questions regarding this notice or our health information privacy policies, please contact ENT & FACE, 197 South Herlong Avenue, Rock Hill, South Carolina 29732.

I hereby acknowledge that I have been presented with a copy of ENT & FACE's Notice of Privacy Practices.

David A. Miller
Name - Signature

3-26-13
Date

David A. Miller
Name - Print

If patient is a minor, Patient's Name

Date

Parent or Guardian Name - Signature

Parent or Guardian Name - Print

Surgery Fees

We will verify insurance benefits prior to the date of surgery. In our efforts to continuously improve our patient service and office efficiency, you will be asked for a credit card number at the time you schedule your surgery. That information will be held securely. After your insurance has paid their portion of all surgery charges, and all contracted write-offs have been made based on your *Explanation of Benefits*, any remaining balance owed by you will be charged to your credit card. It is our company policy to notify you on your account statement before applying these charges to your credit card. If you do not have a credit card, a deposit of \$250 will be required. This will be applied to your surgery charges once your insurance has paid their portion. If there is an outstanding balance of more than \$250, you will have 90 days after the surgery date to pay the complete balance before your account is turned over to our Collection Agency. If the insurance states that your portion is less than \$250, you will be issued a refund of any amount due you.

This in no way will compromise your ability to dispute a charge or question your insurance company's determination of payment.

This policy does not apply to Medicaid or Medicare patients.

Missed appointments

When you miss an appointment, you deny valuable time to another patient in need of medical care. We realize unexpected circumstances may arise. If it is necessary to reschedule or cancel your appointment, please call 24 hours in advance. A \$20 fee will be charged to your account for any missed appointment, or rescheduled/cancelled appointment with less than a 24 hour notice. Please help us serve you better by keeping your scheduled appointments or by calling ahead of time to reschedule.

Balances and Monthly Statements

Any balance not paid within the first three months will be turned over to our Collection Agency and assessed a \$30 processing fee.

Checks returned due to insufficient funds will be subject to an additional charge of \$25. The amount of the returned check plus the \$25 insufficient fund fee must be paid in cash, money order, or by credit card.

Minor Patients

If the patient is a minor (anyone younger than age 18) a parent or guardian must be present. The adult accompanying a minor is responsible for any payment that is due. Please be sure that whoever is bringing the minor is prepared to render any payment that is necessary. If a parent or guardian cannot be present at the time of the visit, we will gladly reschedule the visit to another day.

Thank you for choosing **ENT & FACE**. If you have any questions concerning the above financial policy, please do not hesitate to ask to speak with one of our financial counselors.

I HAVE READ AND AGREE TO THIS FINANCIAL POLICY. I UNDERSTAND AND TAKE RESPONSIBILITY FOR INSURANCE AND PAYMENTS AS STATED ABOVE.

<u>David A. Miller</u>	<u>3-26-13</u>
Patient / Responsible Party - PRINT	Date
<u>David A. Miller</u>	<u>3-26-13</u>
Patient / Responsible Party - SIGNATURE	Date

29021-1 Miller, David

Account	Patient	Clinical
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Charges	Payments	Other
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Posted Date	Code	Description	Provider	Debit	Credit	Balance
03/25/2013	Appt. Pending	01:45 PM	RHNO			0.00
03/26/2013	Appt. Pending	02:45 PM	RHNO			0.00
03/26/2013	Vitals	Vitals; Weight: 235.0 lbs ; Height: 6 ft 0.0 in ; B				0.00
03/26/2013	99204.25	new comprehensive moderate	RHNO	175.00		175.00
03/26/2013	31575.59	Laryngoscopy, flexible	RHNO	175.00		350.00
03/26/2013	Electronic Claim	Medicare - Rec'd: 210.64	RHNO			350.00
03/28/2013	EMR Form	2013 ENT&Face H&P				350.00
03/28/2013	Active Med list	clonidine 0.3 mg tablet --				350.00
03/28/2013	Active Med list	pravastatin 20 mg tablet --				350.00
03/28/2013	Active Med list	amlodipine 5 mg tablet --				350.00
03/28/2013	Active Med list	hydrochlorothiazide 25 mg tablet --				350.00
04/02/2013	Appt. Pending	02:15 PM	RHNO			350.00
04/02/2013	Active Med list	Keflex 500 mg capsule --				350.00
04/11/2013	Medicare Write-Of	Medicare Write-Off			20.83	329.17
04/11/2013	Medicare Write-Of	Medicare Write-Off			65.87	263.30
04/11/2013	Insurance Payment	Medicare (210.64)	RHNO		210.64	52.66
04/11/2013	99213	established expanded low-complex	RHNO	110.00		162.66
04/11/2013	Electronic Claim	Medicare - Rec'd: 53.52	RHNO			162.66
04/23/2013	Vitals	Vitals; Weight: 235.0 lbs ; Height: 6 ft 0.0 in ; B				162.66
04/23/2013	99213	established expanded low-complex	RHNO	110.00		272.66
04/23/2013	Cash Payment	Cash # (52.66)	RHNO		52.66	220.00
04/23/2013	Electronic Claim	Medicare - Rec'd: 53.52	RHNO			220.00
05/03/2013	Medicare Write-Of	Medicare Write-Off			42.83	177.17
05/03/2013	Insurance Payment	Medicare (53.52)	RHNO		53.52	123.65
05/14/2013	Medicare Write-Of	Medicare Write-Off			42.83	80.82
05/14/2013	Insurance Payment	Medicare (53.52)	RHNO		53.52	27.30
05/21/2013	Cash Payment	Cash # (27.30)	RHNO		27.30	0.00
	Problem List	Deviated nasal septum (470)				0.00
	Problem List	Other diseases of nasal cavity and sinuses (478)				0.00
	Problem List	Other voice and resonance disorders (784.49)				0.00
	Problem List	Malignant neoplasm of tonsil (146.0)				0.00
	Problem List	Unspecified essential hypertension (401.9)				0.00
	Problem List	Nasal bones, closed fracture (802.0)				0.00
	Problem List	Acute tonsillitis (463)				0.00
	Total			570.00	570.00	0.00

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Special Circuit Court Judge

Case No. 2017-CP-46-00302

RECEIVED
MAR 05 2019
SC Court of Appeals

David Miller,.....Appellant,

v.

ENT & Face PA, and Brian Wilson, MD,.....Respondents.

NOTICE OF APPEAL

Appellant David Miller appeals from an order of the Honorable Daniel D. Hall denying his post-trial motions. A one-week trial was held on January 28, 2019 and the jury returned a verdict in favor of Respondents on February 1, 2019. Appellant timely filed his post-trial motions, which included motions for judgement notwithstanding the verdict and thirteenth juror. Respondents opposed the motions. No hearing was held, and on February 20, 2019, Judge Hall issued the order denying the post-trial motions. This appeal follows.

Signature Page to Follow