THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION

Full Commission

---

WCC File No. 1200349
Appellate Case No. 2018-000133

RECEIVED
OCT 01 2018
SC Court of Appeals

---

James Provins, Employee/Deceased,
Debra Provins, Alleged Dependents/Claimants, Appellants,

v.

Spirit Construction Services, Inc., Employer,
And Insurance Company of the State of PA, Carrier, Respondents.

---

**RECORD ON APPEAL**

**Volume I of III**

---

September 12, 2018

Donald L. Smith, (Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
*Attorney for Appellants*

Mr. J. South Lewis, II, Esquire
WILLSON JONES CARTER
& BAXLEY, P.A.
872 South Pleasantburg Drive,
Greenville, SC 29607
Phone: (864) 527-3284
Fax: (864) 235-6015
jslewis@wjlaw.net
*Attorney for Respondents*

## INDEX

### I. ORDERS AND DECISIONS


Appellate Panel Decision and Order, filed January 11, 2018 ..... 1

Administrative Order dismissing Appellants' Request for Commission Review, filed May 26, 2017 ..... 16

Decision and Order of Commissioner R. Michael Campbell, II, filed March 6, 2017 ..... 18

Appellate Panel Decision and Order, filed February 27, 2013 ..... 39

Decision and Order of Commissioner Gene McCaskill, filed September 7, 2012 ..... 49


### II. PLEADINGS


Appellants' Motion to Compel Treatment, filed March 14, 2014 ..... 58

Respondents' Motion to Compel and Exhibits, filed March 25, 2014 ..... 62

Respondents' Form 58, filed January 12, 2015 ..... 70

Respondents' Form 58, filed July 15, 2015 ..... 72

Respondents' Supplemental Form 58, filed July 28, 2015 ..... 74

Respondents' Form 58, filed October 9, 2015 ..... 76

Respondents' Form 58, filed October 20, 2015 ..... 78

Respondents' Form 58, with Addendum, filed July 15, 2016 ..... 80

Respondents' Form 58, with Addendum, filed November 23, 2016 ..... 86

Appellants' Amended Pre-Hearing Brief, filed November 25, 2016 ..... 92

Respondents' Form 58, with Addendum, filed December 2, 2016 ..... 98

Memorandum of Employee/Appellant's Initial Brief, filed July 24, 2017 .... 104

Brief of Defendants/Respondents, filed August 11, 2017 ..... 130

Reply Brief of Employee/Appellant, filed August 21, 2017 ..... 146

Appellants' Form 30 with Addendum, filed March 20, 2017 ..... 155

Motion to Reinstate, filed May 31, 2017 ..... 159

Respondents' Response to Appellants' Motion to Reinstate, filed June 9, 2017 ..... 163

Appellant's Notice of Appeal, filed January 26, 2018 ..... 169

**III. TRANSCRIPTS**

Transcript of Compensability Hearing, held on August 14, 2012 (mistakenly dated September 12, 2012) ..... 172

Transcript of Single Commissioner Hearing under Commissioner R. Michael Campbell, II, held on December 5, 2016 ..... 248

Transcript of Full Commission Hearing, held on November 14, 2017 ..... 309

**IV. EXHIBITS**

APA Submissions and Hearing Exhibits, pages 1-696

Appellants' Submissions ..... 334

Respondents' Submissions ..... 447

Appellants' Additional Submissions..... 883

**V. CERTIFICATE OF COUNSEL** ..... 1033

# APPELLATE PANEL DECISION AND ORDER
# FULL COMMISSION
# JANUARY 11, 2018

APPELLATE PANEL

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1200349

| | |
|---|---|
| James Provins, Employee/Deceased<br>Debra Provins, Alleged Dependent,<br>vs. | CLAIMANTS |
| Spirit Construction Services, Inc., | EMPLOYER, |
| AND | |
| Insurance Company of the State of PA, | CARRIER,<br>DEFENDANTS/RESPONDENTS |

---

Appellate Panel Review held in Columbia, South Carolina, on November 14, 2017 per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed January 11, 2018

---

APPEARANCES:

Appellant /Claimant represented by Donald L. Smith, Esquire of Attorney Office of Donald Smith in Anderson, South Carolina.

Defendants/Respondents represented by J. South Lewis, II, Esquire of Willson Jones Carter & Baxley, P.A. in Greenville, South Carolina.

RECEIVED
JAN 29 2018
SC Court of Appeals

## STATEMENT OF THE CASE

The parties were heard by Commissioner R. Michael Campbell, II, on December 5, 2016, in Anderson, South Carolina. On March 6, 2017, Commissioner Campbell issued the following Order:

> **IT IS, HEREBY, ORDERED** that the claim for death benefits is **denied**.
>
> No hearing costs are assessed in this instance.
>
> **IT IS SO ORDERED.**

In his Decision and Order, dated March 6, 2017, Commissioner Campbell made the following specific Findings of Fact and Conclusions of Law:

### Findings of Fact

IT IS FOUND AS A FACT:

1. That all parties to this action are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Provins as Employee/Deceased/Claimant, Debra Provins as Alleged Dependent/Claimant, Spirit Construction Services, Inc. as Employer, and Insurance Company of the State of PA as Carrier, Defendants.

2. That Employee/Deceased/Claimant James Provins was an employee of the above-named Employer on January 24, 2012, on which date he did sustain an injury to his right shoulder.

3. That the average weekly wage of Employee at the time of the above-described accident was $1,130.51, with a corresponding compensation rate of $725.47.

4. Employee passed away on April 14, 2014, before he reached maximum medical improvement for his right shoulder.

5. At the time of Employee's death, he had not been released from care for his right shoulder, and was still undergoing treatment with Dr. Bonnarens.

6. There was no bad faith denial of medical treatment or unreasonable delay by Defendants. The evidence, including emails among counsel included in Defendants' exhibits, indicate that another surgery had been recommended by Dr. Bonnarens (for a recurrent rotator cuff tear) and Defendants requested medical releases be signed to further investigate causation of same. (Defendants' Exhibit A).

7. Prior to the work injury of January 24, 2012, Employee suffered from a significant alcohol abuse problem. This finding is based upon the medical records which illustrate

Employee was a long-suffering alcoholic, and drank excessively, to include beer and liquor, for the majority of his life. These records included history provided by Employee, as well as family members, such as the following:

a. Ms. Provins, Claimant's widow, provided such a history at the time of his hospitalization/death in April 2014. "*According to his wife* a long history of alcoholism...". (*See* APA #18, p. 374)

b. An admission report from April 10, 2014, details a history of a "52-year-old male who is an alcoholic and drinks about half a pint of Vodka *every day for most of his life*...". (*See* APA #18, p. 234)

c. On July 7, 2009, Employee's sister, Ms. Zimmerman, called the police and Employee was transported to University of Louisville Hospital with chief complaint of "I'm drinking myself to death." He further reported that "I can't sleep at all unless I get drunk." It was reported that Employee was a longstanding alcoholic, who consumed 16-18 beers per day and a half a pint to a pint of liquor per day. (*See* APA #11, pp. 121-126)

d. When Employee initially began treating with Dr. Bonnarens, on April 15, 2013, he reported drinking 8-10 beers per day, and this was before his shoulder surgery. (*See* APA #12, p. 154)

e. In none of the post-accident medical reports does it indicate that Employee's drinking habits changed or increased after his work injury or shoulder surgery, which is indicative of someone who simply has been a longstanding user of alcohol, notwithstanding the work injury. The testimony of Employee's widow, Debra Provins, that the drinking only became a problem after his work injury, in response to dealing with his pain, is not supported by the history she herself provided upon Employee's hospital admission on April 10, 2014. (*See* APA #18, p. 374)

8. I give little weight to the report of Dr. Price. Dr. Price's opinion that Employee had "No history of pain, anxiety, depression or alcoholism prior to" the work injury is clearly refuted by the pre-injury medical records. I find that Employee did have a pre-injury history of alcoholism and depression as indicated by his suicidal threats and excessive alcohol consumption pre-injury. Even Employee's other expert, Dr. Martin, acknowledges a history of depression, suicidal ideation, and alcohol dependence.

9. Dr. Price's opinion is based on incorrect, or at a minimum flawed, facts which formed his causation opinion, including but not limited to the following:

a. Ms. Provins told Dr. Price that Employee "developed an alcohol abuse problem secondary to his injury," but the medical records and Ms. Provins' own testimony do not support this assertion. Ms. Provins acknowledged at the hearing that she was unaware of his heavy abuse of alcohol, to include hard liquor, as far back as 2001. (Hr. Tr., pp. 26-27)

b. The information provided by Employee's sister, Alice Marie Zimmerman, that prior to his injury he was "a social drinker but had not consumed alcohol the way he did following his injury" is not supported by the pre-injury medical records. Specifically, Ms. Zimmerman herself called the police on Employee and had him hospitalized in July of 2009, at which time a history was provided that he drank 16-18 beers per day, as well as half a pint to a pint of liquor per day.

c. Dr. Price did not review any medical records from before the work injury, so as to ascertain a complete history of his alcohol habits.

10. Dr. Price, as a PhD and licensed clinical psychologist, is not qualified to provide a medical opinion regarding a cause of death.

11. Dr. Martin's causation affidavit is not reliable, in that it acknowledges pre-injury alcohol abuses, but then relies on subjective history included in Dr. Price's report from Employee's attorney, Employee's widow, and his sister, in opining that his alcohol consumption worsened after the work injury. However, Dr. Martin did not review the body of medical records showing issues with alcohol abuse prior to the work injury. Furthermore, Dr. Martin's opinion cannot be reconciled with the hospital admission records in April of 2014, which outline a lifelong history of alcohol abuse.

12. Dr. Martin's affidavit is further discredited by his reliance upon the report of Dr. Price, which, as detailed herein, contains factual errors and inconsistencies regarding Employee's pre-injury alcohol dependency. Therefore, I give little weight to Dr. Martin's affidavit.

13. I give greater weight to the expert report of Dr. James Ballenger, who has practiced clinical psychiatry and served as a forensic examiner for over 30 years. Dr. Ballenger reviewed voluminous records and explained his opinions at his deposition. Dr. Ballenger's conclusions that Employee suffered from a progressively worsening alcoholism over the course of his adult life is consistent with the medical records, both prior to and subsequent to the work injury. I give greater weight to Dr. Ballenger's conclusion that the work injury had essentially no impact upon Employee's alcohol abuse and ultimate death.

14. No qualified medical doctor who actually treated Employee prior to his death, or in the hospital at the time of death, provided a medical causation regarding the precise causative factors in Employee's death. Thus, we are left to rely on posthumous analysis by experts to determine whether there is any causal connection between Employee's right shoulder injury and his death.

15. The cause of Employee's death was multifactorial, to include sepsis, respiratory failure, multi-organ decompensation, and alcohol abuse. While alcohol was certainly a contributing factor – if not a primary factor – in his ultimate death, no expert has pinned down the precise cause of death. This finding is based upon the Death Certificate (Claimants' Exhibit R, p. 685), and the "Death Summary" from the hospital at the time of death (APA #18, p. 397).

16. The testimony of Ms. Provins, Employee's widow, was not reliable as it related to Employee's history of alcohol use. This finding was based on my observation of her testimony, and comparison of same to the pre-injury medical records:

    a. Ms. Provins admitted at the hearing that she would not be around her husband for weeks at a time while he traveled for work, and she did not know to what extent he was drinking before the injury (*See* Hr. Tr. pp. 27-28)

    b. She testified that prior to the injury, Employee was a beer drinker, but began consuming liquor in large amounts after the injury. However, this does not square with the report she provided to the hospital in April 2014, nor is it consistent with the pre-injury medical records, going all the way back to 2001, in which it was noted that Employee drank beer and hard liquor. (*See* APA #10, p. 113)

    c. She admitted that she really knew very little about Employee's health history. (*See* Hr. Tr. p. 35)

17. The testimony of Ms. Zimmerman, Employee's sister, regarding his pre-injury alcohol use is not supported by the greater weight of the evidence in the record. While she testified that Employee did not drink alcohol excessively prior to the injury, she herself called the police on Employee in 2009, at which time it was reported he was drinking excessive amounts of beer and liquor on a daily basis. Furthermore, she acknowledged that she had no knowledge of his drinking habits when he was traveling regularly for work, but that when he was home, she saw him regularly drink beer and liquor. (Hr. Tr. pp. 46-49)

18. There is no objective evidence – only subjective history provided by Employee's relatives - that his drinking increased significantly after his work injury. In fact, Employee admitted to drinking on a daily basis prior to the work injury at the Compensability Hearing. What is more, there is not a single medical record, either with the treating workers' compensation doctors or his personal doctors/hospitals in Kentucky, which indicate that Employee's alcohol consumption increased after the work injury. To the contrary, on his admission to the hospital in April 2014, he reported that he had tried to quit drinking. (APA #18, p. 264) I decline to speculate that Employee drank more as a result of his work injury.

19. Even assuming Employee has increased his alcohol intake after – and because of - the work injury, such would not constitute a compensable work "injury by accident" or death. Dr. Ballenger testified that the act of drinking, even for an alcoholic, is an intentional one. (Claimants' Exhibit J, p. 619) Injury resulting from a willful intent to injure one's self is not compensable. S.C. Code Ann. 42-9-60. I find that Employee understood the harm his drinking was causing.

20. Employee knew, even before his work injury, that he was harming his body drinking. He told the University of Louisville Hospital in July 2009 that "I'm drinking myself to

death." (APA #11, pp. 121-126) Under Caper v. Flautt, 407 S.E. 2d 248 (1991) an injury has to be unforeseen or unexpected to be compensable, and the medical records establish that Employee appreciated the damage that alcohol abuse was causing, including the risk of death, and had been counseled to quit drinking and seek treatment. Under the circumstances, I cannot find that his death was "by accident" as required to be considered compensable.

21. I find that it would be against public policy to hold that one's choice to abuse a substance, which results in death, should be attributable to his employer/carrier. This would create a "slippery slope" which could result in unintended conclusions, such as an addict's behavior being ascribed to a workers' compensation claim.

22. Claimants have failed to prove by a preponderance of the evidence that Employee/Deceased's death in April 2014 is causally related to the shoulder injury which occurred on January 24, 2012.

23. Defendants' motion for costs and attorney's fees is denied.

Conclusions of Law

Accordingly, as provided in § 42-17-40, S.C. Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Employee/Deceased, James Provins, was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer, Spirit Construction, was a covered employer under the Act.

2. Under § 42-1-160, Employee/Deceased did sustain an injury to his right shoulder, for which he was afforded medical treatment by Defendants.

3. Under § 42-9-290, Employee/Deceased's death was not proximately caused by the January 24, 2012, right shoulder injury.

On March 20, 2017, within the statutory period, counsel for Claimants filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties prior to oral argument presented to the Appellate Panel on November 14, 2017. By appeal, counsel for Claimant submitted the following grounds *verbatim* for review:

1. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant has not died, in part, because of the Employer's bad faith refusal to abide by the Act and provide treatment for Claimant.

2. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant has not suffered permanent impairment to his right upper extremity prior to his untimely death.

3. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant's issues with alcohol has retuned prior to the on-the-job accident, despite no evidence to substantiate the claim other than employees who maintained their job despite mass layoffs.

4. Whether the Single Commissioner erred in finding that Defendants' allegation that Claimant prevented their investigation of causation by failing to sign a HIPAA form, when the treating physician has related the second tear of the shoulder to the first tear.
5. Whether the Single Commissioner erred as a matter of fact and law in dining that Claimant's inability to "wipe his ass", maintain his career, earn a living to support his disabled wife and two daughters, necessity of borrowing from everyone to subsist, did not cause the iron worker depression.

6. Whether the Single Commissioner erred as a matter of fact and law in finding that Dr. Ballenger was credible, despite the fact that he misrepresented his payment for his testimony, the fact that he relied on testimony company employees from the initial hearing which was summarily dismissed by the sitting Commissioner, instructed the undersigned that he was the expert and knew that clear meaning of Claimant's expert's words were not what he meant with their use, etc.

7. Whether the Single Commissioner erred as a matter of fact and law in ignoring the findings of Claimant's IME performed by Dr. Dwight Jacobus, M.D.

8. Whether the Single Commissioner erred as a matter of fact and law by disregarding public policy, and finding on behalf of the defense who denied, denied, denied, until Claimant died.

## FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. That all parties to this action are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Provins as Employee/Deceased/Claimant, Debra Provins as Alleged Dependent/Claimant, Spirit Construction Services, Inc. as Employer, and Insurance Company of the State of PA as Carrier, Defendants.

2. That Employee/Deceased/Claimant James Provins was an employee of the above-named Employer on January 24, 2012, on which date he did sustain an injury to his right shoulder.

3. That the average weekly wage of Employee at the time of the above-described accident was $1,130.51, with a corresponding compensation rate of $725.47.

4. Employee passed away on April 14, 2014, before he reached maximum medical improvement for his right shoulder.

5. At the time of Employee's death, he had not been released from care for his right shoulder, and was still undergoing treatment with Dr. Bonnarens.

6. There was no bad faith denial of medical treatment or unreasonable delay by Defendants. The evidence, including emails among counsel included in Defendants' exhibits, indicate that another surgery had been recommended by Dr. Bonnarens (for a recurrent rotator cuff tear) and Defendants requested medical releases be signed to further investigate causation of same. (Defendants' Exhibit A).

7. Prior to the work injury of January 24, 2012, Employee suffered from a significant alcohol abuse problem. This finding is based upon the medical records which illustrate Employee was a long-suffering alcoholic, and drank excessively, to include beer and liquor, for the majority of his life. These records included history provided by Employee, as well as family members, such as the following:

a. Ms. Provins, Claimant's widow, provided such a history at the time of his hospitalization/death in April 2014. "*According to his wife* a long history of alcoholism...". (*See* APA #18, p. 374)

b. An admission report from April 10, 2014, details a history of a "52-year-old male who is an alcoholic and drinks about half a pint of Vodka *every day for most of his life*...". (*See* APA #18, p. 234)

c. On July 7, 2009, Employee's sister, Ms. Zimmerman, called the police and Employee was transported to University of Louisville Hospital with chief complaint of "I'm drinking myself to death." He further reported that "I can't

sleep at all unless I get drunk." It was reported that Employee was a longstanding alcoholic, who consumed 16-18 beers per day and a half a pint to a pint of liquor per day. (*See* APA #11, pp. 121-126)

d. When Employee initially began treating with Dr. Bonnarens, on April 15, 2013, he reported drinking 8-10 beers per day, and this was before his shoulder surgery. (*See* APA #12, p. 154)

e. In none of the post-accident medical reports does it indicate that Employee's drinking habits changed or increased after his work injury or shoulder surgery, which is indicative of someone who simply has been a longstanding user of alcohol, notwithstanding the work injury. The testimony of Employee's widow, Debra Provins, that the drinking only became a problem after his work injury, in response to dealing with his pain, is not supported by the history she herself provided upon Employee's hospital admission on April 10, 2014. (*See* APA #18, p. 374)

8. We give little weight to the report of Dr. Price. Dr. Price's opinion that Employee had "No history of pain, anxiety, depression or alcoholism prior to" the work injury is clearly refuted by the pre-injury medical records. We find that Employee did have a pre-injury history of alcoholism and depression as indicated by his suicidal threats and excessive alcohol consumption pre-injury. Even Employee's other expert, Dr. Martin, acknowledges a history of depression, suicidal ideation, and alcohol dependence.

9. Dr. Price's opinion is based on incorrect, or at a minimum flawed, facts which formed his causation opinion, including but not limited to the following:

a. Ms. Provins told Dr. Price that Employee "developed an alcohol abuse problem secondary to his injury," but the medical records and Ms. Provins' own testimony do not support this assertion. Ms. Provins acknowledged at the hearing that she was unaware of his heavy abuse of alcohol, to include hard liquor, as far back as 2001. (Hr. Tr., pp. 26-27)

b. The information provided by Employee's sister, Alice Marie Zimmerman, that prior to his injury he was "a social drinker but had not consumed alcohol the way he did following his injury" is not supported by the pre-injury medical records. Specifically, Ms. Zimmerman herself called the police on Employee and had him hospitalized in July of 2009, at which time a history was provided that he drank 16-18 beers per day, as well as half a pint to a pint of liquor per day.

c. Dr. Price did not review any medical records from before the work injury, so as to ascertain a complete history of his alcohol habits.

10. Dr. Price, as a PhD and licensed clinical psychologist, is not qualified to provide a medical opinion regarding a cause of death.

11. Dr. Martin's causation affidavit is not reliable, in that it acknowledges pre-injury alcohol abuses, but then relies on subjective history included in Dr. Price's report from Employee's attorney, Employee's widow, and his sister, in opining that his alcohol consumption worsened after the work injury. However, Dr. Martin did not review the body of medical records showing issues with alcohol abuse prior to the work injury. Furthermore, Dr. Martin's opinion cannot be reconciled with the hospital admission records in April of 2014, which outline a lifelong history of alcohol abuse.

12. Dr. Martin's affidavit is further discredited by his reliance upon the report of Dr. Price, which, as detailed herein, contains factual errors and inconsistencies regarding Employee's pre-injury alcohol dependency. Therefore, we give little weight to Dr. Martin's affidavit.

13. We give greater weight to the expert report of Dr. James Ballenger, who has practiced clinical psychiatry and served as a forensic examiner for over 30 years. Dr. Ballenger reviewed voluminous records and explained his opinions at his deposition. Dr. Ballenger's conclusions that Employee suffered from a progressively worsening alcoholism over the course of his adult life is consistent with the medical records, both prior to and subsequent to the work injury. We give greater weight to Dr. Ballenger's conclusion that the work injury had essentially no impact upon Employee's alcohol abuse and ultimate death.

14. No qualified medical doctor who actually treated Employee prior to his death, or in the hospital at the time of death, provided a medical causation regarding the precise causative factors in Employee's death. Thus, we are left to rely on posthumous analysis by experts to determine

whether there is any causal connection between Employee's right shoulder injury and his death.

15. The cause of Employee's death was multifactorial, to include sepsis, respiratory failure, multi-organ decompensation, and alcohol abuse. While alcohol was certainly a contributing factor – if not a primary factor – in his ultimate death, no expert has pinned down the precise cause of death. This finding is based upon the Death Certificate (Claimants' Exhibit R, p. 685), and the "Death Summary" from the hospital at the time of death (APA #18, p. 397).

16. The testimony of Ms. Provins, Employee's widow, was not reliable as it related to Employee's history of alcohol use. This finding was based on our observation of her testimony, and comparison of same to the pre-injury medical records:

a. Ms. Provins admitted at the hearing that she would not be around her husband for weeks at a time while he traveled for work, and she did not know to what extent he was drinking before the injury (*See* Hr. Tr. pp. 27-28)

b. She testified that prior to the injury, Employee was a beer drinker, but began consuming liquor in large amounts after the injury. However, this does not square with the report she provided to the hospital in April 2014, nor is it consistent with the pre-injury medical records, going all the way back to 2001, in which it was noted that Employee drank beer and hard liquor. (*See* APA #10, p. 113)

c. She admitted that she really knew very little about Employee's health history. (*See* Hr. Tr. p. 35)

17. The testimony of Ms. Zimmerman, Employee's sister, regarding his pre-injury alcohol use is not supported by the greater weight of the evidence in the record. While she testified that Employee did not drink alcohol excessively prior to the injury, she herself called the police on Employee in 2009, at which time it was reported he was drinking excessive amounts of beer and liquor on a daily basis. Furthermore, she acknowledged that she had no knowledge of his drinking habits when he was traveling regularly for work, but that when he was home, she saw him regularly drink beer and liquor. (Hr. Tr. pp. 46-49)

18. There is no objective evidence – only subjective history provided by Employee's

relatives that his drinking increased significantly after his work injury. In fact, Employee admitted to drinking on a daily basis prior to the work injury at the Compensability Hearing. What is more, there is not a single medical record, either with the treating workers' compensation doctors or his personal doctors/hospitals in Kentucky, which indicate that Employee's alcohol consumption increased after the work injury. To the contrary, on his admission to the hospital in April 2014, he reported that he had tried to quit drinking. (APA #18, p. 264) We decline to speculate that Employee drank more as a result of his work injury.

19. Even assuming Employee has increased his alcohol intake after – and because of the work injury, such would not constitute a compensable work "injury by accident" or death. Dr. Ballenger testified that the act of drinking, even for an alcoholic, is an intentional one. (Claimants' Exhibit J, p. 619) Injury resulting from a willful intent to injure one's self is not compensable. S.C. Code Ann. 42-9-60. We find that Employee understood the harm his drinking was causing.

20. Employee knew, even before his work injury, that he was harming his body drinking. He told the University of Louisville Hospital in July 2009 that "I'm drinking myself to death." (APA #11, pp. 121-126) Under Caper v. Flautt, 407 S.E. 2d 248 (1991) an injury has to be unforeseen or unexpected to be compensable, and the medical records establish that Employee appreciated the damage that alcohol abuse was causing, including the risk of death, and had been counseled to quit drinking and seek treatment. Under the circumstances, we cannot find that his death was "by accident" as required to be considered compensable.

21. We find that it would be against public policy to hold that one's choice to abuse a substance, which results in death, should be attributable to his employer/carrier. This would create a "slippery slope" which could result in unintended conclusions, such as an addict's behavior being ascribed to a workers' compensation claim.

22. Claimants have failed to prove by a preponderance of the evidence that

Employee/Deceased's death in April 2014 is causally related to the shoulder injury which occurred on January 24, 2012.

23. Defendants' motion for costs and attorney's fees is denied.

## CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Employee/Deceased, James Provins, was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer, Spirit Construction, was a covered employer under the Act.

2. Under § 42-1-160, Employee/Deceased did sustain an injury to his right shoulder, for which he was afforded medical treatment by Defendants.

3. Under § 42-9-290, Employee/Deceased's death was not proximately caused by the January 24, 2012, right shoulder injury.

## ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

**IT IS, HEREBY, ORDERED** that the claim for death benefits is **denied.**

No hearing costs are assessed in this instance.

**IT IS SO ORDERED.**

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Melody L. James, Commissioner

FULL AFFIRMATION

CONCUR:

Aisha G. Taylor, Commissioner

Gene McCaskill, Commissioner

CERTIFICATE OF SERVICE

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

***By Valerie Deller on January 11, 2018***

# ADMINISTRATIVE ORDER DISMISSING APPELLANTS' REQUEST FOR COMMISSION REVIEW

MAY 26, 2017

# South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723

WCC File #: 1200349

Date of Injury: 01/24/2012

**ADMINISTRATIVE ORDER**

JAMES PROVINS v. SPIRIT CONSTRUCTION
WCC File No: 1200349

The Request for Commission Review in the above captioned case is dismissed. The appellant brief was not timely filed pursuant to R.67-705 H(3).

Amy A. Bracy
Amy A. Bracy
Judicial Director

Date: May 26, 2017

CERTIFICATE OF SERVICE

I hereby certify on May 26, 2017, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

Donald L. Smith
Attorney At Law
122 N. Main Street
Anderson, SC 29621

SPIRIT CONSTRUCTION
118 COLEMAN BLVD
SAVANNAH, GA 31408

J. South Lewis, II
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607

By: Valerie D. Deller, Judicial Department

# DECISION AND ORDER OF COMMISSIONER R. MICHAEL CAMPBELL, II MARCH 6, 2017

DECISION AND ORDER OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1200349

| | |
|---|---|
| James Provins, Employee/Deceased<br>Debra Provins, Alleged Dependent,<br><br>Claimants,<br><br>vs.<br><br>Spirit Construction Services, Inc.,<br><br>Employer,<br>and<br><br>Insurance Company of the State of PA,<br><br>Carrier,<br>Defendants. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) |

| | |
|---|---|
| **HEARING:** | Held in Anderson, South Carolina on December 5, 2016. |
| **APPEARANCES:** | Claimants are represented by Donald L. Smith, Esquire of Anderson, South Carolina.<br><br>Defendants represented by J. South Lewis, II, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina. |
| **PURPOSE OF HEARING:** | To determine the issues as set forth on the Forms 52 and 53. |
| **DECISION AND ORDER:** | **By R. Michael Campbell, II, Commissioner** |
| **FILED:** | March 6, 2017. |

## I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

| Name of Report/Provider | Date of Report | Pages |
|---|---|---|
| **Claimants' Submissions:** | | |
| 1. RediCare | 01/24/12 – 01/30/12 | 1 – 5 |
| 2. Inmed Diagnostic Services of SC | 02/18/12 | 6 |
| 3. Baptist Health Louisville | 05/13/13 – 05/15/13 | 7 – 47 |
| 4. Baptistworx | 06/07/13 – 08/23/13 | 48 – 99 |
| 5. High Field and Open MRI | 10/02/13 | 100 – 101 |
| 6. Oaktree Orthopaedics | 12/23/14 – 01/05/15 | 102 – 104 |
| 7. David R. Price, PhD | 12/23/14 – 01/05/15 | 105 – 108 |
| 8. Gabrielle Linder, PA-C | 06/01/12 | 109 |
| 9. Thomas V. Martin, MD | 06/16/16 | 110 – 112 |
| **Defendants' Submissions:** | | |
| 10. Amin's Family Practice Associates, P.S.C., | 07/30/01 – 09/25/01 | 113 – 114 |
| 11. University of Louisville Hospital | 07/07/09 | 115 – 153 |
| 12. Orthopaedic Associates of Kentuckiana | 04/15/13 – 10/07/13 | 154 – 174 |
| 13. Integrated Case Management | 04/30/13 | 175 – 177 |
| 14. Advanced ENT & Allergy | 04/24/13 | 178 – 182 |
| 15. Baptist Health Louisville | 05/15/13 | 182 – 184 |
| 16. Baptistworx Physical Therapy | 06/02/13 – 12/30/13 | 185 – 209 |
| 17. Jewish Medical Center Southwest | 04/10/14 | 210 – 218 |

| | | | |
|---|---|---|---|
| 18. | St's. Mary & Elizabeth's Hospital | 04/10/14 – 04/14/14 | 219 - 415 |
| 19. | James C. Ballenger, M.D. | 07/15/16 | 416 – 429 |
| 20. | Curriculum Vitae – James C. Ballenger, M.D. | N/A | 430 – 521 |
| | **Defendants' Exhibits:** | | |
| A. | Emails between J. South Lewis, II & Donald L. Smith | 01/07/14 - 03/02/14 | 522 - 525 |
| B. | Emails between J. South Lewis, II & Donald L. Smith | 03/31/15 – 04/06/15 | 526 – 528 |
| C. | Emails between J. South Lewis, II & Donald L. Smith | 06/01/15 | 529 – 530 |
| D. | Correspondence from Donald L. Smith to Dr. David Price, PhD. | 05/19/15 – 05/26/15 | 531 – 532 |
| E. | Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 – 06/08/16 | 533 – 535 |
| F. | Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 – 05/12/16 | 536 – 538 |
| G. | Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 | 539 – 540 |
| H. | Dr. Thomas Martin file materials subpoenaed | | 541 – 547 |
| | **Claimants' Exhibits:** | | |
| I. | Email Correspondence between Counsel | | 548 – 549 |
| J. | Deposition of Dr. James F. Ballenger | | 550 – 636 |
| K. | Dr. Ballenger Case List Since 2001 | | 637 – 669 |
| L. | Dr. Ballenger Pay Explanation | | 670 |
| M. | Dr. Ballenger Expert Witness Retention Contract | | 671 – 676 |
| N. | Excerpt of Dr. Ballenger's Deposition | | 677 – 678 |
| O. | Excerpt of Dr. Ballenger's Deposition | | 679 – 681 |

| | | |
|---|---|---|
| P. | Certificate of Marriage | 682 |
| Q. | Birth Certificates of Jessica Mae Provins and Amanda Jean Provins | 683 – 684 |
| R. | Death Certificate of James Provins | 685 |
| S. | Waiver of Potential Claim – Alice Marie Zimmerman | 686 |
| T. | Waiver of Potential Claim – Jessica Mae Provins | 687 |
| U. | Waiver of Potential Claim – Amanda Jean Provins | 688 |
| V. | Excerpt of Compensability Hearing (Carrion Testimony, pp. 54-60) | 689 – 695 |
| W. | Excerpt of Decision & Order – 09/07/2012 | 696 |


## II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the issues as set forth on Forms 52 and 53, and any other issues which may timely come before the Commission;

2. That Employee/Deceased's accident occurred on January 24, 2012;

3. Employee/Deceased died on April 14, 2014.

4. Employee/Deceased's average weekly wage was $1,130.51 with a corresponding compensation rate of $725.47;

5. Notices were timely and properly served upon all parties of interest;

6. Venue, set in Anderson, South Carolina, is proper as agreed by all parties;

7. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

## III. STATEMENT OF THE CASE

This matter has a fairly involved procedural history. The claim was initiated upon the filing

of a Form 50 hearing request in which Employee/Deceased James Provins (hereinafter "Provins" or "Employee") alleged injury to the right shoulder on January 24, 2012. Defendants, via Form 51, denied compensability. Subsequently, after an evidentiary hearing before Commission Gene McCaskill (hereinafter "Compensability Hearing"), the claim was found compensable. Defendants timely appealed to the South Carolina Workers' Compensation Commission Appellate Panel, and after oral arguments, an affirmation was issued. Thereafter, Defendants began providing Employee medical treatment for the right shoulder.

During the course of medical treatment, Employee filed a Motion to Compel Additional Surgery. Defendants also filed their own Motion to Compel, seeking execution of medical releases to obtain out of state medical records. While a motion hearing was pending and scheduled, Employee died on April 14, 2014. The Death Certificate lists "Acute respiratory failure and septic shock" as the causes of death. (See Claimants' Exhibit "R")

Claimants, through Claimant/Alleged Dependent Debra Provins (hereinafter "Claimant" or "Ms. Provins"), filed a Form 50 on November 18, 2014, seeking entitlement to benefits pursuant to 42-9-280. Prior to the scheduled hearing of January 22, 2015, with Commissioner Barden, and after a pre-hearing conference, the Form 50 was withdrawn. Claimants refiled the Form 50 on March 18, 2015, again asserting entitlement to benefits pursuant to 42-9-280. Subsequently, Claimants filed an Amended Form 50 on April 13, 2015, and additionally filed a Form 52 Death Claim on April 15, 2015. Defendants responded with a Form 53, denying that Employee had sustained a compensable death. A hearing was scheduled before Commissioner T. Scott Beck on October 21, 2015; after a pre-trial conference, Claimants withdrew the Forms 50 and 52.

Claimants refiled the Form 52 on January 25, 2016. A hearing was scheduled before Commissioner Melody James on July 26, 2016. During the pre-trial conference, Commissioner

James ordered the case for mediation. Mediation was held on September 29, at which time the parties did not reach a settlement. This hearing ensued.

At the hearing of December 5, 2016, Ms. Provins asserted that Employee's death resulted from "the bad faith denial of the claim which prolonged his treatment..." Furthermore, and more specifically, Claimants' position is that in order to deal with his pain, Employee became dependent on alcohol, which eventually lead to, or contributed to, his death.

Defendants deny that there was any bad faith denial of the claim. After treatment ensued, to include a surgery, Defendants submitted medical releases to Employee to further investigate causation of the subsequent/recurrent rotator cuff tear; however, those releases had not been executed as of the time of his death. As to the death itself, Defendants assert that the cause of death was multifactorial, as evidenced by the Death Certificate, and that even if Employee's death was attributable to alcohol, such would not justify a compensable death claim. Specifically, Defendants point out that Employee had a significant pre-existing alcohol issue and was an alcoholic prior to the work injury. Defendants rely on the expert report and testimony of Dr. Ballenger, in support of its position that the work injury did not result in his death.

Furthermore, Defendants raise a Capers[1] defense, based on the documented history that Provins had gone to the hospital even before his work injury, reporting that he was drinking himself to death; as such, Defendants contend that death due to alcohol abuse was not an unexpected or unforeseen event, and thus, under Capers, would not meet the standard of "accidental." Finally, Defendants assert a public policy defense. Defendants aver that this matter started as a shoulder claim and the push to morph it into a death claim was done so without reasonable grounds and in bad faith, and request costs and attorney fees be assessed against Claimants.

[1] Capers v. Flautt, 407 S.E. 2d 248 (1991)

## IV. EVIDENCE OF THE CASE

### MEDICAL EVIDENCE BY CLAIMANT

APA #1: On January 24, 2012, Employee was treated for right shoulder pain following a reported a lifting injury at work. On January 30, 2012, he followed up for same.

APA #2: MRI of right shoulder taken February 18, 2012.

APA #3: Baptist Health Louisville. Employee underwent surgical repair of the right shoulder on May 15, 2013.

APA #4: Baptistworx Physical therapy records from June 7, 2013 to August 23, 2013.

APA #5: Employee underwent right shoulder MRI on October 2, 2013, which showed a large recurrent full thickness tear of the rotator cuff.

APA #6: Dwight A. Jacobus, D.O. wrote a letter to Employee's counsel on December 23, 2014, opining that Employee's pathology would lead to a 10-13% rating pursuant to the Sixth Edition of the A.M.A. Guides for Permanent Impairment, and a follow up letter of January 15, 2015 reiterating same.

APA #7: David R. Price, PhD. prepared a report, based on a review of medical records and interviews with Alice Marie Zimmerman and Debra Ann Provins. Dr. Price noted that Ms. Zimmerman gave a history of Employee being a "social drinker" pre-injury, but that he had not consumed alcohol to the extent he did following his injury. Debra Provins provided information that after his work injury, Employee became severely depressed and "developed an alcohol abuse problem secondary to his injury." Ms. Provins did not provide Dr. Price any information about his pre-injury alcohol use.

APA #8: Questionnaire completed by Gabrielle Linder, PA-C on May 1, 2012.

APA #9: Thomas V. Martin, M.D. Dr. Martin prepared an Affidavit in which he opined

that Employee suffered from depressive illness and alcohol abuse disorders prior to his work injury in 2012. He opined that while under psychosocial stressor and pain, Employee would self-medicate his pain and depression with alcohol. Furthermore, he asserted that Employee self-medicated after his work injury, while awaiting additional medical treatment, with alcohol, and that such abuse likely contributed to his multi-organ decompensation which required hospitalization in 2014.

**MEDICAL EVIDENCE BY DEFENDANTS**

APA #10: On July 31, 2001, Employee reported three recent blackout spells in which his eyes rolled back in his head. He reported drinking "beer mostly and hard liquor at times." He was diagnosed with syncopal episodes.

APA #11: Employee was taken by police to University of Louisville Hospital on July 7, 2009, following a call from Employee's sister, after he ingested a large amount of alcohol. He was found sitting in a chair and reported suicidal thoughts. ("I'm drinking myself to death.") It was noted that Employee had experienced multiple episodes of syncope in the past, as well. He reported drinking 16-18 beers per day and a half a pint to one pint of Vodka per day. In the discharge instructions, he was advised to follow up with Alcoholics Anonymous Groups.

APA #12: Employee began seeing Dr. Bonnarens for his right shoulder pain on April 15, 2013, for right shoulder pain. He was diagnosed with a rotator cuff tear, and underwent surgical intervention on May 5, 2013. In post-surgical follow up, he was sent to physical therapy. A repeat MRI was ordered, which showed a recurrent tear of the rotator cuff. Additional surgery was recommended. On October 7, 2013, Employee indicated that he wanted to discuss the follow up surgery with his lawyer, to clarify who was going to be paying for it.

APA #13: Nurse case management notes.

APA #14: Employee underwent surgical clearance on April 24, 2013, with Dr. McMurry, ENT.

APA #15: Employee underwent surgery for right rotator cuff repair on May 15, 2013, at Baptist Health Louisville.

APA #16: Physical therapy records from Baptistworx, June through December 2013.

APA #17: Employee went to Jewish Hospital Medical Center Southwest on April 10, 2014, with complaints of chest pain. He gave a history of quitting drinking two days previous. He was transferred to St. Mary's and Elizabeth Hospital to the Intensive Care Unit, via EMS.

APA #18: Employee was admitted to St. Mary's and Elizabeth Hospital on April 10, 2014, with a history of upper abdominal pain, chest pain for a few days, and nausea. Under the "History of Present Illness," it was noted that Employee was an alcoholic who drinks approximately a half a pint of Vodka every day and has for "most of his life." Employee was intubated and on a ventilator. He was diagnosed with acute hypoxic hypercapnic respiratory failure, acute kidney injury, hyponatremia pancreatitis leukocytosis, sepsis, sepsis with multi-system organ failure, alcohol withdrawal, acute respiratory failure, polysubstance abuse, tachycardia and ARDS. Employee's wife reported a "long history of alcoholism and hypertension." Employee passed away at 8:22 a.m. on August 14, 2014, with the cause of death reported as "sepsis, multi organ failure, acute pancreatitis."

APA #19: Dr. James Ballenger, Clinical Psychiatrist for over 40 years and Forensic Examiner for over 30 years, reviewed medical records, both pre-injury and post-injury, reviewed the hearing transcript from the Compensability Hearing, and opined that Employee suffered from lifelong progressively worsening alcoholism, and that it was more likely than not that Employee's

longstanding consumption of large amounts of alcohol would have contributed to his death regardless of his shoulder injury.

APA #20: Curriculum Vitae of James C. Ballenger, M.D.

**TESTIMONY OF DEBRA PROVINS**

Ms. Provins testified that she lives in Louisville, Kentucky and had been married to the Employee/Deceased, James Provins, for over twenty years, but could not recall the date of their marriage. They have two children together. (Hr. Tr., 9-10) Ms. Provins is on disability. (Hr. Tr., 10) She testified that Employee was an iron worker, who worked in Louisville, as well as regularly out of state. (Hr. Tr., 11)

In 2009, they experienced marriage difficulties, and Ms. Provins kicked Employee out of the house. One of his parents also died that year. (Hr. Tr., 11) As a result, he started drinking; beforehand, he drank "off and on" but it was "social" drinking. Employee's pre-injury drinking was characterized as "beer and stuff and all the recreational-wise," but that he was not "falling down drunk or nothing." (Hr. Tr., 14) She believes he drank beer in 2009 when he was kicked out of the house, but did not really know. (Hr. Tr., 19-20) She did not know whether—or how much—he drank when he worked out of town. (Hr. Tr., 20-21) After they reconciled, Employee got his drinking under control. (Hr. Tr., 12) He had no problems working after 2009. (Hr. Tr., 23)

After his work injury, Employee "couldn't even wipe his butt." He was stressed and depressed, and kept to himself. Despite treatment, he was still hurting. (Hr. Tr., 13-14) Initially, after his injury, he drank beer. Eventually, Employee started drinking vodka and he did not drink vodka before the injury. (Hr. Tr., 15) She initially testified that she did not see much vodka come into the house, but then subsequently testified that she would find vodka bottles laying in/on his

bed. (Hr. Tr., 16) Before the injury, Employee was outgoing and happy. Afterwards, he did not joke around, stayed in his room, and was very quiet. (Hr. Tr., 19)

On cross-examination, Ms. Provins reiterated that Employee did not drink in excess other than during their marital separation in 2009. (Hr. Tr., 25) However, when presented with a 2001 record from Dr. Amin, family doctor, indicating that Employee had black out spells from drinking and that he drank hard liquor, she admitted that she "didn't know about everything." (Hr. Tr., 26-27) She testified that he traveled regularly, and would often be gone for the entire week and over the weekend. While gone, she had no idea about his alcohol consumption habits. (Hr. Tr., 27-28) She was not surprised that Employee testified (at the Compensability Hearing) that he drank daily, as far as beer was concerned. (Hr. Tr., 28)

Ms. Provins was presented with the medical record from University of Louisville Hospital from July 7, 2009, which indicated that Employee was a longstanding alcoholic who drank 16-18 beers and ½-1 pint of liquor per day. She testified that she was not aware of that behavior. (Hr. Tr., 29-31) She also did not know that he was drinking 8-10 beers per day, which was the history Employee provided to Dr. Bonnarens when he began treating with him in April 2013. (Tr. Hr., 31)

Ms. Provins testified that Employee did not go for any depression treatment before his death, and she did not attempt to take him to any mental health facility. (Hr. Tr., 32) In reality, she knew very little about his medical history. (Hr. Tr., 35)

Ms. Provins did not provide the medical history to the hospital when Employee was admitted in April 2014. In fact, she was notified by a friend that he'd been taken to the hospital. Hospital personnel may have obtained a history from Employee's sister, but she does not remember giving them any information herself. (Hr. Tr., 32-33) She did not report to the hospital that Employee only recently began drinking more, due to his pain or work injury. (Hr. Tr., 34) At

the time of his death, Employee was of sound mind, and to the extent he was drinking, he did so of his own free will. (Hr. Tr., 35) She did not recall speaking to either of Claimants' experts (Drs. Price and Martin), or providing them any history. (Tr. Hr., 36-37)

**TESTIMONY OF ALICE ZIMMERMAN**

Employee's sister, Alice Zimmerman, testified that she has been a registered nurse (RN) since 2008. She lives in Panama City Beach, Florida, and has for two years. She suffers from fainting spells, back to age 15; she has witnessed Employee pass out, unrelated to alcohol. Their father and mother also suffered from strokes and seizures. (Hr. Tr., 44-46)

As far as Employee's drinking history, he drank regularly and would get drunk occasionally, but was "functional." (Hr. Tr., 46) He typically drank beer, but would also drink hard liquor. (Hr. Tr., 47) In 2009, Employee stayed with Ms. Zimmerman for a couple of weeks, during a period of marital difficulty. During that time period, he was drinking in excess and was suicidal. After he got back with his wife, Employee quit drinking and started going to church. (Hr. Tr, 47-48)

After 2009, Ms. Zimmerman saw Employee when he would come back into town from working. He was drinking beer, but was working and doing fine. She was not aware of his level of drinking when he was out of town. (Hr. Tr., 48-49) She would see him drink a six-pack or 12-pack of beer, but was not aware that he had an alcohol abuse problem. (Hr. Tr., 49). She describes that Employee was a hard worker. (Hr. Tr., 50) Before his work injury, was a fun and giving person. Afterwards, he was initially drinking beer, but eventually started drinking hard liquor. He would stay in his room and drink. (Hr. Tr., 51-52) She believes his work injury led to his death because he was in constant pain, and changed from the man he was before. (Hr. Tr., 54)

On cross-examination, Ms. Zimmerman testified that she spoke to Dr. Price (expert for Claimants) by phone, and acknowledged telling Dr. Price that her brother was a "social drinker" before the injury. She disputes the characterization in the April 2014 hospital record that described Employee as an alcoholic who drank vodka daily. (Hr. Tr., 56) Ms. Zimmerman was present when Employee was hospitalized in April 2014, but she does not know if Ms. Provins provided any history to the intake personnel. Ms. Zimmerman has no personal knowledge of Employee's activities when he was working out of town. (Hr. Tr., 57) She last spoke to him about two weeks before his death. (Hr. Tr., 58)

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

## V. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That all parties to this action are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Provins as Employee/Deceased/Claimant, Debra Provins as Alleged Dependent/Claimant, Spirit Construction Services, Inc. as Employer, and Insurance Company of the State of PA as Carrier, Defendants.

2. That Employee/Deceased/Claimant James Provins was an employee of the above-named Employer on January 24, 2012, on which date he did sustain an injury to his right shoulder.

3. That the average weekly wage of Employee at the time of the above-described accident was $1,130.51, with a corresponding compensation rate of $725.47.

4. Employee passed away on April 14, 2014, before he reached maximum medical improvement for his right shoulder.

5. At the time of Employee's death, had not been released from care for his right

shoulder, and was still undergoing treatment with Dr. Bonnarens.

6. There was no bad faith denial of medical treatment or unreasonable delay by Defendants. The evidence, including the emails among counsel included in Defendants' exhibits, indicate that another surgery had been recommended by Dr. Bonnarens (for a recurrent rotator cuff tear) and Defendants requested medical releases be signed to further investigate causation of same. (Defendants' Exhibit A).

7. Prior to the work injury of January 24, 2012, Employee suffered from a significant alcohol abuse problem. This finding is based upon the medical records which illustrate Employee was a long-suffering alcoholic, and drank excessively, to include beer and liquor, for the majority of his life. These records included history provided by Employee, as well as family members, such as the following:

A. Ms. Provins, Claimant's widow, provided such a history at the time of his hospitalization/death in April 2014. "*According to his wife* a long history of alcoholism . . .". (*See* APA #18, p. 374)

B. An admission report from April 10, 2014, details a history of a "52-year-old male who is an alcoholic and drinks about half a pint of Vodka *every day for most of his life* . . .". (*See* APA #18, p. 234)

C. On July 7, 2009, Employee's sister, Ms. Zimmerman, called the police and Employee was transported to University of Louisville Hospital with chief complaint of "I'm drinking myself to death." He further reported that "I can't sleep at all unless I get drunk." It was reported that Employee was a longstanding alcoholic, who consumed 16-18 beers per day and a half a pint to a pint of liquor per day. (*See* APA #11, pp. 121-126)

D. When Employee initially began treating with Dr. Bonnarens, on April 15, 2013, he reported drinking 8-10 beers per day, and this was before his shoulder surgery. (*See* APA #12, p. 154)

E. In none of the post-accident medical reports does it indicate that Employee's drinking habits changed or increased after his work injury or shoulder surgery, which is indicative of someone who simply has been a longstanding user of alcohol, notwithstanding the work injury. The testimony of Employee's widow, Debra Provins, that the drinking only became a problem after his work

injury, in response to dealing with his pain, and is not supported by the history she herself provided upon Employee's hospital admission on April 10, 2014. (*See* APA #18, p. 374)

8. I give little weight to the report of Dr. Price. Dr. Price's opinion that Employee had "No history of pain, anxiety, depression or alcoholism prior to" the work injury is clearly refuted by the pre-injury medical records. I find that Employee did have a pre-injury history of alcoholism and depression as indicated by his suicidal threats and excessive alcohol consumption pre-injury. Even Employee's other expert, Dr. Martin, acknowledges a history of depression, suicidal ideation, and alcohol dependence.

9. Dr. Price's opinion is based on incorrect, or at a minimum flawed, facts which formed his causation opinion, including but not limited to the following:

a. Ms. Provins told Dr. Price that Employee "developed an alcohol abuse problem secondary to his injury," but the medical records and Ms. Provin's own testimony don't support this assertion. Ms. Provins acknowledged at the hearing that she was unaware of his heavy abuse of alcohol, to include hard liquor, as far back as 2001. (Hr. Tr., 26-27)

b. The information provided by Employee's sister, Alice Marie Zimmerman, that prior to his injury he was "a social drinker but had not consumed alcohol the way he did following his injury" is not supported by the pre-injury medical records. Specifically, Ms. Zimmerman herself called the police on Employee and had him hospitalized in July of 2009, at which time a history was provided that he drank 16-18 beers per day, as well as a half a pint to a pint of liquor per day.

c. Dr. Price did not review any medical records from before the work injury, so as to ascertain a complete history of his alcohol habits.

10. Dr. Price, as a PhD and licensed clinical psychologist, is not qualified to provide a medical opinion regarding a cause of death.

11. Dr. Martin's causation affidavit is not reliable, in that it acknowledges pre-injury alcohol abuses, but then relies on subjective history included in Dr. Price's report from Employee's attorney, Employee's widow, and his sister, in opining that his alcohol consumption worsened after

the work injury. However, Dr. Martin did not review the body of medical records showing issues with alcohol abuse prior to the work injury. Furthermore, Dr. Martin's opinion cannot be reconciled with the hospital admission records in April of 2014, which outline a lifelong history of alcohol abuse.

12. Dr. Martin's affidavit is further discredited by his reliance upon the report of Dr. Price, which, as detailed herein, contains factual errors and inconsistencies regarding Employee's pre-injury alcohol dependency. Therefore, I give little weight to Dr. Martin's affidavit.

13. I give greater weight to the expert report of Dr. James Ballenger, who has practiced clinical psychiatry and served as a forensic examiner for over 30 years. Dr. Ballenger reviewed voluminous records and explained his opinions at his deposition. Dr. Ballenger's conclusions that Employee suffered from a progressively worsening alcoholism over the course of his adult life is consistent with the medical records, both prior to and subsequent to the work injury. I give greater weight to Dr. Ballenger's conclusion that the work injury had essentially no impact upon Employee's alcohol abuse and ultimate death.

14. No qualified medical doctor who actually treated Employee prior to his death, or in the hospital at the time of death, provided a medical causation regarding the precise causative factors in Employee's death. Thus, we are left to rely on posthumous analysis by experts to determine whether there is any causal connection between Employee's right shoulder injury and his death.

15. The cause of Employee's death was multifactorial, to include sepsis, respiratory failure, multi-organ decompensation, and alcohol abuse. While alcohol was certainly a contributing factor—if not a primary factor—in his ultimate death, no expert has pinned down the precise cause of death. This finding is based upon the Death Certificate (Claimants' Exhibit R, p. 685), and the

"Death Summary" from the hospital at the time of death (APA #18, p 397).

16. The testimony of Ms. Provins, Employee's widow, was not reliable as it related to Employee's history of alcohol use. This finding was based on my observation of her testimony, and comparison of same to the pre-injury medical records:

a. Ms. Provins admitted at hearing that she would not be around her husband for weeks at a time while he traveled for work, and she did not know to what extent he was drinking before the injury. (*See* Hr. Tr. p. 27-28)

b. She testified that prior to the injury, Employee was a beer drinker, but began consuming liquor in large amounts after the injury. However, this does not square with the report that she provided to the hospital in April 2014, nor is it consistent with the pre-injury medical records, going all the way back to 2001, in which it was noted that Employee drank beer and hard liquor. (*See* APA #10, p. 113)

c. She admitted that she really knew very little about Employee's health history. (*See* Hr. Tr., p. 35)

17. The testimony of Ms. Zimmerman, Employee's sister, regarding his pre-injury alcohol use is not supported by the greater weight of the evidence in the record. While she testified that Employee did not drink alcohol excessively prior to the injury, she herself called the police on Employee in 2009, at which time it was reported he was drinking excessive amounts of beer and liquor on a daily basis. Furthermore, she acknowledged that she had no knowledge of his drinking habits when he was traveling regularly for work, but that when he was home, she saw him regularly drink beer and liquor. (Hr. Tr. pp. 46-49)

18. There is no objective evidence—only subjective history provided by Employee's relatives—that his drinking increased significantly after his work injury. In fact, Employee admitted to drinking on a daily basis prior to the work injury at the Compensability Hearing. What's more, there is not a single medical record, either with the treating workers' compensation doctors or his personal doctors/hospitals in Kentucky, which indicate that Employee's alcohol

consumption increased after the work injury. To the contrary, on his admission to the hospital in April 2014, he reported that he'd tried to quit drinking. (APA # 18, p. 264) I decline to speculate that Employee drank more as a result of his work injury.

19. Even assuming Employee had increased his alcohol intake after—and because of—the work injury, such would not constitute a compensable work "injury by accident" or death. Dr. Ballenger testified that the act of drinking, even for an alcoholic, is an intentional one. (Claimants' Exhibit J, p. 619) Injury resulting from a willful intent to injure one's self is not compensable. S.C. Code Ann. 42-9-60. I find Employee understood the harm his drinking was causing.

20. Employee knew, even before his work injury, that he was harming his body drinking. He told the University of Louisville Hospital in July 2009 that "I'm drinking myself to death." (APA #11, p. 121-126) Under Caper v. Flautt, 407 S.E. 2d 248 (1991) an injury has to be unforeseen or unexpected to be compensable, and the medical records establish that Employee appreciated the damage that alcohol abuse was causing, including the risk of death, and had been counseled to quit drinking and seek treatment. Under these circumstances, I cannot find that his death was "by accident" as required to be considered compensable.

21. I find it would be against public policy to hold that one's choice to abuse a substance, which results in death, should be attributable to his employer/carrier. This would create a "slippery slope" which could result in unintended conclusions, such as an addict's behavior being ascribed to a workers' compensation claim.

22. Claimants have failed to prove by preponderance of the evidence that Employee/Deceased's death in April 2014 is causally related to the shoulder injury which occurred on January 24, 2012.

23. Defendants' motion for costs and attorney's fees is denied.

## VI. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Employee/Deceased, James Provins, was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer, Spirit Construction, was a covered employer under the Act.

2. Under § 42-1-160, Employee/Deceased did sustain an injury to his right shoulder, for which he was afforded medical treatment by the Defendants.

3. Under § 42-9-290, Employee/Deceased's death was not proximately caused by the January 24, 2012, right shoulder injury.

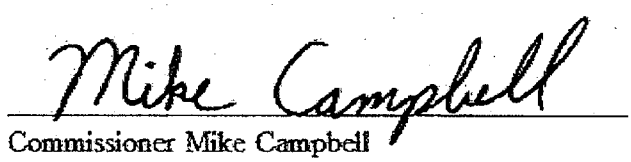
## VII. ORDER/AWARD

**IT IS HEREBY ORDERED** that the claim for death benefits is **denied**.

No hearing costs are assessed in this instance.

**IT IS SO ORDERED.**

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Mike Campbell

CERTIFICATE OF SERVICE

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

March 6, 2017

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

# APPELLATE DECISION AND ORDER
# FULL COMMISSION
# FEBRUARY 27, 2013

**APPELLATE PANEL**

**DECISION AND ORDER**

**OF THE**

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

**W.C.C. NO.: 1200349**

JAMES PROVINS,

Claimant,

vs.

SPIRIT CONSTRUCTION SERVICES, INC., Employer
and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Carrier,

Defendants.

| | |
|---|---|
| HEARING: | Appellate Panel Review held in Columbia, South Carolina on January 23, 2013, per notices timely and properly served upon all parties of interest. |
| APPEARANCES: | Claimant, represented by Donald L. Smith of Anderson, South Carolina.<br><br>Defendants represented by J. South Lewis, II of Greenville, South Carolina.<br><br>Court Reporter- Gigi Davis |
| FILED: | Appellate Panel Decision & Order, filed February 27, 2013. |

## STATEMENT OF THE CASE

The parties were originally heard by Commissioner Gene McCaskill on August 14, 2012. On September 7, 2012, the Commissioner issued the following Order:

**IT IS THEREFORE ORDERED** that based upon the Findings of Fact and Conclusions of Law set forth herein, Defendants shall pay for causally related medical treatment associated with the accidental injury on January 24, 2012, including but not limited to, reimbursement for MRI performed on February 18, 2012.

**IT IS FURTHER ORDERED** that the Defendants shall be responsible to provide the necessary medical treatment at a provider of their choosing in Louisville, Kentucky in order to lessen the duration of the Claimant's disability.

**IT IS FURTHER ORDERED** that the Claimant is awarded temporary total disability until he has reached maximum medical improvement.

**IT IS FURTHER ORDERED** that the Defendants are entitled to a credit of four-weeks of temporary total disability.

In the September 7, 2012, Order, Commissioner McCaskill made the following findings of fact based upon a preponderance of the evidence:

1. All parties to this proceeding are subject to and governed by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Claimant, James Provins, employee appearing with his counsel, Donald L. Smith, and Spirit Construction as employer and the Insurance Company of the State of Pennsylvania, as carrier, with J. South Lewis appearing on their behalf.

2. The Claimant suffered an accident and injury within the course and scope of his employment on January 24, 2012. This finding is supported by the greater weight of the evidence.

3. The case rests on the testimony of the Claimant and Luis Carrion, who were the only two witnesses to the event which involved moving sheets of steel decking. The Claimant asserts that while they were moving a sheet of decking, Mr. Carrion dropped his end which created a jarring effect on the Claimant's end that resulted in an injury to the Claimant's shoulder.

4. I found the Claimant to be very credible and believe that he suffered an injury by the mechanism which he described.

5. The witness, Ernst McDonald, who appeared for the Defendants, testified that he took the Claimant to the doctor after the Claimant reported the accident at work. He also testified that the Claimant was shaking so badly that Mr. McDonald had to sign the Claimant in once they arrived. This behavior is consistent with someone who has been injured, and not behavior that Mr. Provins would have thought to contrive. While the medicals in this case are limited, they do support a shoulder injury to the Claimant.

6. While the Defendants sought to impugn the Claimant's character with assertions of a drinking problem, that characterization of the Claimant is more than rebutted by testimony from another defense witness, Tony Azusenis, who describes the Claimant's work ethic as exceptional. The Claimant has never filed a Worker's Compensation claim prior to the accident. Moreover, the Claimant testifies that there were no drugs or alcohol in his system on the day of the accident. This claim was not rebutted, and his post-accident drug test was negative on all accounts.

7. The Defendant's claim that the Claimant has found other employment in Kentucky is without merit. While the Claimant did find a "job," it was very short term and could not be classified as employment.

8. The Claimant is entitled to medical care and treatment for his shoulder injury with a provider in Kentucky of the Defendant's choosing.

9. The Claimant is entitled to temporary total disability from the date of the accident (01/24/12) going forward. The Defendants are entitled to a credit against that amount for four weeks of temporary total disability due to the Claimant's testimony that he worked for Mechanical Contracting Systems for four weeks in Kentucky.

The Hearing Commissioner's Decision and Order also set forth the following Conclusions of Law:

1. That pursuant to Section 42-1-160, the Claimant did sustain an injury by accident to his right upper extremity.

2. That pursuant to Section 42-15-20, the Claimant gave proper notice of his accident within 90 days thereof.

3. That pursuant to Section 42-15-40, this claim was filed within the two-year statute of limitations.

4. That pursuant to Section 42-15-60, the employer/carrier is required to pay all causally related medical expenses.

Within the statutory period, Defendants filed a Form 30, Request for Commissioner Review, setting forth issues on appeal, copies of which were furnished to all interested parties

prior to oral argument to the individual members of the Appellate Panel on September 13, 2012. Plaintiff did not appeal the decision of the Hearing Commissioner.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under careful consideration. By appeal, Defendants respectfully submitted that the Hearing Commissioner erred in the following:

1. Did the Hearing Commissioner err in finding that the claimant sustained a compensable injury to his right shoulder on January 24, 2012. The error being that such is not supported by the preponderance of the evidence of the case and the record as a whole.

2. Did the Hearing Commissioner err in finding that the claimant "was a very credible witness." The error being that such is not supported by the preponderance of the evidence of the case and the record as a whole.

3. Did the Hearing Commissioner err in finding that Luis Carron dropped his end of the decking causing injury to the claimant's shoulder? The error being that such is not supported by the preponderance of the evidence of the case and the record as a whole.

4. Did the Hearing Commissioner err in finding that the claimant's shaking while en route to the medical clinic on the date of alleged injury was consistent with someone who suffered a shoulder injury? The error being that such is not supported by the preponderance of the evidence of the case and the record as a whole.

5. Did the Hearing Commissioner err in finding that the claimant's diagnosis and

Condition is causally related to the work injury? The error being that such is not supported by the preponderance of the evidence of the case; specifically, the questionnaire submitted by the claimant at the hearing did not support same, and the record as a whole.

6. Did the Hearing Commissioner err in finding that the claimant is entitled to medical Treatment? The error being that such is not supported by the preponderance of the evidence of the case and the record as a whole does not support a compensable injury and, thus, no medical treatment should be awarded.

7. Did the Hearing Commissioner err in finding that the claimant is entitled to temporary total disability benefits for the inability to work? The error being that such is not supported by the preponderance of the evidence of the case and the record as a whole, particularly since Claimant has worked subsequently in Kentucky.

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50, review the award, weigh the evidence as presented at the hearing and, if good grounds be shown therefore, make its findings of facts and reach its own conclusions of law consistent or inconsistent with those of the Hearing Commissioner. *See Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 156 S.E.2d 318 (1967); *see also Lowe v. Am-Can Transport Serv., Inc.*, 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).

Although the Appellate Panel is empowered to make its own findings of fact ant to reach its own conclusions of law, it is logical for the Appellate Panel, which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (1992).

After a hearing before the South Carolina Workers' Compensation Full Commission Appellate Panel and after thoroughly considering the evidence in the record, the Appellate Panel find a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order.

## FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. All parties to this proceeding are subject to and governed by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Claimant, James Provins, employee appearing with his counsel, Donald L. Smith, and Spirit Construction as employer and the Insurance Company of the State of Pennsylvania, as carrier, with J. South Lewis appearing on their behalf.

2. The Claimant suffered an accident and injury within the course and scope of his employment on January 24, 2012. This finding is supported by the greater weight of the evidence.

3. The case rests on the testimony of the Claimant and Luis Carrion, who were the only two witnesses to the event which involved moving sheets of steel decking. The Claimant asserts that while they were moving a sheet of decking, Mr. Carrion dropped his end which created a jarring effect on the Claimant's end that resulted in an injury to the Claimant's shoulder.

4. We found the Claimant to be very credible and believe that he suffered an injury by the mechanism which he described.

5. The witness, Ernst McDonald, who appeared for the Defendants, testified that he took the Claimant to the doctor after the Claimant reported the accident at work. He also testified that the Claimant was shaking so badly that Mr. McDonald had to sign the Claimant in once they

arrived. This behavior is consistent with someone who has been injured, and not behavior that Mr. Provins would have thought to contrive. While the medicals in this case are limited, they do support a shoulder injury to the Claimant.

6. While the Defendants sought to impugn the Claimant's character with assertions of a drinking problem, that characterization of the Claimant is more than rebutted by testimony from another defense witness, Tony Azusenis, who describes the Claimant's work ethic as exceptional. The Claimant has never filed a Worker's Compensation claim prior to the accident. Moreover, the Claimant testifies that there were no drugs or alcohol in his system on the day of the accident. This claim was not rebutted, and his post-accident drug test was negative on all accounts.

7. The Defendant's claim that the Claimant has found other employment in Kentucky is without merit. While the Claimant did find a "job," it was very short term and could not be classified as employment.

8. The Claimant is entitled to medical care and treatment for his shoulder injury with a provider in Kentucky of the Defendant's choosing.

9. The Claimant is entitled to temporary total disability from the date of the accident (01/24/12) going forward. The Defendants are entitled to a credit against that amount for four weeks of temporary total disability due to the Claimant's testimony that he worked for Mechanical Contracting Systems for four weeks in Kentucky.

## CONCLUSIONS OF LAW

Accordingly, as provided by South Carolina Code Ann. Section 42-17-50, as amended, it is the determination of this Commission that:

1. That pursuant to Section 42-1-160, the Claimant did sustain an injury by accident to his right upper extremity.

2. That pursuant to Section 42-15-20, the Claimant gave proper notice of his accident within 90 days thereof.

3. That pursuant to Section 42-15-40, this claim was filed within the two-year statute of limitations.

4. That pursuant to Section 42-15-60, the employer/carrier is required to pay all causally related medical expenses.

## ORDER

**IT IS HEREBY ORDERED** that the Hearing Commissioner's Order dated September 7, 2012, is fully affirmed as set forth above.

**IT IS SO ORDERED.**

Avery B. Wilkerson, Jr., Commissioner

T. Scott Beck, Interim Chair

Melody L. James, Commissioner

CERTIFICATE OF SERVICE

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

***By Valerie Deller on February 27, 2013***

# DECISION AND ORDER OF COMMISSIONER GENE McCASKILL SEPTEMBER 7, 2012

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. NO.: 1200349

JAMES PROVINS,

Claimant,

vs.

SPIRIT CONSTRUCTION SERVICES, INC., Employer
and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Carrier,

Defendants.

| | |
|---|---|
| HEARING: | Held in Anderson, South Carolina on August 14, 2012. |
| APPEARANCES: | Claimant, represented by Donald L. Smith of Anderson, South Carolina.<br><br>Defendants represented by J. South Lewis, II of Greenville, South Carolina. |
| PURPOSE OF HEARING: | To determine whether the Claimant is entitled to medical care, reimbursement for necessary MRI, treatment for his right shoulder, and to determine whether he is entitled to temporary total disability benefits. |
| OPINION AND AWARD: | By Commissioner Gene McCaskill |
| FILED: | September 7, 2012 |

## APA SUBMISSIONS

### CLAIMANT

| | NAME OF MEDICAL PROVIDER: | DATES OF SERVICE: | NO. OF PAGES: |
|---|---|---|---|
| 1. | InMed Diagnostic Services of SC, LLC | 2/18/12 | 1 |
| 2. | Redicare | 1/24/12-1/30-12 | 2-9 |

### CLAIMANT'S EXHIBITS

| | | |
|---|---|---|
| 3. | Kentucky Office of Employment and Training | 10-13 |

### STIPULATIONS

Counsel for the parties stipulated at the time of the hearing to the following issues:

(1) Notice of the hearing was timely and properly served upon all parties of interest.

(2) The claimant seeks benefits under the South Carolina Workers' Compensation Act based on accidental injuries occurring on or about January 24, 2012, while in the employ of Spirit Construction Services, Inc.; therefore, the South Carolina Workers' Compensation Commission has jurisdiction.

(3) The purpose of this hearing is to determine whether the Claimant is entitled to medical care and treatment for his right shoulder, and to see if he is entitled to TTD.

(4) The claimant gave notice of an accident and the fact that he was injured within ninety (90) days, pursuant to the Act.

(5) Venue, set in Anderson, SC, is proper.

(6) Claimant's compensation rate is $725.47 as calculated by the Commission based upon the Claimant's average weekly wage of $1,130.51.

(7) Defendants deny that the Claimant sustained a compensable injury while in the course and scope of his employment on January 24, 2012.

(8) Defendants deny that Claimant is entitled to an award of temporary total disability because he procured other employment prior to this hearing and following his alleged injury.

(9) Claimant testified that he was employed by Mechanical Contracting Systems on a short-term basis for a period of four weeks.

## STATEMENT OF THE CASE

This matter was heard by the undersigned Commissioner on August 14, 2012 in Anderson, South Carolina to determine whether the Claimant sustained a compensable injury; and if compensable, whether the evidence supports an award of temporary total disability. Notices were timely and properly served on all parties of interest at which time all parties were present for the hearing: The claimant, James Provins, who was represented by Donald L. Smith; the defendants, Spirit Construction Services, Inc., and Insurance Company of the State of Pennsylvania, represented by their attorney, J. South Lewis, II. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and the subject matter of this case.

This is a hearing to determine the compensability of the Claimant's shoulder injury. The Defendants contend that the Claimant complained of shoulder pain to a co-worker prior to the date of the alleged accident. The Defendants claim that the injury to Claimant's shoulder was a chronic injury and not the result of an accident on January 24, 2012. The Defendants request a determination as to whether the Claimant is entitled to temporary total disability benefits as a result of his right shoulder injury because he was employed in Kentucky following the injury.

The Claimant contends that his torn right rotator cuff is a direct result of his injury at work on January 24, 2012. Further, the Claimant contends that any subsequent post-accident employment was sporadic in nature and on a temporary basis, which did not exceed four weeks.

## EVIDENCE OF THE CASE

A record, such as is necessary, for a decision was made at the proceedings in this matter. The Claimant is a 51 year old man, having been born on June 28, 1961. Mr. Provins is married and lives with his two daughters in Hardin County, Kentucky. Mr. Provins completed high school, and vocational school for welding. He has always worked in the welding and construction fields, and has not previously filed a claim for worker's compensation. He has virtually no medical history, other than a tonsillectomy. He further has no history of alcohol abuse or recreational drug use.

The Claimant began work with the Defendant on or about July 21, 2011. He was hired to build a paper machine building in Anderson, South Carolina.

On January 24, 2012, while carrying a large sheet of decking, with a co-worker, Luis Carrion, the Claimant injured his right shoulder when Mr. Carion dropped his end of the 150 pound sheet. The Claimant suffered immediate pain in the right upper extremity as a direct result of this accident. Mr. Provins was treated by Gabrielle Linder, PA-C, of Redi Care in Anderson, SC. Mr. Provins was treated with anti-inflammatories, and his right arm was placed in a sling.

On January 31, 2012, Claimant reported to Dr. Linder, as requested. He reported no improvement in his condition and Dr. Linder requested an MRI. The defendants did not approve the MRI; and, subsequently, the Claimant was laid off due to a lack of light duty work. On February 18, 2012, a medically necessary MRI was conducted on the Claimant's right shoulder, and Dr. Stephen J. Gordin reported that the MRI revealed a fairly extensive tear of the rotator cuff.

## FINDINGS OF FACT

Based upon the stipulations of the parties, the testimony and evidence received and produced at the hearing, as well as personal observation of the witnesses, the undersigned Commissioner makes the following findings of fact based upon a preponderance of the evidence:

1. All parties to this proceeding are subject to and governed by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Claimant, James Provins, employee appearing with his counsel, Donald L. Smith, and Spirit Construction as employer and the Insurance Company of the State of Pennsylvania, as carrier, with J. South Lewis appearing on their behalf.

2. The Claimant suffered an accident and injury within the course and scope of his employment on January 24, 2012. This finding is supported by the greater weight of the evidence.

3. The case rests on the testimony of the Claimant and Luis Carrion, who were the only two witnesses to the event which involved moving sheets of steel decking. The Claimant asserts that while they were moving a sheet of decking, Mr. Carrion dropped his end which created a jarring effect on the Claimant's end that resulted in an injury to the Claimant's shoulder.

4. I found the Claimant to be very credible and believe that he suffered an injury by the mechanism which he described.

5. The witness, Ernest McDonald, who appeared for the Defendants, testified that he took the Claimant to the doctor after the Claimant reported the accident at work. He also testified that the Claimant was shaking so badly that Mr. McDonald had to sign the Claimant in once they arrived. This behavior is consistent with someone who has been injured, and not behavior that

Mr. Provins would have thought to contrive. While the medicals in this case are limited, they do support a shoulder injury to the Claimant.

6. While the Defendants sought to impugn the Claimant's character with assertions of a drinking problem, that characterization of the Claimant is more than rebutted by testimony from another defense witness, Tony Azusenis, who describes the Claimant's work ethic as exceptional. The Claimant has never filed a Worker's Compensation claim prior to the accident. Moreover, the Claimant testifies that there were no drugs or alcohol in his system on the day of the accident. This claim was not rebutted, and his post-accident drug test was negative on all accounts.

7. The Defendant's claim that the Claimant has found other employment in Kentucky is without merit. While the Claimant did find a "job," it was very short term and could not be classified as employment.

8. The Claimant is entitled to medical care and treatment for his shoulder injury with a provider in Kentucky of the Defendant's choosing.

9. The Claimant is entitled to temporary total disability from the date of the accident (01/24/12) going forward. The Defendants are entitled to a credit against that amount for four weeks of temporary total disability due to the Claimant's testimony that he worked for Mechanical Contracting Systems for four weeks in Kentucky.

## CONCLUSIONS OF LAW

Accordingly, as provided by South Carolina Code Ann. Section 42-17-40, it is the determination of this Commissioner:

1. That pursuant to Section 42-1-160, the Claimant did sustain an injury by accident to his right upper extremity.

2. That pursuant to Section 42-15-20, the Claimant gave proper notice of his accident within 90 days thereof.

3. That pursuant to Section 42-15-40, this claim was filed within the two-year statute of limitations.

4. That pursuant to Section 42-15-60, the employer/carrier is required to pay all causally related medical expenses.

**ORDER**

IT IS THEREFORE ORDERED that based upon the Findings of Fact and Conclusions of Law set forth herein, Defendants shall pay for causally related medical treatment associated with the accidental injury on January 24, 2012, including but not limited to, reimbursement for MRI performed on February 18, 2012.

IT IS FURTHER ORDERED that the Defendants shall be responsible to provide the necessary medical treatment at a provider of their choosing in Louisville, Kentucky in order to lessen the duration of the Claimant's disability.

IT IS FURTHER ORDERED that the Claimant is awarded temporary total disability until he has reached maximum medical improvement.

IT IS FURTER ORDERED that the Defendants are entitled to a credit of four-weeks of temporary total disability.

Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
September 7, 2012

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

# APPELLANTS' MOTION TO COMPEL TREATMENT
MARCH 14, 2014

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF ANDERSON | ) | BEFORE THE SOUTH CAROLINA<br>WORKERS' COMPENSATION COMMISSION |
| James Provins,<br>Claimant, | ) | **MOTION TO COMPEL** |
| vs. | ) | W.C.C. File No.: 1200349 |
| Spirit Construction Services, Inc.<br>Employer, | ) | |
| and | ) | |
| Insurance Company of the PA,<br>Carrier, Defendants. | ) | |

TO: Spirit Construction Services, Inc., and Insurance Company of the State of PA, by and through their counsel, J. South Lewis, II.

IT IS ORDERED THAT YOU, Spirit Construction Services, Inc., and Insurance Company of the State of PA, shall appear before this Court on the _____ day of _____, 2014, at _____ ___. M., or as soon thereafter as counsel may be heard, and show cause, if any you can, why you should not be held compelled by this Court to grant the Claimant necessary treatment as alleged in this verified Complaint.

The above-referenced matter went to a hearing on January 23, 2013 for compensability. It was found to be compensable, and the Claimant later had surgery to repair a torn rotator cuff. Due to the high risk of failure of rotator cuff surgeries, the Claimant re-tore his rotator cuff without intentional cause. Dr. Frank Bonnarens stated that this injury is directly related to the injury Claimant sustained while under the scope of his employment on January 24, 2012 during a phone conference on December 30, 2013. As such, the Defendants are held responsible for providing the Claimant with necessary treatment.

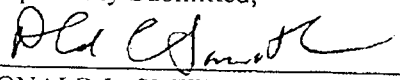
Claimant hereby moves for the following:

A) That Claimant be granted the necessary treatment.

B) That Claimant be compensated for any expenditures he may incur to be treated.

C) That the undersigned counsel be afforded fees and costs for this bad faith delay in treatment.

Respectfully Submitted,



DONALD L. SMITH
Attorney for the Claimant
122 N. Main Street
Anderson SC 29621
Telephone: 864-642-9284
Facsimile: 864-642-9285
attorneydonaldsmith@gmail.com

March 14, 2014

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF ANDERSON | ) | BEFORE THE SOUTH CAROLINA<br>WORKERS' COMPENSATION COMMISSION |
| James Provins,<br>Claimant, | ) | **CERTIFICATE OF SERVICE BY MAIL** |
| vs. | ) | W.C.C. File No.: 1200349 |
| Spirit Construction Services, Inc.<br>Employer, | ) | |
| and | ) | |
| Insurance Company of the PA,<br>Carrier, Defendants. | ) | |

THE UNDERSIGNED person deposes and says that he served a Motion to Compel Treatment, in this action by placing a copies thereof in envelopes addressed to the parties at the addresses shown below, which envelopes were sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the place addressed as follows:

Date: 3/14/14

Tyler Smith

Tyler Smith
Paralegal To Donald L. Smith
ATTORNEY OFFICE OF DONALD SMITH
122 N. Main St.
Anderson, South Carolina 29621
Phone: (864) 642-9284
Facsimile: (864) 642-9285

MAILED TO:

Virginia Crocker, Director
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia SC 29202-1715

J. South Lewis, II., Esquire
872 S. Pleasantburg Drive
Greenville SC 29607

# RESPONDENTS' MOTION TO COMPEL AND EXHIBITS MARCH 25, 2014

BEFORE THE SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1200349

| | | |
|---|---|---|
| James Provins,<br>Employee,<br>Claimant,<br><br>vs.<br><br>Spirit Construction Services, Inc.,<br><br>Employer,<br>and<br><br>Insurance Company of the State of PA,<br><br>Carrier,<br>Defendants. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | **DEFENDANTS' MOTION TO COMPEL AND RESPONSE TO CLAIMANT'S MOTION TO COMPEL** |

TO: The Honorable Avery B. Wilkerson, Commissioner;
Donald L. Smith, Esquire, Attorney for Claimant.

YOU WILL PLEASE TAKE NOTICE that on the tenth day of service hereof or as soon thereafter as the matter can be heard, the Defendants, Spirit Construction Services, Inc. and Insurance Company of the State of PA, will move before the jurisdictional Commissioner for an order compelling the Claimant to sign authorizations to release medical records. Grounds for this motion are as follows:

1. That Claimant currently lives in Louisville, Kentucky, and he has been a resident of Kentucky his entire adult life. (Depo. pp. 6-7).

2. That Claimant was hired as an iron worker by Spirit Construction Services, Inc. ("Spirit Construction") on June 21, 2011, and he was assigned to work a construction job in Anderson, South Carolina. (Depo. pp. 15-16).

3. That on January 24, 2012, Claimant sustained an injury to his right shoulder arising out of and in the course of his employment with Spirit Construction. This was initially a denied claim.

4. That on June 11, 2012, Claimant filed a Form 50, Request for Hearing, to determine compensability of his claim, and Defendants timely filed a Form 51 on July 9, 2012 denying that Claimant sustained a compensable injury. A hearing was held in this matter before Commissioner Gene McCaskill on August 14, 2012.

5. That on September 7, 2012, Commissioner McCaskill issued his Decision and Order finding that Claimant sustained a compensable injury to right shoulder and ordering Defendants to provide Claimant with causally related medical treatment with a provider of their choosing in Louisville, Kentucky and to pay him temporary total disability ("TTD") benefits.

6. That Defendants filed a Form 30, Request for Commission Review on September 13, 2012, and an Appellate Panel review hearing was held on January 23, 2013.

7. That on February 27, 2013, the Appellate Panel issued its Order affirming Commissioner McCaskill's decision.

8. That Defendants did not appeal the Appellate Panel's Order and began providing Claimant with appropriate medical treatment per Dr. Frank O. Bonnarens of Orthopaedic Associates of Kentuckiana, the authorized treating physician.

9. That on April 15, 2013, Dr. Bonnarens diagnosed Claimant with a right rotator cuff tear and recommended surgical intervention. (Exhibit A).

10. That on May 15, 2013, Dr. Bonnarens performed a right rotator cuff repair, acromioplasty/Mumford procedure, debridement of the biceps stump and labral tears, and insertion of bone graft on Claimant's right shoulder. (Exhibit B).

11. That Claimant continued to treat Dr. Bonnerans following surgery, and on September 23, 2013, Dr. Bonnerans recommended an arthrogram MRI of the right shoulder due to Claimant's complaints of pain and decreased range of motion. (Exhibit C).

12. That on October 7, 2013, Dr. Bonnerans opined that the right shoulder MRI revealed a recurrent rotator cuff tear, and he recommended surgery. However, Dr. Bonnerans noted that Claimant "wants to discuss this with his lawyer to make sure about whose paying what and then he will let us know if he would like to proceed with the surgery." (Exhibit D).

13. That on October 10, 2013, Defendants mailed a questionnaire to Dr. Bonnerans to determine his opinion regarding causation of Claimant's recurrent right shoulder tear. Dr. Bonnerans had not responded to the questionnaire as of November 12, 2013, and Defendants resent the questionnaire to his office via facsimile. (See Exhibit E).

14. That on November 15, 2013, Defendants received an email from Dr. Bonnerans's office informing them that Dr. Bonnerans had received the questionnaire, but that he would only answer the questions in a telephone conference or deposition setting. (Exhibit F).

15. That the parties subsequently scheduled a telephone conference with Dr. Bonnnerans on December 30, 2013. (Exhibit G).

16. That during the telephone conference, Dr. Bonnerans indicated that Claimant's use of alcohol could be a complicating factor in his surgical outcome. Dr. Bonnarens stated that while Claimant initially reported that he drank 8 to 10 beers per day, he subsequently reported that he was actually drinking *a case of beer* <u>*and*</u> *a bottle of hard liquor per day* ***prior to his surgery***. Dr. Bonnarens further stated that ***following surgery***, Claimant reported that he was attempting to decrease his use of alcohol and that he had completely stopped drinking hard liquor. Dr. Bonnerans said that as a result, Claimant began suffering from dry heaves and

delirium tremens ("DTs"), a severe form of alcohol withdrawal with symptoms that include muscle spasms, hallucinations, seizures, and uncontrolled muscle movements.

17. That Dr. Bonnerans indicated that it was possible Claimant's DTs caused the re-tear in his right shoulder rotator cuff; however, he stated that without any evidence of a subsequent injury to the right shoulder, it was his opinion that Claimant's re-tear and his need for a second surgery was directly related to his January 24, 2012 work injury.

18. That at the original hearing in this matter on September 14, 2012, Claimant testified that he was no longer drinking alcohol. (Tr. 22-23). Yet, *less than eight months later,* Claimant was drinking a case of beer and a bottle of hard liquor per day.

19. That Defendants first learned of Claimant's excessive drinking and his subsequent withdrawals during the telephone conference with Dr. Bonnerans on December 30, 2013, and given Dr. Bonnerans's indication that Claimant's DTs *could* have caused the re-tear of his right rotator cuff, Defendants attempted to engage in further investigation.

20. That on January 7, 2014, Defendants sent Claimant's attorney a letter requesting that Claimant sign authorization forms to allow AMIN Family Medical Care, University of Louisville Hospital, Jewish Hospital Medical Center Southwest, and Norton Immediate Care to release his medical records to Defendants since these providers are located in Kentucky, are not subject to South Carolina subpoenas, and will not provide Defendants with the medical records without a signed release. (Exhibit H).

21. That while Claimant's attorney indicated that he would "be happy to provide" the records from the Kentucky providers, Defendants did not receive the requested medical records or the signed authorization forms. (See Exhibit I).

22. That on February 28, 2014, Defendants sent an e-mail to Claimant's attorney following up on the previous request to have Claimant sign the medical releases. (See Exhibit J).

23. That Claimant's attorney did not provide the signed releases, but sent the following response:

> Have you gotten me the records that I requested? Have you set up the surgery to repair his shoulder (pursuant to the treating physician's statement that the current issue is directly related to the on-the-job injury which the Commission found as compensable)? I'm comfortable with the belief that you will recognize the answer.
>
> (See Exhibit J).

24. That on March 2, 2014, Defendants again requested that Claimant's attorney provide them with the signed releases so that Defendants could obtain Claimant's medical records from the providers in Kentucky. (See Exhibit K).

25. That to date, Defendants have not received Claimant's signed authorization forms.

26. That Defendants need the signed authorization forms in order to perform and complete a proper investigation into the cause of his recurrent right shoulder rotator cuff tear.

27. That had Claimant signed the authorization forms when initially requested, Defendants would have been able to complete the necessary investigation and would have likely already been able to determine whether Claimant's current right shoulder problems are causally related to his work accident.

28. That Defendants continue to authorize TTD benefits and are continuing to be prejudiced by Claimant's ongoing refusal to sign the authorization forms.

29. That as such, Defendants respectfully request an Order compelling the Claimant to sign authorizations allowing AMIN Family Medical Care, University of Louisville Hospital,

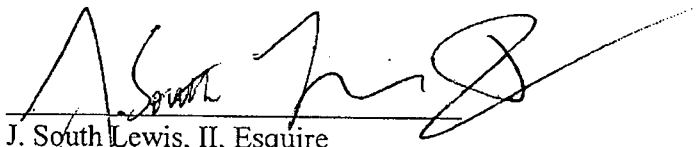
Jewish Hospital Medical Center Southwest, and Norton Immediate Care to release his medical records to Defendants.

30. That based on the foregoing, Defendants also respectfully request an Order denying Claimant's Motion to Compel medical treatment.

THERFORE, Defendants Spirit Construction Services, Inc. and Insurance Company of the State of PA move for an Order (1) compelling the Claimant to sign authorizations allowing the out of state medical providers to release his medical records to Defendants and (2) denying Claimant's Motion to Compel medical treatment.

Respectfully submitted,

**WILLSON JONES CARTER & BAXLEY, P.A.**



J. South Lewis, II, Esquire
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorneys for Defendants

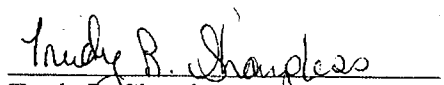
Date: March 25, 2014

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200349

| | | |
|---|---|---|
| James Provins,<br>Employee,<br>Claimant,<br><br>vs.<br><br>Spirit Construction Services, Inc.,<br><br>Employer,<br>and<br><br>Insurance Company of the State of PA,<br><br>Carrier,<br>Defendants. | ) | CERTIFICATE OF SERVICE |

I, Trudy R. Sharpless, do hereby certify that I am the Legal Assistant for J. South Lewis, II, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Greenville, South Carolina, and that on the 25th day of March, 2014, I mailed the foregoing NOTICE OF MOTION AND MOTION TO COMPEL to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

Donald L. Smith, Esquire
Attorney Offices of Donald Smith
122 N. Main Street
Anderson, SC 29621



Trudy R. Sharpless
Legal Assistant to J. South Lewis, II, Esquire
**WILLSON JONES CARTER & BAXLEY, P.A.**
872 S. Pleasantburg Drive
Greenville, SC 29607

RESPONDENTS' FORM 58
JANUARY 12, 2015

**South Carolina Workers' Compensation Commission**
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

# PRE-HEARING BRIEF
## WCC File No: 1200349

| | | | |
|---|---|---|---|
| Claimant's Name: | James Provins | Employer's Name: | Spirit Construction Services, Inc. |
| Address: | | Address: | |
| City: | State: Zip: | City: | State: Zip: |
| Home Phone: | Work Phone: | Carrier: | Insurance Company of the State of PA |
| Preparer's Name: | J. South Lewis, II | Preparer's Phone #: | (864) 527-3284 |

**A claim for workers' compensation benefits is made based on the following grounds:**
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $725.47 2. AWW: $ 1,130.51 **Date of Injury:** 1/24/2012
3. Type of injury and body part(s): Right shoulder.
4. Facts in controversy: **Whether Claimant's widow is entitled to benefits pursuant to § 42-9-280?** Claimant was in the midst of treatment for a right shoulder injury, drawing weekly TTD benefits at the time of his death *(unrelated to work injury – See Death Certificate 04/30/14)*. Claimant had not reached maximum medical improvement, and thus was not yet entitled to any permanent disability. § 42-9-280 is clear that when a claimant dies from unrelated cause(s), his next of kin "dependent upon him for support" is entitled to the "unpaid balance of compensation." As Claimant had not reached maximum medical improvement, and was receiving *temporary* benefits, there is no "unpaid balance of compensation" accrued. Further, the SC Supreme Court has ruled that "heirs have no claim to unaccrued weekly payments." Stone v. Roadway Express, 367 S.C. 575 (2006).
5. Legal issues involved: § 42-9-280; Stone v. Roadway Express, 367 S.C. 575 (2006).
6. Unusual aspects: See No. 4.
7. Witnesses (designate if expert):* None.
8. Exhibits: None.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION
10. Name, address, and specialty, if any, of the treating physician: Dr. Frank Bonnarens, Orthopaedic Associates of Kentuckiana, P.L.L.C., 3605 Northgate Circle, Suite 202, New Albany, IN 47150.
11. Impairment rating(s); body part(s); physician and date of opinion: Premature; Claimant had not yet reached maximum medical improvement.
12. I am amending my Form 50/51 in the following manner:

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

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

**I verify the contents of this form are accurate and true to the best of my knowledge.**
I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Donald L. Smith, 122 N. Main Street Anderson, SC 29621 on the 12th day of January, 2015 by ☒ first class mail ☐ personal service ☐ certified mail.

Trudy R. Sharpless
Certifier, Trudy R. Sharpless

Signature: J. South Lewis, II
J. South Lewis, II, Willson Jones Carter & Baxley, P.A.

Email: jslewis@wjlaw.net

Date of hearing: 01/22/2015

Time needed for hearing: 45 minutes

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

RESPONDENTS' FORM 58
JULY 15, 2015

**South Carolina Workers' Compensation Commission**
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

# PRE-HEARING BRIEF
## WCC File No: 1200349

Claimant's Name: James Provins
Address:
City: State: Zip:
Home Phone: Work Phone:
Preparer's Name: J. South Lewis, II

Employer's Name: Spirit Construction Services, Inc.
Address: 3131 Market St.
City: Green Bay State: WI Zip: 54304
Carrier: Insurance Company of the State of PA
Preparer's Phone #: (864) 527-3284

**A claim for workers' compensation benefits is made based on the following grounds:**
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $725.47 2. AWW: $ 1,130.51 **Date of Injury:** 1/24/2012
3. Type of injury and body part(s): Right shoulder. **Death allegation denied.**
4. Facts in controversy: Please see attached "Defendants Addendum."
5. Legal issues involved: §§ 42-9-280; 42-9-290; 67-614; 42-17-80
6. Unusual aspects:
   (1) Claimant would never sign medical releases for Kentucky medical records;
   (2) Claimant has no "medical" evidence justifying a causally-related death. Claimant only obtained an opinion from a Ph.D. on 07/13/15.
7. Witnesses (designate if expert):* Tony Azusenis; David White.
8. Exhibits:
   (1) Hearing Transcript (08/14/2012).
   (2) Motions to Compel from 2014.
   (3) Emails among attorneys regarding Defendants request to sign medical releases.
   (4) Claimant's previously submitted Form 58 and Pre-hearing Brief (from January 22, 2015, hearing).
   (5) David Price, Ph.D.'s file materials regarding this matter.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION
10. Name, address, and specialty, if any, of the treating physician: Dr. Frank Bonnarens, Orthopaedic Associates of Kentuckiana, P.L.L.C, 3605 Northgate Circle, Suite 202, New Albany, IN 47150
11. Impairment rating(s); body part(s); physician and date of opinion: None. Claimant was still treating and not at maximum medical improvement at the time of his death.
12. I am amending my Form 50/51 in the following manner:

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

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

**I verify the contents of this form are accurate and true to the best of my knowledge.**
I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Donald L. Smith, 122 N. Main Street Anderson, SC 29621 on the 17th day of July, 2015 by ☒ first class mail ☐ personal service ☐ certified mail.

Certifier, Trudy R. Sharpless

Signature: J. South Lewis, II, Willson Jones Carter & Baxley, P.A.
Email: jslewis@wjlaw.net

Date of hearing: 07/29/2015 Time needed for hearing:

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

# RESPONDENTS' SUPPLEMENTAL FORM 58

JULY 28, 2015

SUPPLEMENTAL

**South Carolina Workers' Compensation Commission**
*P.O. Box 1715 • 1612 Marion Street*
*Columbia, South Carolina 29202-1715*
*(803) 737-5700*

WCC File # 1200349
Carrier File # 003186-000589-wc-01
Carrier Code #
Employer FEIN

James Provins
Claimant's Name — SSN

Address — City — State — Zip

Home Phone — Work Phone

Spirit Construction Services, Inc.
Employer's Name

Address — City — State — Zip

Insurance Company of the State of PA
Insurance Carrier

J. South Lewis, II — 872 S. Pleasantburg Drive, Greenville, SC 29607 — (864) 527-3284
Preparer's Name — Address — Phone #

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
DONALD L. SMITH, ESQUIRE, ATTORNEY FOR CLAIMANT

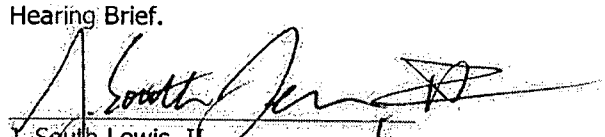
YOU ARE HEREBY NOTIFIED THAT DEFENDANTS, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the defendants, to wit:

| NAME OF PHYSICIAN/OTHER | DATE OF REPORT | PAGE |
|---|---|---|
| 8. Orthopaedic Associates of Kentuckiana, P.L.L.C. | 06/13/13 – 10/07/13 | 110 – 122 |
| 9. Advanced ENT & Allergy | 04/24/13 | 123 – 126 |
| 10. Baptistworx | 08/28/23 – 10/04/13 | 127 – 136 |
| ***EXHIBITS*** | | |
| A. Emails between J. South Lewis & Don Smith | 01/07/14 -03/02/14 | 137 – 140 |
| B. Emails between J. South Lewis & Don Smith | 03/31/15 – 04/06/15 | 141 – 143 |
| C. Emails between J. South Lewis & Don Smith | 06/01/15 | 144 – 145 |
| D. Correspondence from Don Smith to Dr. David Price, PHD | 05/19/15 – 05/26/2015 | 146 – 147 |

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.



J. South Lewis, II
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607

July 28, 2015

July 29, 2015
(hearing date)

RESPONDENTS' FORM 58

OCTOBER 9, 2015

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

# PRE-HEARING BRIEF
## WCC File No: 1200349

| | | | |
|---|---|---|---|
| Claimant's Name: | James Provins | Employer's Name: | Spirit Construction Services, Inc. |
| Address: | | Address: | 3131 Market St. |
| City: | State: Zip: | City: | Green Bay State: WI Zip: 54304 |
| Home Phone: | Work Phone: | Carrier: | Insurance Company of the State of PA |
| Preparer's Name: | J. South Lewis, II | Preparer's Phone #: | (864) 527-3284 |

**A claim for workers' compensation benefits is made based on the following grounds:**
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $725.47 2. AWW: $ 1,130.51 **Date of Injury:** 1/24/2012
3. Type of injury and body part(s): Right shoulder. **Death allegation denied.**
4. Facts in controversy: (1) Please see attached "Defendants Addendum." (2) Are Defendants entitled to costs and attorney's fees incurred in defending the death claim?
5. Legal issues involved: §§ 42-9-280; 42-9-290; 42-17-80; 67-614.
6. Unusual aspects:
   (1) Claimant's counsel was provided medical releases as early as January 2014, yet refused to have Mr. Provins sign them. As such, Defendants couldn't obtain Claimant's personal medical records timely. Those releases were finally signed and received by our office on 08/31/2015. Defendants began asking for those records, but to date haven't received them all.
   (2) Claimant has no "medical" evidence justifying a causally-related death. Claimant only obtained an opinion from a Ph.D. on 07/13/15.
   (3) Claimant's prior records (see APA #11) bely the position that his drinking became a problem only after his injury/surgery.
7. Witnesses (designate if expert):* Tony Azusenis; David White.
8. Exhibits:
   (1) Hearing Transcript (08/14/2012).
   (2) Motions to Compel from 2014.
   (3) Emails among attorneys regarding Defendants request to sign medical releases.
   (4) Claimant's previously submitted Form 58 and Pre-hearing Brief (from January 22, 2015, hearing).
   (5) David Price, Ph.D.'s file materials regarding this matter.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION; **Additional records to be submitted upon receipt – the executed medical releases were not obtained until August 31, 2015.**
10. Name, address, and specialty, if any, of the treating physician: Dr. Frank Bonnarens, Orthopaedic Associates of Kentuckiana, P.L.L.C, 3605 Northgate Circle, Suite 202, New Albany, IN 47150
11. Impairment rating(s); body part(s); physician and date of opinion: None. Claimant was still treating and not at maximum medical improvement at the time of his death.
12. I am amending my Form 50/51 in the following manner:

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

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

**I verify the contents of this form are accurate and true to the best of my knowledge.**
I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Donald L. Smith, 122 N. Main Street Anderson, SC 29621 on the 9th day of October, 2015 by ☒ first class mail ☐ personal service ☐ certified mail.

Trudy R. Sharpless
Certifier, Trudy R. Sharpless

Signature: J. South Lewis, II, Wilson Jones Carter & Baxley, P.A. Email: jslewis@wjlaw.net

Date of hearing: 10/21/2015 Time needed for hearing:

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

RESPONDENTS' FORM 58
OCTOBER 20, 2015

**South Carolina Workers' Compensation Commission**
*P.O. Box 1715 • 1612 Marion Street*
*Columbia, South Carolina 29202-1715*
*(803) 737-5700*

WCC File # 1200349
Carrier File # 003186-000589-wc-01
Carrier Code #
Employer FEIN

James Provins
Claimant's Name
SSN
Address City State Zip
Home Phone Work Phone

Spirit Construction Services, Inc.
Employer's Name
Address City State Zip
Insurance Company of the State of PA
Insurance Carrier

J. South Lewis, II
Preparer's Name
872 S. Pleasantburg Drive, Greenville, SC 29607
Address
(864) 527-3284
Phone #

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
DONALD L. SMITH, ESQUIRE, ATTORNEY FOR CLAIMANT

YOU ARE HEREBY NOTIFIED THAT DEFENDANTS, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the defendants, to wit:

| NAME OF PHYSICIAN/OTHER | DATE OF REPORT | PAGE |
|---|---|---|
| 8. Orthopaedic Associates of Kentuckiana, P.L.L.C. | 06/13/13 – 10/07/13 | 110 – 122 |
| 9. Advanced ENT & Allergy | 04/24/13 | 123 – 126 |
| 10. Baptistworx | 08/28/13 – 10/04/13 | 127 – 136 |
| 11. University of Louisville Hospital | 07/07/09 – 07/09/09 | 137 - 175 |
| ***Supplemental*** | | |
| 12. Amin's Family Practice Associates, P.S.C. | 07/31/01 – 09/25/01 | 176 |
| ***EXHIBITS*** | | |
| A. Emails between J. South Lewis & Don Smith | 01/07/14 -03/02/14 | 176 – 179 |
| B. Emails between J. South Lewis & Don Smith | 03/31/15 – 04/06/15 | 180 – 182 |
| C. Emails between J. South Lewis & Don Smith | 06/01/15 | 183 – 184 |
| D. Correspondence from Don Smith to Dr. David Price, PhD | 05/19/15 – 05/26/2015 | 185 - 186 |

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.

J. South Lewis, II
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607

October 20, 2015

October 21, 2015
(hearing date)

RESPONDENTS' FORM 58
WITH ADDENDUM
JULY 15, 2016

**South Carolina Workers' Compensation Commission**
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

# PRE-HEARING BRIEF
## WCC File No: 1200349

| | | | |
|---|---|---|---|
| Claimant's Name: | James Provins | Employer's Name: | Spirit Construction Services, Inc. |
| Address: | | Address: | 3131 Market St. |
| City: | State: Zip: | City: | Green Bay State: WI Zip: 54304 |
| Home Phone: | Work Phone: | Carrier: | Insurance Company of the State of PA |
| Preparer's Name: | J. South Lewis, II | Preparer's Phone #: | (864) 527-3284 |

**A claim for workers' compensation benefits is made based on the following grounds:**
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $725.47 2. AWW: $ 1,130.51 **Date of Injury:** 1/24/2012
3. Type of injury and body part(s): Right shoulder. **Death allegation denied.**
4. Facts in controversy: Please also see attached "Defendants' Addendum."
   (1) Is claim barred by claimant's two prior hearing request withdrawals, pursuant to 67-609?
   (2) Compensability of death allegation?
   (3) Defendants' entitlement to costs of defense?
5. Legal issues involved: §§ 42-9-280; 42-9-290; 42-9-60; 67-614; 42-17-80; 67-609
6. Unusual aspects:

   Claimant has withdrawn a Form 50 and a Form 52 previously.

   Claimant's beneficiary alleges that his death, due in large part to alcohol abuse, is attributable to the work injury. Claimant has a long history of alcohol abuse.
7. Witnesses (designate if expert):* None by Defendants.
8. Exhibits:
   (1) Hearing Transcript (08/14/2012).
   (2) Motions to Compel from 2014.
   (3) Emails among attorneys regarding Defendants request to sign medical releases, and seeking evidence in support of death allegation.
   (4) Claimant's Form 58 and Pre-hearing Brief from January 22, 2015, hearing.
   (5) David Price, Ph.D.'s file materials regarding this matter.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION
10. Name, address, and specialty, if any, of the treating physician: Dr. Frank Bonnarens, Orthopaedic Associates of Kentuckiana, P.L.L.C, 3605 Northgate Circle, Suite 202, New Albany, IN 47150
11. Impairment rating(s); body part(s); physician and date of opinion: None. Claimant was still treating and not at maximum medical improvement at the time of his death.
12. I am amending my Form 50/51 in the following manner:

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

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

**I verify the contents of this form are accurate and true to the best of my knowledge.**
I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Donald L. Smith, 122 N. Main Street Anderson, SC 29621 on the 15th day of July, 2016 by ☒ first class mail ☐ personal service ☐ certified mail.

Trudy R. Sharples
Certifier: Trudy R. Sharples

Signature: J. South Lewis, II, Willson Jones Carter & Baxley, P.A. Email: jslewis@wjlaw.net

Date of hearing: 07/26/2016 Time needed for hearing: 2.0 – 2.5 hours

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

4. **Defendants' Addendum**

The procedural history of this case is important. Claimant's right shoulder injury was deemed compensable pursuant to an Order from the Hearing Commissioner and affirmed by the Appellate Panel. As such, Defendants began providing medical treatment with Dr. Bonnarens, as Claimant lives in Louisville, KY. Dr. Bonnarens performed a right shoulder surgery (rotator cuff repair) on May 15, 2013. In follow-up, Claimant had a repeat MRI showing a recurrent tear of the rotator cuff. Defendants sent a questionnaire to Dr. Bonnarens on October 10, 2013, to address whether the recurrent tear was causally-related to the work injury. Dr. Bonnarens would not answer the questionnaire, but would only answer the questions in a deposition setting or phone conference. On December 30, 2013, the parties held a phone conference with Dr. Bonnarens, to address causation. As a result of the information provided by Dr. Bonnarens, Defendants sent medical releases to Claimant's attorney so that Claimant's personal physician/hospital records could be reviewed to determine whether there was indication of a re-injury. Claimant refused to sign the releases, despite his attorney's January 7, 2014, email stating he would "be happy to provide them with the accompanying records from KY." Defendants followed up multiple times with Claimant's attorney about the medical release authorizations, to no avail. Instead, on March 14, 2014, Claimant filed a Motion to Compel (the surgery). Defendants filed their own Motion to Compel on March 25, 2014, seeking execution of the medical releases.

A hearing was set on the Motions on April 24, 2014, before Commissioner Wilkerson. Unfortunately, Claimant died on April 14, 2014; the Death Certificate lists "Acute Respiratory Failure" and "Septic Shock" as the causes of death. Due to Claimant's death, the Motion Hearing was cancelled.

Claimant's attorney filed a Form 50 on November 18, 2014, on behalf of Claimant's widow (Debra Provins). **Notably, there was no allegation of a compensable death claim.** The parties were scheduled for a hearing before Commissioner Susan Barden on January 22, 2015. The issue raised at hearing was whether Claimant had reached maximum medical improvement, and whether Mrs. Provins was entitled to benefits pursuant to § 42-9-280. A review of claimant's Form 58 and APA submissions show that no death allegation was made at that hearing. In fact, an IME from Dr. Jacobus was submitted by Claimant, for the purposes of justifying a rating to the shoulder. **Nothing Dr. Jacobus opined purported to advance a death claim.** After a pre-hearing conference, focusing solely on § 42-9-280, Claimant withdrew the Form 50.

Claimant re-filed the Form 50 on March 18, 2015; again, no death claim was made. The SCWCC told the parties the case was subject to mandatory mediation because the claimant pled "Total" disability in number 8. Defendants assumed this was a clerical error, since permanent and total disability had never been raised. **In response to an email from defense counsel on April 6, following upon the apparent erroneous pleading, claimant's counsel responded "Thank you for reminding me. I will amend the pleading and get it out in the next day or so."** (See Def. Exh. B). However, Claimant's Amended Form 50 on April 13, 2015 not only included the P&T claim, but also for the first time alleged that the injury "ultimately caused his death." Claimant then filed a Form 52 death claim on April 15, 2015. Defendants denied same in the Form 53. Notably, neither Dr. Bonnarens, nor the medical examiner, nor the hospital where claimant died, produced any records in support of claimant's death claim.

**Defendants counsel asked Claimant's counsel to provide any evidence that Claimant's death was related to the work injury. (Email of June 1, 2015) The response was "I'll have the necessary evidence to meet my burden."** (See Def. Exh. C). Nothing was ever provided to Defendants in support of a death claim, until Defendants received Claimant's pre-hearing brief, which contained a report from David Price, Ph.D., dated July 13, 2015, to support the death theory.

A hearing was scheduled before Commissioner T. Scott Beck on October 21, 2015. At the pre-trial conference, Defendants asserted that Dr. Price's report/opinion was not sufficient "medical" evidence to support a death claim. Defendants further asserted that this death allegation,

which was not pled in the original pleadings (*or even argued at the hearing before Commissioner Barden in January 2015*) was/is made in bad faith and is frivilous. Claimant withdrew the Form 52, after a pre-trial conference.

Subsequently, a new Form 52 was served on or about January 25, 2016. No new evidence arose *prior* to the re-filing of the Form 52 to support a death claim. Defendants asked Claimant's counsel numerous time during the case to provide the evidence upon which the Form 52 death claim was based. (See Def. Exhibits A, B, C, E, F, G). Ultimately, Claimant's counsel produced an "affidavit" from Dr. Thomas Martin supporting his theory. This affidavit was sworn out on June 16, 2016, over two years after Mr. Provins' death. Again, notably, none of the doctors who treated Mr. Provins either before or after his injury gave any medical opinion in support of Claimant's position. There has been no opinion offered from the doctors treating him at the hospital at the time of his death.

Defendants had Dr. James Ballenger, M.D., an internationally known expert in alcohol abuse issues, review Mr. Provins' pre and post-injury records, along with case file materials. His opinion, as set forth in APA # 20, is that claimant's history of alcholism is a primary contributing factor in his death. Essentailly, his is the classic case of an alcoholic killing himself by a lifetime of abuse. While unfortunate, there is no nexus to the work injury. To attribute the willful behavior/activity of a Claimant in abusing alcohol or drugs to a work injury requires speculation/conjecture in this case, and further would lead to absurd conclusions as a matter of policy. Our statute further prohibits compensability of injury or death if caused by intoxication or willful intent on behalf of the Claimant. (§ 42-9-60)

Defendants assert that this death claim is brought in bad faith, and pursued "without reasonable grounds" pursuant to § 42-17-80 and Reg. 67-614. This case was initially a shoulder injury, and after Claimant's death, the case was filed to seek PPD benefits to the shoulder to his beneficiaries. At the initial hearing before Commissioner Barden, the issues were only on the Form 50 for such PPD benefits. After that Form 50 was withdrawn, another was filed in March 2015. It was not until after the SCWCC contacted the parties about mediation that a Form 52 death claim was pled on April 15, 2015 (along with another Form 50, incidentally). No new facts had arisen, and no medical records/opinions supported a death claim. Rather, only after the death claim was filed did Claimant's counsel begin obtaining opinions to support that position. **Defendants respectfully move for costs and attorney's fees for defense of this matter, pursuant to § 42-17-80 and Reg. 67-614.**

**South Carolina Workers' Compensation Commission**
*P.O. Box 1715 • 1612 Marion Street*
*Columbia, South Carolina 29202-1715*
*(803) 737-5700*

WCC File # 1200349
Carrier File # 003186-000589-wc-01
Carrier Code #
Employer FEIN

James Provins
Claimant's Name SSN

Address City State Zip

Home Phone Work Phone

Spirit Construction Services, Inc.
Employer's Name

118 Coleman Boulevard, Savannah, GA 31408
Address City State Zip

Insurance Company of the State of PA
Insurance Carrier

J. South Lewis, II — 872 S. Pleasantburg Drive, Greenville, SC 29607 — (864) 527-3284
Preparer's Name — Address — Phone #

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
DONALD L. SMITH, ESQUIRE, ATTORNEY FOR CLAIMANT

YOU ARE HEREBY NOTIFIED THAT DEFENDANTS, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the defendants, to wit:

| NAME OF PHYSICIAN/OTHER | DATE OF REPORT | PAGE |
|---|---|---|
| 10. Amin's Family Practice Associates, P.S.C. | 07/30/01 – 09/25/01 | 113 – 114 |
| 11. University of Louisville Hospital | 07/07/09 | 115 - 153 |
| 12. Orthopaedic Associates of Kentuckiana | 04/15/13 – 10/07/13 | 154 – 174 |
| 13. Integrated Case Management | 04/30/13 | 175 – 177 |
| 14. Advanced ENT & Allergy | 04/24/13 | 178 – 182 |
| 15. Baptist Health Louisville | 05/15/13 | 182 - 184 |
| 16. Baptistworx Physical Therapy | 06/02/13 – 12/30/13 | 185 – 209 |
| 17. Jewish Medical Center Southwest | 04/10/14 | 210 – 218 |
| 18. St's. Mary & Elizabeth's Hospital | 04/10/14 – 04/14/14 | 219 – 415 |
| 19. James C. Ballenger, M.D. | 07/15/16 | 416 – 429 |
| 20. Curriculum Vitae – James C. Ballenger, M.D. | N/A | 430 – 521 |
| **Exhibits** | | |
| A. Emails between J. South Lewis, II & Donald L. Smith | 01/07/14 - 03/02/14 | 522 – 525 |
| B. Emails between J. South Lewis, II & Donald L. Smith | 03/31/15 – 04/06/15 | 526 – 528 |
| C. Emails between J. South Lewis, II & Donald L. Smith | 06/01/15 | 529 – 530 |
| D. Correspondence from Donald L. Smith to Dr. David Price, PhD. | 05/19/15 – 05/26/15 | 531 – 532 |
| E. Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 – 06/08/16 | 533 – 535 |
| F. Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 – 05/12/16 | 536 - 538 |
| G. Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 | 539 - 540 |

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.

J. South Lewis, II
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607

July 15, 2016

July 26, 2016
(hearing date)

RESPONDENTS' FORM 58
WITH ADDENDUM
NOVEMBER 23, 2016

**South Carolina Workers' Compensation Commission**
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

# PRE-HEARING BRIEF
## WCC File No: 1200349

Claimant's Name: James Provins
Address:
City: State: Zip:
Home Phone: Work Phone:
Preparer's Name: J. South Lewis, II

Employer's Name: Spirit Construction Services, Inc.
Address: 3131 Market St.
City: Green Bay State: WI Zip: 54304
Carrier: Insurance Company of the State of PA
Preparer's Phone #: (864) 527-3284

**A claim for workers' compensation benefits is made based on the following grounds:**
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $725.47 2. AWW: $ 1,130.51 **Date of Injury:** 1/24/2012
3. Type of injury and body part(s): Right shoulder. **Death allegation denied.**
4. Facts in controversy: Please also see attached "Defendants' Addendum" for more detailed outline
   (1) Compensability of death allegation?
   (2) Defendants' entitlement to costs of defense?
5. Legal issues involved: §§ 42-9-280; 42-9-290; 42-9-60; 67-614; 42-17-80; 67-609
6. Unusual aspects:
   As of date of issuance of Brief, Defendants have not received Claimant's Brief. This may impact numbering of pages herein.
   Claimant's beneficiary alleges that his death, due in large part to alcohol abuse, is attributable to the work injury. Claimant has a long history of alcohol abuse.
7. Witnesses (designate if expert):* None by Defendants.
8. Exhibits:
   (1) Hearing Transcript (08/14/2012).
   (2) Motions to Compel from 2014.
   (3) Emails among attorneys regarding Defendants request to sign medical releases, and seeking evidence in support of death allegation.
   (4) Claimant's Form 58 and Pre-hearing Brief from January 22, 2015, hearing.
   (5) David Price, Ph.D.'s file materials regarding this matter.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION
10. Name, address, and specialty, if any, of the treating physician: Dr. Frank Bonnarens, Orthopaedic Associates of Kentuckiana, P.L.L.C, 3605 Northgate Circle, Suite 202, New Albany, IN 47150
11. Impairment rating(s); body part(s); physician and date of opinion: None. Claimant was still treating and not at maximum medical improvement at the time of his death.
12. I am amending my Form 50/51 in the following manner:

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

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

**I verify the contents of this form are accurate and true to the best of my knowledge.**
I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Donald L. Smith, Esq., 122 N. Main Street Anderson, SC 29621 on the 23rd day of November, 2016 by ☒ first class mail ☐ personal service ☐ certified mail.

Trudy R. Sharpless
Certifier, Trudy R. Sharpless

Signature: J. South Lewis, II, Willson Jones Carter & Baxley, P.A.
Email: jslewis@wjlaw.net

Date of hearing: 12/05/2016
Time needed for hearing: 2.0 – 2.5 hours

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

4. **Defendants' Addendum**

The procedural history of this case is important. Claimant's right shoulder injury was deemed compensable pursuant to an Order from the Hearing Commissioner and affirmed by the Appellate Panel. As such, Defendants began providing medical treatment with Dr. Bonnarens, as Claimant lives in Louisville, KY. Dr. Bonnarens performed a right shoulder surgery (rotator cuff repair) on May 15, 2013. In follow-up, Claimant had a repeat MRI showing a recurrent tear of the rotator cuff. Defendants sent a questionnaire to Dr. Bonnarens on October 10, 2013, to address whether the recurrent tear was causally-related to the work injury. Dr. Bonnarens would not answer the questionnaire, but would only answer the questions in a deposition setting or phone conference. On December 30, 2013, the parties held a phone conference with Dr. Bonnarens, to address causation. As a result of the information provided by Dr. Bonnarens, Defendants sent medical releases to Claimant's attorney so that Claimant's personal physician/hospital records could be reviewed to determine whether there was indication of a re-injury. Claimant refused to sign the releases, despite his attorney's January 7, 2014, email stating he would "be happy to provide them with the accompanying records from KY." Defendants followed up multiple times with Claimant's attorney about the medical release authorizations, to no avail. Instead, on March 14, 2014, Claimant filed a Motion to Compel (the surgery). Defendants filed their own Motion to Compel on March 25, 2014, seeking execution of the medical releases.

A hearing was set on the Motions on April 24, 2014, before Commissioner Wilkerson. Unfortunately, Claimant died on April 14, 2014; the Death Certificate lists "Acute Respiratory Failure" and "Septic Shock" as the causes of death. Due to Claimant's death, the Motion Hearing was cancelled.

Claimant's attorney filed a Form 50 on November 18, 2014, on behalf of Claimant's widow (Debra Provins). **Notably, there was no allegation of a compensable death claim.** The parties were scheduled for a hearing before Commissioner Susan Barden on January 22, 2015. The issue raised at hearing was whether Claimant had reached maximum medical improvement, and whether Mrs. Provins was entitled to benefits pursuant to § 42-9-280. A review of claimant's Form 58 and APA submissions show that no death allegation was made at that hearing. In fact, an IME from Dr. Jacobus was submitted by Claimant, for the purposes of justifying a rating to the shoulder. **Nothing Dr. Jacobus opined purported to advance a death claim.** After a pre-hearing conference, focusing solely on § 42-9-280, Claimant withdrew the Form 50.

Claimant re-filed the Form 50 on March 18, 2015; again, no death claim was made. The SCWCC told the parties the case was subject to mandatory mediation because the claimant pled "Total" disability in number 8. Defendants assumed this was a clerical error, since permanent and total disability had never been raised. **In response to an email from defense counsel on April 6, following upon the apparent erroneous pleading, claimant's counsel responded "Thank you for reminding me. I will amend the pleading and get it out in the next day or so."** (See Def. Exh. B). However, Claimant's Amended Form 50 on April 13, 2015 not only included the P&T claim, but also for the first time alleged that the injury "ultimately caused his death." Claimant then filed a Form 52 death claim on April 15, 2015. Defendants denied same in the Form 53. Notably, neither Dr. Bonnarens, nor the medical examiner, nor the hospital where claimant died, produced any records in support of claimant's death claim.

**Defendants counsel asked Claimant's counsel to provide any evidence that Claimant's death was related to the work injury. (Email of June 1, 2015) The response was "I'll have the necessary evidence to meet my burden."** (See Def. Exh. C). Nothing was ever provided to Defendants in support of a death claim, until Defendants received Claimant's pre-hearing brief, which contained a report from David Price, Ph.D., dated July 13, 2015, to support the death theory.

A hearing was scheduled before Commissioner T. Scott Beck on October 21, 2015. Defendants asserted that the death allegation, which was not pled in the original pleadings (*or even argued at the hearing before Commissioner Barden in January 2015*) was/is made in bad faith and is frivilous. Claimant withdrew the Form 52, after a pre-trial conference.

Subsequently, a new Form 52 was served on or about January 25, 2016. No new evidence arose *prior* to the re-filing of the Form 52 to support a death claim. Defendants asked Claimant's counsel numerous time during the case to provide the evidence upon which the Form 52 death claim was based. (See Def. Exhibits A, B, C, E, F, G). Ultimately, Claimant's counsel produced an "affidavit" from Dr. Thomas Martin supporting his theory. This affidavit was sworn out on June 16, 2016, over two years after Mr. Provins' death. Again, notably, none of the doctors who treated Mr. Provins either before or after his injury gave any medical opinion in support of Claimant's position. There has been no opinion offered from the doctors treating him at the hospital at the time of his death.

Defendants had Dr. James Ballenger, M.D., an internationally known expert in alcohol abuse issues, review Mr. Provins' pre and post-injury records, along with case file materials. His opinion, as set forth in APA # 20, is that claimant's history of alcholism is a primary contributing factor in his death. Essentailly, his is the classic case of an alcoholic killing himself by a lifetime of abuse. While unfortunate, there is no nexus to the work injury. To attribute the willful behavior/activity of a Claimant in abusing alcohol or drugs to a work injury requires speculation/conjecture in this case, and further would lead to absurd conclusions as a matter of policy. Our statute further prohibits compensability of injury or death if caused by intoxication or willful intent on behalf of the Claimant. (§ 42-9-60)

A hearing was scheduled before Commissioner Melody James on July 26, 2016. During a pre-trial conference, she ordered the parties to mediate the case. Mediation was held on September 29; the parties did not reach a settlement.

**Grounds for Costs & Fees**

Defendants assert that this death claim is brought in bad faith, and pursued "without reasonable grounds" pursuant to § 42-17-80 and Reg. 67-614. This case was initially a shoulder injury, and after Claimant's death, the case was filed to seek PPD benefits to the shoulder to his beneficiaries. At the initial hearing before Commissioner Barden, the issues were only on the Form 50 for such PPD benefits. After that Form 50 was withdrawn, another was filed in March 2015. It was not until after the SCWCC contacted the parties about mediation that a Form 52 death claim was pled on April 15, 2015 (along with another Form 50, incidentally). No new facts had arisen, and no medical records/opinions supported a death claim. Rather, only after the death claim was filed did Claimant's counsel begin obtaining opinions to support that position. **Defendants respectfully move for costs and attorney's fees for defense of this matter, pursuant to § 42-17-80 and Reg. 67-614.**

**South Carolina Workers' Compensation Commission**
*P.O. Box 1715 • 1612 Marion Street*
*Columbia, South Carolina 29202-1715*
*(803) 737-5700*

WCC File # 1200349
Carrier File # 003186-000589-wc-01
Carrier Code #
Employer FEIN

James Provins — Claimant's Name — SSN
Address — City — State — Zip
Home Phone — Work Phone

Spirit Construction Services, Inc. — Employer's Name
118 Coleman Boulevard, Savannah, GA 31408 — Address — City — State — Zip
Insurance Company of the State of PA — Insurance Carrier

J. South Lewis, II — Preparer's Name
872 S. Pleasantburg Drive, Greenville, SC 29607 — Address
(864) 527-3284 — Phone #

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND DONALD L. SMITH, ESQUIRE, ATTORNEY FOR CLAIMANT

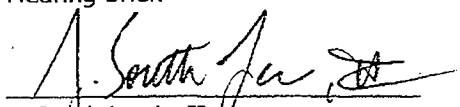
YOU ARE HEREBY NOTIFIED THAT DEFENDANTS, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the defendants, to wit:

| NAME OF PHYSICIAN/OTHER | DATE OF REPORT | PAGE |
|---|---|---|
| 10. Amin's Family Practice Associates, P.S.C. | 07/30/01 – 09/25/01 | 113 – 114 |
| 11. University of Louisville Hospital | 07/07/09 | 115 - 153 |
| 12. Orthopaedic Associates of Kentuckiana | 04/15/13 – 10/07/13 | 154 – 174 |
| 13. Integrated Case Management | 04/30/13 | 175 – 177 |
| 14. Advanced ENT & Allergy | 04/24/13 | 178 – 182 |
| 15. Baptist Health Louisville | 05/15/13 | 182 - 184 |
| 16. Baptistworx Physical Therapy | 06/02/13 – 12/30/13 | 185 – 209 |
| 17. Jewish Medical Center Southwest | 04/10/14 | 210 – 218 |
| 18. St's. Mary & Elizabeth's Hospital | 04/10/14 – 04/14/14 | 219 – 415 |
| 19. James C. Ballenger, M.D. | 07/15/16 | 416 – 429 |
| 20. Curriculum Vitae – James C. Ballenger, M.D. | N/A | 430 – 521 |
| **Exhibits** | | |
| A. Emails between J. South Lewis, II & Donald L. Smith | 01/07/14 - 03/02/14 | 522 – 525 |
| B. Emails between J. South Lewis, II & Donald L. Smith | 03/31/15 – 04/06/15 | 526 – 528 |
| C. Emails between J. South Lewis, II & Donald L. Smith | 06/01/15 | 529 – 530 |
| D. Correspondence from Donald L. Smith to Dr. David Price, PhD. | 05/19/15 – 05/26/15 | 531 – 532 |
| E. Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 – 06/08/16 | 533 – 535 |
| F. Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 – 05/12/16 | 536 - 538 |
| G. Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 | 539 - 540 |

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.



J. South Lewis, II
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607

November 23, 2016

December 5, 2016
(hearing date)

# APPELLANTS' AMENDED PRE-HEARING BRIEF
NOVEMBER 25, 2016

**South Carolina Workers' Compensation Commission**
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739
www.wcc.sc.gov

# AMENDED PRE-HEARING BRIEF
## WCC File No: 1200349

Claimant's Name: Debra Provins for James Provins (deceased)
Address: [redacted]
City: [redacted] State: [redacted] Zip: [redacted]
Home Phone: [redacted] Work Phone:
Preparer's Name: Donald L. Smith, Esquire

Employer's Name: Spirit Construction Services, Inc.
Address: 118 Coleman Blvd.
City: Savannah State: GA Zip: 31408
Carrier: Insurance Company of the PA
Preparer's Phone #: (864) 642-9284

**A claim for workers' compensation benefits is made based on the following grounds:**
X Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $725.47 2. AWW: $1,153.37 **Date of Injury:** 01/24/2012
3. Type of injury and body part(s): Right and Left Upper Extremities; Death
4. * Facts in controversy: Whether claimant's death on April 14, 2014 is causally related to the on-the-job-accident that occurred on January 24, 2012; whether claimant's spouse is entitled to death and funeral benefits
5. Legal issues involved: Approval of allocation of benefits; 42-9-110 (presumed dependents); 42-9-120 (determination of dependency); 42-9-130 (div of death benefits); 42-9-280 (remaining TTD benefits); 42-9-290 (comp for death of employee by acc); Due to the nature and severity of McMahan's back injury, the court found it very likely that McMahan would continue to need pain management for the remainder of his life, irrespective of an MMI diagnosis. Accordingly, permanent total disability benefits were warranted. McMahan v. S.C. Dept. of Education, Op. No. 5415 (S.C. Ct. App. filed June 15, 2016)
6. Unusual aspects: Claimant passed away on April 14, 2014. His wife, Debra, has retained the undersigned to resolve this claim on behalf of Mr. Provins' estate. Mr. Provins' sister and two children have waived their rights to any claim of proceeds that this claim may recover, making Mrs. Provins the sole heir.
7. Witnesses (designate if expert): * Debra Provins, Alice Zimmerman, Stephen Gordin, MD*, Gabrielle Linder, PA-C*, Frank Bonnarens, MD*, George Dunn, MD*, Dwight Jacobus, DO*, David Price, PhD*, Thomas Martin, MD*
8. Exhibits: Death Certificate of James Provins; Waiver of Potential Claim of Alice M. Zimmerman, Jessica M. Provins, and Amanda J. Provins; Testimony of Luis Carmon (p. 54-60 of August 14, 2012 Transcript); findings of Fact (p. 5 of September 7, 2015 Decision and Order); Birth Certificates of Jessica and Amanda; Deposition of Dr. James F. Ballenger; Retention Contract; Case Work of Ballenger; Breakdown of Plaintiff/Defendant; email exchange between counsel
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See Addendum
10. Name, address, and specialty, if any, of the treating physician: See Addendum
11. Impairment rating(s); body part(s); physician and date of opinion: 10-13% to right upper extremity; Dr. Dwight A. Jacobus; January 5, 2015
12. I am amending my Form 50/51 in the following manner:

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

Signature: Email: attorneydonaldsmith@gmail.com

Date of hearing: November 25, 2016 Time needed for hearing: 1 hour

On behalf of X Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

ADDENDUM
JAMES PROVINS - 1200349
Date of Loss: January 24, 2012

January 24, 2012-50 year old male presents with c/o shoulder pain right shoulder pain, anteriorly, radiates down to the arm, unable to lift ann. (APAs, p. 1)

His end snapped out of his hand, causing his right arm to fall, he heard a snapping sensation and had immediate pain. (APAs, p. 1)

General Appearance: pleasant, alert, nontoxic, well hydrated, appears uncomfortable, but NAD. Eyes: PERRL, EOMI, lids/conjunctivae normal. (APAs, p. 2)

X ray: Shoulder, right No fracture or dislocation. (APAs, p. 2)

General Appearance: pleasant, alert, nontoxic, well hydrated, appears uncomfortable, but NAD. Eyes: PERRL, EOMI, lids/conjunctivae normal (APAs, p. 2)

January 30, 2012-Patient states he has had no improvement of symptoms. He states he is unable to lift arm above his head and wakes up in the middle of the night if he rolls over onto his shoulder. (APAs, p. 4)

Signs and symptoms suspicious for rotator cuff injury. Will have patient scheduled for MRI of shoulder pending WC approval. (APAs, p. 5)

February 18, 2012-There is a tear of the supraspinatus tendon and likely involving a portion of the infraspinatus tendon. This tear measures approximately 2.8 cm in anterior posterior dimension. This tear extends over the distal 2 to 2.5 cm of the rotator cuff. (APAs, p. 6)

May 14, 2013-He said the pain is 10 out of 10. He said he is quite frustrated by this because he has to learn how to wipe his butt with his left hand, cannot use the right hand after doing it that way for 51 years. (APAs, p. 9)

The patient does have a bulge consistent with a possible rupture of the long head of the biceps on the right side when compared to the left. (APAs, p. 10)

May 15, 2013-The patient was seen to have a massive tear of the rotator cuff. (APAs, p. 16)

...it looked like the supraspinatus, infraspinatus, and the rotator interval were all involved in the rotator cuff tear. (APAs, p. 16)

June 7, 2013-Worse since sx (surgery)
-Nature of Pain: Bum, Throb, Stab, Constant (APAs, p. 48)

June 12, 2013-Doing ok-I guess. Still hurts. (APAs, p. 52)

June 13, 2013-States"high blood pressure" and "I had to go to court again to make them pay for my injury.' (APAs, p. 53)

June 14, 2013-out of pain meds. (APAs, p. 54)

June 18, 2013- Right shoulder hurts.
-patient is out of pain meds. (APAs, p. 55)

June 19, 2013- hurting. (APAs, p. 56)

June 21, 2013-"Hurts when I got my arm in certain spots. Ok if it at my side. Pain when raising it." (APAs, p. 57)

June 24, 2013-"notable effort and pain."(APS, p. 58)

June 26, 2013-"Still feel like I can't raise arm. Pain still there."(APAs, p. 59)

June 28, 2013-Right shoulder feels about the same. (APAs, p. 60)

June 28, 2013-Letter to Dr. Bonnarens, 10 sessions of PT
-right shoulder feels same since start
-Still can't raise arm on own without help.
-notable effort and pain reports (APAs, p. 92)

July 3, 2013-"still painful but getting used to it."(APAs, p. 62)

July 5, 2013-"no better with pain and motion no better."
"ALARM -notable ticking. Pain."(APAs. p.63)

July 10, 2013-"hurting"-same and "difficulty moving, standing, sitting."('APAs, p. 65)

July 12, 2013-"poor. Same as yesterday." and "signs of instability." (APAs, p. 66)

July 16, 2013-Complains of persistent shoulder pain. (APAs, p. 67)

July 17, 2013-"still hurts."(APAs, p. 68)

July 19, 2013-"still hurting-still wakes me up every night."
-very slow progress (APAs, p. 69)

July 22, 2013-"fatigued easily." (APAs, p. 70)

July 24, 2013-Same-shoulder still pops and hurts the same.
Patient may be plateauing with program-possible new or re-tear; and, possible new or re-tear. Plan of care-reassess. (APAs, p. 71)

July 26, 2013-It's hurting and popping. (APAs, p. 72)

July 26, 2013-Letter to Dr. Bonnarens, "22 sessions- pt. still hurting a lot & its popping also.
Can't use right arm for much. AROM recent decline.
Signs/sxs of possible re-tear, could be extreme weakness & fatigue. (APAs, p. 47)

July 31, 2013-Hurting
-pain and limited range of motion and, therefore, limited functional use or right upper extremity (APAs, p. 73)

August 5, 2013-Shoulder still hurts.
Still with right shoulder pain complaint. (APAs, p. 75)

August 7, 2013-same-pain & popping
-no notable gains past ... weeks (APAs, p. 76)

August 9, 2013-Right shoulder still hurts-able to raise rum overhead but takes a lot of effort. (APAs, p. 77)

August 13, 2013-I feel like I need more meds. (APAs, p. 78)

August 14, 2013-Continues with moderate pain and limited range of motion (APAs, p. 79)

August 16, 2013-Paint complaints remain ..., as does range of motion limitations (APAs, p. 80)

August 19, 2013-Shoulder still hurts. "Can't raise it as high as you can."(APAs, p. 81)

August 21, 2013-Moderate pain with stretching and limited range of motion
-Reassess for return to MD." (APAs, p. 82)

August 23, 2013-Letter to Dr. Bonnarens, Limited with self-care activities (toileting, dressing, bathing, etc.) due to pain and motion limitations.
Deficits remaining in regards to pain free shoulder movement.
Compliant/Cooperative with rehabilitation efforts.
Please advise after your exam."(APAs, p. 91)

Dwight A. Jacobus, DO
"This is to confirm my opinion that the above-captioned patient, who is now deceased, would have a 10% to 13% disability rating utilizing the shoulder regional grid border of Permanent Impairment, Sixth Edition. It should be noted that it is also my opinion that whether the patient was not deceased and was able to have a second surgery, he would still have a disability percentage of at least 10% to 13% in regard to the findings of pre-operatively, surgically, and post-operatively. (APAs, p. 104)

David Price, PhD
Obviously the process that ultimately led to Mr. Provins' demise appears to have been the injury followed by prolonged pain, financial distress, loss of use of his right arm, impaired activity of daily living, depression, anxiety about his future and his self-medication with alcohol that led to his death. These would appear to be related to his shoulder injury of 01/24/12 as he has no history of pain, anxiety, depression or alcoholism prior to that event. (APAs, p. 108)

Gabrielle Linder, PA-C
That I referred Mr. Provins for an MRI due to the symptomology that he exhibited.
That the carrier in this matter denied my request. (APAs, p. 109)

Thomas Martin, MD
It is clear from the records provided that Mr. Provins suffered from depressive illness and alcohol abuse disorders that preexisted his work-related injury in 2012. Furthermore, it has been stipulated that he suffered from a serious right shoulder injury that required medical and surgical treatment. It is also apparent that while under significant psychosocial stress or in pain, Mr. Provins would self-medicate pain and depression with alcohol. While awaiting professional medical/surgical and pain management after incurring his injury, Mr. Provins used alcohol to cope and self-medicate depressive and pain symptoms, thereby exacerbating a preexisting condition. Following his surgery in 2013, he did not gain significant remediation or pain relief. When medical assistance ceased in latter 2013, Mr. Provins again used alcohol in excess. This further enhanced his neurovegetative symptoms of depression, reclusiveness, and lack of self-care. It is this Examiner's opinion to a reasonable degree of medical and psychiatric certainty that Mr. Provins suffered from depressive disorder due to another medical condition (right shoulder injury), somatic symptom disorder with predominant pain, substance (alcohol) induced depressive disorder, and alcohol use disorder, severe.

10. TREATING PHYSICIANS

1. Redicare/Gabrielle Linder, PA-C
   823 Pearman Dairy Road
   Anderson SC 29625

2. Inmed Diagnostic Services of SC/Stephen Gordin, MD
   1704 E. Main St.
   Duncan SC 29334

3. Baptist Health Louisville/Frank Bonnarens, MD
   4000 Kresge Way
   Louisville KY 40207

4. Baptistworx Physical Therapy
   7092 Distribution Drive
   Louisville KY 40258

5. High Field & Open MRI/George Dunn, MD
   7807 Shelbyville Road
   Louisville KY 40222

6. Oaktree Orthopaedics/Dwight Jacobus, DO
   115 Bushy Creek Road
   Easley SC 29642

7. David Price, PhD
   P.O. Box 27161
   Greenville SC 29616

8. Thomas Martin, MD
   1330 Richland Street
   Columbia SC 29201

9. James F. Ballenger, MD
   192 E. Bay St., Suite 204
   Charleston SC 29401

RESPONDENTS' FORM 58 WITH ADDENDUM
DECEMBER 2, 2016

**South Carolina Workers' Compensation Commission**
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

# PRE-HEARING BRIEF
## WCC File No: 1200349
## AMENDED

Claimant's Name: James Provins
Address:
City: State: Zip:
Home Phone: Work Phone:
Preparer's Name: J. South Lewis, II

Employer's Name: Spirit Construction Services, Inc.
Address: 3131 Market St.
City: Green Bay State: WI Zip: 54304
Carrier: Insurance Company of the State of PA
Preparer's Phone #: (864) 527-3284

**A claim for workers' compensation benefits is made based on the following grounds:**
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $725.47 2. AWW: $ 1,130.51 **Date of Injury:** 1/24/2012
3. Type of injury and body part(s): Right shoulder. **Death allegation denied.**
4. Facts in controversy: Please also see attached "Defendants' Addendum" for more detailed outline
   (1) Compensability of death allegation?
   (2) Defendants' entitlement to costs of defense?
5. Legal issues involved: §§ 42-9-280; 42-9-290; 42-9-60; 67-614; 42-17-80; 67-609
6. Unusual aspects:
   As of date of issuance of Brief, Defendants have not received Claimant's Brief. This may impact numbering of pages herein.
   Claimant's beneficiary alleges that his death, due in large part to alcohol abuse, is attributable to the work injury. Claimant has a long history of alcohol abuse.
7. Witnesses (designate if expert):* None by Defendants.
8. Exhibits:
   (1) Hearing Transcript (08/14/2012).
   (2) Motions to Compel from 2014.
   (3) Emails among attorneys regarding Defendants request to sign medical releases, and seeking evidence in support of death allegation.
   (4) Claimant's Form 58 and Pre-hearing Brief from January 22, 2015, hearing.
   (5) David Price, Ph.D.'s file materials regarding this matter.
   (6) Dr. Thomas Martin file materials subpoenaed.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION
10. Name, address, and specialty, if any, of the treating physician: Dr. Frank Bonnarens, Orthopaedic Associates of Kentuckiana, P.L.L.C, 3605 Northgate Circle, Suite 202, New Albany, IN 47150
11. Impairment rating(s); body part(s); physician and date of opinion: None. Claimant was still treating and not at maximum medical improvement at the time of his death.
12. I am amending my Form 50/51 in the following manner:

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

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

**verify the contents of this form are accurate and true to the best of my knowledge.**
I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Donald L. Smith, Esq., 122 N. Main Street Anderson, SC 29621 on the 2nd day of December, 2016 by ☒ first class mail ☐ personal service ☐ certified mail and by e-mail attorneydonaldsmith@gmail.com.

Jane C. Watkins
Certifier, Jane C. Watkins

Signature: J. South Lewis, II, Willson Jones Carter & Baxley, P.A.
Email: jslewis@wjlaw.net

Date of hearing: 12/05/2016
Time needed for hearing: 2.0 – 2.5 hours

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

4. **Defendants' Addendum**

The procedural history of this case is important. Claimant's right shoulder injury was deemed compensable pursuant to an Order from the Hearing Commissioner and affirmed by the Appellate Panel. As such, Defendants began providing medical treatment with Dr. Bonnarens, as Claimant lives in Louisville, KY. Dr. Bonnarens performed a right shoulder surgery (rotator cuff repair) on May 15, 2013. In follow-up, Claimant had a repeat MRI showing a recurrent tear of the rotator cuff. Defendants sent a questionnaire to Dr. Bonnarens on October 10, 2013, to address whether the recurrent tear was causally-related to the work injury. Dr. Bonnarens would not answer the questionnaire, but would only answer the questions in a deposition setting or phone conference. On December 30, 2013, the parties held a phone conference with Dr. Bonnarens, to address causation. As a result of the information provided by Dr. Bonnarens, Defendants sent medical releases to Claimant's attorney so that Claimant's personal physician/hospital records could be reviewed to determine whether there was indication of a re-injury. Claimant refused to sign the releases, despite his attorney's January 7, 2014, email stating he would "be happy to provide them with the accompanying records from KY." Defendants followed up multiple times with Claimant's attorney about the medical release authorizations, to no avail. Instead, on March 14, 2014, Claimant filed a Motion to Compel (the surgery). Defendants filed their own Motion to Compel on March 25, 2014, seeking execution of the medical releases.

A hearing was set on the Motions on April 24, 2014, before Commissioner Wilkerson. Unfortunately, Claimant died on April 14, 2014; the Death Certificate lists "Acute Respiratory Failure" and "Septic Shock" as the causes of death. Due to Claimant's death, the Motion Hearing was cancelled.

Claimant's attorney filed a Form 50 on November 18, 2014, on behalf of Claimant's widow (Debra Provins). **Notably, there was no allegation of a compensable death claim.** The parties were scheduled for a hearing before Commissioner Susan Barden on January 22, 2015. The issue raised at hearing was whether Claimant had reached maximum medical improvement, and whether Mrs. Provins was entitled to benefits pursuant to § 42-9-280. A review of claimant's Form 58 and APA submissions show that no death allegation was made at that hearing. In fact, an IME from Dr. Jacobus was submitted by Claimant, for the purposes of justifying a rating to the shoulder. **Nothing Dr. Jacobus opined purported to advance a death claim.** After a pre-hearing conference, focusing solely on § 42-9-280, Claimant withdrew the Form 50.

Claimant re-filed the Form 50 on March 18, 2015; again, no death claim was made. The SCWCC told the parties the case was subject to mandatory mediation because the claimant pled "Total" disability in number 8. Defendants assumed this was a clerical error, since permanent and total disability had never been raised. **In response to an email from defense counsel on April 6, following upon the apparent erroneous pleading, claimant's counsel responded "Thank you for reminding me. I will amend the pleading and get it out in the next day or so."** (See Def. Exh. B). However, Claimant's Amended Form 50 on April 13, 2015 not only included the P&T claim, but also for the first time alleged that the injury "ultimately caused his death." Claimant then filed a Form 52 death claim on April 15, 2015. Defendants denied same in the Form 53. Notably, neither Dr. Bonnarens, nor the medical examiner, nor the hospital where claimant died, produced any records in support of claimant's death claim.

**Defendants counsel asked Claimant's counsel to provide any evidence that Claimant's death was related to the work injury. (Email of June 1, 2015) The response was "I'll have the necessary evidence to meet my burden."** (See Def. Exh. C). Nothing was ever provided to Defendants in support of a death claim, until Defendants received Claimant's pre-hearing brief, which contained a report from David Price, Ph.D., dated July 13, 2015, to support the death theory.

A hearing was scheduled before Commissioner T. Scott Beck on October 21, 2015. Defendants asserted that the death allegation, which was not pled in the original pleadings (*or even argued at the hearing before Commissioner Barden in January 2015*) was/is made in bad faith and is frivilous. Claimant withdrew the Form 52, after a pre-trial conference.

Subsequently, a new Form 52 was served on or about January 25, 2016. No new evidence arose *prior* to the re-filing of the Form 52 to support a death claim. Defendants asked Claimant's counsel numerous time during the case to provide the evidence upon which the Form 52 death claim was based. (See Def. Exhibits A, B, C, E, F, G). Ultimately, Claimant's counsel produced an "affidavit" from Dr. Thomas Martin supporting his theory. This affidavit was sworn out on June 16, 2016, over two years after Mr. Provins' death. Again, notably, none of the doctors who treated Mr. Provins either before or after his injury gave any medical opinion in support of Claimant's position. There has been no opinion offered from the doctors treating him at the hospital at the time of his death.

Defendants had Dr. James Ballenger, M.D., an internationally known expert in alcohol abuse issues, review Mr. Provins' pre and post-injury records, along with case file materials. His opinion, as set forth in APA # 20, is that claimant's history of alcholism is a primary contributing factor in his death. Essentailly, his is the classic case of an alcoholic killing himself by a lifetime of abuse. While unfortunate, there is no nexus to the work injury. To attribute the willful behavior/activity of a Claimant in abusing alcohol or drugs to a work injury requires speculation/conjecture in this case, and further would lead to absurd conclusions as a matter of policy. Our statute further prohibits compensability of injury or death if caused by intoxication or willful intent on behalf of the Claimant. (§ 42-9-60)

A hearing was scheduled before Commissioner Melody James on July 26, 2016. During a pre-trial conference, she ordered the parties to mediate the case. Mediation was held on September 29; the parties did not reach a settlement.

**Grounds for Costs & Fees**

Defendants assert that this death claim is brought in bad faith, and pursued "without reasonable grounds" pursuant to § 42-17-80 and Reg. 67-614. This case was initially a shoulder injury, and after Claimant's death, the case was filed to seek PPD benefits to the shoulder to his beneficiaries. At the initial hearing before Commissioner Barden, the issues were only on the Form 50 for such PPD benefits. After that Form 50 was withdrawn, another was filed in March 2015. It was not until after the SCWCC contacted the parties about mediation that a Form 52 death claim was pled on April 15, 2015 (along with another Form 50, incidentally). No new facts had arisen, and no medical records/opinions supported a death claim. Rather, only after the death claim was filed did Claimant's counsel begin obtaining opinions to support that position. **Defendants respectfully move for costs and attorney's fees for defense of this matter, pursuant to § 42-17-80 and Reg. 67-614.**

**South Carolina Workers' Compensation Commission**
*P.O. Box 1715 • 1612 Marion Street*
*Columbia, South Carolina 29202-1715*
*(803) 737-5700*

WCC File # 1200349
Carrier File # 003186-000589-wc-01
Carrier Code #
Employer FEIN

**SUPPLEMENTAL**

James Provins
Claimant's Name
SSN
Address City State Zip
Home Phone Work Phone

Spirit Construction Services, Inc.
Employer's Name
118 Coleman Boulevard, Savannah, GA 31408
Address City State Zip
Insurance Company of the State of PA
Insurance Carrier

J. South Lewis, II
Preparer's Name
872 S. Pleasantburg Drive, Greenville, SC 29607
Address
(864) 527-3284
Phone #

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
DONALD L. SMITH, ESQUIRE, ATTORNEY FOR CLAIMANT

YOU ARE HEREBY NOTIFIED THAT DEFENDANTS, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the defendants, to wit:

| NAME OF PHYSICIAN/OTHER | DATE OF REPORT | PAGE |
|---|---|---|
| 10. Amin's Family Practice Associates, P.S.C. | 07/30/01 – 09/25/01 | 113 – 114 |
| 11. University of Louisville Hospital | 07/07/09 | 115 - 153 |
| 12. Orthopaedic Associates of Kentuckiana | 04/15/13 – 10/07/13 | 154 – 174 |
| 13. Integrated Case Management | 04/30/13 | 175 – 177 |
| 14. Advanced ENT & Allergy | 04/24/13 | 178 – 182 |
| 15. Baptist Health Louisville | 05/15/13 | 182 - 184 |
| 16. Baptistworx Physical Therapy | 06/02/13 – 12/30/13 | 185 – 209 |
| 17. Jewish Medical Center Southwest | 04/10/14 | 210 – 218 |
| 18. St's. Mary & Elizabeth's Hospital | 04/10/14 – 04/14/14 | 219 – 415 |
| 19. James C. Ballenger, M.D. | 07/15/16 | 416 – 429 |
| 20. Curriculum Vitae – James C. Ballenger, M.D. | N/A | 430 – 521 |
| **Exhibits** | | |
| A. Emails between J. South Lewis, II & Donald L. Smith | 01/07/14 - 03/02/14 | 522 – 525 |
| B. Emails between J. South Lewis, II & Donald L. Smith | 03/31/15 – 04/06/15 | 526 – 528 |
| C. Emails between J. South Lewis, II & Donald L. Smith | 06/01/15 | 529 – 530 |
| D. Correspondence from Donald L. Smith to Dr. David Price, PhD. | 05/19/15 – 05/26/15 | 531 – 532 |
| E. Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 – 06/08/16 | 533 – 535 |
| F. Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 – 05/12/16 | 536 - 538 |
| G. Emails between J. South Lewis, II & Donald L. Smith | 02/17/16 | 539 – 540 |
| H. Dr. Thomas Martin file materials subpoenaed | | 541 – 547 |

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.

J. South Lewis, II
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607

December 2, 2016

December 5, 2016
(hearing date)

# MEMORANDUM OF EMPLOYEE/ APPELLANT'S INITIAL BRIEF
JULY 24, 2017

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC FILE NO.: 1200349

James Provins
Employee, Claimant,

Appellant,

versus

Spirit Construction Services, Inc.,
Employer, and Insurance Company
of the State of Pennsylvania, Carrier,

Respondents.

---

# MEMORANDUM OF EMPLOYEE/APPELLANT

---

Donald L. Smith
Attorney for the Appellant
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

## ISSUES PRESENTED

I. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant had not died, in part, because of the Employer's bad faith refusal to abide by the Act and provide treatment for Claimant.

II. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant had not suffered permanent impairment to his right upper extremity prior to his untimely death.

III. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant's issues with alcohol had returned prior to the on-the-job accident, despite no evidence to substantiate the claim other than employees who maintained their job despite mass layoffs.

IV. Whether the Single Commissioner erred in finding that Defendants' allegation that Claimant prevented their investigation of causation by failing to sign a HIPAA form, when the treating physician had related the second tear of the shoulder to the first tear.

V. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant's inability to "wipe his ass", maintain his career, earn a living to support his disabled wife and two daughters, necessity of borrowing from everyone to subsist, did not cause the iron worker depression.

VI. Whether the Single Commissioner erred as a matter of fact and law in finding that Dr. Ballenger was credible, despite the fact that he misrepresented his payment for his testimony, the fact that he relied on testimony company employees from the initial hearing which were summarily dismissed by the sitting Commissioner, instructed the undersigned that he was the

expert and knew that clear meaning of Claimant's expert's words were not what he meant with their use, etc.

VII. Whether the Single Commissioner erred as a matter of fact and law in ignoring the findings of Claimant's IME performed by Dr. Dwight Jacobus, M.D.

VIII. Whether the Single Commissioner erred as a matter of fact and law by disregarding public policy, and finding on behalf of the defense who denied, denied, denied, until the Claimant died.

## STATEMENT OF CASE

This case is on appeal with the South Carolina Workers' Compensation by the employee, James Provins (deceased), by and through his personal representative, Debra Provins, from an order issued by Commissioner R. Michael Campbell, III, on March 6, 2017. Commissioner Campbell found, based upon all of the evidence presented at the hearing on December 5, 2016, that the employee's death was not causally related to the injury to his right shoulder that was sustained on January 24, 2012. Specifically, the Commissioner found that the claimant's widow did not prove that he died as a result of his employment by a preponderance of the evidence.

## HISTORICAL BACKGROUND

At the hearing, Respondent's defense of the case did not include anything that questioned the actual injury. They simply attempted to assassinate his character. Respondents' provided three witnesses. They included the safety manager, the gentlemen who was helping Claimant to carry a piece of deck, when he was injured, and Claimant's former roommate.

It is Respondents' belief that Claimant died of things unrelated to the on-the-job injury of January 24, 2012. Specifically, they focused on alcohol consumption. They did not have any witness testify to anything related to the day of the accident. They did, however, have his roommate testify to times other than the day in question. When questioned about alcohol consumption on that day, James offered the following:

20 Q. On the day in question were you intoxicated?
21 A. No.
22 Q. Under the influence?
23 A. No.
24 Q. Did you take a drug test when you went to the
25 doctor?
1 A. Yes.
2 Q. Did you pass that test?

3 A. Yes.

(James Provins, Hrg. Transcript 09/14/2012: 36, 20.25; 37, 1.3).

Earnest McDonald had been with Spirit for eighteen (18) years, nine (9) years of which had been devoted to safety. He had assumed the head safety position with Spirit fourteen (14) months prior. He was responsible for taking James Provins to the company doctor on January 24, 2012. He spoke of how he was James was shaking from the pain in his right shoulder. He testified that he had to sign his name for him. He did not testify to anything related to alcohol, even though he was in his presence for a couple of hours. However, he did offer the following:

10 Q. Did he have an MRI?
11 A. Not as I'm aware of, no.
12 Q. And the story that Mr. Provins gave today is
13 the same one he gave to you and the same one that he gave
14 to the doctor; am I right?
15 A. Yes.
16 Q. So that's never changed?
17 A. No.
18 Q. In regard to Mr. Provins' work, the quality of
19 his work was okay, wasn't it?
20 A. Yes, it was.
21 Q. His attendance was solid?
22 A. Uh-huh.
23 Q. He was timely?
24 A. Yes. Uh-huh.
25 Q. Mr. Provins is right-handed; is that right?
1 A. I believe so, yes.
2 Q. And you signed in for him?
3 A. Yes.
4 Q. And since you were safety man, did you have
5 them do a drug test?
6 A. Yes.
7 Q. And how did that go?
8 A. It was good.

(McDonald, Hrg. Transcript, 49, 10.25; 50, 1.8).

Mr. McDonald had absolutely nothing negative to say about Mr. Provins. He did not

offer an iota of negative testimony regarding James Provins. Alcohol was not a term uttered by Mr. McDonald, even on the day of the injury when he spent the afternoon with him at the doctor's office, pharmacy and taking him home.

The second witness for the Respondents was Luis Carrion. Luis was also an iron worker who struggled mightily with the English language. The Commissioner had to go out of his way to ensure that he was capable of testifying. When he actually did testify, it was apparent that had been coached in preparation for his testimony.

20 Q. Where does he live?
21 A. I don't know.
22 Q. What did you talk about on the job?
23 A. Nothing. We working together. We didn't talk
24 nothing.
25 Q. Did he work hard?
1 A. Huh?
2 Q. Did he work hard?
3 A. Oh, yeah. When -- when we pick up the first
4 piece, he told me he --
5 MR. SMITH: Objection. I ask that he answer
6 the question.
7 THE COURT: He needs to answer the question he
8 was asked.

(Carrion Hrg. Transcript, 09/14/2012: 56, 20.25; 57, 1.8).

Mr. Carron was not on the same crew as Mr. Provins. However, on January 24th, they were teammates as they attempted to move decking. During the course of the morning, Mr. Carrion did not make any observations of Mr. Provins regarding alcohol. In fact, he did not mention anything that could be considered negative with regard to the employment of Mr. Provins.

The third witness that the Respondents offered was Anthony A. Azusenus, Jr. He had been the roommate of Mr. Provins for roughly three months. Mr. Provins had been in a motel when Mr. Azusenis needed to get another tenant for the $1500.00 per month apartment that he

had leased.

Mr. Azusenis did not work on the same crew as Mr. Provins. Mr. Azusenis was not a witness to the accident. Mr. Azusenis made claims about the significant consumption of alcohol by Mr. Provins (after the accident). Mr. Azusenis offered statements regarding the difficulties faced by Mr. Provins regarding his mortgage. Of course, Mr. Provins was a maximum compensation case, so it was likely that he was not getting 2/3 of his wage. It wouldn't have made sense for him to seek out workers' compensation benefits, over his weekly wage. His testimony can best be summarized in the following dialogue:

18 Q. Spirit had you signed a confidentiality
19 agreement regarding Mr. Provins' injury, didn't they?
20 A. No.
21 Q. So if Mr. Provins said that, that would be
22 incorrect?
23 A. That is incorrect.
24 Q. You called Mr. Provins in March and told him
25 you were fired, didn't you?
1 A. I was told by my boss to go home and tell
2 James that he was relieved of his duty due to a reduction
3 of workforce.
4 Q. Okay. Now, if you could answer my question.
5 With regard to you making a phone call to Mr. Provins in
6 March and telling him that you were fired and that you
7 needed work, do you recall that?
8 A. No.
9 Q. What -- what record do you have? Your
10 criminal record, could you share that with us?
11 A. I have no criminal record.
12 Q. Never been in trouble?
13 A. I've had a few DUIs in the past.
14 Q. So you know all about drinking?
15 A. Yes, I do.

(Azusenis, Jr, Hrg. Transcript, 09/14/2012: 68, 18.25; 69, 1.15).

When Mr. Azusenis was questioned about the effort that James Provins put forth on

behalf of Spirit. He went further than Mr. McDonald.

12 Q. What was Mr. Provins' work ethic like?
13 A. To be honest with you, it was exceptional. He
14 showed up every day, he was on time, and the man would do
15 anything you asked him to do.
16 Q. Did he work hard?
17 A. Yeah, he was a hard worker. He wasn't slack
18 by any means.

(Azusenis, Jr, Hrg. Transcript, 09/14/2012: 71, 12.18).

13 Q. But his work ethic, he was an exceptional
14 worker?
15 A. Yes. I cannot take that away from him.
16 Q. With regard to his alcohol consumption, he
17 didn't drink any that day, did he?
18 A. I cannot answer that.

(Azusenis, Jr, Hrg. Transcript, 09/14/2012: 73, 13.18).

Mr. Azunesis had stated that Mr. Provins put alcohol in jug to take to work. He said that he drank in the morning before work. However, there were no statements offered by Spirit regarding alcohol use at work. There were no infractions for tardiness. There was nothing that substantiated the claims of Mr. Azusenis. It should also be noted that he testified that he knew of no other uses by Mr. Provins of his right upper extremity, outside of the work forum.

Mr. Provins had the opportunity to see Dr. Linder on two separate occasions. He presented to Dr. Linder on the date of injury, January 24, 2012. His appearance was "pleasant, alert, nontoxic, well hydrated, appears uncomfortable." There was no mention of the odor of alcohol, or appearance of alcohol use. His skin was normally colored and was warm to the touch. He weighed 192.5 lbs.

He returned for his follow-up appointment on January 30, 2012. His general appearance was once again "pleasant, alert, nontoxic, well hydrated, appears uncomfortable." His physical

exam offered the same as the previous week.

> Signs and symptoms suspicious for rotator cuff injury. Will have patient scheduled for MRI of shoulder pending WC approval. Patient advsied to stop Voltaren and to start Mobic for inflammation and pain. Can use Robaxin as needed for muscle spasm. Moist heat or ice okay. Continue light duty at work. See scanned form. FU pendin g WC approval of MRI or as needed. Side effects of medications were explained to patient.

On February 18, 2012, Mr. Provins managed to get the MRI that had been requested of the Respondents by Dr. Linder. The MRI was confirmation of Dr. Linder's fears, given the symptomology presented by Mr. Provins. "There is a tear of the supraspinatus tendon and likely involving a portion of the infraspinatus tendon. This tear measures approximately 2.8 cm in anterior posterior dimension. This tear extends over the distal 2 to 2.5 cm of the rotator cuff. Provins had to wait unnecessarily for the treatment that would enable him to return to work. Defendants ignored the fact that their doctor's belief was confirmed when an MRI illustrated a torn rotator cuff. Respondents forced Appellant to try the case.

Upon successful completion of the single commissioner level, Respondent's appealed the sitting commissioner despite the fact that he made a specific finding that Appellant was credible and the only other witness to the accident (Mr. Carrion), was not. The Full Commission unanimously ratified the decision of the sitting commissioner. Respondents waited the full thirty (30) days prior to issuing his TTD check consisting of over thirteen (13) months of back-pay. More importantly, the treatment that he should have gotten a year earlier was ordered.

On May 15, 2013, James Provins "was seen to have a massive tear of the rotator cuff...it looked like the supraspinatus, infraspinatus, and the rotator interval were all involved in the rotator cuff tear. (APAs, p. 16). The injury that had occurred over fifteen (15) month prior, had become more severe based on further tearing and the atrophying of the muscles around it. When

he was seen for the first time following the surgery, it was noted that his pain level was worse since the surgery. (APAs, p. 48). Mr. Provins would ***never*** have an interaction with a care giver again where he was pain-free.

Mr. Provins maintained at every visit to physical therapy, which amounted to thirty (30) visits, that he was hurting and in pain. He religiously attended the sessions. His complaints remained the same. His limitations remained the same. On October 2, 2013, an MRI indicated that he had a large recurrent full thickness tear of the supranatus tendon retracted approximately 25mm. There was mild muscle atrophy associated with this tear. There was also a full-thickness tear of the subscapularis tendon, with the tendon likely scarred in to the rotator intervalus. It involved moderate muscle atrophy. (APAs, p. 100).

Based on the fact that twenty (20) months had passed since James Provins had been injured, and he still could not "wipe his ass", he was crushed. He was worse off at that point than he had been when he originally had gotten hurt. Based on the absolute failure to progress following surgery, it is likely that the surgery did not take. Thus, he went through the physical therapy visits causing further injury to himself.

Despite learning of the re-injury of the rotator cuff on October 2nd, the Respondents continued to delay treatment. A teleconference was had on December 30, 2013, so that the Respondents could explore alternative causation. Dr. Bonnarens stated that the tear was related to the accident injury; and that, re-tears happen often with these types of surgeries.

Once again, the Respondents refused to adhere to the Act and delayed treatment. They used two excuses. First, they said that they were not provided with a release to acquire records and ensure that there had been no intervening cause. Second, they said that claimant was concerned about who would pay. Their phone conference had elicited that the re-tear was

directly related to the initial tear; and, Claimant was told immediately that it would not be his responsibility to pay for the next surgery. Spirit continued to ignore the spirit of the Act.

The undersigned filed a Motion to Compel treatment on April 11, 2014. Mr. Provins died on April 14, 2014. It is his widow's contention that if Respondents had complied with the Act, and provided treatment would have tended to lessen her husband's degree of disability, he would still be here. The fifty-year-old man did not have the elasticity of his younger counterparts. His ability to recover from such a serious injury was directly related to the swiftness in which it was addressed.

The continuous delays were not legitimate. Doctors told them what was necessary as a result of the causation that they deduced. They refused to honor the findings of the treating physicians whom they chose. James Provins died in misery following this clear example of bad faith.

Debra Provins was married to James Provins for over twenty-eight (28) years, but she did not know the date. She is disabled and had not worked since prior to the birth of their children. They had one significant disruption to their marriage at which time she threw Mr. Provins out of the home because she suspected he was having an affair. That circumstance, plus the untimely death of his father, had him on the brink of suicide. Thankfully, he began going to church and toned down the drinking that had been prevalent during this most depressing time period.

Ms. Provins spent greater than half her life with Mr. Provins. They raised two children together. He was a hard worker who was responsible for the financial soundness of his family. As an iron worker, he traveled to the work. She was well aware that he drank on a daily basis.

However, it was not an issue because no issues arose other than the aforementioned crisis in 2009.

She knew her husband as a happy go lucky individual, who was the life of the party. He was happiest when he was helping someone or sitting around having a beer. She saw the decline in his physical health, and the subsequent deterioration in his mental health, following the accident. They lived paycheck to paycheck, which meant greater than $1100.00 per week. When Respondents denied the treatment and TTD checks related to the torn rotator cuff, it was the beginning of the end.

She discussed his depression resulting from the torn rotator cuff that he suffered from in his dominant right upper extremity from the date of the accident until his death, over two years later.

2 A Yeah, he was right handed. He -- he
3 couldn't even wipe his butt. He couldn't help do
4 anything around the house. He just -- he felt totally
5 useless.
6 Q What kind of income did you guys have coming
7 in at that time?
8 A Nothing.
9 Q Well, how did you --
10 A No income -- we borrowed, bummed off people,
11 borrowed as much as we could. We were going into
12 foreclosure. We were losing -- we was going in all
13 kinds of trouble trying to stay afloat.

(Debra Provins, Hrg. Transcript, 12/05/2016: 13, 2.13).

She described his demeanor prior to the accident.

9 Q Can you tell us what James Provins' -- what
10 his demeanor was prior to the accident? What kind of
11 person was he?
12 A Oh, before the accident? Oh, he was happy,
13 jokes around a lot. He used to -- outgoing, willing
14 to help anybody whenever they needed him.
15 Q How did that change after he got hurt?

16 A He didn't talk to hardly anybody, stayed at
17 home, never came out of the room, never joked around,
18 real quiet and that's odd for him because he was -- he
19 was normally a real talkative person.

(Debra Provins, Hrg. Transcript, 12/05/2016: 19, 9.19).

Alice Zimmerman was Jamie's older sister (by 10 months). They lived relatively close to each other and had a strong sibling relationship. She was a factory worker in Louisville until becoming an R.N. in 2008.

17 Q Since you became a nurse where have you
18 worked?
19 A I worked at -- as a registered nurse in the
20 neonatal ICU at Kosair Children's Hospital in
21 Louisville, Kentucky and I now work at Community
22 Health and Rehab which is a nursing home/rehab
23 facility in Panama City, Florida.
24 Q What are your responsibilities?
25 A I am the nursing supervisor.

(Alice Zimmerman, Hrg. Transcript, 12/05/2016: 43, 13.25).

Her life experience, education and occupation, allowed her to offer some information regarding the syncope that her brother had. Syncope is a neurological condition, which is similar to epilepsy. It is something that may have been congenital.

3 Q Do you know what syncope is?
4 A Yes I do.
5 Q What is it?
6 A It's when you have fainting spells or you
7 black out shortly when you go backwards and you
8 fainted. I suffer them myself.
9 Q How long have you suffered them?
10 A During times of stress since I was
11 approximately 15 years old.
12 Q Did Jamie suffer from them, do you know; or
13 did you see it?
14 A Yes. Yes he did.
15 Q Did you ever have occasion to see it happen?
16 A Yes.

17 Q Was it -- was he drinking a great deal and
18 that was the cause of it?
19 A No, sir.

(Alice Zimmerman, Hrg. Transcript, 12/05/2016: 44, 3.19).

It is important to note that her father also had neurological irregularities.

2 My father suffered seizures
3 which led to strokes.

(Alice Zimmerman, Hrg. Transcript, 12/05/2016: 46, 2.3).

Debra also witnesses Jamie's syncope episodes.

16 A Yes, he's been known to -- he's been known
17 to have little — little episodes where he -- he kind
18 of -- when he gets excited or gets upset kind of eyes
19 roll back in his head and he'll pass out for a minute,
20 but that's — but I've seen that episode when he
21 wasn't when he was drinking or anything.

(Debra Provins, Hrg. Transcript, 12/05/2016: 26, 16.21).

Claimant's family doctor, Dr. Amin, provided discussed the issue of syncope. His notes say

that Mr. Provins told him of five syncope episodes and that he had not been drinking heavily. He noted the family history of diabetes, which is a leading cause of syncope. The explanation of the episodes to him were centered around coughing. The excessive coughing caused an elevation of blood pressure resulting in situational syncope. Of course, the fact that his father was epileptic and his sister suffered from syncope as well, underscore the congenital nature of his syncope.

## ARGUMENT

**I. The Single Commissioner erred as a matter of fact and law in finding that Claimant had not died, in part, because of the Employer's bad faith refusal to abide by the Act and provide treatment for Claimant.**

In a Worker's Compensation matter, for an injury to be compensable, it must arise out of

and in the course of employment. S.C. Code Ann. § 42-1-160 (1985). "Arising out of" refers to the origin of the cause of the injury. *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 466 S.E.2d 357 (1996). "An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury." Id. at 518, 466 S.E.2d at 358. The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation. *Sola v. Sunny Slope Farms*, 244 S.C. 6, 135 S.E.2d 321 (1964).

> A symptom which is present and causally connected, but found not to impact upon the claimant's condition at the time of the original award, may later manifest itself in full bloom and thereby worsen his or her condition.

*Estridge v. Joslyn Clark Controls, Inc.*, 325 S.C. 532 (1997) 482 S.E.2d 577.

Here, Claimant/Appellant met this burden when he proved that the Respondents did not provide for the medical help necessary to tend to lessen his period of disability when there was no alternative to the causation explained by him.

> **SECTION 42-15-60. (A) The employer *shall* provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty.** *(emphasis added).*

Original company doctor diagnosed a potential rotator cuff tear when a piece of decking was mishandled. She ordered an MRI based on the explanation of the accident and the accompanying symptomology. Defendants refused to authorize MRI. Claimant was forced to litigate.

As a result of the baseless litigation, and the continued bad faith denial of the no-fault medical coverage provided by the Act, Appellant suffered irreparable damage to his right upper

extremity. He became depressed and the depression caused him to withdraw from his family and go into a black hole from which he never recovered.

If that wasn't enough, Respondents learned of the re-tear of the rotator cuff on October 2, 2013, yet had not provided the authorization to fix it at the time of his death on April 14, 2014. The ok for the surgery had not come despite their own surgeon admitting that the tear was related to the original injury and that he knew of no intervening cause. This was undue delay and the Commissioner erred by not finding that said delay eliminated the possibility of claimant's prospective recovery, and eventually killed him.

The Respondents also played with the payment schedule of the Appellant. The Appellant was forced to contact counsel on several occasions due to missing checks. He went to his grave knowing that they had shorted him. At the very least, they changed the check date on a couple of occasions, causing great strife in his life due to his reduced income via workers' compensation.

> **SECTION 42 9 220. Manner in which compensation paid. Compensation under this title shall be paid periodically, promptly and directly to the person entitled thereto, unless otherwise specifically provided.**
>
> **SECTION 42 9 230. Date on which compensation payable under agreement becomes due. Installments paid weekly must be paid on the same day of the week, installments paid monthly must be paid on the same day of the month, and installments paid on some period other than weekly or monthly must be paid on the same day of each period.**

The violations of these statutes went a long way into driving claimant further and further into despair.

**II. The Single Commissioner erred as a matter of fact and law in finding that Claimant had not suffered permanent impairment to his right upper extremity prior to his untimely death.**

The Single Commissioner erred in not accepting the findings of Dr. Dwight Jacobus, M.D. who found that Mr. Provins would have a permanent disability regardless of whether he had a second surgery because of the overwhelming damage done due to the delay in proving treatment.

> This is to confirm my opinion that the above-captioned patient, who is now deceased, would have .a 10% to 13% disability rating utilizing the shoulder regional grid border of the upper extremity on Table 15-5, page 403, of The Guides and Evaluation of Permanent Impairment. Sixth Edition. It should be noted that it is also my opinion that whether the patient was not deceased and was able to have a second surgery, he would still have a disability percentage of at least 10% to 13% in regard to the findings of pre-operatively, surgically, and post-operatively. It is my opinion that a second surgery would not relate to a diminished percentage of disability because of the pathology that was present at the time the first surgery was completed.

(APAs, p. 104).

This statement does not even take into account the medicinal therapy that he would have engage so as to reduce the pain related from his injury. It is however, the substantial evidence necessary for the Commission to find that the damage had already been done to James Provins. Essentially, Dr. Jacobus said that any future treatment would do no more that provide for pain relief. He would not lessen his degree of permanent disability.

In *Scruggs v. Tuscarora Yarns, Inc.*, the Claimant was awarded permanent disability when she had not been released by the treating physician. She was still receiving physical therapy. While the claimant believed that her physical therapy would help her get better, her physician did not. Defendants argued that since she was still receiving treatment and, therefore, she was not at MMI, The Court found that, "She may receive physical therapy for the rest of her life, but may never attain a greater medical improvement.". Scruggs v. Tuscarora Yarns, Inc., 294 S.C. 473, 62 S.E.2d 319 (1987). The damage done to the shoulder of Mr. Provins was

substantial. The atrophy in his shoulder would not allow the surgery that was done to be effective. He could only have hoped to maintain.

**III. The Single Commissioner erred as a matter of fact and law in finding that Claimant's issues with alcohol had returned prior to the on-the-job accident based on res judicata.**

The Commissioner made the following finding of fact regarding allegations of a drinking problem at the initial hearing, which was ratified by the Full Commission (and not appealed), and is the law of the case.

> While the Defendants sought to impugn the Claimant's character with assertions of a drinking problem, that characterization of the Claimant is more than rebutted by testimony from another defense witness, Tony Azusenis, who describes the Claimant's work ethic as exceptional. The Claimant has never filed a Worker's Compensation claim prior to the accident. Moreover, the Claimant testifies that there were no drugs or alcohol in his system on the day of the accident. This claim was not rebutted, and his post-accident drug test was negative on all accounts.

(Compensability Hrg. Finding of Fact 6).

At the time of the hearing, James Provins had been three years removed from his difficulty with alcohol. He was in a good place, personally. His work for the employer was exemplary by all those who spoke. The Commissioner found his very credible, in particular, about this topic. His drinking immediately prior to this accident was not an issue. Therefore, any references to it are barred by res judicata. The issue of alcohol being a factor at the time of the accident was rebutted. Furthermore, it was not appealed.

**IV. The Single Commissioner erred in finding that Defendants' allegation that Claimant prevented their investigation of causation by failing to sign a HIPAA form, when the treating physician had related the second tear of the shoulder to the first tear.**

Respondents complaint regarding the HIPAA form was disingenuous at best. They didn't authorize the MRI on January 30, 2012. They ignored the MRI which confirmed

Gabirelle Lander's findings, violating the statute which commands employers to provide treatment. They coached an employee who barely knew English to testify at the compensability hearing. They appealed despite not having an issue with which to appeal.

Claimant hurt from the day of the surgery until his death. He made absolutely no progress with regard to this recovery. When Respondents finally allowed him to get an MRI, his injuries were more significant than they had been prior to the surgery. The MRI was completed on October 2, 2013. Their treating surgeon stated on the December 30, 2013, that the injury related back to the accident; and, he had no knowledge of an intervening cause. Respondents wanted to go on a wild goose chase to find something that didn't exist, and delay following the Order of the Commissioner that much more.

**V. The Single Commissioner erred as a matter of fact and law in finding that Claimant's inability to "wipe his ass", maintain his career, earn a living to support his disabled wife and two daughters, necessity of borrowing from everyone to subsist, did not cause the iron worker depression.**

James Provins nearly succumbed to his depression in 2009. The death of his father and the subsequent separation from his wife, caused him to speak of suicide. That was the only time in his life in which he had suicidal ideations. There was no testimony that spoke of how jolly Mr. Provins was-prior to the accident. As his sister discussed, he appreciated his comparison to Curly of the Three Stooges and enjoyed his life as a jokester, who took care of his family.

The pain from the torn rotator cuff was something that he never escaped. The delays caused his shoulder to become spaghetti by the time that surgery was performed. The doctor didn't have a prayer to perform a successful surgery with a 50-year-man's shoulder, following fifteen months of atrophy. The fact that he couldn't "wipe his ass" was something that he offered to anyone that he came in contact.

The delays and outright disregard for the law as it related to the Respondents' handling of the case was extremely difficult for him. He gave everything that his antiquated body had to give, in a young man's game no less. In turn, they spit on him. As a result, he slipped away in the abyss.

He lost his ability to provide for his family. He lost his ability to be free from pain, He lost his ability to smile. He lost his ability to wipe his ass. He lost his life. This loss of life was a direct result of getting hurt on the job for the benefit of Spirit Construction.

**VI. The Single Commissioner erred as a matter of fact and law in finding Dr. Ballenger was credible.**

Dr. Ballenger has made a mint representing insurance companies. The breakdown of Defendants versus Plaintiffs that he has represented is 81% to 19%. Of course, he didn't quite remember it that way. He offered that he it was roughly 60/40. That wasn't his only misstep. When he was questioned about his pay for his testimony, he thought that only I had ponied up a retainer. A subpoena to defense counsel showed that in fact he had received $5000.00 from the defense. He performed like he received that money.

His bias was more than clear. It was repulsive. He found that Dr. Amin's finding that Mr. Provins syncope episodes could be related to epilepsy, or diabetes for that matter, were flawed. The Provins lineage included diabetes and neurological discord. Both of which could very easily cause syncope. Ballenger refused to believe anything other than what he was paid to opine. His failure to research the records that supported the findings of Dr. Amin made it impossible for him to make anything but a paid service announcement.

James Provins was not having issues with alcohol at the time of the compensability hearing. He hadn't had any since the 2009 meltdown. This was corroborated by anyone that knew him. There was nothing offered to discount that theory. In fact, the Commissioner made a

specific finding that he was not having any issues with alcohol at the time of the hearing.

Therefore, Ballenger's findings were based on his assumption that Mr. Provins had a drinking problem right up to the accident. This was a fact that had already been litigated. Therefore, he was barred from using this assumption as a basis for his opinions.

Testimony offered from Appellant's wife and sister were honest. They did not refrain from offering negative answers. On the same token, since they were around him, they were in a better position to speak on his life. They knew him as a beer drinker who was always ready to laugh. They knew that other than the brief time in 2009, he was not consumed by alcohol. The testimony for this case is consistent in that regard. His work ethic was exceptional. However, Ballenger was going to be a drunken picture regardless of this actual knowledge.

Ballenger refuted what Dr. Martin had opined. Dr. Martin had recognized the 2009 incident. He had essentially offered that Provins had gotten his act together in 2009; and, he had been free of trouble since that time. Ballenger said that Martin was actually saying that Provins had not been in trouble with alcohol because he had not been drinking. There is no evidence whatsoever that he stopped drinking, even from his loved ones. He simply got back on the right track with moderation. He ignored the plain meaning of the language used by a physician, and made the expert's statement his own.

Dr. Amin's statements about the syncope were challenged Ballenger. In fact, he said that the average, competent would find that blackouts were alcohol related. He refused to attempt to appear non-biased. It appears that he simply takes on case to get paid and conforms his beliefs to fit the facts. His opinions had dollar signs on them.

**VII. The Single Commissioner erred as a matter of fact and law by disregarding public policy, and finding on behalf of the defense who denied, denied, denied, until the Claimant died.**

The Workers' Compensation Act shifts from the employee to the employer the risk of work related injuries incident to modern industrial activity. In return, it requires the worker, as a condition for receiving the benefits of the Act, to surrender his right to sue at common law. Cook v. Mack's Transfer & Storage, 291 S.C. 84, 352 S.E.2d 296 (1986).

If the dispute concerns an alleged wrongful denial of statutory benefits, the Commission has exclusive jurisdiction to adjudicate the controversy. Whether the denial is willful, in bad faith, negligent, or the result of a good faith difference is immaterial to the question of the Commission's exclusive jurisdiction. Id.

The employees gave up their right to sue in Common Law in exchange for a no-fault based way of remuneration. This theory is based on the good faith participation of the employer. The current theme trumpeted by employers (by and through the insurance carriers) in workers' compensation is to litigate everything. Whereas twenty years ago, if someone was injured and they weren't drunk, or had failed the associated drug test, they would have an appointment to their company doctor. The employer/carrier would then honor the prescriptions or referrals of said physician.

The carriers have replaced the employer in the formula. The employee has no true avenue in which to address their perceived slights. Getting a hearing date is not that easy given the explosion of litigated cases. Suing at common law is starting to look a lot better. However, at the moment, workers' compensation is still the only means of recovery for the employee. The employee's only opportunity to get some semblance of equity is for the application of the Act in its purest form.

Workers' Compensation is for the worker. Therefore, every tie or close call should go to the worker. In the present case, the employer denied coverage at every turn. As a result, the employee was crushed by the inability to take any action to survive. By preventing Debra Provins from getting the death benefits related to her husband's avoidable death, the message would be clear. The message would be to continue to deny every case in hopes that the claimants would simply go away. The only way that the workers' comp ship gets righted, is if the Commission holds the carriers accountable for the ever-increasing denials which are done in bad faith. Debra Provins prays that the Respondents don't get away with the bad faith that cost her and her daughters, their husband and father.

## CONCLUSION

The death was the direct result of the bad faith denial of the claim which prolonged treatment that needed to be given as soon as possible to keep further tearing and atrophy at bay. Instead, the refusal of the Respondents to provide the treatment that is the pillar of the Act, created damage that could not be corrected. The incessant pain, absence of hope and inability to wipe his ass, overwhelmed him like an avalanche. He had an MRI on October 2, 2013, which indicated that, in fact, he had the torn rotator cuff. He died in April. I filed a Motion to Compel treatment in April based on my understanding of what the treating surgeon had said. We believe that "but for" the injury; the subsequent bad faith denial of the claim; and, the failure to provide the necessary treatment in a reasonable time; caused his injury to be far more conclusive. It prevented having a single physical therapy visit that was absent a discussion relating to pain. It never -- never went away. He never got to a plateau and as a result it's — it's our contention that he died due to the on-the-job injury, not necessarily directly, but certainly he would not have met

his premature demise without it. The employees of South Carolina yearn for a ruling that keeps carriers in check. Please provide Debra Provins with the benefits related to the causally related death of her husband.

*s/Donald L. Smith*
Donald L. Smith, (SC Bar # 6699)
Attorney for Plaintiff
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
Dated: July 24, 2017.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF ANDERSON | ) | BEFORE THE SOUTH CAROLINA<br>WORKERS' COMPENSATION COMMISSION |
| James Provins,<br>Claimant, | ) | **CERTIFICATE OF SERVICE** |
| vs. | ) | |
| Spirit Construction Services, Inc.<br>Employer, | ) | W.C.C. File No.: 1200349 |
| and | ) | |
| Insurance Company of the PA,<br>Carrier, Defendants. | ) | |

THE UNDERSIGNED person deposes and says that he served an Initial Brief on Behalf of the Claimant, in this action by email placing copies thereof in envelopes addressed to the parties at the addresses shown below, which envelopes were sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the places addressed as follows:

Anderson, South Carolina
Dated: July 24, 2017.

*s/Donald L. Smith*
Donald L. Smith, (SC Bar # 6699)
Attorney for Plaintiff
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

MAILED TO:

South Carolina Workers' Compensation Commission
Judicial Department, Appeals
Attention: Eugenia Hollmon
P.O. Box 1715
Columbia SC 29202-1715

J. South Lewis, II., Esquire
872 S. Pleasantburg Drive
Greenville SC 29607

# BRIEF OF DEFENDANTS/RESPONDENTS

AUGUST 11, 2017

BEFORE THE SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1200349

| | | |
|---|---|---|
| James Provins, Employee/Deceased<br>Debra Provins, Alleged Dependent,<br><br>Claimants,<br><br>vs.<br><br>Spirit Construction Services, Inc.,<br><br>Employer,<br>and<br><br>Insurance Company of the State of PA,<br><br>Carrier,<br>Defendants/Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | BRIEF OF<br>DEFENDANTS/RESPONDENTS |

## STATEMENT OF THE CASE

This matter has a fairly involved procedural history. The claim was initiated upon the filing of a Form 50 hearing request in which Employee/Deceased James Provins (hereinafter "Provins" or "Employee") alleged injury to the right shoulder on January 24, 2012. Defendants, via Form 51, denied compensability. Subsequently, after an evidentiary hearing before Commission Gene McCaskill (hereinafter "Compensability Hearing"), the claim was found compensable. Defendants timely appealed to the South Carolina Workers' Compensation Commission Appellate Panel, and after oral arguments, an affirmation was issued. Thereafter, Defendants began providing Employee medical treatment for the right shoulder, to include a shoulder surgery.

During the course of medical treatment, Employee filed a Motion to Compel (additional surgery). Defendants also filed their own Motion to Compel, seeking execution of medical releases to obtain out of state medical records. While a motion hearing was pending and scheduled, Employee

died on April 14, 2014. The Death Certificate lists "Acute respiratory failure and septic shock" as causes of death. (See Claimants' Exhibit "R")

Claimants, through Claimant/Alleged Dependent Debra Provins (hereinafter "Claimant" or "Ms. Provins"), filed a Form 50 on November 18, 2014, seeking entitlement to benefits pursuant to 42-9-280. Prior to the scheduled hearing of January 22, 2015, with Commissioner Barden, and after a pre-hearing conference, the Form 50 was withdrawn. Claimants refiled the Form 50 on March 18, 2015, this time seeking permanent and total disability, as well. Subsequently, Claimants filed an Amended Form 50 on April 13, 2015, and additionally filed a Form 52 Death Claim on April 15, 2015. Defendants responded with a Form 53, denying that Employee had sustained a compensable death. A hearing was scheduled before Commissioner T. Scott Beck on October 21, 2015; after a pre-trial conference, Claimants withdrew the Forms 50 and 52.

Claimants refiled only the Form 52 on January 25, 2016. A hearing was scheduled before Commissioner Melody James on July 26, 2016. During the pre-trial conference, Commissioner James ordered the case for mediation. Mediation was held on September 29, at which time the parties did not reach a settlement. This hearing ensued.

At the hearing of December 5, 2016, Ms. Provins asserted that Employee's death resulted from "the bad faith denial of the claim which prolonged his treatment..." Specifically, Claimants' position is that in order to deal with his pain, Employee became dependent on alcohol, which eventually lead to his death.

Defendants denied that there was any "bad faith" denial of the claim. After treatment ensued, to include a surgery, Defendants submitted medical releases to Employee to further investigate causation of a subsequent/new/recurrent rotator cuff tear; however, those releases had not been executed as of the time of his death. As to the death itself, Defendants asserted that the cause of death

was multifactorial, as evidenced by the Death Certificate, with alcohol being a significant contributing factor. However, abuse of alcohol—even if legitimately related to pain—would not justify a compensable death claim. Specifically, Employee/Provins had a significant pre-existing alcohol issue and was an alcoholic prior to the work injury. Defendants relied on the expert testimony of Dr. Ballenger, in support of its position that the work injury did not result in his death.

Furthermore, Defendants raised a Capers[1] defense, based on the documented history that Provins had gone to the hospital even before his work injury, reporting that he was drinking himself to death; as such, Defendants contended that death due to alcohol abuse was not an unexpected or unforeseen event, and, thus, would not meet the standard of "accidental." Finally, Defendants asserted a public policy defense.

## ARGUMENTS/DISCUSSION

### I.

### THE SINGLE COMMISSIONER DID NOT ERR BY FINDING THAT THE PROVINS HAD NOT SUFFERED PERMANENT IMPAIRMENT TO HIS RIGHT SHOULDER.

**1. The Single Commissioner did not err in not awarding a permanent partial disability to the right shoulder.**

Claimants did not plead a permanent partial disability to the shoulder. While initially asserting a § 42-9-280 claim, that Form 50 was withdrawn in order to pursue a Form 52 death claim. Therefore, the issue of permanent partial disability was not raised in the present pleadings. Further, by Claimants previously withdrawing the Form 50's and instead pursuing a Form 52, there was a clear intention to solely pursue the compensability of the death claim. Thus, the issue of a permanent partial disability to the right shoulder was not, and is not, properly before the court.

**2. Claimants did not appeal the Hearing Commissioner's finding that Provins had not reached MMI.**

[1] Capers v. Flautt, 407 S.E.2d 248 (1991)

Claimants did not assert that Employee/Provins was at MMI at the time of death on the Form 30. An appellant is required to specifically assert (in the Form 30) each point it thinks was in error. (*See*, S.C. Code Ann. Regs. 67-701 (A)(3)(a): "each question presented must be concise and concern one finding of fact, conclusion of law, or other proposition the appellant believes is in err"). Claimants did not appeal the finding that Employee was not at MMI at the time of his death. Given that Employee had not reached MMI with an impairment rating from Dr. Bonnarens, it would be inappropriate for a permanent partial disability determination. Nonetheless, Claimants attempt to argue otherwise in the Memorandum/Brief in support of the Form 30. Claimants argue that "Single Commissioner erred as a matter of fact and law in finding that Claimant had not suffered permanent impairment to his right upper extremity prior to his untimely death." (See Form 30). In Claimants' brief, it is argued argues the Single Commissioner erred in not accepting the findings of Dr. Dwight Jacobus. (Cl's Brief, p.17). Dr. Jacobus was not the treating doctor. He is a doctor in South Carolina who merely prepared a report – after Provin's death – opining of a 10%-13% impairment rating. Id. However, Dr. Bonnarens, as the authorized treating physician, had not placed Employee at MMI and Commissioner Campbell also specifically found that he had not reached MMI. To reiterate, the MMI finding was not appealed. As such, Claimants are precluded from making such assertion now. Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698, 703 (Ct. App. 1999); Clark v. Aiken County Government, 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005).

Claimants cite Scruggs v Tuscarora Yarns, Inc. to facilitate the argument that one may receive compensation based off an impairment rating before reaching MMI. However, Scruggs and the case at hand are vastly different. In Scruggs, the authorized treating physician had assigned MMI, but Defendants argued that she was not yet at MMI because she was still undergoing and

improving with physical therapy. Scruggs v. Tuscarora Yarns, Inc., 294 S.C. 47, 50, 362 S.E.2d 319, 321 (Ct. App. 1987). The Court held that there was substantial evidence to find that Claimant was at MMI and that the doctor's opinion was consistent with the facts of the case. Id.

In the current case, as noted, Employee was never released from his doctor, and never found to be at MMI. There was no doctor to testify he was at MMI at a deposition, or anywhere for that matter. Therefore, Claimants clearly misconstrued the applicability of Scruggs because the justification for compensation was that Ms. Scruggs was, in fact, already placed at MMI. In our case, Claimants' own arguments indicate that Employee/Provins he was not at MMI (i.e. argues that Provins needed another causally-related surgery). Thus, there is no entitlement to permanent partial disability to the shoulder based on two grounds – Provins had not reached MMI and the finding regarding MMI was unappealed.

## II.

## THERE WAS NO BAD FAITH DENIAL OF TREATMENT BY THE DEFENDANTS.

Claimants' assertion that there was a "bad faith" denial in providing treatment is simply unfounded. The evidence, including emails among counsel included in Defendants' exhibits, indicate that another surgery had been recommended by Dr. Bonnarens (for a recurrent rotator cuff tear). After that recommendation, Defendants requested medical releases be signed to further investigate causation of same. (Defendant's Exhibit A). Unfortunately, before these medical releases were signed, Employee passed away.

Claimants erroneously assert that Dr. Bonnarens related the recurrent rotator cuff tear to the work injury. However, there is no medical opinion in the record that relates the re-tear to the work injury. There was a phone conversation between Dr. Bonnarens and respective counsel; as a

result of the phone conversation, Defendants sought medical releases to further investigate the causation of this claim. As this court is well aware, obtaining medical records from an out-of-state provider requires execution of medical releases. Provins and his counsel pushed back on executing said releases—as evidenced by the correspondence submitted into the record. (See Defendants' Exhibit A, pp. 522-525).

What's more, in South Carolina, a "bad faith" claim is not recognized in the workers' compensation arena. Cook v. Mack's Transfer & Storage, 291 S.C. 84, 352 S.E.2d 296 (Ct.App.1986). In Cook, a claimant brought suit in civil court against his employer and the employer's workers' compensation carrier for bad faith refusal to pay benefits for his workers' compensation claim. The Court of Appeals held an action for bad faith cannot be brought under the South Carolina Workers' Compensation Act because the Act provides the exclusive remedy for settling claims coming within the terms of the Act. While Cook was a civil action, it supports the proposition that the South Carolina Workers' Compensation Act provides the remedies and reliefs for claimants/employers/carriers, and consequently, Claimants cannot simply made a broad assertion of "bad faith" in justifying their pursuit of this death allegation.

Therefore, because the evidence does not establish that Defendants engaged in "bad faith," coupled with the proposition that South Carolina does recognize a "bad faith" action related to workers' compensation claims, the Single Commissioner did not err in finding that there was no "bad faith" denial of treatment.

III.

**THE SINGLE COMMISSIONER DID NOT ERR IN FINDING THAT EMPLOYEE HAD LONGSTANDING ALCOHOL ABUSE ISSUES AND WAS A CONTRIBUTING FACTOR TO HIS DEATH.**

**1. Claimants' argument that the evidence pertaining to an alcohol problem is barred by res judicata is unfounded.**

The central issue before Commissioner Campbell was whether Provins' death was due to his shoulder injury. Notwithstanding, Claimants allege that a finding from the initial Compensability Hearing bars Defendants from asserting that Employee's *death* was caused, at least in part, to his life of alcohol abuse. The specific finding of fact is as follows:

> While the Defendants sought to impugn the Claimant's character with assertions of a drinking problem, that characterization of the Claimant is more than rebutted by testimony from another defense witness, Tony Azusenis, who describes the Claimant's work ethic as exceptional. The Claimant has never filed a Workers' Compensation claim prior to the accident. Moreover, the Claimant testifies that there were no drugs or alcohol in his system on the day of the accident. This claim was not rebutted, and his post-accident drug test was negative on all accounts.

(Compensability Hrg. Finding of Fact 6).

Claimants' assertion that this finding of fact proves that Employee did not have an alcohol problem leading up to his death is off base. Rather, the above finding reflected upon Provins' *character* and *work ethic*—not regarding whether he *used* alcohol or his *level* of alcohol use. That was a vastly different issue than what is being litigated now (i.e., credibility as to underlying compensability versus cause of death).

The finding of fact dealing with Employee's alcohol problem from the Death Hearing reflects the nature of his alcohol abuse and how it impacted upon his early death, which was the sole purpose of the hearing. It does not speak to his character or work ethic, and is thus not inconsistent with any previous findings from prior hearing. Incidentally, this "res judicata" issue was not raised at the Death Hearing.

**2. The record is replete with evidence that Employee had a lifelong alcohol abuse problem.**

The finding of fact from the present order is as follows:

> Prior to the work injury of January 24, 2012, Employee suffered from a significant alcohol abuse problem. This finding is based upon the medical records which illustrate Employee was a long-suffering alcoholic, and drank excessively, to include beer and liquor, for the majority of his life. These records included history proved by Employee, as well as family members, such as the following:
>
> > A. Ms. Provins, Claimant's widow, provided such a history at the time of his hospitalization/death in April 2014. "According to his wife a long history of alcoholism...." (See APA # 18, p. 374)
> >
> > B. An admission report from April 10, 2014, details a history of a "52-year-old male who is in alcoholic and drinks about half a pint of Vodka every day for most of his life...." (See APA #18, p. 234)
> >
> > C. On July 7, 2009, Employee's sister, Ms. Zimmerman, called the police and Employee was transported to University of Louisville Hospital with chief complaint of "I'm drinking myself to death." He further reported that "I can't sleep at all unless I get Drunk." It was reported that Employee was a longstanding alcoholic, who consumed 16-18 beers per day and a half a pinto to a pint of liquor per day. (See APA #11, pp. 121-126)
> >
> > D. When Employee initially began treating with Dr. Bonnarens, on April 15, 2013, he reported drinking 8-10 beers per day, and this was before his shoulder surgery. (See APA #12, p. 154)
> >
> > E. In none of the post-accident medical reports does it indicate that Employee's drinking habits changed or increased after his work injury or shoulder surgery, which is indicative of someone who simply has been a longstanding user of alcohol, notwithstanding the work injury. The testimony of Employee's widow, Debra Provins, that the drinking only became a problem after his work injury, in response to dealing with this pain, and is not supported by the history she herself provided upon Employees hospital admission on April 10, 2014. (See APA #18, p. 374)

This finding does not rebut that Employee was a hard worker or even that alcohol affected compensability of the underlying incident. It is simply a reflection of the issues with which Provins dealt throughout the course of his adult life with addiction. Unfortunately, it is clear that Provins had a longstanding alcohol abuse problem before (and after) his work injury, and leading up to his death. While Appellants essentially assert that Provins "once" had an issue with drinking, which had resolved, the evidence does not support such. Specifically, as noted above, when he began treating with Dr. Bonnarens, he was reporting extensive daily alcohol use—and this was before he'd ever had a surgery for his shoulder.

Dr. Ballenger, Defendants' expert, when challenged at his deposition about the extent of Provins' alcohol use before the injury, opined that it is clear that Provins was a longstanding alcoholic and that his "pattern" fits that of a longstanding alcoholic. Dr. Ballenger also testified that the absence of any medical visits related to alcoholism between 2009 and his death is not an indication that he'd quit drinking. To the contrary, Dr. Ballenger testified that the records from 2001, 2009, 2012, and 2014 indicate his reporting consuming a "prodigious" amount of alcohol, and that most alcoholics "underreports." (Ballenger Depo., p. 35). Furthermore, Provins' roommate testified at the initial Compensability Hearing that Provins was a daily consumer of liquor; Provins himself admitted that he drank daily at that initial hearing.

The testimony of Ms. Provins that he developed an alcohol problem only after the work injury is not supported by the records, including the very history she relayed to medical providers. She testified that Employee did not drink vodka before the injury...only after. (Hr. Tr., 15.) Inexplicably, Ms. Provins acknowledged at hearing that she was unaware of the alcohol issues Employee himself reported to his physicians as far back as 2001. (Hr. Tr., p. 26-27) Even in 2009, Employee reported drinking daily "1/2 gallon whiskey or vodka; 14-24 beers." (APA #11, p. 127.)

His family members present at the hospital at the time of admission/death provided a history of "a long history of alcoholism" and that he "drinks about half a pint of vodka every day for most of his life." (See APA #18, pp. 234, 374) Incidentally, there is no medical record or other evidence that existed before Employee's death that supports that he developed an alcohol issue only after his shoulder injury. Defendants repeatedly sought out such evidence for consideration—starting in February 2016—after Claimants surprisingly filed the Form 52 death allegation; the response from Claimants' counsel was "I do not possess that which I will be submitting at this juncture. I'm still trying to get things together." (See Def. Exhibits E, F, G) It is evident that the Single Commissioner did not err by finding that the Claimant suffered from a significant alcohol abuse problem before his work accident, after his work accident, and leading up until his death.

IV.

**THE HEARING COMMISSIONER CORRECTLY DETERMINED THAT DR. BALLENGER WAS CREDIBLE.**

Although the Appellate Panel has the power to make its own findings, it is logical for the Commission which did not have the benefit of observing witnesses to give deference to the Single Commissioner's opinion on the weight of the evidence and the credibility of the witnesses. The credibility and weight of a doctor's testimony is for the trier of facts, and such evidence is weighed similarly to other evidence. Chapman v. Foremost Dairies, Inc., 249 S.C. 438, 154 S.E.2d 845 (1967). McGuffin v. Shumberger-Sangama, 307 S.C. 58, 156 S.E.2d 318 (1967); Fishburne v. ATI Sys. Int'l, S.C. 76, 681 S.E.2d 595 (Ct. App. 2000).

As it is the fact finder's responsibility to determine the weight of a doctor's testimony, the Single Commissioner did so in the present case. The Single Commissioner determined that Dr. Ballenger's expert opinion should be afforded greater weight for multiple reasons, including his credentials, that fact that he did an extensive review of voluminous records including Employee's

medical history, and further explained his onions in his deposition. (Order, Finding of Fact 13, p. 16). Dr. Ballenger is board certified in psychiatry and forensic psychiatry and has been practicing for approximately 40 years. (See APA #19, p. 416). He was a professor and chairman of the Department of Psychiatry and Behavioral Sciences at the Medical University of South Carolina in Charleston, for 17 years. Id. He was Founding Director of the Institute of Psychiatry (1988-2000), and also founded MUSC's substance abuse clinical and research institute, the Center for Drug and Alcohol Programs in 1994, and was its Founding Executive Director until 2000. Id. He is internationally recognized as an expert in psychopharmacology and the anxiety disorders and depression/bipolar illness. Id. In addition, Dr. Ballenger has authored over 350 professional papers and sixteen books. Id.

Quite logically, little weight was given to Dr. Price's opinion, especially when juxtaposed to Dr. Ballenger's opinion. **Dr. Price opined that Claimant had "no history of pain, anxiety, depression or alcoholism prior to the work injury." (Order, Finding of Fact 8, p. 15). Clearly, this is refuted by the pre-injury medicals that demonstrate Claimant has had a long standing alcohol abuse problem for the majority of his life. (See APA #10-11).** It appears, based on the correspondence between Claimants' counsel and Dr. Price, his opinion was outcome oriented, without regard to an examination of a full medical history. (See Def. Exhibit D.)

Claimant seeks to impugn Dr. Ballenger's credibility based on his testimony that he represented defendants 60% of the time and Plaintiffs 40%, but that his estimation was not precise. Even if this is true, this is not indicative of a lie, or Dr. Ballenger being deceptive. More so, Dr. Ballenger *approximated* the allocation of his work. A review of the submitted cases from Dr. Ballenger indicates that Dr. Ballenger does expert consultations on civil, criminal, and workers' compensation matters. With the volume of work that Dr. Ballenger engages in—due to his

credentials—he gave an estimated response, but also testified that it changes over time, depending on current work load. (Ballenger Depo., p. 33-34).

Claimants also assert that Dr. Ballenger was biased in that "He found that Dr. Amin's findings that Mr. Provins syncope episodes could be related to epilepsy, or diabetes for that matter, were flawed." (Cl's Brief p. 20) Claimants further state "The Provins lineage included diabetes and neurological discord. Both of which could very easily cause syncope." Id. Claimants cite this 'medical diagnosis' even though there is no medical opinion in the record regarding these issues. Rather, Claimants offered the testimony of Employee's sister (Ms. Zimmerman) that there is a family history of passing out. Notably, thought, no evidence from Employee's primary care physician, or any other physician for that matter, is offered to support this proposition. Interestingly, Dr. Ballenger testified that those who use alcohol excessively do tend to have passing out episodes. (Ballenger Depo., 11-17.)

Based on the grounds set forth above, the preponderance of the evidence supports the Single Commissioner's finding that Dr. Ballenger was credible, and should be afforded more deference than Claimants' experts.

V.

**CLAIMANTS COUNSEL'S ASSERTION THAT CLAIMANT WAS DEPRESSED IS NOT PROPERLY BEFORE THE COMMISSION; ADDITIONALLY, NO MEDICAL EVIDENCE SUPPORTS A CAUSALLY-RELATED DEPRESSION.**

Claimants assert that the Single Commissioner erred as a matter of fact that the Employee's inability to "wipe his ass," maintain his career, and earn a living did not cause him depression. However, depression has never been a compensable part of the claim. What's more, Employee

was never referred for any depression treatment and was not diagnosed with causally-related depression after the work injury. Nor was a claim for depression ever filed.

**1. Claimant seeks compensability for "depression" for the first time on appeal.**

Of course, an issue cannot be raised for the first time on appeal, but must have been raised to, and ruled upon, by the Single Commissioner. S.C. Dept. of Transportation v. First Carolina Corp. of S.C., 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (holding that to be preserved for appellate review, an issue must have been "(1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity"). Here, it is clear that Claimant has never raised this issue and therefore may not do so on appeal. Therefore, the Single Commissioner did not err by not finding that "Claimant's inability to "wipe his ass", maintain his career, earn a living" caused him depression. Commissioner did not err by not finding that employee has suffered compensable depression.

**2. Claimant was never diagnosed with depression and to claim that he was, in fact, depressed and that same is causally-related is pure speculation.**

Given that no physicians who actually treated Employee before his death diagnosed him with depression, to do so now posthumously would require much conjecture. Ms. Provins admitted at hearing that she never sought to have him treated for any depression after his work injury. (Hr. Tr., 32.) Furthermore, with Employee's history of alcoholism, depression would not be unexpected. In fact, upon questioning by Claimants' counsel, seeking an opinion that Employee must have been depressed, Dr. Ballenger responded:

> "Well, you know, that is speculation. I can tell you as a practicing psychiatrist for 40 something years drinking a half a gallon of liquor every day is much more likely to cause depression than even being unemployed and having trouble in the bathroom. So it is just speculation, one, that it would cause depression and, two, that he was really depressed. We have no evidence. Most people who get

> seriously depressed find their way to the doctor to complain of depressive symptoms and yet he did not."

(Ballenger Depo., 11-17.)

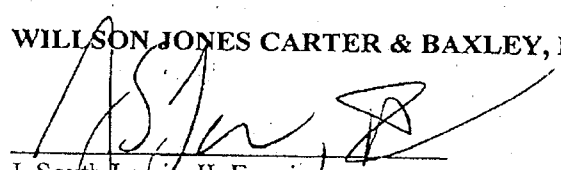
There was never any medical evidence provided by Claimants from personal doctors or treating physicians that would either support a depression finding, or refute Dr. Ballenger's opinion concerning the matter. Claimants only offered an affidavit from Dr. Martin, a psychiatrist who was hired by them to prepare an opinion. As noted, however, Dr. Martin never treated Employee, and much of his report was based on Dr. Price's report, which is considerably flawed, as previously discussed.

## CONCLUSION

While Mr. Provins' situation is certainly tragic, viewing the record and totality of the circumstances, Defendants assert there is ample evidence to support all of the Hearing Commissioner's findings/conclusions by a preponderance of the evidence. Based on the foregoing, Defendants respectfully request that the Appellate Panel affirm the Decision and Order of the Hearing Commissioner in its entirety.

Respectfully submitted,

**WILLSON JONES CARTER & BAXLEY, P.A.**



J. South Lewis, II, Esquire
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorneys for Defendants

Date: August 11, 2017

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1200349

| | | |
|---|---|---|
| James Provins, Employee/Deceased<br>Debra Provins, Alleged Dependent,<br><br>Claimants,<br><br>vs.<br><br>Spirit Construction Services, Inc.,<br><br>Employer,<br>and<br><br>Insurance Company of the State of PA,<br><br>Carrier,<br>Defendants/Respondents. | ) | CERTIFICATE OF SERVICE |

I, Trudy Sharpless, do hereby certify that I am the Assistant for J. South Lewis, II, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Greenville, South Carolina, and that on the 11th day of August, 2017 I mailed the foregoing BRIEF OF DEFENDANTS/RESPONDENTS to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

Donald L. Smith, Esq.
Attorney Offices of Donald Smith
122 N. Main Street
Anderson, SC 29621

Ms. Amy Bracy
Judicial Director
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Trudy B. Sharpless
Trudy Sharpless, Assistant to J. South Lewis, II, Esquire
**WILLSON JONES CARTER & BAXLEY, P.A.**

# REPLY BRIEF OF EMPLOYEE/APPELLANT
AUGUST 21, 2017

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC FILE NO.: 1200349

James Provins
Employee, Claimant,

Appellant,

versus

Spirit Construction Services, Inc.,
Employer, and Insurance Company
of the State of Pennsylvania, Carrier,

Respondents.

---

# REPLY BRIEF OF EMPLOYEE/APPELLANT

---

Donald L. Smith
Attorney for the Appellant
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

**APPELLANTS MAKE THE FOLLOWING REPLY TO THE RESPONSE OFFERED BY THE RESPONDENTS:**

## STATEMENT OF CLAIM

The Workers' Compensation Act shifts from the employee to the employer the risk of work related injuries incident to modern industrial activity. In return, it requires the worker, as a condition for receiving the benefits of the Act, to surrender his right to sue at common law. Cook v. Mack's Transfer & Storage, 291 S.C. 84, 352 S.E.2d 296 (1986).

If the dispute concerns an alleged wrongful denial of statutory benefits, the Commission has exclusive jurisdiction to adjudicate the controversy. Whether the denial is willful, in bad faith, negligent, or the result of a good faith difference is immaterial to the question of the Commission's exclusive jurisdiction. Id.

The employees gave up their right to sue in Common Law in exchange for a no-fault based way of remuneration. This theory is based on the good faith participation of the employer. The current theme carried by employers (by and through the insurance carriers) in workers' compensation is to litigate everything. Whereas twenty years ago, if someone was injured and they weren't drunk, or failed the associated drug test, they would have an appointment to the company doctor. The employer/carrier would then honor the prescriptions or referrals of said physician.

The carriers have replaced the employer in the formula. The employee has no true avenue in which to address their perceived slights. Getting a hearing date is not that easy given the explosion is litigated cases. Suing at common law is starting to look a lot better. However, workers' compensation remains the only means of recovery for the employee. The employee's only opportunity to get some semblance of equity is for the application of the Act in its purest

form.

Workers' Compensation is for the worker. Therefore, every tie or close call should go to the worker. In the present case, the employer denied coverage at every turn. As a result, the employee was crushed by the inability to take any action to survive. By preventing Debra Provins from getting the death benefits related to her husband's avoidable death, the message would be clear. The message would be to continue to deny every case in hopes that the the Commission holds the carriers accountable for the ever-increasing denials which are done in bad faith. Debra Provins prays that the Respondents don't get away with the bad faith that cost her and her daughters, their husband and father.

I.

**THE SINGLE COMMISSIONER DID ERR BY FINDING THAT PROVINS HAD NOT SUFFERED PERMANENT IMPAIRMENT TO HIS RIGHT SHOULDER**

Claimant did not abandon his claim for permanent damage to his shoulder. Defense counsel is mistaken as it relates to his belief that Claimant has suddenly given up the shoulder claim that has brought us to this point. He injured his shoulder while attempting to move a long girder which snapped out of his hand, yanking his arm down, suddenly. Dr. Jacobus did not in any way opine that Claimant had reached MMI at the time of death. He stated that due to symptoms of the initial tearing; the atrophy caused by the inexcusable delay in treatment; and, the second significant tear to the shoulder; his shoulder would never get any better than having a permanent impairment of 10 to 13%. It should be noted that Dr. Jacobus did have two telling MRIs of the shoulder from which he made his findings.

## II.

## THERE WAS BAD FAITH DENIAL OF TREATMENT BY THE DEFENDANTS

Defendant's denied bad faith in their defense of this case. They did this despite the fact their human resource representative, who took him to the company doctor, attested to the fact that he was in so much pain he had to sign Mr. Provins's name. They did this despite the fact Mr. Carrion, who did not understand the English language, responded to a query about the work ethic of Mr. Provins, by attempting to tell the Commissioner what he allegedly told him about his shoulder, when they picked up "the first piece" that morning. They did this despite Mr. Azusenis, responding to a question about whether he called Mr. Provins in March of 2012 to tell him that he (Mr. Azusenis) had been fired, with the fact that he had told that Mr. Provins that *he* had been dismissed in February of 2012.

It was clear to the Hearing Commissioner that the defense witnesses were incredible. On the same token, he specifically found Mr. Provins to be very credible. At the time of the accident, there was absolutely no allegation that Mr. Provins was drinking excessively other than Mr. Azusenis who was trying to save a job from which he had arguably been fired.

The defense attempted to incorporate the undersigned into their own bad faith. Defense counsel makes a comment regarding the teleconference which he in fact ***did not participate*** on December 30, 2013. He did not hear Dr. Bonnarens state without qualification that re-tears of this sort are common, and that he had no knowledge of any intervening cause. The defense argued that it could have been DTs that re-tore his shoulder. Dr. Bonnarens and I agreed that our undergrad sprees did not cause any ligamentous tears. This was simply a ploy to further delay treatment that he was entitled.

## III.

## THE SINGLE COMMISSIONER DID ERR IN FINDING THAT EMPLOYE HAD LONGSTANDING ALCOHOL ABUSE ISSUES AND WASS A CONTRIBUTING FACTOR TO HIS DEATH

The defense focused on Mr. Provins "drinking himself to death" in 2009. It is undisputed that the statement occurred when his father died; and his wife, kicked him out of the family residence. Thereafter, he started going to church and returned to being the affable individual that he was.

Mr. Provins suffered from issues with syncope. His sister suffered from bouts with the same issue. Mr. Provins' family doctor, Dr. Amin wanted him tested for epilepsy. He did this because of his family history. A family doctor would have taken a family history, which included a father who suffered from seizures and the aforementioned sister, who suffered from stress-related fainting spells.

IV.

## THE HEARING COMMISSIONER INCORRECTLY DETERMINED THAT DR. BALLENGER WAS CREDIBLE

Dr. Ballenger who didn't know that he received a $5,000.00 retainer for his opinions, found that the idea that Claimant's widow and her sister-in-law said that Mr. Provins was highly depressed was speculative. "We have no evidence."

The undersigned does not claim to be a doctor, but the following facts tent to illustrate depression:

1. Mr. Provins was a happy go lucky man who never met a stranger prior to the accident;
2. At the time of the accident, he weighed 192.5 lbs., while he weighed 242.5 at the time of the surgery;

3. He was making roughly $1,100.00 per week at the time of the accident; while the bad faith of the Defendants left him without a comp. check or the inability to ply his trade for 14 months. He was the only breadwinner for his family, which consisted of his wife and two (2) daughters;
4. He had to live in pain for 15 months, and the agony of further injury for 15 months, prior to surgery;
5. Following surgery, he completed a full load of physical therapy, despite the fact that his complaints of pain never waned;
6. When Defendants finally authorized an MRI in October 2013, the injuries to his shoulder were greater than the initial MRI in February 2012;
7. Instead of getting him to surgery immediately, the undersigned was forced to beg for treatment. On December 30, 2013, a teleconference was conducted with Dr. Bonnerens. He stated that he had no alternative causation that the original injury. It should be noted that opposing counsel was not part of the conversation. Third, the defense continued to unjustly deny care;
8. Mr. Provins could not support the ladies in his life with his compensation checks;
9. Mr. Provins had been in pain for greater than two (2) years;
10. Mr. Provins had been given absolutely no hope that he would ever be fixed or free from pain;
11. Mr. Provins died with a urine bottle, that was found in his room following his death, which allowed him to refrain from interacting with people; and,
12. Mr. Provins couldn't wipe his own ass.

Dr. Ballenger shows his true colors by telling us that these facts are not evidence of depression, and that saying so was mere speculation. Seemingly, if the defense would have needed him to say that the moon is made of cheese, he would have done so.

V.

## CLAIMANT'S COUNSEL DID ASSERT THAT CLAIMANT WAS DEPRESSED WAS PROPERLY BEFORE THE COMMISSION; ADDITIONALLY, THERE WAS MEDICAL EVIDENCE SUPPORTING A CAUSALLY RELATED DEPRESSION

While Dr. Ballenger's credibility is questionable at best, Dr. Thomas Martin's credibility is unquestioned. He opined the following:

> It is clear from the records provided that Mr. Provins suffered from depressive illness and alcohol abuse disorders that preexisted his work-related injury in 2012. Furthermore, it has been stipulated that he suffered from a serious right shoulder injury that required medical and surgical treatment. It is also apparent that while under significant psychosocial stress or in pain, Mr. Provins would self-medicate pain and depression with alcohol. While awaiting professional medical/surgical and pain management after incurring his injury, Mr. Provins used alcohol to cope and self-medicate depressive and pain symptoms, thereby exacerbating a preexisting condition. Following his surgery in 2013, he did not gain significant remediation or pain relief. When medical assistance ceased in latter 2013, Mr. Provins again used alcohol in excess. This further enhanced his neurovegetative symptoms of depression, reclusiveness, and lack of self-care. It is this Examiner's opinion to a reasonable degree of medical and psychiatric certainty that Mr. Provins suffered from depressive disorder due to another medical condition (right shoulder injury), somatic symptom disorder with predominant pain, substance (alcohol) induced depressive disorder, and alcohol use disorder, severe.

Dr. Martin's opinions were logical conclusions to a very unfortunate situation. The Commissioner erred by literally ignoring his well-reasoned opinions. Dr. Ballenger's opinions related to his payment-period.

Claimant did not seek compensability for depression for the first time on appeal. The basis for Claimant's Form 52 was that his ongoing pain and suffering related to his shoulder injury, and the refusal of the defense to provide treatment, led him to a depressive state which

ultimately led him into a dark spiral downward to his death. In fact, his Form 52 lists his mental health as a cause of death. Claimant brought issue of depression, and related death, in front of Hearing Commissioner. The claim was summarily dismissed. The Commissioner denied that Mr. Provins' death was related to the depression created by his shoulder surgery. It is an appealable issue.

## CONCLUSION

Had the defendants acted according to the Workers' Compensation Act, and provided the injured worker with treatment, his shoulder would not have been injured (and atrophied) to the point that it was nothing more than paper mache. His inability to support his family would have been addressed. His exceptional work ethic would have continued, and allowed him to recover financially. He would have been able to wipe his ass. Instead, he suffered needlessly due to the defense employed by the respondents, "Deny! Deny! Deny! He may die!" This defense proved successful in this matter.

Donald L. Smith, (SC Bar# 6699)
Attorney for Plaintiff
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
August 21, 2017.

## CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 21st day of August 2017.

Donald L. Smith

APPELLANTS' FORM 30 WITH ADDENDUM
MARCH 20, 2017

**South Carolina Workers' Compensation Commission**
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov

WCC File #: 1200349
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Debra Provins for James (Deceased) SSN:
Address:
City: State: Zip:
Home Phone: Work Phone: ( ) -
Preparer's Name: Donald L. Smith Law Firm: Attorney Office of Donald Smith

Employer's Name: Spirit Construction Services, Inc.
Address: 118 Coleman Blvd.
City: Savannah State: GA Zip: 31408
Insurance Carrier: Insurance Company of the PA
Preparer's Phone #: (864) 642 - 9284

## REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 01/24/2012 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see attached.

**(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.**

☒ **Mediation**

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

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

**I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to South Lewis, Esquire at S. Pleasantburg SC 29615 on March 20, 2017, with first class postage.**

Preparer's Signature: [signature] Title: attorney Email: attorneydonaldsmith@gmail.com Date: 3/20/2017

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

**Grounds for Appeal/James Provins/WCC#1200349/Death**

1. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant had not died, in part, because of the Employer's bad faith refusal to abide by the Act and provide treatment for Claimant.
2. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant had not suffered permanent impairment to his right upper extremity prior to his untimely death.
3. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant's issues with alcohol had returned prior to the on-the-job accident, despite no evidence to substantiate the claim other than employees who maintained their job despite mass layoffs.
4. Whether the Single Commissioner erred in finding that Defendants' allegation that Claimant prevented their investigation of causation by failing to sign a HIPAA form, when the treating physician had related the second tear of the shoulder to the first tear.
5. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant's inability to "wipe his ass", maintain his career, earn a living to support his disabled wife and two daughters, necessity of borrowing from everyone to subsist, did not cause the iron worker depression.
6. Whether the Single Commissioner erred as a matter of fact and law in finding that Dr. Ballenger was credible, despite the fact that he misrepresented his payment for his testimony, the fact that he relied on testimony company employees from the initial hearing which was summarily dismissed by the sitting Commissioner, instructed the undersigned that he was the expert and knew that clear meaning of Claimant's expert's words were not what he meant with their use, etc.
7. Whether the Single Commissioner erred as a matter of fact and law in ignoring the findings of Claimant's IME performed by Dr. Dwight Jacobus, M.D.
8. Whether the Single Commissioner erred as a matter of fact and law by disregarding public policy, and finding on behalf of the defense who denied, denied, denied, until the Claimant died.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF ANDERSON | ) | BEFORE THE SOUTH CAROLINA<br>WORKERS' COMPENSATION COMMISSION |
| James Provins,<br>Claimant, | ) | **CERTIFICATE OF SERVICE BY MAIL** |
| vs. | ) | W.C.C. File No.: 1200349 |
| Spirit Construction Services, Inc.<br>Employer, | ) | |
| and | ) | |
| Insurance Company of the PA,<br>Carrier, Defendants. | ) | |

THE UNDERSIGNED person deposes and says that she served a Form 30 on Behalf of the Claimant, in this action by placing copies thereof in envelopes addressed to the parties at the addresses shown below, which envelopes were sealed and postage thereon fully prepaid, and deposited in the United States Mail at Spartanburg, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the places addressed as follows:

Date: March 20, 2017

Donald L. Smith, Esquire
*Attorney Office of Donald Smith*
122 N. Main St.
Anderson, South Carolina 29621
Phone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

MAILED TO:

South Carolina Workers' Compensation Commission
Judicial Department, Appeals
Attention: Eugenia Hollmon
P.O. Box 1715
Columbia SC 29202-1715

J. South Lewis, II., Esquire
872 S. Pleasantburg Drive
Greenville SC 29607

# APPELLANTS' MOTION TO REINSTATE
# MAY 31, 2017

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | BEFORE THE SOUTH CAROLINA |
| | ) | WORKERS' COMPENSATION COMMISSION |
| COUNTY OF ANDERSON | ) | |
| James Provins, | ) | |
| | ) | |
| Claimant, | ) | **MOTION TO REINSTATE** |
| | ) | |
| vs. | ) | W.C.C. File No.: 1200349 |
| | ) | |
| Spirit Construction Services, Inc. | ) | |
| Employer, | ) | |
| | ) | |
| And | ) | |
| | ) | |
| Insurance Company of the PA, | ) | |
| Carrier, | ) | |
| | ) | |
| Defendants. | ) | |

Claimant is submitting this this Motion to Reinstate in hopes of being granted the opportunity order to file a brief in support of his Form 30, Request for Review by the Full Commission. The Form 30 was timely filed. Furthermore, Claimant's counsel submitted a Motion to Extend Time to File on May 22, 2017. It was the date the brief was due. Since service is complete upon mailing according to the South Carolina Rules of Civil Procedure, the motion was served on the Court prior to the closure of the time to file.

Unfortunately, the undersigned was overwhelmed with the arduous task of completing the brief and appendix for not one, but two appeals in the 4th Circuit of the United States Court of Appeals. There simply was no time. While it is understood that the request was made at the 11th hour, it was not the objective. It was still believed that it would be miraculously be completed. It was not and a late motion was filed to stave off elimination.

Rule 601 provides that if an attorney of record is called to appear simultaneously in actions pending in two or more tribunals of this State, there is a list of priorities indicating which should be

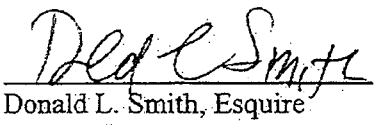
addressed first. Claimant believes that the same priorities should hold true in this situation. The element of time is not something that is capable of reproduction. Claimant contends that there is only one greater priority in the practice of law-the Supreme Court of the United States.

This case began on January 24, 2012. It is a most challenging fight for the family of the deceased Claimant. All involved have expended a great deal in support of their respective cause. While it is recognized that the defense was unable to consent to the extension of time to file the brief, the case that the defense has prepared will not be prejudiced by the allowing Claimant to submit a brief.

We pray that the fact that the motion to extend was filed prior to the exhaustion of the time to file the brief is sufficient to allow the Commission to grant the extension. Claimant should not suffer due to counsel making the choice that is seemingly supported by the spirit of Rule 601. Please allow Claimant to properly support that which was raised by his Form 30, with a brief.

By copy of this letter to Defendant's attorney, we are hereby serving Mr. Lewis with a copy of said motion by United States mail.

Date: 5/31/2017



Donald L. Smith, Esquire
*ATTORNEY OFFICE OF DONALD SMITH*
122 N. Main St.
Anderson, South Carolina 29621
Phone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | BEFORE THE SOUTH CAROLINA |
| | ) | WORKERS' COMPENSATION COMMISSION |
| COUNTY OF ANDERSON | ) | |
| | ) | |
| James Provins, | ) | |
| Claimant, | ) | **CERTIFICATE OF SERVICE** |
| | ) | |
| vs. | ) | W.C.C. File No.: 1200349 |
| | ) | |
| Spirit Construction Services, Inc. | ) | |
| Employer, | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Insurance Company of the PA, | ) | |
| Carrier, | ) | |
| Defendants. | ) | |

THE UNDERSIGNED person deposes and says that he served the Motion to Reinstate of Respondent/Claimant, in this action by placing a copy thereof in an envelope addressed to the party at the address shown below, which envelope was sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the place addressed as follows:

Date: 5/31/2017

Donald L. Smith, Esquire
*ATTORNEY OFFICE OF DONALD SMITH*
122 N. Main St.
Anderson, South Carolina 29621
Phone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

MAILED TO:

Ms. Euguenia Hollomon
Judicial Director
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, South Carolina 29202-1715

J. South Lewis, II., Esquire
872 S. Pleasantburg Drive
Greenville SC 29607

# RESPONDENTS' RESPONSE TO APPELLANTS' MOTION TO REINSTATE
JUNE 9, 2017

BEFORE THE SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1200349

| | | |
|---|---|---|
| James Provins,<br>Employee,<br>Claimant,<br><br>vs.<br><br>Spirit Construction Services, Inc.,<br><br>Employer,<br>and<br><br>Insurance Compnay of the PA,<br><br>Carrier,<br>Defendants. | ) | RESPONSE TO CLAIMANT'S MOTION TO REINSTATE |

TO: South Carolina Workers' Compensation Commission;
Donald L. Smith, Esquire, Attorney for Claimant:

Defendants here by move for an order denying the Claimant's Motion to Reinstate based on the following grounds:

I.

(1) This case involves an underlying date of incident of January 24, 2012 for a right shoulder injury. On August 14, 2014, Claimant died due to causes unrelated to his January 24, 2012 work injury. His Death Certificate lists "acute respiratory failure" and "septic shock" as the causes of death.

(2) Subsequent to Claimant's death, Claimant's attorney filed a Form 50 on November 18, 2014, with no allegation of a compensable death claim, on behalf of Claimant's widow, Debra Provins. Claimant's attorney eventually filed the matter as a death claim on April 15, 2015.

(3) Since November of 2014, multiple hearings have been scheduled and withdrawn before the hearing that took place on December 5, 2016 before Commissioner R. Michael Campbell, which resulted in this appeal.

A. Claimant filed a Form 50 on November 18, 2014, on behalf of Claimant's widow, Debra Provins. There was no allegation of a death claim at this time. A hearing was scheduled before Commissioner Barden on January 22, 2015. After the pre-hearing conference, Claimant withdrew the Form 50.

B. Claimant re-filed the Form 50 on March 18, 2015; again, no death claim was made. Claimant amended his Form 50 on April 13, 2015 to include a permanent and total disability claim and also alleged for the first time that the right shoulder injury "ultimately caused his death."

C. Claimant filed a Form 52 death claim on April 15, 2015. Defendants denied the same in the Form 53. A hearing was scheduled before Commissioner T. Scott Beck on October 21, 2015. Claimant withdrew his Form 52 after a pre-trial conference.

D. Claimant re-filed a Form 52 on or about January 25, 2016. A hearing was scheduled before Commissioner Melody James on July 26, 2016. The parties were ordered to mediate the case during a pre-trial conference. Mediation was held on September 29, 2016 and the parties did not reach a settlement.

E. Ultimately, a hearing was scheduled on the Forms 52/53 before Commissioner R. Michael Campbell on December 5, 2016. Commissioner Campbell found that Claimants failed to prove by a preponderance of the evidence that the Employee/Deceased's death on April 14, 2014 was causally related to his January 24, 2012 shoulder injury.

F. Claimant filed a Form 30, requesting an appeal of Commissioner Campbell's Decision and Order, on March 20, 2017, the day of the deadline for filing an appeal.

G. An Appellate Hearing was scheduled for June 19, 2017. Claimant/Appellant's brief was due on May 21, 2017.

H. On May 22, 2017, Claimant filed a Motion to Extend Time to File his brief. This was the day of the deadline for filing of the brief.

I. On May 26, 2017, Claimant's Request for Commission Review was dismissed as a result of the appellant's brief not being timely filed pursuant to R. 67-705 H(3).

J. Claimant filed a Motion to Reinstate on May 31, 2017.

(4) Furthermore, Defendants contend that Rule 601, South Carolina Appellate Court Rules, is inapplicable here as it deals with a situation wherein an attorney is "called to *appear* simultaneously in actions pending in two or more tribunals of this State." Rule 601 says nothing about submission of **briefs**.

(5) Defendants contend that Claimant has failed to provide sufficient justification for reinstatement of this appeal.

(6) Furthermore, given the length of time that this case has been going on, and that Claimant was well-informed of the deadline to file his appellate brief in his appeal, Defendants assert that continuance of this matter would unnecessarily prolong an already unnecessarily drawn out matter.

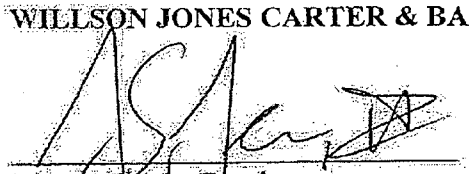
(7) Defendants contend that they would, in fact, be prejudiced by continuance of this matter, which they consider without sufficient basis.

V.

FOR THE FOREGOING REASONS, Claimant's Motion to Reinstate should be dismissed. Defendants are happy to have this Motion to Reinstate heard by way of oral arguments, if deemed necessary.

Respectfully submitted,

**WILLSON JONES CARTER & BAXLEY, P.A.**



J. South Lewis, Esquire
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorneys for Defendants

Date: June 9, 2017

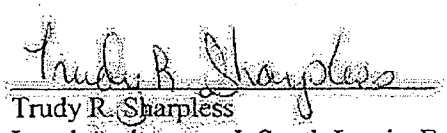
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1220714

| | | |
|---|---|---|
| James Provins,<br>Employee,<br>Claimant,<br><br>vs.<br><br>Spirit Construction Services, Inc.,<br><br>Employer,<br>and<br><br>Insurance Compnay of the PA,<br><br>Carrier,<br>Defendants. | ) | CERTIFICATE OF SERVICE |

I, Trudy R. Sharpless, do hereby certify that I am the Legal Assistant for J. South Lewis, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Greenville, South Carolina, and that on the 9th day of June, 2017, I mailed the foregoing RESPONSE TO CLAIMANT'S MOTION TO REINSTATE to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto and/or via electronic mail:

Donald L. Smith, Esquire
Attorney Office of Donald Smith
122 N. Main Street
Anderson, SC 29621

Ms. Amy Bracy
Judicial Director
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715



Trudy R. Sharpless
Legal Assistant to J. South Lewis, Esquire
**WILLSON JONES CARTER & BAXLEY, P.A.**
872 S. Pleasantburg Drive
Greenville, SC 29607

# APPELLANTS' NOTICE OF APPEAL
# JANUARY 26, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

T. Scott Beck, Commissioner

WCC File No.: 1200349

James Provins and Debra Provins, Appellants,

v.

Spirit Construction and Insurance Company and Insurance Company of the State of PA, Respondents,

---

**NOTICE OF APPEAL**

---

Appellant Debra Provins, on behalf of deceased Mr James Provins, and in her capacity as a dependent, appeals the decision of the Honorable T. Scott Beck dated January 11, 2018, denying the claims for death benefits. Appellants received a copy of this decision, by and through their counsel of record, on January 11, 2018.

January 26, 2018

Donald L. Smith
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for the Appellant

Other Counsel of Record:
J. South Lewis, II, Esq.
WILLSON JONES CARTER & BAXLEY, P.A.
872 South Pleasantburg Drive,
Greenville, South Carolina 29607
Attorney for Respondents

RECEIVED
JAN 29 2018
SC Court of Appeals

## PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

T. Scott Beck, Commissioner

WCC File No. 1200349

James Provins and Debra Provins, Appellants,

v.

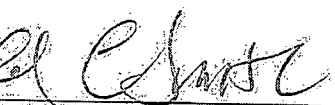
Spirit Construction and Insurance Company
and Insurance Company of the State of PA, Respondents,

---

## PROOF OF SERVICE

---

I certify that I have served a copy of the Notice of Appeal and Proof of Service on the above-mentioned case, upon The Honorable Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, Ms. Virginia Crocker Judicial Director, SC Workers' Compensation Commission at PO Box 1715, Columbia, SC 29202-1715, and the Respondents, by and through their counsel of record, Mr. J. South Lewis, II, Esquire at 872 South Pleasantburg Drive, Greenville, SC 29607, by depositing copies of it in the United States Mail, postage prepaid, on January 26, 2018, addressed as follows:



Donald L. Smith, (SC Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

January 26, 2018

RECEIVED
JAN 29 2018
SC Court of Appeals

# TRANSCRIPT FOR COMPENSABILITY HEARING
# AUGUST 14, 2012

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1200349

| | |
|---|---|
| James Provins,<br><br>Claimant,<br><br>vs.<br><br>Spirit Construction, Employer,<br><br>and<br><br>Insurance Company of the State of Pennsylvania, Carrier,<br><br>Defendants. | TRANSCRIPT OF PROCEEDINGS<br><br>September 14, 2012 |

This hearing was held before Commissioner Gene McCaskill, reported by Kimberly T. Power, Court Reporter and Notary Public in and for the State of South Carolina; said proceedings were held at the Law Offices of Donald Smith, 210 North Main Street, Anderson, South Carolina, on 2012.

1 APPEARANCES

2

3 ATTORNEYS FOR THE CLAIMANT

4 LAW OFFICES OF DONALD SMITH
BY: DONALD SMITH, ESQUIRE
5 210 North Main Street
Anderson, South Carolina 29621
6

7

8

9 ATTORNEYS FOR THE DEFENDANTS

10 WILLSON JONES CARTER & BAXLEY, PA
BY: J. SOUTH LEWIS, II, ESQUIRE
11 872 South Pleasantburg Drive
Greenville, South Carolina 29607
12

13

14

15

16

17

18

19

20

21

22

23

24

25

CONTENTS


| | PAGE |
|---|---|
| WITNESS: JAMES PROVINS | |
| Direct Examination by Mr. Smith | 7 |
| Cross-Examination by Mr. Lewis | 23 |
| Redirect Examination by Mr. Smith | 36 |
| Recross-Examination by Mr. Lewis | 40 |
| Further Redirect Examination by Mr. Smith | 41 |
| WITNESS: EARNEST MCDONALD | |
| Direct Examination by Mr. Lewis | 43 |
| Cross-Examination by Mr. Smith | 48 |
| Redirect Examination by Mr. Lewis | 50 |
| WITNESS: LUIS CARRION | |
| Direct Examination by Mr. Lewis | 54 |
| Cross-Examination by Mr. Smith | 56 |
| WITNESS: ANTHONY AZUSENIS, JR. | |
| Direct Examination by Mr. Lewis | 62 |
| Cross-Examination by Mr. Smith | 68 |
| Certificate of Reporter | 75 |

1 THE COURT: Today's date is August 14, 2012.
2 This is the case of James Provins vs. Spirit
3 Construction. The Workers' Compensation Commission File
4 Number is 1200349. This claimant is represented by
5 Donald L. Smith. The defendants are represented by J.
6 South Lewis, II. The carrier is Insurance Company of the
7 State of Pennsylvania.
8 The claimant has an average weekly wage of
9 $1,130.51, and it's the max comp rate which is $725.47.
10 The date of this injury is January 24, 2012. This is a
11 denied case.
12 Are there any objections to jurisdiction,
13 venue, or any APA submissions?
14 MR. SMITH: No, sir.
15 MR. LEWIS: None from defense.
16 THE COURT: All right. Very good. The
17 Commission file becomes a part of the record with the
18 exception of self-serving declarations and unstipulated
19 medical reports.
20 All right. Mr. Smith, if you could state your
21 client's position for the record, please.
22 MR. SMITH: It's our position that he was an
23 employee of the Defendant Spirit Construction. While
24 working in that capacity, he tore his shoulder.
25 Following a release from Spirit Construction, he's been

1 unable to secure steady employment. He has never been
2 released from the company doctor who put him on light
3 duty. Requested an MRI which was denied. A subsequent
4 MRI indicated that he suffered a shoulder tear. And we
5 would ask for the TT benefits that are past due as well
6 as any in the future for the medical treatment. Anything
7 else the Commission finds appropriate.
8 THE COURT: All right. Mr. Lewis.
9 MR. LEWIS: Thanks, Commissioner. It's the
10 defendant's position they acknowledge that Mr. Provins
11 was an employee of their company and was working on
12 January 24, 2012. And he did report sometime around
13 lunchtime that he sustained an injury, but it's our
14 position that the evidence does not support his
15 description of what happened. The witnesses here are
16 going to refute his description of what happened. He
17 told people that he had shoulder problems beforehand.
18 And, finally, it's defendant's position that
19 the medical evidence doesn't support a causation given
20 the APA -- I mean, the questionnaire at APA Page No. 2
21 which indicates the doctor is unable to state that he
22 suffered the findings in the shoulder on January 24,
23 2012.
24 And, furthermore, if you do find it
25 compensable and temporary total benefits are due,

1 Mr. Provins has worked for four weeks in Kentucky. So we
2 would ask for that to be offset out of the TTD award.
3 THE COURT: Do we know the dates of those four
4 weeks? Have either one of y'all given me that before?
5 MR. SMITH: Your Honor, I don't, but I believe
6 it was roughly the month of March.
7 THE COURT: But everybody is in agreement that
8 he did work four weeks?
9 MR. SMITH: Yes.
10 THE COURT: All right. Very good. All right.
11 Mr. Smith, do you want to call your witness? Well, does
12 anybody else have anything else before we move on?
13 MR. SMITH: I don't.
14 MR. LEWIS: No, sir.
15 THE COURT: All right. Mr. Smith, call your
16 witness.
17 MR. SMITH: May it please the Court, I call
18 James Provins.
19 THE COURT: All right, sir. We're going to
20 swear you in. The first little direction I give folks, I
21 don't think it's going to be a real problem in here, we
22 need for you to speak loudly enough so the attorneys, the
23 reporter and I can all hear you. Sometimes we're in huge
24 rooms and that is an issue, but I believe we're going to
25 be fine here. And the other is real simple. If you're

1 asked a yes or no question, please respond with yes or
2 no. Don't say uh-huh or unh-unh because sometimes that
3 gets misunderstood. And if you shake or nod your head,
4 she's got to stop and look to see what she did and enter
5 that into the record and it just takes more time. So if
6 you're asked a yes or no question by either of the
7 attorneys, if you would just answer with a yes or no.
8 Okay. Very good.
9 (JAMES CURTIS PROVINS, being duly sworn to
10 tell the whole truth and nothing but the truth, testified
11 as follows:)
12 THE COURT: Please state and spell your full
13 name for the record.
14 THE WITNESS: James Curtis Provins.
15 J-A-M-E-S, C-U-R-T-I-S, P-R-O-V-I-N-S.
16 THE COURT: All right. Thank you, sir.
17 Mr. Smith.
18 DIRECT EXAMINATION
19 BY MR. SMITH:
20 Q. Mr. Provins, what is your date of birth?
21 A. 6/29/61.
22 Q. Are you married?
23 A. Yes.
24 Q. How long have you been married?
25 A. Since '84.

1 Q. Do you have children?
2 A. Yes.
3 Q. How many?
4 A. Two.
5 Q. Are you responsible for either of them?
6 A. Yes.
7 Q. Where do you currently live?
8 A. Louisville, Kentucky.
9 Q. Live in a home or apartment?
10 A. Home.
11 Q. Is that your home?
12 A. Yes.
13 Q. How long have you possessed it?
14 A. Seven years.
15 Q. What is your educational background?
16 A. High school graduate, two.
17 Q. Do you have any certificates or training
18 beyond high school?
19 A. Two years welding.
20 Q. What does your work history consist of?
21 A. Iron work, boiler making.
22 Q. How long would you say that history was?
23 A. Thirty years.
24 Q. When were you hired by Spirit?
25 A. June the 21st, 2011.

1 Q. What were you hired for?
2 A. Iron worker.
3 Q. How did you learn of the opening?
4 A. Word of mouth.
5 Q. When you went to Spirit, what were your
6 physical responsibilities related to your position?
7 A. Everything has to do with iron work.
8 Q. Which includes?
9 A. Bolt nut, dragging deck, miscellaneous detail
10 work.
11 Q. Have you ever had a workers' comp claim
12 before?
13 A. No, sir.
14 Q. You ever had an auto accident in which you
15 recovered --
16 A. (Witness shakes head.)
17 Q. Which is your dominant side?
18 A. Right.
19 Q. Prior to this accident had you ever injured
20 your shoulder -- right shoulder?
21 A. No.
22 Q. Did you have an accident on your right
23 shoulder?
24 A. Repeat.
25 Q. Had an accident which involved your right

1 shoulder?
2 A. That day.
3 Q. Have you ever received any sort of treatment
4 whether it be a medical doctor, chiropractor or any of
5 the sort to your right shoulder prior to this accident?
6 A. Prior?
7 Q. Yes.
8 A. No.
9 Q. What date did you get hurt?
10 A. 24th, January.
11 Q. Of what year?
12 A. 2012.
13 Q. When you went to work that day, were you
14 having any issues?
15 A. Yes.
16 Q. What were they?
17 A. Sore from impacting big bolts and bolt nut and
18 hanging from the iron.
19 Q. All right. Can you please explain that with a
20 little greater detail?
21 A. Well, wherever iron connectors come together,
22 there will be -- the connector is put in two bolts and
23 the rest of them you have to bolt pin, hammer and beat in
24 bolt pin and finish bolting up. And then you have to
25 come back and impact it, and some of the impact guns are

1 really big.
2 Q. Is that considered iron work?
3 A. Yes.
4 Q. How long have you been doing this bolting
5 action?
6 A. Off and on for all my life.
7 Q. And so what issues were you having with your
8 body again?
9 A. Always constantly sore, constantly bruised up
10 in my thighs.
11 Q. And your upper extremities, your shoulders?
12 A. Yes.
13 Q. Did you ever tell anybody about your
14 difficulties?
15 A. Yes.
16 Q. And what did you say?
17 A. I told them that my arm was sore -- my right
18 arm was sore, that I couldn't lift it up very high. It's
19 from impacting bolts and bolting up for two weeks and
20 then -- and then going to dragging deck.
21 Q. Dragging deck, could you explain that process?
22 A. There would be a bundle of deck landing across
23 the iron by the connectors, and you cut the bands on it
24 and two guys grab a sheet of deck and then they drag it
25 out and put it in place.

1 Q. What are these decks made of?
2 A. Galvanized steel.
3 Q. Are they paper thin?
4 A. No.
5 Q. Do you have an idea of how much they might
6 weigh?
7 A. Hundred-fifty plus.
8 Q. How long had you been doing that particular
9 job prior to January 24?
10 A. About four days of dragging deck.
11 Q. Had that caused any difficulties for you?
12 A. Yes.
13 Q. And what was that difficulty?
14 A. I was sore and stiff. It's a young man's
15 game.
16 Q. How old are you again?
17 A. Fifty-one.
18 Q. Had you had any prior conversations with your
19 supervisors about the fact your shoulder was sore?
20 A. Not Jeff, but Shannon.
21 Q. So you made him aware that it was causing you
22 difficulty?
23 A. Yes. I told him that I was getting too old to
24 be dragging deck and doing the heavy impact, and he told
25 me that they was hiring greeters at Wal-Mart.

1 Q. With regard to Luis Carrion, did you have a
2 great relationship with him?
3 A. I don't even hardly speak much to him. I
4 don't speak Spanish. He doesn't speak very good English.
5 He speaks some, but me and him didn't talk.
6 Q. What was his position?
7 A. Me and him was working as a partner team
8 dragging deck.
9 Q. And what would you -- what was your position
10 again? What was it called?
11 A. Partners dragging deck. Iron workers.
12 Q. Boiler anchor or anything like that?
13 A. No, just iron workers, I guess.
14 Q. Is Mr. Carrion considered an iron worker?
15 A. I don't know how many years experience he's
16 got, so I couldn't say.
17 Q. On that particular day did you tell him that
18 your shoulder was sore?
19 A. Yes.
20 Q. With regard to this soreness that you spoke
21 of, could you raise your hand -- your right arm above
22 your shoulder?
23 A. Then, yeah, I could raise it up about that
24 high and it was stiff and sore.
25 Q. What time did you begin your workday?

1 A. 7:00, 7:30. I ain't exactly sure. It's been
2 a long time ago.
3 Q. And what did your morning work consists of?
4 A. I was shooting down decks, screwing down deck,
5 and then Shannon told me and the other boy the two
6 bundles were laying around backwards and we had to spin
7 them around, put them in right corrugation so they could
8 be fastened down.
9 Q. And how many of those do you think you moved?
10 A. Well, the first bundle we moved -- me and him
11 moved on the ends. And then the second bundle one got on
12 one end and one got on the other because it was too far
13 away from the decking from where the deck had already
14 previously been laid. The first bundle was right up
15 against it. We both grabbed it and we shared one end and
16 drug it out and spun it around. Second bundle was out
17 further and there was no decking there to stand on, so we
18 had to drag it down the beam line.
19 Q. How easy was this -- what kind of ground
20 surface area was it?
21 A. Well, you're kind of standing on the bundle of
22 deck and you got to get over and then you got to step
23 over onto a truss line and then over onto the decking
24 that's already been laid.
25 Q. And how long did it take you to move one deck

1 at a time?
2 A. One sheet at a time doing it that way, I don't
3 know, it took maybe ten minutes a sheet because once you
4 got it all the way down, then you had to turn around and
5 spin it back around.
6 Q. Did you -- other than Mr. Carrion and
7 yourself, was there anybody else on the sheets?
8 A. No. That day it was just me and him.
9 Everybody else was flashing, shooting down deck.
10 Q. So how long prior to this particular day had
11 you mentioned that the -- moving the sheets was causing
12 you soreness?
13 A. It probably had been four or five days before
14 when I talked to Shannon, told him, you know, that -- you
15 know, it was hard on me. And he just said -- like I
16 said, he said, "Well, you're an iron worker, ain't you?
17 They're hiring greeters at Wal-Mart." So, I mean, it
18 just didn't do no good, so I just go out there and do it.
19 Q. Did you have anybody helping you do your job
20 based on your difficulties?
21 A. No, just he was being my partner. He's doing
22 his share and I'm doing mine.
23 Q. Was there anything done to make your part --
24 participation lesser than his?
25 A. No.

1 Q. Were you ever sore before that day?
2 A. Yes.
3 Q. Going back to January 24th, could you explain
4 the -- what county were you in?
5 A. Anderson.
6 Q. And the accident that you're alleging, what
7 time did it occur?
8 A. About 15 minutes before lunch.
9 Q. Could you explain the accident in detail?
10 A. Could I have a piece of paper folded in half?
11 I'll show you. He was on the bundle of deck. He's down
12 this end. I'm at this end. Okay. And then he's jerking
13 up on the sheets and I'm holding on the sheets and we
14 finally get it out of corrugation. And we're walking and
15 I got my back turned and I'm carrying this end of the
16 sheet down here like this, and he drops his end and it
17 pulled my arm down and it popped. It didn't take much to
18 do it, that long of a sheet.
19 Q. Is moving the -- would you consider it
20 difficulty moving the sheet, the awkwardness of the
21 length of it or the weight of it?
22 A. It's just what comes with the territory. You
23 know what I'm saying? It's -- they're long and they are
24 awkward, but it's -- it's kind of a young man's game.
25 It's kind of hard on an old guy like me.

1 Q. What did you do -- what did you feel at that
2 point?
3 A. I just felt something inside pop. And so then
4 we moved two or three more sheets and then I went -- it
5 was lunchtime. They hollered lunch. I went and got
6 ahold to Shannon and told him that I injured my shoulder.
7 And then he sent me to Jeff and Jeff sent me to Ernie.
8 Q. And what occurred at that point?
9 A. Ernie took me to the care center.
10 Q. And that visit to the doctor, how were you --
11 what treatment did you receive?
12 A. They took an x-ray, found nothing was broke.
13 And then she showed me how to do some physical therapy
14 exercises, pushed my hand up a wall and stand there and
15 return around in figure eight.
16 Q. Did you get any prescriptions?
17 A. She give me some anti-inflammatory stuff. I
18 don't remember what else.
19 Q. Did you get anything else to help you with
20 your problem?
21 A. She give me two different types, but I don't
22 remember what the other kind was called. None of it
23 helped.
24 Q. Did you get a sling?
25 A. Yes.

1 Q. What occurred with regard to work following
2 your visit to the doctor?
3 A. I came back to work. I talked to Ernie and
4 John Crowe in the job trailer. Then they told me I
5 had -- I was on light duty, but I could only work four
6 days a week. And then John Crowe called me that night at
7 work and told me not to come in the next four days, to
8 wait till Monday morning.
9 Q. So at first you were supposed to work light
10 duty, but no overtime?
11 A. Yeah, at first.
12 Q. And then you were told not to come back in for
13 the rest of the week?
14 A. Yes.
15 Q. And what happened on Monday?
16 A. I was told to report to Ernie every morning
17 before I go down there to make bolts up in the connex for
18 light duty and then report to him in the evenings.
19 Q. And did you go to the doctor again?
20 A. Ernie went on vacation and the other safety
21 guy took me to the doctor the second time. I can't
22 remember his name, though.
23 Q. And what transpired at that visit?
24 A. The lady examined my arm and seen it wasn't
25 getting no better and she said -- told me that she might

1 order an MRI, but I didn't know who to tell or anything.
2 Q. Was it -- was an MRI ever authorized to your
3 knowledge?
4 A. Not to my knowledge.
5 Q. And the doctor -- did the doctor ever released
6 you?
7 A. No. I got laid off a couple weeks later.
8 Q. What was the reason for the layoff?
9 A. Tony told me that I was -- there was no more
10 light duty and he didn't hand me an ROF or nothing. He
11 told me to pick my check up on Friday. That's what I
12 did. I couldn't afford to stay here, so I went back
13 home.
14 Q. Did you attempt to get unemployment benefits?
15 A. Yes, I did.
16 Q. And did you tell them of your difficulties?
17 A. Yes, I did.
18 Q. How did you tell them?
19 A. On the computer you've got to punch it in. It
20 will say, Are you capable of working? I put down no.
21 Then you have to put down the reason why. And it just
22 goes to different columns and it asks you yes or no
23 questions. If you answer no, then it would ask for an
24 explanation. If you answer yes, then it goes to the next
25 question. Then I submitted the claim and I never got

1 my -- it said confirmation on the monitor, but I never
2 got nothing in the mail. Usually get a determination
3 whether or not it's been allowed or disallowed.
4 Q. So they confirmed that your application was
5 complete and you submitted it?
6 A. Yes. The application was confirmed, but never
7 heard nothing else back from it.
8 Q. And you never received any benefits?
9 A. Never.
10 Q. Did you also -- did you attempt to get work
11 during this time?
12 A. Yes. When I first got home, Jack Joyner
13 called me and told me about a three month outage and I
14 went to work for NCS for four weeks.
15 Q. And what -- what were your duties?
16 A. I was running a crew of four guys, young boys.
17 Q. What does running a crew entail?
18 A. Let them do all the hard work while I showed
19 them what to do.
20 Q. Did that require any physical labor on your
21 part?
22 A. Hardly any.
23 Q. Did you fill out an application to do that
24 job?
25 A. Didn't have to.

1 Q. Why not?
2 A. Because I had worked a nine-day shutdown with
3 them back January the year before, before I come to work
4 for Spirit, and I was already on file.
5 Q. Did you have to take a physical?
6 A. No.
7 Q. How long did you work?
8 A. Four weeks.
9 Q. Have you worked since that time?
10 A. No, can't find a foreman job.
11 Q. How much money did you make on your --
12 according to your 2011 taxes?
13 A. I think it's right around 79. Somewhere
14 around 70, 79, I think.
15 Q. How has the past seven months been on you?
16 A. Rough.
17 Q. How have you supported yourself?
18 A. Borrowed money off my twin brother.
19 Q. And your house?
20 A. It's on a modification program. It went into
21 foreclosure.
22 Q. What were your work traits? I mean, did you
23 get to work on time?
24 A. Yes.
25 Q. How many times did you get written up?

1 A. None.
2 Q. How long did you work there?
3 A. From June the 21st until two weeks after the
4 accident. Two weeks and two days, I think it was.
5 Q. What's the longest you've ever been
6 unemployed?
7 A. Maybe three months at the most.
8 Q. When was that?
9 A. That's been about three years ago. But before
10 I come to work for Spirit, I was off for one moth. Then
11 I kind of reopened the claim and I only drew like four
12 checks.
13 Q. Is there any other thing that you could have
14 done to hurt your shoulder?
15 A. No.
16 Q. What were your hobbies or are your hobbies?
17 A. I don't really have none. My hobby was
18 drinking, but I don't do that no more.
19 Q. You live in Kentucky?
20 A. Yes.
21 Q. And do you know anybody in Anderson?
22 A. In where?
23 Q. Anderson?
24 A. Yeah, people from work.
25 Q. Do you have any family -- you didn't have any

1 family here?
2 A. Oh, no, no family here.
3 Q. So all you did was stay with your co-workers?
4 A. Yeah.
5 MR. SMITH: I have nothing further at this
6 time, Your Honor.
7 THE COURT: All right. Mr. Lewis.
8 MR. LEWIS: Thank you, Commissioner.
9 CROSS-EXAMINATION
10 BY MR. LEWIS:
11 Q. Mr. Provins, we haven't met in person yet, but
12 I took your deposition over the telephone. Actually, we
13 were in this office here and you were in Kentucky. Do
14 you remember that?
15 A. Yes, sir.
16 Q. Now, you mentioned a minute ago one of your
17 hobbies used to be drinking, and I understand you said
18 you quit; is that right?
19 A. Yes.
20 Q. But when you were working for Spirit, you
21 would drink every day even before you went to work,
22 wouldn't you?
23 A. Only in the evenings.
24 Q. Did you not take alcohol to work in your water
25 jug?

1 A. No.
2 Q. So you deny that you ever drank while you were
3 on the job or drank before you went?
4 A. Yes.
5 Q. But you drank every evening, correct?
6 A. Yes.
7 Q. And so do you really have a clear memory as to
8 what happened on January the 24th?
9 A. Yeah, I hurt my shoulder.
10 Q. Okay. And what about Luis, the Hispanic guy
11 that you said was working with you, that's him sitting
12 outside, isn't it?
13 A. I think so.
14 Q. Okay. Now, you don't think he would have a
15 better recollection than you as to what happened?
16 A. No.
17 Q. Okay. Did you -- didn't you tell Luis before
18 you started working that day that your right shoulder was
19 bothering you and you told him that for the purpose of
20 letting him know you weren't going to be able to do a lot
21 of heavy lifting?
22 A. Yes.
23 Q. And the reason you did that, obviously, is
24 because you were already having pain in your shoulder,
25 correct?

1 A. I had pains all over both shoulders.
2 Q. I think you said you were sore in your
3 shoulders and your back at that point?
4 A. Yeah.
5 Q. And I guess you were sore enough that you
6 asked Shannon Clarke, you didn't even want to drag
7 decking; is that right?
8 A. Yeah.
9 Q. And when you were working with Luis, he was
10 actually kind of helping and doing most of the heavy
11 lifting, wasn't he?
12 A. No, we did the same.
13 Q. Well, you told him -- there was a reason you
14 told him your shoulder was hurting?
15 A. Yeah.
16 Q. You don't just tell him for information.
17 Didn't you tell him so that he would help out and do most
18 of the, quote, heavy lifting or most -- if anything
19 needed to be picked up?
20 A. No.
21 Q. So why did you tell him?
22 A. So that way we don't have to work as fast or
23 wouldn't be hard -- real hard on me.
24 Q. So your testimony is you told Luis that your
25 shoulder was already bothering you so y'all didn't work

1 too fast? Is that what you're trying to say?
2 A. No. I'm trying to say that I told him to
3 where we don't have to work like all out run, where we
4 can just kind of like take it easy.
5 Q. You said a few minutes ago when you were
6 testifying, you said this is a young man's game. You
7 were upset that they were making you drag decking,
8 weren't you?
9 A. No, not really upset.
10 Q. Well, I mean, you've - you've told us that you
11 told Shannon Clarke that you didn't want to drag decking
12 and you said in your deposition you told a guy named
13 Billy?
14 A. Well, I think I told both of them.
15 Q. Okay. And the reason you did that is because
16 you thought that the younger guys should be doing the --
17 dragging the decking, didn't you?
18 A. Well, I thought I would be more beneficial
19 doing other stuff.
20 Q. Now, earlier you folded a piece of paper in
21 half and I've got one that's similar to it. Let's --
22 let's just pretend that this is a piece of decking, and
23 wasn't the decking you guys were moving 20 feet long?
24 A. Somewhere around there, 20 or 25, I guess. I
25 don't know exactly.

1 Q. And in terms of width, what is it, three or
2 four feet?
3 A. Three feet, yeah.
4 Q. Okay. So it's shaped like a rectangle
5 representative of this piece of paper, correct?
6 A. Yes.
7 Q. All right. And they're stacked together; is
8 that right?
9 A. Yes.
10 Q. And when you're dragging decking, you and
11 Luis, what y'all would be doing is y'all would be taking
12 a piece and pulling it off the stack and then it would
13 kind of fall down to the floor and then the two of you
14 would drag it over where it goes in place and lay it
15 down, correct?
16 A. No. We was having to drag it down because it
17 was all turned around. The wrong corrugation was on it.
18 Then we was having to turn it all the way around like
19 this and bring it back out, put it back out there.
20 Q. But still I guess the point I'm trying to make
21 is you guys were dragging it like so, correct?
22 A. Yes. When we first started, we were dragging
23 the first bundle like this. And then the second bundle
24 was out further, so we drug it like this.
25 Q. Okay. So he's on one corner, you're on the

1 other, the bottom of the decking is still touching the
2 ground and you guys are dragging?
3 A. Uh-huh.
4 Q. Okay. And are -- are you facing him?
5 A. No, I got my back to him.
6 Q. Why, are you in the front?
7 A. Yes.
8 Q. Okay. So you've already got a sore shoulder
9 and are you holding the decking with both hands or just
10 one, your corner? You said you're walking away. You're
11 holding your corner.
12 A. When I first grabbed it, I had two hands on
13 it. Then when I start walking, I kind of got one and
14 this was more balancing the right hand actually holding
15 it.
16 Q. So as you're walking, you're holding it with
17 your right hand and you still kind of got your left hand
18 on it too?
19 A. Not that high. It would be like that.
20 (Witness indicates.)
21 Q. So you've got your left hand on it as well?
22 A. Like this. (Witness indicates.)
23 Q. And your testimony is that Luis dropped his
24 end, like his end went down to the ground?
25 A. Yes. When his end went down to the ground, it

1 did this kind of thing like that there and jerked my arm
2 down. Didn't take much.
3 Q. Now, your shoulder was already sore. How was
4 it you had such a good grip on that piece of decking if
5 he dropped it when your shoulder was already sore?
6 A. Because it's corrugated. It's kind of like
7 grabbing this cup like this.
8 Q. Now, that decking, it's kind -- I mean, I know
9 it weighs 100 or so pounds, but doesn't it -- it kind of
10 bends and flexes?
11 A. It won't bend like this. What it will do, it
12 can bow. But whenever it's dropped, it's kind of like a
13 stack of dominoes. It's going to come down.
14 Q. So after this happened, you certainly would
15 have turned around and said something to Luis like, what
16 did you do or whatever?
17 A. I just turned and looked at him.
18 Q. And did you pick your end up?
19 A. Yeah, I went back to work.
20 Q. So you turned and looked at him and didn't say
21 anything to him?
22 A. No.
23 Q. No. Why not? I mean, he just dropped his end
24 of the deck and you're the -- you're the veteran guy on
25 the crew and he's -- and he's not doing it right?

1 A. I didn't know if he spoke very good English or
2 not and I just looked at him like -- didn't think nothing
3 of it, you know, because you got to be tough when you're
4 an iron worker.
5 Q. You said it was already -- it was almost
6 lunchtime, so you and he had been working together all
7 morning. Surely you had some kind of communication with
8 him?
9 A. Not much.
10 Q. So y'all worked together and didn't speak to
11 each other?
12 A. We didn't have a whole lot of conversation.
13 We was too busy working. Jeff gets mad if you stand
14 around talking.
15 Q. Now he's a pretty healthy looking --
16 A. Yeah, yeah.
17 Q. I mean, he's got big muscles and he's --
18 A. Yeah.
19 Q. -- young and strapped, isn't he?
20 A. Yes.
21 Q. How would it have been that he just dropped
22 his end and you were able to hold onto yours?
23 MR. SMITH: Objection. Calls for speculation.
24 BY MR. LEWIS:
25 Q. You were there.

1 A. I don't know. I don't know why he dropped it.
2 I had my back turned.
3 Q. So you stopped, you looked at him. And when
4 you looked at him, what was his response?
5 A. He just looked back at me and picked -- picked
6 mine back up and he picked his up.
7 Q. So you continued working up to lunchtime?
8 A. Yeah. We moved about two or three more sheets
9 and I couldn't take the pain no more and I went and told
10 Shannon I was injured. I just wanted my shoulder fixed.
11 Q. Now, you said your shoulder was already sore
12 and had been for quite some period of time?
13 A. Yes, but I don't think the damage had been
14 done yet.
15 Q. Okay. So you're saying that your shoulder was
16 sore, but this incident made it worse?
17 A. Made it worse. Can I say something?
18 Q. Yes.
19 A. I think doing the wall exercises and hanging
20 on the door is what did the final trick to it.
21 Q. You think doing wall exercises while --
22 A. With a bad shoulder, put your hand up on the
23 door and Ernie and them told me to pull my weight down on
24 it. No pain, no gain.
25 Q. Okay. Let's go piece by piece. You said --

1 when you're talking about Ernie, you're talking about
2 Ernie that's sitting right here beside me?
3 A. Yes.
4 Q. The safety manager. Okay. And you were
5 working light duty in the bolt -- making bolts?
6 A. Yes.
7 Q. And in that room it was you and you had a
8 helper, didn't you?
9 A. Well, he was the main guy, I guess.
10 Q. But he was in there with you?
11 A. Yeah.
12 Q. And this was a room with a fan in it?
13 A. Yeah.
14 Q. You were doing sitdown work?
15 A. Yeah.
16 Q. And Ernie would come check on you or his
17 assistant a couple times a day to make sure you were
18 doing your exercises?
19 A. Yes.
20 Q. Because the doctor had given you exercises to
21 do with stretches on the wall and such for your shoulder,
22 correct?
23 A. That's the reason why Ernie told me to do
24 them.
25 Q. And so Ernie would come in and just encourage

1 you to do your exercises, correct?
2 A. Yes.
3 Q. So today is it your testimony that you say you
4 think you told your shoulder doing the exercise?
5 A. I think that made it worse, yes. Because when
6 I hung on the top of that door, it wasn't getting no
7 better. It just kept getting worse and worse.
8 Q. Were the exercises you were doing things the
9 doctor told you or just what Ernie told you to do?
10 A. It's what the doctor told me, his doctor.
11 Q. Now, by the time -- this was on January the
12 24th, 2012. You had been on that job for, what, six,
13 seven months?
14 A. Yes.
15 Q. And the job was scaling down a little bit by
16 that time, wasn't it?
17 A. Yes.
18 Q. I mean, you had -- before that you had been
19 working like weekends and everything. They had cut out
20 weekend hours by that time, right?
21 A. Yes.
22 Q. And they had already laid off a number of
23 people, didn't they?
24 A. Yes.
25 Q. You knew your time was coming up for layoff,

1 didn't you?
2 A. Never made layoff. Zero was actually going to
3 transfer me to Kentucky. I survived every layoff because
4 of my attendance and my good work record.
5 Q. Since you've -- since you've left there now,
6 they've had more layoffs, haven't they?
7 A. I have no idea. I don't live down here.
8 Q. How many employees were on the job when you
9 were there?
10 A. I couldn't tell you.
11 Q. More than 300?
12 MR. SMITH: Objection. Calls for speculation.
13 THE WITNESS: I couldn't tell you.
14 BY MR. LEWIS:
15 Q. You don't know how many are out there now?
16 A. I don't know how many are out there now.
17 Q. Now, you mentioned your house being in
18 foreclosure. Isn't it true your house was already in
19 foreclosure? You would be on the phone with the mortgage
20 company and your roommate, Tony, would hear you? You
21 were already having financial issues with your house,
22 weren't you, before this injury?
23 A. No, I was only -- I wasn't in foreclosure. I
24 was just a month behind. It didn't get in foreclosure
25 until I got home. We was just having troubles making the

1 house payments because the hours were cut down.
2 Q. Were you on the phone with the mortgage
3 company on a regular basis talking about these -- about
4 your finances?
5 A. They called me, yeah, on a regular basis
6 because I was like one month behind on my payment and
7 then it got two months behind.
8 Q. Okay. Now, when you -- when you were working
9 with Spirit, did you have health insurance?
10 A. No. I think I had just had qualified after
11 six months maybe.
12 Q. You were there for the qualified amount of
13 time. Did you purchase health insurance?
14 A. I did not purchase it at the time.
15 Q. Okay. So did you have any health coverage at
16 the time that your shoulder was bothering you?
17 A. No.
18 Q. So if the workers' comp insurance wasn't going
19 to pay to get your shoulder treated, you wouldn't have
20 any way to pay for it, would you?
21 A. If workman's comp don't, I have to figure out
22 some other way to pay for it.
23 Q. All right. Before I finish, I just want to
24 make sure I'm clear. Your testimony today is that your
25 shoulder and other things were already sore before

1 January 24th, had been for at least some period of time?
2 A. Possibly at least four or five weeks, yeah.
3 Q. Four or five weeks. And on January 24th, your
4 co-worker, Luis, dropped his end of the deck and jerked
5 your arm and that made it worse?
6 A. It hurt it enough to where I needed it -- that
7 I contacted safety because you're supposed to report an
8 accident.
9 Q. And that doing arm stretches on the wall
10 during light duty is what you think really like popped
11 your shoulder or snapped it?
12 A. No, I think it just made it worse. I don't
13 know. I'm not a doctor.
14 MR. LEWIS: All right. Nothing further,
15 Commissioner.
16 THE COURT: All right. Mr. Smith?
17 MR. SMITH: May it please the Court.
18 REDIRECT EXAMINATION
19 BY MR. SMITH:
20 Q. On the day in question were you intoxicated?
21 A. No.
22 Q. Under the influence?
23 A. No.
24 Q. Did you take a drug test when you went to the
25 doctor?

1 A. Yes.
2 Q. Did you pass that test?
3 A. Yes.
4 Q. With regard to soreness, what does soreness
5 mean?
6 A. Well, I guess it means like when you get up in
7 the mornings after working hard all day before and all
8 your joints ache and you're, you know, sore.
9 Q. As a veteran iron worker, have you dealt with
10 that sort of situation before?
11 A. Yes, I've always dealt with pain.
12 Q. With regard to the notice that you gave to
13 Spirit, how many days before the incident did you tell
14 Shannon that you were sore?
15 A. I couldn't be exact. I say about four or five
16 maybe.
17 Q. The sheets are made of what?
18 A. Galvanized steel. I don't know what gauge.
19 Q. With regard to your -- what is the policy with
20 regard to reporting accidents?
21 A. You go to your supervisor or foreman and I
22 guess I was working for Shannon. He was the foreman, the
23 closest one. So I asked him where Jeff was so I could go
24 to my supervisor.
25 Q. How old is Luis?

1 A. I couldn't tell you.
2 Q. Where does he live?
3 A. Huh?
4 Q. Where does he live?
5 A. Couldn't tell you.
6 Q. What does he do?
7 A. I don't know.
8 Q. With regard to you said that you felt a
9 popping sensation in your shoulder?
10 A. Yeah.
11 Q. Did you ever feel a pop at any other time
12 other than that particular incident?
13 A. No, I never felt a pop.
14 Q. With regard to the exercises, did you feel
15 popping in that?
16 A. One day when I was in there and Ernie had me
17 or the other guy told me to grab the top of the door and
18 pull down, it almost brought tears to my eyes. It hurt
19 real bad right then.
20 Q. And this was -- did Ernie take you to the
21 doctor the first time?
22 A. Ernie took me the first time.
23 Q. Did he talk to the doctor at all?
24 A. Yes, he was in the room with me when I was
25 being examined.

1 Q. So he knew what exercise need to be done?
2 A. Yes.
3 Q. And he was concerned about you and he made
4 sure you did those?
5 A. Yes.
6 Q. So someone was at the doctor when you were
7 prescribed the MRI?
8 A. The second time that was the other guy.
9 Q. Were they -- did you get an MRI?
10 A. No, I didn't get one. I didn't retain an
11 order. Not my place. I come in and talked to him and he
12 said, like, well, what you going to do? I said, I don't
13 know. What are y'all going to do?
14 Q. Would you have been doing those exercises,
15 sliding your hand up the wall and so forth, had you not
16 been injured on January 24, 2012?
17 A. No. I still would have been injured, but I
18 just don't -- I think it just complicated matters.
19 Q. No. My question is, would you have been doing
20 those exercises -- did you do those exercises --
21 A. Oh, no, no --
22 Q. -- on January 23rd?
23 A. -- no, no. I wouldn't never be doing them
24 exercises if it wasn't for the injury.
25 MR. SMITH: I have nothing further.

1 MR. LEWIS: A couple follow-up, Commissioner.
2 RECROSS-EXAMINATION
3 BY MR. LEWIS:
4 Q. You mentioned that, you know, you knew what
5 general soreness is. You've done a physical job most of
6 your life, correct?
7 A. Yeah.
8 Q. And so it's not uncommon for you to have aches
9 and pains especially in your line of work, correct?
10 A. Yes. And I've worked with busted ribs before
11 too.
12 Q. And you consider yourself to be a tough guy,
13 don't you?
14 A. Used to be.
15 Q. But, I mean, your discomfort in your shoulder
16 was significant enough before January 24th that you went
17 and asked not to do this deck dragging, correct?
18 A. Yes.
19 Q. So it wasn't just a minor ache and pain. It
20 was something significant?
21 A. It was significant, but that don't mean that
22 you don't get out there and do it because just like Ernie
23 and them say, no pain, no pain. We're iron workers. If
24 you want to go work at Wal-Mart and be a greeter, go do
25 it. And I had to have a paycheck, so I had to get out

1 there and do it.
2 Q. I understand. And that's my point. I mean,
3 you're in a tough profession. You're a tough guy. But
4 your shoulder was sore enough before anything on
5 January 24th that you went and asked no less than two
6 people at Spirit if you could not do the deck dragging
7 and you told your co-worker beforehand you wanted to let
8 him know your shoulder was bothering you, didn't you?
9 A. Yes.
10 Q. Now, just to make sure we're clear. You
11 talked about doing some other jobs for the company before
12 January 24th you think might have contributed to your
13 soreness. Are you saying that your whole body at work at
14 Spirit has caused your shoulder to be bad or are you
15 saying something specifically happened on January 24th?
16 A. I'm saying something happened specifically on
17 the 24th, but I think it all led up to being sore.
18 Q. I don't have --
19 A. And working extremely hard.
20 MR. LEWIS: Nothing else, Commissioner.
21 MR. SMITH: If I may?
22 THE COURT: Certainly.
23 FURTHER REDIRECT EXAMINATION
24 BY MR. SMITH:
25 Q. Did the aches and pains that Mr. Lewis spoke

1 of or asked you about, were there ever tears in your
2 shoulder?
3 A. No.
4 Q. With regard to your injuries as Mr. Lewis
5 pointed out, you told your supervisor before this
6 incident about the fact that you were sore?
7 A. Yes.
8 Q. Other than working, were you doing anything
9 with regard to your shoulder?
10 A. No, I would sit around and watch TV.
11 Q. Where did the soreness come from?
12 A. Probably from hanging and messing around with
13 them big bolts and them giant impact guns and holding
14 them up like this doing overhead ones.
15 Q. And that was while working, right?
16 A. Working, yeah. From working. From working
17 hard. I always work hard.
18 Q. And then the final incident was the popping
19 incident?
20 A. Yeah.
21 MR. SMITH: I have nothing further.
22 MR. LEWIS: Nothing else, Commissioner.
23 THE COURT: All right. Thank you, sir. Other
24 witnesses?
25 MR. SMITH: That's it.

1 THE COURT: That's your case?
2 MR. SMITH: That's it.
3 THE COURT: Witnesses?
4 MR. LEWIS: Yes, sir. I call Ernie McDonald.
5 (EARNEST MCDONALD, being duly sworn to tell
6 the whole truth and nothing but the truth, testified as
7 follows:)
8 THE COURT: Please state and spell your full
9 name for the record.
10 THE WITNESS: Earnest McDonald.
11 E-A-R-N-E-S-T, M-C-D-O-N-A-L-D.
12 THE COURT: You're speaking loud enough. But
13 remember if it's yes or no, say yes or no. All right.
14 Mr. Lewis.
15 MR. LEWIS: Thank you, Commissioner.
16 DIRECT EXAMINATION
17 BY MR. LEWIS:
18 Q. Mr. McDonald, you understand first of all that
19 you're under oath today, correct?
20 A. Yes, sir.
21 Q. You know Mr. Provins who is sitting in here,
22 don't you?
23 A. Yeah.
24 Q. Tell the Commissioner just briefly what your
25 role with Spirit Construction is here in Anderson, what

1 the job is.
2 A. The head safety person for Spirit Construction
3 out here at First Quality for Spirit and Vos Electric.
4 Q. And what is First Quality? Y'all are building
5 a paper machine, correct?
6 A. Correct. Yes.
7 Q. All right. And how long -- how long have you
8 been on that job?
9 A. I've been on this job now for 14 months.
10 Q. Now, in general how long have you worked for
11 Spirit Construction or one of its related companies as a
12 safety manager?
13 A. Been with the company for 18 years now and
14 I've been in safety for nine.
15 Q. And you live in Alabama, correct?
16 A. Yes, I live in Alabama.
17 Q. And you go on these jobs all over the country
18 and you basically live in that area for a while?
19 A. Yes, sir. I've been from Oregon all the way
20 to eastern United States.
21 Q. And you have an apartment here?
22 A. Yes.
23 Q. And is it in the same apartment complex that
24 Mr. Provins lived in for a while?
25 A. Yes, sir.

1 Q. And obviously we're here today because he
2 contends he was injured on January 24, 2012, and there's
3 no dispute that he came to you and told you he had been
4 injured, correct?
5 A. Yes.
6 Q. And as a result of that, did you drive him to
7 the doctor?
8 A. Yes, I did.
9 Q. And tell me what you remember about the ride
10 to the doctor's office.
11 A. Well, on the way over there he mentioned that,
12 you know, he said his arm was sore. He said it was sore
13 before this accident happened and like the -- the
14 dropping of the deck, he heard a pop and it made it
15 worse.
16 Q. Okay. And did -- the deck that he's dragging,
17 you've seen some of the demonstration that we've been
18 using with the sheets of paper. Is that accurate in
19 terms of the way these guys drag the deck? One would be
20 on each end and they'll walk it down?
21 A. Yes, it is.
22 Q. And where -- when you got to the doctor's
23 office, was it just the two of you?
24 A. Yes, it was.
25 Q. All right. And did you wait there with him

1 the entire time?
2 A. Yes, I did.
3 Q. And did you take him home that night?
4 A. Yes, I did.
5 Q. And did you then provide him a light duty job?
6 A. Yes, we did.
7 Q. And this is, of course, while the case was
8 being investigated. But from your end, is that something
9 you do if somebody is hurt on the job, y'all get them a
10 light duty position?
11 A. That's right.
12 Q. Tell the Commissioner what he was doing in the
13 light duty job.
14 A. The light duty job, like he said, he would
15 come in, we would go through his exercise like the doctor
16 had showed us -- showed me for him to do. He done that.
17 He would go down to the -- what we called a bolt connex,
18 which is just a seat container that they have all the
19 bolts in. And all he had to do was just sit at the
20 table, had a fan on him. He just sit there and just take
21 bolts and put the nuts and washers on them. That's all
22 it is. He'd make them up, throw them in -- throw all the
23 bolts in a bucket, I'm sorry, and that was his job duty
24 all day.
25 Q. And when you went -- when you would go in

1 there and check on him and tell him to do his exercises,
2 why were you -- why were you telling him to exercise?
3 A. Because the doctor had told us -- told me that
4 whenever he was doing the -- during the day to do the
5 exercise two or three times a day. So that's the reason
6 why go we could go in there and check on him just to make
7 sure he would do it.
8 Q. Okay. Now, how many employees are on that job
9 now?
10 A. It's less than 100.
11 Q. And at the time Mr. Provins was there, how
12 many were there?
13 A. Probably a little over 300 people, 370,
14 something like that.
15 Q. So the jobs have been scaled down
16 incrementally?
17 A. Oh, yes.
18 Q. Is the job going to be coming to an end before
19 too long?
20 A. Yes.
21 Q. Now, when you -- when you took Mr. Provins to
22 the doctor's office, you drove him over there, did he
23 ride in the car with you?
24 A. Yes.
25 Q. And how did he appear? What did you observe?

1 A. He was really -- real shaky and stuff, you
2 know. Even when we got to the doctor's office, he was --
3 he was shaking so bad I actually had to sign him in.
4 Then after that, we left the doctor's office, went by and
5 got his medicine for him, and then that's when I took him
6 home.
7 MR. LEWIS: All right. Nothing further,
8 Commissioner. Thank you.
9 THE COURT: Mr. Smith.
10 MR. SMITH: May it please the Court.
11 CROSS-EXAMINATION
12 BY MR. SMITH:
13 Q. You've been with Spirit for some time?
14 A. Yes.
15 Q. And so you're aware of their policy to deny
16 claims, right?
17 MR. LEWIS: I object. I object to that,
18 Commissioner.
19 THE COURT: Sustained.
20 BY MR. SMITH:
21 Q. You were really concerned about him doing his
22 exercise?
23 A. I'm always concerned about it, yes. Anybody
24 that's injured in construction under my people, I make
25 sure that they do what the doctor has asked them to do.

1 Q. So based on that and based on the fact you
2 were involved with Mr. Provins seeing the doctor, you
3 would want him to have an MRI, right?
4 A. I'm not aware of that.
5 Q. Aren't you the safety man?
6 A. Yes, sir. But stuff like that, I was on
7 vacation that week and what happened then, you know, that
8 goes to the Green Bay office. I'm not aware of what
9 happened about the MRI and stuff.
10 Q. Did he have an MRI?
11 A. Not as I'm aware of, no.
12 Q. And the story that Mr. Provins gave today is
13 the same one he gave to you and the same one that he gave
14 to the doctor; am I right?
15 A. Yes.
16 Q. So that's never changed?
17 A. No.
18 Q. In regard to Mr. Provins' work, the quality of
19 his work was okay, wasn't it?
20 A. Yes, it was.
21 Q. His attendance was solid?
22 A. Uh-huh.
23 Q. He was timely?
24 A. Yes. Uh-huh.
25 Q. Mr. Provins is right-handed; is that right?

1 A. I believe so, yes.
2 Q. And you signed in for him?
3 A. Yes.
4 Q. And since you were safety man, did you have
5 them do a drug test?
6 A. Yes.
7 Q. And how did that go?
8 A. It was good.
9 Q. Have you ever told him no pain, no gain?
10 A. Well, yes, I did.
11 Q. Did you also tell him that maybe if he stopped
12 masturbating he would get better?
13 A. That's just construction workers. No harm was
14 meant by that whatsoever.
15 Q. But you said it?
16 A. Yes, sir, I did say it.
17 MR. SMITH: I have nothing further, sir.
18 THE COURT: Mr. Lewis.
19 REDIRECT EXAMINATION
20 BY MR. LEWIS:
21 Q. Mr. McDonald, just one more question. When
22 you were taking Mr. Provins to the doctor, he also told
23 you in the car that his shoulder was already bothering
24 him before this incident that he alleged, correct?
25 A. Yes, he did.

1 Q. And in terms of making decisions about
2 approving MRIs and workers' comp issues, you get them to
3 the doctor, you don't decide all those issues, do you?
4 A. No, sir, I do not.
5 MR. LEWIS: Nothing else.
6 THE COURT: Mr. Smith?
7 MR. SMITH: I don't have anything further,
8 sir.
9 THE COURT: All right. Thank you very much.
10 Next witness. Luis, do you speak English?
11 THE WITNESS: Yeah, I understand pretty good
12 sometimes.
13 THE COURT: Is your understanding of English
14 better than your speaking ability?
15 THE WITNESS: Yes, I understand more.
16 THE COURT: Do you feel comfortable that you
17 can understand the questions that these gentlemen are
18 going to ask you?
19 THE WITNESS: (Inaudible.)
20 THE COURT REPORTER: I didn't understand that.
21 THE WITNESS: Do what?
22 THE COURT REPORTER: Can you repeat your
23 answer?
24 THE COURT: This lady is making a record of
25 this, so she needs to understand everything you say.

1 Okay. I need to understand everything you say because
2 I'm the fact-finder here. Do you feel comfortable
3 answering the questions?
4 THE WITNESS: What?
5 MR. LEWIS: He said do you feel comfortable
6 understanding the questions that are going to be asked to
7 you?
8 THE WITNESS: Yeah.
9 THE COURT: What I'm going to do here in just
10 a moment is I'm going to swear you in, ask you under oath
11 to tell the truth. Okay?
12 THE WITNESS: Okay.
13 THE COURT: Then I need for you to speak up
14 loudly and clearly so that we all can hear you. If you
15 don't understand the question, say you don't understand
16 the question.
17 THE WITNESS: Okay.
18 THE COURT: And we will have them restate.
19 You can tell me tell, you can tell whoever is asking you
20 the question. But I want to make sure you clearly
21 understand. If you don't understand the question, don't
22 answer it until you understand it.
23 THE WITNESS: Okay.
24 THE COURT: Okay. Because it's very important
25 that the answers you give are the answer to the question

1 they ask, not just what you maybe thought they asked. Do
2 you follow what I'm saying?
3 THE WITNESS: Yeah.
4 THE COURT: Okay. All right. Now, once I
5 swear you in, I need you to state and spell your name.
6 Can you spell in English?
7 THE WITNESS: Not really. Luis is L-U --
8 L-U-I-S, Louis. C-I-R-R...
9 THE COURT: Is it on your APAs?
10 MR. LEWIS: Yes, sir. That's how it's
11 spelled.
12 THE COURT: C-A-R-R-I-O-N.
13 (LUIS CARRION, being duly sworn to tell the
14 whole truth and nothing but the truth, testified as
15 follows:)
16 THE WITNESS: Can you repeat that one more
17 time?
18 THE COURT: All right. Let me simplify this.
19 I don't think either one of you will object. The answers
20 you're going to give, do you swear under oath that they
21 are truthful, that you are about to tell us what is true?
22 THE WITNESS: True.
23 MR. LEWIS: Do you swear that your answers are
24 going to be truthful? Are you going to tell the truth?
25 THE WITNESS: Yeah, tell the truth.

1 THE COURT: Okay. Very good. Is everybody
2 comfortable with that?
3 MR. LEWIS: (Counsel nods head.)
4 THE COURT: Mr. Smith, are you comfortable
5 that he's --
6 MR. SMITH: Yes.
7 THE COURT: -- appropriately sworn in?
8 MR. SMITH: Yes, sir.
9 THE COURT: All right. Mr. Lewis.
10 MR. LEWIS: All right. Thank you,
11 Commissioner. And I'm going to be brief.
12 DIRECT EXAMINATION
13 BY MR. LEWIS:
14 Q. Luis, do you remember working with Mr. Provins
15 on January -- around January 24, 2012?
16 A. Yeah.
17 Q. Okay. And that was like the first time you
18 really had worked with him, right, because he was usually
19 on another crew; is that correct?
20 A. Yeah.
21 MR. SMITH: Objection as to leading.
22 MR. LEWIS: I did lead. Let me ask him
23 another one.
24 BY MR. LEWIS:
25 Q. Did Mr. Provins typically work on your crew

1 with Shannon Clarke?
2 A. Yeah, he worked one day.
3 Q. So he worked one day with Shannon's crew?
4 A. Yeah.
5 Q. Okay. Now, when you and he -- did y'all drag
6 decking together?
7 A. No.
8 Q. You --
9 A. Yeah, we -- we were up in the decking.
10 Q. You and Mr. Provins were dragging decking,
11 correct?
12 A. Yeah.
13 Q. Did you ever drop your end of the decking?
14 A. No.
15 Q. Did he -- did Mr. Provins ever say anything to
16 you or indicate to you that you had dropped your end of
17 the decking?
18 A. No.
19 Q. Now, you're -- how old are you?
20 A. Twenty-three.
21 Q. And you're a pretty healthy guy. You work out
22 at the gym regularly?
23 A. Yeah, I go two, three, four days a week.
24 Q. Two or three or four days a week?
25 A. Yeah.

1 MR. LEWIS: That's all the questions I have,
2 Commissioner.
3 THE COURT: All right. Mr. Smith.
4 MR. SMITH: May it please the court.
5 CROSS-EXAMINATION
6 BY MR. SMITH:
7 Q. How many times did you have the opportunity to
8 work with Mr. Provins?
9 A. How many times what?
10 Q. How many times did you get to work with him?
11 A. How many times? No, just one. Just one time.
12 Q. Were you friends, amigos?
13 A. Yeah, friend. Well, I worked for -- when
14 my -- really were two friends and that's all.
15 Q. Where -- Mr. Provins, does he live in South
16 Carolina?
17 A. Who?
18 Q. Mr. Provins.
19 A. No.
20 Q. Where does he live?
21 A. I don't know.
22 Q. What did you talk about on the job?
23 A. Nothing. We working together. We didn't talk
24 nothing.
25 Q. Did he work hard?

1 A. Huh?
2 Q. Did he work hard?
3 A. Oh, yeah. When -- when we pick up the first
4 piece, he told me he --
5 MR. SMITH: Objection. I ask that he answer
6 the question.
7 THE COURT: He needs to answer the question he
8 was asked. If you want to come back and ask him that
9 question, you may.
10 THE WITNESS: Huh?
11 THE COURT: Please restate the question,
12 please, Mr. Smith.
13 MR. SMITH: I withdraw it.
14 BY MR. SMITH:
15 Q. If there's an accident at Spirit, what are you
16 supposed to do?
17 A. Just tell somebody else, my foreman or safety.
18 Q. Are you a foreman?
19 A. No.
20 Q. Mr. Provins, was he supposed to tell you
21 something?
22 A. No, he didn't tell me something with job.
23 Q. You still have a job with Spirit?
24 A. Huh?
25 Q. You still have a job with Spirit?

1 A. Yeah.
2 Q. A lot of people have been laid off?
3 A. Yeah, some people got laid off.
4 Q. How much -- how much experience do you have --
5 how long have you worked with Spirit?
6 A. Almost 15, 16 months.
7 Q. What is your position?
8 A. It's iron worker.
9 Q. Iron worker?
10 A. Yeah.
11 Q. And how long have you been an iron worker?
12 A. I work two years and a half, something.
13 Q. The people that have been laid off, how many
14 years have they been working?
15 MR. LEWIS: Commissioner, I'm going to object
16 to that. I mean, that's --
17 MR. SMITH: It's cross-examination.
18 MR. LEWIS: Yeah, but that's not -- that's not
19 a legitimate question. Who is he talking about?
20 MR. SMITH: It goes to credibility.
21 MR. LEWIS: There's hundreds of people. How
22 does his seniority go to credibility?
23 MR. SMITH: He still has a job when you've
24 brought up the fact that there's 100 people now, not 300.
25 MR. LEWIS: He's in a different state now.

1 THE COURT: You opened that door.
2 MR. LEWIS: Okay.
3 THE WITNESS: I don't know how many got. Some
4 people.
5 BY MR. SMITH:
6 Q. Mr. Provins told you his shoulder was sore?
7 A. Huh?
8 Q. Mr. Provins told you his shoulder was sore?
9 A. Yeah, he told me. When we pick up the first
10 piece, he tell me that the shoulder hurt. But I don't
11 know.
12 Q. Did he do anything differently, I mean, or did
13 he do the same that you did? I mean, you were moving the
14 sheets, right?
15 A. Yeah. One time he said, My shoulder hurt. My
16 shoulder hurt. He never stopped if he had a problem.
17 Q. You started moving sheets first thing in the
18 morning?
19 A. We move like almost -- in the morning like ten
20 o'clock. We move one bundle, the decking bundle.
21 Q. How many are in a bundle?
22 A. Bundles are almost 13, 15 piece.
23 Q. And you started working doing that at eight
24 o'clock?
25 A. Yeah. We start -- when we -- when we worked

1 together, we start 10:00.
2 Q. What were you doing for the other two hours
3 before that?
4 A. Oh, we do everything. We do the decking.
5 Q. In order to move this deck, the sheets, takes
6 two people, right?
7 A. Yeah.
8 Q. And the two of you did the same job, right?
9 A. Yeah.
10 Q. Did he drop his end?
11 A. No. We never drop it because we never pick
12 up. When we work with him, we slide the piece. We never
13 pick it up. I don't know why he say I drop it.
14 Q. What?
15 A. I don't know why he say I drop the piece
16 because we never -- we pick up the piece like this far.
17 We pick it up like this and we slide the piece. (Witness
18 indicates.)
19 Q. Have you talked to Ernie about this?
20 A. Yeah.
21 MR. SMITH: I have nothing further.
22 THE COURT: Mr. Lewis?
23 MR. LEWIS: No questions.
24 THE COURT: All right. Next witness. All
25 right, sir. I'm going to swear you in in just a moment.

1 I'm going to ask you to do a couple of things for me. I
2 want to make sure you speak loudly enough and clearly
3 enough that everyone in the room can hear you,
4 specifically the two attorneys and me and especially this
5 young lady because she's making a record of this
6 proceeding. Okay?
7 The other thing is if you are asked a yes or
8 no question, please respond with yes or no. Uh-huh and
9 unh-unh get misunderstood. And shaking and nodding your
10 head requires her to stop to see what you're doing and
11 then has to actually write that down. So if you're asked
12 a yes or no question by either of the attorneys or by me,
13 please answer with yes or no. Okay?
14 THE WITNESS: Yes.
15 THE COURT: All right. Very good.
16 (ANTHONY A. AZUSENIS, JR., being duly sworn to
17 tell the whole truth and nothing but the truth, testified
18 as follows:)
19 THE COURT: Please state and spell your full
20 name for the record.
21 THE WITNESS: Anthony A. Azusenis, Jr.
22 A-N-T-H-O-N-Y, A, period, A-Z-U-S-E-N-I-S, J-R.
23 THE COURT: All right. Mr. Lewis.
24 DIRECT EXAMINATION
25

1 BY MR. LEWIS:
2 Q. Tony, you worked for Spirit Construction and
3 you worked here in Anderson on that project for some
4 time, didn't you?
5 A. Yes.
6 Q. And now where do you work for Spirit
7 Construction?
8 A. In Shelby, North Carolina.
9 Q. And Luis, the gentleman who just testified,
10 Mr. Carrion that just left, does he also work in North
11 Carolina with you?
12 A. Yes, sir.
13 Q. Now, we're here today obviously dealing with
14 Mr. James Provins, and you worked with him on the job
15 here in Anderson?
16 A. Yes.
17 Q. And did he live with you at one point in time?
18 A. Yes, he did.
19 Q. Okay. Tell me how that came about.
20 A. We were working together. I had another
21 roommate by the name of Bill Phillips, and I had a
22 previous roommate by the name of Ryan Martin that moved
23 out. And we were living at Shadow Creek Apartments. We
24 had a three bedroom fully furnished with utilities that
25 was running us about 1500 a month. So we're out of town

1 to make money. We're not out of town to spend money. So
2 he suggested -- James was looking for a place to live and
3 suggested him as a roommate and I said, fine, since the
4 lease was in my name, and I invited him to move in.
5 Q. Okay. And when he moved in, did you -- you
6 went and picked him up from wherever he was living and
7 moved his stuff?
8 A. Yes, I did.
9 Q. Was he in a hotel before then?
10 A. Yes, he was.
11 Q. Now, when he lived with you, did he discuss --
12 did he ever tell you about any kind of problems he was --
13 MR. SMITH: Objection. Leading.
14 MR. LEWIS: That's not leading. I'll rephrase
15 it.
16 MR. SMITH: I anticipated. I'm sorry.
17 BY MR. LEWIS:
18 Q. Now, when you were living with Mr. Provins,
19 did you ever notice anything about him physically
20 something that you directly observed any kind of physical
21 limitations?
22 A. As far as at home, I would say no. But as far
23 as working with him on the job site, I noticed he had a
24 limited movement of his right arm.
25 Q. Okay. And why did that stand out to you? Did

1 it remind you of something or?
2 A. It reminded me there's a gentleman by the name
3 of John McCain.
4 Q. You mean the way the shoulder movement?
5 A. Right. As far as being able to force your
6 hand straight up in the air.
7 Q. And did you ever have any conversations with
8 him about why he moved his arm in that manner prior to
9 January 24th?
10 A. At work, no. I mean, he performed his job
11 well and was a hard worker. So, I mean, that was not an
12 issue at that point.
13 Q. At home conversation with him about it.
14 A. No.
15 Q. Now, you drove him to work typically when he
16 lived with you; is that right?
17 A. Yes.
18 Q. And you remember the date in question here you
19 didn't take him home that day?
20 A. No. He was home when I got home I would leave
21 Ernie took care of that.
22 Q. Ernie take him during the course of time that
23 hi levied with you did you ever hear him have any
24 conversations about his finances?
25 A. I know he was having difficulty with his

1 mortgage payments.
2 Q. And how do you know that?
3 A. Because I heard him having conversations with
4 his --
5 MR. SMITH: Objection. He doesn't know who
6 was on the other end of the phone. Speculative.
7 THE COURT: Do what now?
8 MR. SMITH: He doesn't know who is on the
9 other end of the phone. It's speculative.
10 THE COURT: But why can't he tell us what he
11 heard.
12 MR. SMITH: He was telling us who he was
13 talking to.
14 THE COURT: You can't do that. You can tell
15 us what you heard, but you can't tell -- you can tell us
16 what you heard as far as what he said, but you can't
17 speculate as to who he might be talking to.
18 THE WITNESS: Correct, Your Honor.
19 BY MR. LEWIS:
20 Q. All right. Tony, you can't tell us who
21 Mr. Provins was talking to if you don't know. Did
22 Mr. Provins ever tell you, Hey, I'm on the phone dealing
23 with the mortgage company or did he identify who he was
24 speaking with?
25 A. He didn't identify exactly who he was speaking

1 with, but he said he was on the phone arguing with the
2 mortgage company trying to buy himself some more time.
3 Q. Okay. And did you hear that conversation more
4 than once?
5 A. Yes.
6 Q. More than twice?
7 A. Yes.
8 Q. So was it -- would you call it a regular
9 occurrence or --
10 A. I would say on a weekly basis.
11 Q. Now, when Mr. Provins lived with you, was he
12 still drinking a lot at that time?
13 MR. SMITH: Objection.
14 MR. LEWIS: It's relevant, Commissioner.
15 MR. SMITH: He hasn't even built a foundation.
16 MR. LEWIS: We talked about his memory earlier
17 with the alcohol, and this is going to go to his memory.
18 You can make a determination on your own as to whether it
19 impacts his memory, but I think his roommate testifying
20 about this is certainly relevant to his reliability and
21 his memory.
22 MR. SMITH: He's testifying for him. There's
23 no foundation for this line of questioning.
24 THE COURT: I actually have an issue with the
25 phraseology of your question, "drinking a lot." I don't

1 know that there's any way that he knows that.
2 MR. LEWIS: Okay. I'll try to be brief, but
3 I'll get -- get to it.
4 THE COURT: Be careful.
5 BY MR. LEWIS:
6 Q. Tony, when you lived with Mr. Provins, was he
7 a drinker or a non-drinker?
8 A. A drinker.
9 Q. Okay. And how would you characterize the
10 frequency of his drinking? How would you characterize
11 the frequency, how often he drank?
12 A. Daily.
13 Q. And what was he drinking? Was it beer or was
14 it some type of whiskey?
15 A. It was a bourbon.
16 Q. Okay. And did you ever observe him drinking
17 in the morning before he went to work?
18 A. To be honest with you, yes.
19 Q. Did you ever see him take it to work in a jug
20 or any kind of container?
21 MR. SMITH: Objection. Leading.
22 MR. LEWIS: That's not leading. It's a
23 question. I've not suggested an answer. It's a yes or
24 no. Did you ever observe --
25 THE COURT: That's acceptable.

1 BY MR. LEWIS:
2 Q. Did you ever observe Mr. Provins putting
3 alcohol in any type of container that he took to work?
4 A. Yes.
5 Q. Now, you weren't working with him the day he
6 says he got hurt, correct? In other words, you weren't
7 working on his crew?
8 A. No.
9 Q. So you don't have any knowledge exactly of
10 what happened while he was doing what he was saying he
11 was doing?
12 A. No, no.
13 MR. LEWIS: Nothing further, Commissioner.
14 THE COURT: All right. Mr. Smith.
15 MR. SMITH: May it please the Court.
16 CROSS-EXAMINATION
17 BY MR. SMITH:
18 Q. Spirit had you signed a confidentiality
19 agreement regarding Mr. Provins' injury, didn't they?
20 A. No.
21 Q. So if Mr. Provins said that, that would be
22 incorrect?
23 A. That is incorrect.
24 Q. You called Mr. Provins in March and told him
25 you were fired, didn't you?

1 A. I was told by my boss to go home and tell
2 James that he was relieved of his duty due to a reduction
3 of workforce.
4 Q. Okay. Now, if you could answer my question.
5 With regard to you making a phone call to Mr. Provins in
6 March and telling him that you were fired and that you
7 needed work, do you recall that?
8 A. No.
9 Q. What -- what record do you have? Your
10 criminal record, could you share that with us?
11 A. I have no criminal record.
12 Q. Never been in trouble?
13 A. I've had a few DUIs in the past.
14 Q. So you know all about drinking?
15 A. Yes, I do.
16 Q. What did Mr. Provins do that required use of
17 his right shoulder at home?
18 A. At home? Like I said, I never really
19 acknowledged it at home. I mean, at work I did because
20 of his ability to have to climb or lift heavy stuff and
21 him making the comment that I'm no spring chicken anymore
22 and I'm a little old and a little worn down, to be honest
23 with you.
24 Q. Did he have any hobbies? Bowling?
25 A. No.

1 Q. Did you see him do anything with his right
2 shoulder outside the workplace?
3 A. To be honest, no.
4 Q. So all you did was see him use his right
5 shoulder at work; is that right?
6 A. Correct.
7 Q. You said that you helped him move stuff from
8 his hotel to your apartment?
9 A. Yes.
10 Q. Was there anything heavy in there?
11 A. No. It took us probably a whole total of
12 three to four minutes.
13 Q. How long -- how long -- excuse me. I'm sorry.
14 How long did he live at your apartment?
15 A. About three months, give or take.
16 Q. You said that he argued with the -- whoever
17 held his mortgage, is that right, or something to that
18 effect?
19 A. Yeah. He was -- he was concerned about his
20 home going into foreclosure and he was on the phone. I
21 couldn't say he was talking to the bank. But from what
22 he told me, that he was trying to buy himself some more
23 time with his mortgage company.
24 Q. And how many times did you hear that
25 conversation?

1 A. I'd say at least a half dozen occasions.
2 Q. What time did those conversations take place?
3 A. That I got some money coming in. I'm going to
4 be sending it out to you. I know I'm two months behind.
5 I'm doing the best I can, you know. I'm here in Anderson
6 working and doing the best I can. That's pretty much
7 what it was.
8 Q. When did these conversations take place?
9 A. Usually like on a Saturday or early evening.
10 Q. Early evening about what time?
11 A. Right when we got home from work, 5:00, 5:30.
12 Q. What was Mr. Provins' work ethic like?
13 A. To be honest with you, it was exceptional. He
14 showed up every day, he was on time, and the man would do
15 anything you asked him to do.
16 Q. Did he work hard?
17 A. Yeah, he was a hard worker. He wasn't slack
18 by any means.
19 Q. Is there any question that he needed money?
20 A. Was there any question?
21 Q. Was there any question based on what you
22 heard?
23 A. Yeah. I would say he was very concerned about
24 losing his home. He had so many years invested into it.
25 Q. As a worker yourself, would you agree that not

1 having a job would make it even that much more difficult
2 to make your payments?
3 A. Yes.
4 Q. You told Mr. Provins to hire me, didn't you?
5 A. Oh, we were sitting in a pub. He was looking
6 through a magazine and he took notice. He went outside
7 and called.
8 Q. You told him to get a lawyer because you knew
9 that they were going to wait for him to be released from
10 the doctor and then lay him off, right?
11 A. False.
12 Q. How long have you worked with Spirit?
13 A. Six years.
14 Q. So you and Luis still working together?
15 A. Excuse me?
16 Q. You and Luis still working together?
17 A. We do not work together. He's in a different
18 department.
19 Q. Been a lot of layoffs at Spirit?
20 A. No. Actually, in Shelby there hasn't been no
21 layoffs in the past four months. We've been hiring.
22 Q. Have you talked to Ernie about this case?
23 A. No, I have not. I have not seen Ernie since
24 March since I was relocated to Shelby.
25 Q. Do you have any question that Mr. Provins is

1 hurt?
2 A. Excuse me?
3 Q. Do you believe that he's hurt?
4 A. I would say he does have an injury. Is it
5 from Spirit directly, I cannot say because I was not
6 there. But did he have a previous injury, yes.
7 Q. When was that?
8 A. I couldn't tell you when, but I acknowledged
9 him working prior to his so-called injury with Spirit and
10 having limited ability movement with his -- with his arm.
11 Q. How did he hurt himself?
12 A. I couldn't tell you. I wasn't there.
13 Q. But his work ethic, he was an exceptional
14 worker?
15 A. Yes. I cannot take that away from him.
16 Q. With regard to his alcohol consumption, he
17 didn't drink any that day, did he?
18 A. I cannot answer that.
19 MR. SMITH: I have nothing further, Your
20 Honor.
21 THE COURT: Mr. Lewis?
22 MR. LEWIS: Nothing else, Commissioner.
23 THE COURT: All right. Thank you, sir. Any
24 other witnesses, Mr. Lewis?
25 MR. LEWIS: No, sir. That's our case.

1 THE COURT: All right. That concludes this
2 hearing then.
3 (The hearing was concluded.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2

3 I, Kimberly T. Power, Court Reporter and Notary Public for the State of South Carolina at Large, do
4 hereby certify:

5 That the foregoing transcript of proceedings was taken before me on the date and at the time and location
6 stated on page 1 of this transcript; that the witness was duly sworn to testify to the truth, the whole truth, and
7 nothing but the truth; that the testimony of the witness and all objections made at the time of the proceeding
8 were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript of proceedings
9 as typed is a true, accurate and complete record of the testimony and of all objections made at the time to the
10 best of my ability.

11 I further certify that I am neither related to nor counsel for any party to the cause pending or interested
12 in the events thereof.

13 Witness my hand, I have hereunto affixed my official seal this 20th day of October, 2012, at Richland
14 County, South Carolina.

15

16

17

18

19 Kimberly T. Power, Court Reporter
Notary Public, State of South Carolina
20 My Commission Expires: 07/22/2015

21

22

23

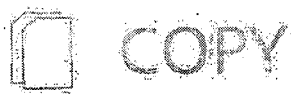
24

25

# TRANSCRIPT OF SINGLE COMMISSIONER HEARING UNDER COMMISSIONER R. MICHAEL CAMPBELL, II DECEMBER 5, 2016

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200349

| | |
|---|---|
| JAMES PROVINS,<br><br>CLAIMANT,<br><br>v.<br><br>SPIRIT CONSTRUCTION,<br><br>EMPLOYER,<br>AND<br><br>INSURANCE COMPANY OF THE STATE OF PA,<br><br>CARRIER,<br>DEFENDANTS. | HEARING<br>BEFORE COMMISSIONER<br>R. MICHAEL CAMPBELL, II<br><br>**TRANSCRIPT** |




THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 1:22 P.M., MONDAY, DECEMBER 5, 2016, RONALD TOWNSEND GOVERNMENT BUILDING, 2404 NORTH MAIN STREET, ANDERSON, SOUTH CAROLINA 29621.

**CORA ELLIS BRUTON**
**COURT REPORTER**
**131 BROWNING COURT**
**LEXINGTON, SOUTH CAROLINA 29073**
**803-397-0189**

## APPEARANCES

**FOR THE CLAIMANT**

DONALD L. SMITH, ESQUIRE
ATTORNEY OFFICE OF DONALD SMITH
122 NORTH MAIN STREET
ANDERSON, SOUTH CAROLINA 29621
864-642-9284

**FOR THE DEFENDANTS**

J. SOUTH LEWIS, II, ESQUIRE
WILLSON, JONES, CARTER & BAXLEY, P.A.
872 SOUTH PLEASANTBURG DRIVE
GREENVILLE, SOUTH CAROLINA 29607
864-527-3293

**REPORTED BY**

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

## INDEX

WITNESS - JAMES PROVINS
DIRECT EXAMINATION BY MR. SMITH. . . . . 9
CROSS EXAMINATION BY MR. LEWIS . . . . . .23
REDIRECT EXAMINATION BY MR. SMITH. . . . . .39

WITNESS - ALLICE MARIE ZIMMERMAN
DIRECT EXAMINATION BY MR. SMITH. . . . . .43
CROSS EXAMINATION BY MR. LEWIS . . . . . .54
REDIRECT EXAMINATION BY MR. SMITH. . . . . .57

CERTIFICATE. . . . . .60

EXHIBITS
(No Exhibits Proffered)

1 THE COURT: Today's hearing date is December the
2 5th, 2016. This is South Carolina Workers'
3 Compensation Case File Number 1200349. This is the
4 case of the Claimant James Provins who is deceased,
5 represented by Attorney Donald L. Smith. The Employer
6 is Spirit Construction. The Carrier is Insurance
7 Company of the State of Pennsylvania; both represented
8 by Attorney J. South Lewis, II.
9 The date of accident was January 24th, 2012.
10 There is an average weekly wage of $1,130.51 with a
11 corresponding compensation rate of $725.47.
12 APAs have been submitted. Are there any
13 objections to APAs, Jurisdiction, venue or any other
14 items?
15 MR. SMITH: None from the Claimant.
16 MR. LEWIS: None from the Defendants.
17 THE COURT: Without objection the Commission file
18 becomes a part of the record with the exception of
19 self-serving declarations and unstipulated medical
20 reports.
21 Mr. Smith, we're here today on your Form 52, so
22 if you would please put your position on the record
23 and let us know exactly what you're seeking here
24 today, sir.
25 MR. SMITH: Your Honor, we -- we are seeking to

1 have the death benefits that would be entitled to Ms.
2 Provins based on a work related death. The death
3 resulted from the bad faith denial of the claim which
4 prolonged his treatment and caused atrophy in his
5 shoulder and further injury to his shoulder which the
6 surgery was successful allegedly and then of course he
7 had a tear. At some point he said that the tear or
8 the pain in his shoulder was the same. He allegedly
9 had the MRI in October 2013 which indicated that, in
10 fact, he had the torn shoulder. He died in April. I
11 filed a Motion to Compel treatment in April based on
12 my understanding of what the treating surgeon had
13 said. We believe that "but for" the injury and the
14 subsequent bad faith denial of the claim and the
15 inability for necessary treatment in a reasonable
16 time, caused his injury to be far greater and it
17 blocked the injury in the manner of getting better, at
18 MMI and getting back to work. Every single physical
19 therapy visit that he had talked about pain. It never
20 -- never went away. He never got to a plateau and as
21 a result it's -- it's our contention that he died as a
22 result of the injury, not necessarily directly, but
23 certainly it was instrumental in the death.
24 THE COURT: Okay. All right. Thank you. Mr.
25 Lewis:

1 MR. LEWIS: Thank you. Commissioner. It's the
2 Defendants' position that this was a shoulder injury.
3 Mr. Provins had his shoulder operated on one time. He
4 was in the middle of treating with the authorized
5 treating physician and there was a second surgery that
6 was being discussed. Some medical releases had been
7 sent to Mr. Provins' counsel which were not signed so
8 as to investigate the causation aspect of the new tear
9 in the shoulder. And unfortunately during that time
10 in April of 2014, Mr. Provins passed away. This was
11 always a shoulder case and initially it was brought
12 under 42-9-280 to determine if there was any permanent
13 disability due to the shoulder. It's our position
14 that after that avenue was not going to be successful
15 that this death claim was filed. This claim for death
16 was not filed until over a year after Mr. Provins'
17 death. It had always been understood that it was a
18 shoulder case until such time as that avenue was not
19 going to be successful. It's our position that Mr.
20 Provins' death is not causally related to his work
21 injury. Certainly it's not directly related to the
22 injury. The theory from the Claimant is that -- the
23 Claimant's side is that because of the problems, the
24 pain he dealt with from the injury that he consumed
25 alcohol in excess. I believe the records show that

1 he's had an alcohol abuse problem the majority of his
2 life quite frankly. Furthermore, the death
3 certificate lists multiple causes of death or at least
4 two; acute respiratory failure and septic shock. It
5 also shows contributing factors of pneumonia, renal
6 failure and alcohol abuse. There's no opinion from
7 any of the doctors who treated Mr. Provins, either in
8 the hospital at the time of his death or even that
9 treated him personally before his death, linking up
10 his death to anything related to the work injury.
11 It's also our position that it would be against public
12 policy to hold that the way a -- an individual
13 responds to pain in using alcohol in excess would be
14 against public policy, no different than we would say
15 somebody who responds to a work injury by getting
16 addicted to heroin that is somehow the responsibility
17 of the Workers' Compensation Carrier and Defendants.
18 Furthermore, Mr. Provins had gone to the hospital
19 before his death and these are in the records, and
20 they reveal that he had had a significant drinking
21 problem. He had even, in fact, said he was drinking
22 himself to death in one particular -- one particular
23 episode and visit to the hospital. And so it's really
24 not unforeseen. Our position is that under the Capers
25 case and the theory of not an accident. It would be

1 something -- not something that would be unexpected
2 because he knew that these were issues for him and
3 that's how he dealt with his problems afterwards.
4 Finally, there's an expert -- there's two experts in
5 the case that Dr. Martin's the Claimant's expert. Dr.
6 Ballenger is our expert and it's our position that Dr.
7 Ballenger is the more credential qualified and
8 persuasive expert and if you read his deposition
9 testimony and I think that will be borne out. And
10 finally, I know I said finally already one time, you
11 know, we assert that this -- that the death aspect of
12 this claim, not the shoulder itself or the underlying
13 injury, but pushing the death aspect so far removed
14 from the death itself and then going and obtaining
15 evidence after the fact -- after it was filed. There
16 was no evidence to support the death at the time the
17 death claim was filed. We assert that the death
18 pleading is made with unreasonable grounds and in bad
19 faith. Thank you.
20 THE COURT: Okay. All right. Mr. Smith,
21 anything more?
22 MR. SMITH: No. I believe that the facts will
23 play out with the testimony.
24 THE COURT: Okay. All right. Ms. Provins, I
25 have a couple of quick instructions for you. If you

1 would please speak up and speak clearly so we all hear
2 your responses to the questions and most importantly
3 so this nice lady right here on my right can get them
4 for the record. If you're asked a yes or no question
5 please give us a verbal yes or no answer. You can
6 shake your head yes or no like I do all the time just
7 make sure you accompany that with a verbal yes or no
8 answer. Try and stay away from things like uh-huh and
9 huh-uh. That's just too easily misunderstood for the
10 record. So if you could help us out with that we'd
11 appreciate it. Okay.
12 THE WITNESS: Yes.
13 THE COURT: Okay. Please raise your right hand.
14 Do you swear and affirm that the testimony you are
15 about to give is the truth, the whole truth and
16 nothing but the truth?
17 THE WITNESS: Yes.
18 THE COURT: Okay. You can put your hand down and
19 please state and spell your name for the record,
20 ma'am.
21 THE WITNESS: Debra Provins, D-E-B-R-A
22 P-R-O-V-I-N-S.
23 THE COURT: Okay. Thank you, Ms. Provins. Mr.
24 Smith, your witness.
25 MR. SMITH: Thank you, Your Honor.

1 Debra Provins,

2 Having first been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SMITH:

5 Q Ms. Provins, where do you currently reside?

6 A 125 -- 13 -- 13605 Ken Ross, Louisville,

7 Kentucky.

8 Q How long have you lived there?

9 A About eight -- probably eight to ten years.

10 I'm not sure exactly.

11 Q Who do you live there with?

12 A My two daughters.

13 Q How old are they?

14 A Right now they're 20 and 24.

15 Q Do you have any more children?

16 A No.

17 Q Well, when did you get married to Mr.

18 Provins?

19 A It was over 20 -- I was married over 28

20 years. I'm not exactly -- the year or date -- I can

21 tell you the -- the date of the -- September the 4th,

22 but I'm not exactly sure the year. I'm never good

23 with numbers and dates.

24 Q Yes, ma'am. So you -- so the two of you had

25 two children?

1 A Yes.

2 Q Were there any other children by Mr. Provins

3 --

4 A No.

5 Q -- over -- no? What's your educational

6 background?

7 A I finished high school.

8 Q Okay. What's your work history?

9 A I worked maybe -- maybe two or three jobs

10 and then I -- I decided to have kids and I stayed

11 home. I didn't work after that. I was -- he wanted

12 me to stay home mother, so I never worked after that;

13 after the kids were born.

14 Q What do you currently live on?

15 A I'm on disability.

16 Q What kind of -- how long were you with

17 James?

18 A For about 28 years.

19 Q Right. And during that time what -- what

20 did he work in for the most part?

21 A Iron work.

22 Q How was he with regard to making it to work?

23 A He was always up and ready to go.

24 Q All right.

25 A He did it without an alarm clock. He would

1 just set --

2 Q Was his -- his work in Louisville?

3 A It's in different places. Some was in

4 Louisville, some was out of state.

5 Q And then why did -- why'd he -- why'd he

6 travel so much?

7 A He'd traveled for the, you know, more money,

8 wherever the jobs, you know, he thought best to help

9 the income of the family.

10 Q 2009, did you have marital difficulties?

11 A Yes. I kicked him out of the house there --

12 because of I was insecure about stuff and thought he

13 was cheating on me, so I kicked him out for a while.

14 Q Was that the only thing that troubled Mr.

15 Provins that year?

16 A Yeah. He --

17 Q Any deaths in the family?

18 A Oh yeah, it might be when -- I'm not sure

19 when his mom or dad died. One of his parents died.

20 Q Okay. What was the effect --

21 A I think it was his Dad.

22 Q Okay. What was the effect on Mr. Provins?

23 A It was really hard on him.

24 Q Okay. And what did he do to address that or

25 deal with it?

1 A He started drinking.
2 Q All right. Now, you're not saying that
3 James didn't drink prior to that are you?
4 A He drank off and on. Yes, he drank off and
5 on there. But not, you know, just regular like
6 social.
7 Q Okay. What ended up happening in 2009? Did
8 it -- did it change bad to good or how -- how did it
9 play out?
10 A You mean after I kicked him out or --
11 Q Yes.
12 A After I kicked him out he -- we got back
13 together and he got, you know, got his drinking under
14 control and, you know. And he -- he was really good.
15 I mean he was fine.
16 Q How was he in 2012 when he got injured?
17 A Oh, when he was injured? He was fine when
18 he first came in and he -- he -- he was fine except
19 for he was hurting and he said everything will get
20 okay, he'd get his arm fixed and he'd be ready back to
21 work.
22 Q All right. How long had he been in South
23 Carolina? Do you remember?
24 A I really don't know how long he was.
25 Q What was his -- what was his big issue with

1 regard to his injury? Was he right handed?

2 A Yeah, he was right handed. He -- he

3 couldn't even wipe his butt. He couldn't help do

4 anything around the house. He just -- he felt totally

5 useless.

6 Q What kind of income did you guys have coming

7 in at that time?

8 A Nothing.

9 Q Well, how did you --

10 A No income -- we borrowed, bummed off people,

11 borrowed as much as we could. We were going into

12 foreclosure. We were losing -- we was going in all

13 kinds of trouble trying to stay afloat.

14 Q Was Mr. Provins stressed about that?

15 A He was extremely stressed. He started, you

16 know, he was really stressed out and depressed and he

17 just got withdrawn.

18 Q When you say withdrawn what does that mean?

19 A He would - he would stay in his room.

20 Wouldn't -- he'd be quiet. He would have to stay --

21 we had to stay in separate rooms because of the pain

22 in his arm. I -- I have restless leg, so I'd have to

23 sleep in the other room and then he -- he just

24 wouldn't hardly come out of the room at all and he'd

25 barely talk.

1 Q Now, when he had the surgery how was he with
2 regard to going to physical therapy and doing what he
3 was supposed to?
4 A He did everything he -- they told him to do.
5 And he went to all of his therapies and -- and he
6 still was hurting.
7 Q And did you go with him to therapy?
8 A I went to some of his therapy things and
9 some of them I didn't.
10 Q Were you with him whenever he went to see
11 the doctor?
12 A I think I went once.
13 Q With regard to --
14 A Or maybe twice; I'm not positive.
15 Q With regard to his drinking, after he got --
16 after he -- before he got hurt, let's see where he --
17 tell us what -- about his drinking before he got hurt
18 in 2012?
19 A I know he was drinking, you know, beer and
20 stuff and all the recreational-wise. I mean he wasn't
21 falling down drunk or nothing. He was just, you know,
22 like, you know, drinking socially.
23 Q All right. And so tell us what happened
24 after he returned home in February of 2012?
25 A Was that after he got hurt?

1 Q Yes.

2 A He would just -- he said -- he said he was

3 fine and -- except he was hurting and everything was

4 going to be okay. I was worried about the bills and

5 he said --

6 MR. LEWIS: Commissioner, I - objection. She's

7 testifying to what Mr. Provins said. It's hearsay.

8 THE COURT: Yeah. You can tell me what your

9 understanding about something was but don't tell me

10 what he said. Okay? You can tell what your

11 observations were and what your understanding about

12 things were, but don't tell me what he said. Okay?

13 A Oh, okay.

14 THE COURT: All right.

15 BY MR. SMITH:

16 Q What was he drinking when he first came

17 home?

18 A He was drinking beer.

19 Q All right. At some point did that change?

20 A Yeah. He started -- after his accident he

21 started drinking vodka.

22 Q Had he been drinking vodka prior to that?

23 A No. Not that I know of, no.

24 Q How -- how much vodka did you see come in

25 your house?

1 A I never actually seen much come in the
2 house. I seen it a few times. I seen a couple of
3 small bottles. I'm not sure what sizes they are, but
4 maybe what do you call them; half pints or pints,
5 something like that. But I didn't see them -- I
6 didn't see that much.
7 Q Where -- where did you keep alcohol in your
8 house?
9 A In the refrigerator -- it's beer. All I
10 ever seen normally he'd keep beer in the refrigerator.
11 Now when he started drinking vodka and all -- brought
12 vodka -- you know, I'd see -- I'd come in the room
13 sometimes and I'd see a little bottle laying by the
14 bed.
15 Q So the -- the vodka that you saw was not in
16 a cabinet or anything like that?
17 A No. It would be laying on the bed with him.
18 Q How -- how soon after the accident did you
19 start seeing that?
20 A It wasn't for a while, a little while after
21 the accident. I think more after he started getting
22 more depressed. He seemed more withdrawn and then
23 that's when I noticed the bottles coming up when he
24 stayed in the room more and I then I happened to go in
25 there and see them. And I never seen it before.

1 Q With regard to his -- his death, did you
2 know he was sick?
3 A No. He -- I was sick at the time and he was
4 -- he hid his sickness from me. I didn't -- I -- you
5 know, I knew he was kind of withdrawn a lot, but I
6 mean I -- and all -- and in pain, but no. He hid a
7 lot of that. I'd ask if you're okay all the time and
8 then he, you know, he would just, I'm okay. He was
9 always strong and hid it, you know. He never showed
10 no -- you know, he liked to hide his pain I guess. He
11 was always so strong and tough guy, so.
12 Q How much did he come out of his room or how
13 much did he stay in his room?
14 A He stayed in there most of the time. Only I
15 seen him come out, -- you know, he stopped going to
16 the bathroom. He would use a little -- what do you
17 call these little things you use the bathroom in? He
18 kept that in the room. I mean I barely see him come
19 out hardly at all.
20 Q It was one of those bottles and --
21 A Yeah. One of those bottles you get in the
22 hospital. He'd go -- you know, when he - when he -- I
23 found out he went to the hospital that was in the room
24 full of blood like
25 Q Did you -- did you know he went to the

1 hospital?

2 A No.

3 Q How -- what was his relationship with his

4 daughters?

5 A He was -- he was -- it was a basic father

6 relationship. I mean he'd talk to them and, you know,

7 listen to music with them or something.

8 Q Did you --

9 A He didn't -- we didn't see a whole lot of

10 them because he worked so much.

11 Q All right.

12 A Well, yeah, baseball (inaudible).

13 Q How was -- how was the relationship after he

14 got hurt when he was home? Did he spend a lot of time

15 with them?

16 A At first he did and then -- but and then

17 after a while he stayed in his room so, no, he didn't

18 see too much of them.

19 Q Do you know of a time after he got hurt that

20 he was pain free?

21 A No.

22 Q Did he have health insurance after he got

23 hurt?

24 A No.

25 Q Did he have health insurance prior to that?

1 A No.

2 Q Did he go to the doctor a lot?

3 A No.

4 Q Did he go to the doctor for anything other

5 than his shoulder following the injury?

6 A Following the injury?

7 Q Yes.

8 A Not that I remember, no.

9 Q Can you tell us what James Provins' -- what

10 his demeanor was prior to the accident? What kind of

11 person was he?

12 A Oh, before the accident? Oh, he was happy,

13 jokes around a lot. He used to -- outgoing, willing

14 to help anybody whenever they needed him.

15 Q How did that change after he got hurt?

16 A He didn't talk to hardly anybody, stayed at

17 home, never came out of the room, never joked around,

18 real quiet and that's odd for him because he was -- he

19 was normally a real talkative person.

20 Q And you heard -- heard about his excessive

21 drinking; when you first got married what would he

22 drink?

23 A Beer.

24 Q Did that -- that change?

25 A He drank mainly beer. Occasionally he'd

1 have, you know, a mixed drink, but mainly just beer.
2 Q When he had his difficulty in 2009 what did
3 he drink then?
4 A I really don't know. I'm not -- I -- I
5 figure just beer. I really don't know.
6 Q Is there -- is there any doubt that he would
7 drink excessively at that time?
8 A At that time, he'd probably drink -- I
9 wasn't around him then, but I -- I kicked him out so I
10 imagine he drank, you know, quite a bit then after I
11 kicked him out.
12 Q Prior to (inaudible).
13 A (Inaudible).
14 Q Prior to kicking him out it -- was alcohol
15 was the reason you kicked him out?
16 A No. I thought he was cheating on me.
17 Q So after you guys got back together --
18 A Everything was fine.
19 Q -- how much was he drinking when you got
20 back together?
21 A Nothing basically. He -- he just -- he was
22 doing so good. He wasn't drinking and we were getting
23 -- you know, getting along.
24 Q Do you know whether he drank when he was out
25 of town?

1 A I really don't know. He probably drank
2 beers.
3 Q All right. Do you know of any time after
4 2009 that he had difficulties doing his job for
5 drinking?
6 A No, never. He was always -- he was always a
7 good -- I heard was a good worker.
8 Q You saw him every morning when he worked in
9 Kentucky. Was there a time that he worked in
10 Kentucky?
11 A Oh, yeah. He worked in Kentucky right close
12 to the house a lot.
13 Q All right. And how was he about getting to
14 work on time?
15 A He was always -- always going -- always
16 going in on perfect on time. He was willing to work
17 anytime they wanted him. He was a hard worker.
18 Q And -- and the alcohol, did it play into his
19 work at all?
20 A No.
21 Q All right. What was his condition
22 immediately prior to his death in April of 2014?
23 A What was his?
24 Q What was -- what was his -- how did he
25 change after the accident, if he did? Did he change

1 after the accident?

2 A Just real quiet and withdrawn like and --

3 Q Did he take medication for the pain?

4 A That the doctor's gave him, he took pain

5 medicine - medicine, but it didn't do much for him he

6 said.

7 Q Okay. Did he -- so at the time he died how

8 much were you seeing him out of every day? Now, you

9 didn't work then, right?

10 A Yeah. I didn't work.

11 Q How much did you see him out of every day?

12 A Time of day I didn't see him maybe -- I'd be

13 good to see him once a day. Once -- one time.

14 Q He only came out one time? When did he eat?

15 A He - he'd come out to eat, he'd use the

16 bathroom in there in that little thing. At the time

17 close to he was dying I was sick too, so.

18 Q How many friends did he have coming over to

19 visit him?

20 A None.

21 Q Did he go out to visit friends?

22 A He did -- he did a little bit at the

23 beginning, but after a while, no. He stayed in his

24 room.

25 Q When did all of his issues begin? Can you

1 tell?

2 A Right after the -- you mean right after his

3 accident? Everything started going downhill. He was

4 fine working otherwise. I mean he was working and

5 never had any problems.

6 Q After 2009?

7 A Yeah.

8 MR. SMITH: Nothing further at this time,

9 Commissioner.

10 THE COURT: Okay. Thank you. Mr. Lewis?

11 MR. LEWIS: All right. Thank you, Commissioner.

12 CROSS EXAMINATION

13 BY MR. LEWIS:

14 Q Ms. Provins, I'm going to -- I'm going to

15 ask you a few questions and, you know, I want you to

16 know first off that I'm regretful that we're here

17 today and I'm sorry for the circumstances. Okay?

18 A All right.

19 Q And I'm going to ask you some questions and

20 some of them might be difficult for you. I want you

21 to know it's not my intention to speak ill of your

22 late husband or to cause you any more pain than

23 necessary. Okay? You understand that?

24 A Yes.

25 MR. LEWIS: Okay. Commissioner, can you -- would

1 it help if I came around?

2 THE COURT: Yeah. That's fine. Whatever works

3 best for you is fine.

4 Q All right. Now Ms. Provins, I think you --

5 you've testified -- let's just start -- you said you

6 -- you guys were married about 20 some odd years?

7 A Yeah.

8 Q Okay.

9 A Yes.

10 Q And you -- you don't work, correct? You're

11 on disability?

12 A Yes.

13 Q Okay. And what's the nature of your

14 disability?

15 A It's many factors. Anxiety, depression,

16 rheumatic arthritis --

17 Q Rheumatoid arthritis?

18 A That's it.

19 Q Okay.

20 A And diticulitis.

21 Q Okay. And how long has it been since you

22 worked? I mean like just a year or two or --

23 A 20 -- no, it's been over -- over -- the kids

24 were born, so 20 something years.

25 Q Okay. You testified that with respect to

1 your husband that before -- before his work injury
2 essentially is it fair to say you're saying he had a
3 brief period of time in 2009 where you guys were
4 separated and --
5 A Just for a week.
6 Q -- he might have -- let -- let me finish the
7 question if you don't mind. Are you saying there was
8 a brief period of time in 2009 where you guys were
9 separated and that maybe he had drank too much during
10 that period of time, but otherwise he did not drink
11 excessively; is that accurate?
12 A Yes.
13 Q Okay. Were you guys married in 2001?
14 A How many years ago -- let's see. Yes.
15 Q Okay. Do you know who is family doctor was
16 at that time?
17 A Dr. Amin, I think.
18 Q Dr. Amin?
19 A Amin.
20 Q And did -- did you know that your husband
21 was going to see Dr. Amin for passing out episodes in
22 2001?
23 A I'm not sure. I think so.
24 MR. LEWIS: Commissioner, may I approach Ms.
25 Provins?

1 THE COURT: Absolutely. Yeah. Absolutely.

2 MR. LEWIS: Don, I'm at page 113 for your

3 reference. Commissioner, I'm at 113.

4 THE COURT: Thank you.

5 Q Ms. Provins, I want to show you an Amin

6 Family Practice record, for the record it's under tab

7 10, page 113. And I've highlighted a couple of things

8 and could you read -- could you read that? It says

9 patient has -- can you see what that says after?

10 A I have bad vision. Three --

11 Q Does that say patient has three black out

12 spells?

13 A -- black out spells. Okay.

14 Q Recently, drinks beer, states his eyes roll

15 back in his head.

16 A Yes, he's been known to -- he's been known

17 to have little -- little episodes where he -- he kind

18 of -- when he gets excited or gets upset kind of eyes

19 roll back in his head and he'll pass out for a minute,

20 but that's -- but I've seen that episode when he

21 wasn't when he was drinking or anything.

22 Q But he's -- he's had -- been diagnosed with

23 seizures?

24 A I don't - no, he hasn't been -- I guess

25 what do you call it -- doctor diagnosed it.

1 Q The doctor diagnosed him with seizures?
2 A Didn't.
3 Q Oh, did not.
4 A Now, I don't know. He don't go to doctors
5 too much.
6 Q Now, on this same note there's a reference
7 that says "Drinks beer mostly and hard liquor at
8 times." I understood you earlier to say that -- that
9 as far as you know he had only been a beer drinker,
10 but he was actually a hard -- hard liquor drinker in
11 '01 wasn't he?
12 A If he -- not that I know of. He hid -- if
13 he did he hid it from me.
14 Q So it -- it's fair to say that you didn't
15 know about everything (inaudible) --
16 A I don't want to --- yeah, I didn't know
17 about everything, you know. Nobody can know
18 everything about him.
19 Q No, I understand. And -- and he also -- he
20 worked out of town a good bit did he not?
21 A Yes.
22 Q And when he did that he'd be gone all week,
23 right?
24 A Yes.
25 Q Sometimes he'd stay over the weekend,

1 correct?

2 A Yes.

3 Q So he had an apartment like in -- this case

4 we're on here today he was living in an apartment here

5 in the Anderson area wasn't he?

6 A I guess so, yeah.

7 Q You don't know what his arrangement was?

8 A I just -- I thought it was motel rooms or,

9 you know.

10 Q So it's fair to say that you really had no

11 idea when he was away from the house what he was doing

12 in terms of his alcohol consumption behavior, correct?

13 A Correct.

14 Q Okay. And would it surprise you to know

15 that at the hearing in this case that your husband

16 testified that he was drinking every day? Would that

17 surprise you?

18 A Well, beer, no.

19 Q And in 2009 you and Mr. Provins were

20 separated. Did you know that he went to the

21 University of Louisville Hospital for suicidal type

22 issues?

23 A I found out later, yes.

24 Q Okay. You didn't know it at the time?

25 A No.

1 MR. LEWIS: And Commissioner, I'm going to
2 reference tab 11.
3 THE COURT: Okay. Thank you.
4 Q Was he living with his sister at the time
5 that y'all were separated?
6 A Yes.
7 Q Is that the same lady that's outside -
8 A Yes.
9 Q -- that's going to testify today?
10 A Yes.
11 Q Okay. And I'm going to show you --
12 MR. LEWIS: Commissioner, I'm at page 121.
13 THE COURT: Thank you.
14 Q I've highlighted a couple -- 121 -- I've
15 highlighted some things out of this hospital record.
16 Can you read what's highlighted right there.
17 MR. SMITH: Do you have a question? Objection.
18 She has to not be able to answer the question for you
19 before you do that, right?
20 THE COURT: Well, I believe he was going to ask
21 her to just read that. She can - that's fine.
22 MR. LEWIS: I can have the witness read something
23 that's in the notes.
24 MR. SMITH: Is there a question?
25 MR. LEWIS: Well, I'm going to follow up with a

1 question on it.

2 BY MR. LEWIS:

3 Q Ms. Provins, if you could please read what's

4 highlighted there.

5 A I can't sleep at all unless I get drunk.

6 Q And if you would go on down and what does it

7 say?

8 A Heavy alcohol use.

9 Q And then does it also say that your husband

10 was a longstanding alcoholic 16, 18 beers a today and

11 a half a pint to a pint of liquor?

12 A It says that, yes.

13 Q Are you --

14 A I guess I didn't know that.

15 Q It's your testimony today that you didn't

16 know that?

17 A No.

18 Q And the purpose of that visit was for, it

19 said suicidal thoughts. Did you know at that time if

20 he had gone there threatening suicide?

21 A I found out later, yes, that he went there

22 for suicide.

23 Q Okay. And did you know that your -- before

24 reading this note did you know that your husband had

25 been characterized as a longstanding alcoholic?

1 A No.

2 Q After -- after your husband's injury working

3 for my clients and he began seeing Dr. Bonnarens in

4 Kentucky is it your testimony that you had gone to

5 some appointments with your husband to see Dr.

6 Bonnarens before?

7 A I think I went to one or two of them.

8 Q Was your husband still driving at the time

9 at the end of his life? He was still driving and

10 operating a vehicle wasn't he?

11 A Yeah. Yes.

12 Q Did he usually drive himself to his doctor's

13 appointment?

14 A Yes.

15 Q When -- when your husband initially started

16 seeing Dr. Bonnarens in April of 2013 there's a

17 medical note that says he was drinking eight to ten

18 beers a day. Did you know that?

19 MR. LEWIS: Commissioner, I'm at page 154.

20 THE COURT: Thank you.

21 Q Did you know he'd been drinking eight to ten

22 --

23 A I knew he was drinking but I never counted

24 them.

25 Q Is -- is eight to ten beers a day a little

1 excessive?

2 A I really don't know. I -- I guess it

3 depends on the person.

4 Q Now, before he died you testified that he

5 became withdrawn and I think you used the word

6 depressed. Did -- did he ever go anywhere for any

7 kind of treatment for depression prior to his death?

8 A No.

9 Q I'm sorry?

10 A No.

11 Q Did you ever -- did you ever take him

12 anywhere to get him treated for any depression; to a

13 mental health facility or his family doctor or

14 anything?

15 A No.

16 Q And at the time that he passed I think you

17 answered in response to Mr. Smith's question that he

18 -- he was using pain medications -- he had pain

19 medications from the doctor that he was using?

20 A I guess at the time. I mean if a doctor

21 gave him some, he didn't have it.

22 Q Now when -- when Mr. Provins -- when he last

23 went to the hospital that was in April 2014; is that

24 right?

25 A Yeah.

1 Q Okay. Did you go with him?
2 A No. He didn't tell me that he -- I found
3 out through somebody -- his friend who took him called
4 me and told me that, you know, how was James? And I
5 said, I don't know what you're talking about. He
6 goes, I took him to -- dropped him off at the
7 emergency room. And after he called me I called the
8 hospital and then they said they transferred him to a
9 different hospital and that he was bad shape.
10 Q And then I'm assuming you went up there?
11 A Yes. Me and the kids went up there.
12 Q And did you -- are you the one that talked
13 to the doctors and kind of told them about what was
14 going on with him and his history and that sort of
15 thing?
16 A No. The only thing I talked to them -- only
17 -- they really didn't talk much with me; they talked
18 more to his sister because she's a nurse.
19 Q Do you know if the -- do you know the
20 information that -- you know on these hospital reports
21 where they get a history, do you know if you gave them
22 that information or was that his sister?
23 A It might have been her. I don't remember
24 giving the doctor any information to be honest.
25 Q All right. Did you tell the hospital --

1 MR. LEWIS: Commissioner, I'm going to reference
2 something on page 234.
3 THE COURT: Okay. Thank you.
4 Q Was it you that told the hospital that Mr.
5 Provins was a alcoholic and drank a half a pint of
6 vodka every day for most of his life and that he was
7 having problems breathing?
8 A No.
9 Q Did you ever give any information to the
10 folks at the hospital that he had just recently
11 started drinking more?
12 A You mean after he was dying?
13 Q No. I'm sorry. When -- when he went into
14 the hospital -- to the extent you talked to anybody up
15 there about his history --
16 A No, the only --
17 Q -- did they --
18 A -- thing I seen him when he had the tell
19 them is that the stuff sticking out of him and they
20 why didn't bring him in sooner. That's the only thing
21 I got to talk to them about. Because they talked more
22 with his sister than me. I was too upset and I told
23 them that he hid everything from me and wouldn't go to
24 the doctor.
25 Q Now, I asked you a minute ago if you had

1 ever -- if he had ever gotten any treatment for any
2 depression after -- after this work injury and you
3 said he had not. Was he still of sound mind? I know
4 you said he was withdrawn, but was he still of sound
5 mind and able to make his own decisions for himself?
6 A I think so, yeah. Yes.
7 Q Okay. Now did he -- did he make the
8 decisions as to what he wanted to eat?
9 A Yes.
10 Q So you don't doubt to -- to the extent he
11 was drinking that he was making those decisions to do
12 so out of his own free will?
13 A Yes.
14 Q What other medical conditions did -- did
15 your husband suffer from?
16 A I really don't know all of his medical
17 stuff. He hid all of his medical stuff from me. He
18 wouldn't tell me anything that was wrong with him.
19 Q So really the fact is that you really don't
20 know a whole lot about --
21 A Yes.
22 Q -- his medical history and --
23 A Right.
24 Q -- nor do you know a lot about --
25 A He talked more about his history with me -

1 about his medical stuff because he didn't want to
2 scare me.
3 MR. LEWIS: Just a minute, Commissioner. I'm
4 almost finished.
5 THE COURT: Sure. Take your time.
6 Q Did you talk to any doctors or any experts
7 that consulted on this case? Did you talk to any of
8 the doctors that did any reports on behalf of your --
9 on your behalf?
10 A I don't know what you mean.
11 Q Did you -- well, let me ask you
12 specifically, did you ever talk to a guy named Dr.
13 Price?
14 A I really don't know any -- you mean after he
15 got hurt or when he went --
16 Q Yeah, after he -- actually after he passed
17 away did you ever talk to any --
18 A Oh, after he passed away, talk to any do
19 doctors?
20 Q Yeah, on the phone or anything?
21 A No.
22 Q So you -- did you ever talk to either Dr.
23 Price or Dr. Martin, who were experts that provided
24 reports on behalf of your case? Did you ever talk to
25 them on the phone about your husband's alcohol

1 consumption habits?

2 A No.

3 MR. LEWIS: Commissioner, I am -- in the

4 Claimant's Brief, --

5 THE COURT: Yes.

6 MR. LEWIS: -- page 105.

7 THE COURT: Thank you.

8 Q Ms. Provins, there's a letter in there dated

9 July the 14th of '15 or a report from a Dr. David

10 Price and he said he had interviewed with you and Mary

11 Alice Zimmerman about -- about your husband and what

12 was going on prior to his death. Are you saying you

13 did not talk to him?

14 A Is that a --

15 Q If you don't remember, --

16 A I don't remember. I don't really remember.

17 Now if I did -- if it's right when he was dying and

18 had the tubes and stuff in him I don't -- I don't

19 really remember too much. Now, I might have talked to

20 him -- he might have talked to us a little bit about

21 that, but -- one of the doctors, but I don't -- before

22 he died, but I don't remember. I don't remember a lot

23 about that.

24 Q Would you agree with -- would you agree with

25 me that -- would you agree with me that based on the

1 information that you saw from the University of
2 Louisville Hospital from 2009 that said he was a
3 longstanding alcoholic with heavy alcohol abuse, that
4 would be indicative of somebody who's had a
5 longstanding preexisting alcohol problem?
6 MR. SMITH: Objection. She's not an expert.
7 THE COURT: You can answer the question. I'll
8 allow you to answer.
9 BY MR. LEWIS:
10 A What was the question again?
11 Q Sure. Would you agree -- you -- you
12 testified today that you didn't know about some of
13 this history that was provided in 2009 to the hospital
14 about heavy alcohol use and longstanding alcoholic, 16
15 to 18 beers a day and half a pint to a pint of vodka?
16 A Uh-huh.
17 Q Would that cause you to change your position
18 that your husband drinking significantly changed after
19 the injuries than before?
20 A I don't know. Can I say something else on
21 that? That I -- I didn't know. To me he wasn't drink
22 -- he wasn't drink -- I didn't think he was drinking
23 that much.
24 Q Okay. You wouldn't disagree with the --
25 whatever is in the records that they're -- they're

1 factual would you?

2 A I really don't -- I don't -- I didn't -- you

3 know, I really don't know.

4 Q And was -- did -- did Mr. Provins, did he

5 have a history of alcoholism in his family like with

6 his father and his brother?

7 A I think his father might have been an

8 alcoholic, but I'm not positive. He didn't talk too

9 much to me about that. I think his dad was an

10 alcoholic. I'm not positive.

11 MR. LEWIS: All right. Commissioner, I don't

12 have any more questions. Thank you.

13 THE COURT: Okay. Mr. Smith?

14 MR. SMITH: Commissioner.

15 REDIRECT EXAMINATION

16 BY MR. SMITH:

17 Q The hard alcohol that he drank prior to 2009

18 was it something that you saw on a regular basis or

19 was that the mixed drinks that you spoke of?

20 A On the what?

21 Q He drank beer?

22 A Yeah. All I ever seen -- he'd drink in

23 front of me was beer.

24 Q When you went out or went to a Christmas

25 party or something did he drink mixed drinks?

1 A If he went somewhere, yeah like that, he
2 might drink a little bit but not too much because, you
3 know, I didn't like him to drink nothing but beer. I
4 said that's, you know, the only thing I was
5 comfortable with him drinking around me and the kids.
6 Q Prior to the -- the injury when he came home
7 on the weekends and so forth what kind of alcohol
8 consumption did you see?
9 A Beer.
10 Q Okay. And with regard to the activities
11 that took place when he was home was he -- did you
12 guys go anywhere with the kids or anything like that?
13 A We'd go to eat and stuff like that and he
14 would be drinking beer here and there, but I never
15 seen him drink any liquor then.
16 Q Would he drink excessively during that time?
17 A No.
18 Q When you went to see Dr. Bonnarens was there
19 any discussion about drinking?
20 A Not that I recall, no.
21 Q We're talking about the surgeon, right?
22 A The surgeon.
23 Q Physical therapy, --
24 A No.
25 Q Did you have a discussion about drinking?

1 A No.

2 Q Do you know if he ever went hung over when

3 you saw him or went with him?

4 A When I went with him, no.

5 Q Okay. You said that he was depressed. What

6 do you mean he was depressed?

7 A He was really quiet and stayed to himself

8 and he's usually not like that. He's usually really

9 talkative and outgoing and when he gets quiet there's

10 something wrong.

11 Q How did he take his dad dying?

12 A He took it hard. He didn't spend enough

13 time with him and it -- it really -- it got to him.

14 Q Did you ever have an opportunity to see

15 Jamie drinking a bottle of vodka a day?

16 A No.

17 MR. SMITH: I have nothing further, Your Honor.

18 THE COURT: Okay.

19 MR. LEWIS: Nothing else, Commissioner.

20 THE COURT: Okay. And ma'am, you can step down.

21 Thank you for your testimony. If you want to go over

22 there and have a seat next to Mr. Smith you're welcome

23 to do so. All right. Ma'am, you can come right

24 around here and have a seat right there, ma'am and

25 make yourself comfortable. I have a couple of quick

1 instructions for you. If you would please speak up
2 and speak clearly for us so we can all hear your
3 answers to the question. If you're asked a yes or no
4 question please give us a verbal yes or no answer.
5 THE WITNESS: Yes, sir.
6 THE COURT: And try and stay away from things
7 like uh-huh and huh-uh. That's just too easily
8 misunderstood for the record. Okay?
9 THE WITNESS: Yes, sir.
10 THE COURT: Okay. Please raise your right hand.
11 Do you swear and affirm that the testimony you are
12 about to give is the truth, the whole truth and
13 nothing but the truth?
14 THE WITNESS: I do.
15 THE COURT: Okay. And you can put your hand down
16 and please state and spell your name for the record
17 ma'am.
18 THE WITNESS: My name is Alice Marie Zimmerman,
19 A-L-I-C-E M-A-R-I-E Z-I-M-M-E-R-M-A-N.
20 THE COURT: Okay. Thank you, Ms. Zimmerman. Mr.
21 Smith, your witness.
22 MR. SMITH: Thank you.
23 Alice Zimmerman,
24 Having first been duly sworn, testified as follows:
25 DIRECT EXAMINATION

1 BY MR. SMITH

2 Q Ms. Zimmerman, where do you live?

3 A I live in Panama City Beach, Florida.

4 Q How long have you been there?

5 A Almost two years. Not quite two years.

6 Q Where did you -- where did you live prior to

7 that?

8 A Louisville, Kentucky.

9 Q What is -- what is your educational

10 background?

11 A I have an associate's degree. I'm a

12 registered nurse.

13 Q How long have you been an RN?

14 A Since 2008.

15 Q Prior to that what did you do?

16 A I was a factory worker for 20 years.

17 Q Since you became a nurse where have you

18 worked?

19 A I worked at -- as a registered nurse in the

20 neonatal ICU at Kosair Children's Hospital in

21 Louisville, Kentucky and I now work at Community

22 Health and Rehab which is a nursing home/rehab

23 facility in Panama City, Florida.

24 Q What are your responsibilities?

25 A I am the nursing supervisor. I supervise

1 four LPNs, kitchen staff, housecleaning staff and
2 CNAs, which vary in numbers at times.
3 Q Do you know what syncope is?
4 A Yes I do.
5 Q What is it?
6 A It's when you have fainting spells or you
7 black out shortly when you go backwards and you
8 fainted. I suffer them myself.
9 Q How long have you suffered them?
10 A During times of stress since I was
11 approximately 15 years old.
12 Q Did Jamie suffer from them, do you know; or
13 did you see it?
14 A Yes. Yes he did.
15 Q Did you ever have occasion to see it happen?
16 A Yes.
17 Q Was it -- was he drinking a great deal and
18 that was the cause of it?
19 A No, sir.
20 Q Does drinking cause syncope?
21 MR. LEWIS: I object to the -- object to the
22 question. It's asking for a medical opinion and Ms.
23 Zimmerman's not qualified to give that.
24 THE COURT: Can you rephrase the question please
25 sir?

1 MR. SMITH: Yes, sir.

2 BY MR. SMITH:

3 Q Do you -- did you see him have a fainting

4 spell?

5 A Yes.

6 Q And was there alcohol -- was he drinking

7 alcohol at the time?

8 A No, sir.

9 Q How did Jamie growing up?

10 A Fun, normal, very involved in things, just

11 lots of friends. Just, you know --

12 Q Were you older than him or younger?

13 A 11 months, two weeks older.

14 Q When did he get married with regard to after

15 he got out of high school? How long -- how long was

16 it?

17 A I don't exactly how long it was after high

18 school, but he was with his present wife -- he was

19 with her while he was in high school. They've been

20 together for quite a while.

21 Q Have you - has your family had any other

22 neurological issues?

23 A Yes, sir.

24 Q When -- what are they?

25 A My mother suffered multiple TIAs which led

1 to her dementia. She -- that's what they said caused
2 her to be childlike. My father suffered seizures
3 which led to strokes. I was witness to those.
4 Q Did he -- did he drink?
5 A My father?
6 Q Yes.
7 A Yes, he did.
8 Q And did he drink a lot?
9 A At one point yes, sir. He quit drinking
10 probably about ten years before I noticed -- I
11 witnessed his first seizure episode.
12 Q Was he an alcoholic?
13 A No.
14 Q How -- what was his drinking like?
15 A He would drink after work, drink beer,
16 sometimes go to a bar after work, but he would come
17 home, eat dinner.
18 Q What was Jamie's drinking like?
19 A About the same. He would drink, but he
20 would still work. He would drink beer with his
21 friends. He did get drunk occasionally as most people
22 who drink do, but he was functional.
23 Q What was his drink of choice?
24 A Beer.
25 Q How often did you see him with hard liquor?

1 A Several times, but, you know, -- not a lot.
2 Mostly beer.
3 Q When did he drink hard -- hard alcohol?
4 A When he was really depressed, down.
5 Q Did -- did he ever live with you?
6 A Yes.
7 Q When?
8 A In 2009 he stayed with me.
9 Q How long did he stay with you?
10 A A couple of weeks.
11 Q Do you know what the circumstances
12 surrounding him moving in with you were?
13 A Yes.
14 Q What were they?
15 A His wife and him were having trouble. They
16 weren't getting along. He at the time was out of
17 work. It was a very stressful time with young child
18 -- young child.
19 Q Okay. When -- when did your father pass
20 away?
21 A 2009. It was approximately the same time.
22 Q How did Jamie take that?
23 A Very hard.
24 Q How was his drinking at that point?
25 A Very bad. It -- it increased.

1 Q Okay. And did it change at any point and
2 what was the cause of the change?
3 A When Debbie and him split up it got worse.
4 He felt like he was a failure. He was suicidal. He
5 had lost his dad, felt he was losing his wife, his
6 family and it was really hard on him.
7 Q What did he do to change that?
8 A He got help. He -- he started going to
9 church. That helped. He quit drinking for quite --
10 quite some time. I don't know for how long, but he
11 did quit drinking. He got back together with Debbie.
12 He seemed to come to grips with everything.
13 Q How much church did he go to prior to 2009?
14 A Not a lot. When we went with my
15 grandparents maybe.
16 Q So that was when you were young? The -- how
17 often did you see him after 2009?
18 A He lived about, I'd say, two and a half,
19 three miles from me. I saw him quite frequently.
20 Q Would you have the opportunity to see
21 whether he was drinking or not?
22 A Yes.
23 Q And how was he -- how was he doing with
24 regard to his drinking at that point?
25 A Drinking beer, working, doing fine. I'd see

1 him when he was -- I'd see him when he came into town.
2 He worked out of town a lot.
3 Q Were you aware of anything that he was doing
4 when he was out of town?
5 A He was working ironwork. I know he was an
6 iron worker. He loved his job.
7 Q Are you aware of his drinking that he was
8 doing when he was out of town?
9 A No, I'm not.
10 Q When he came into town how often did you see
11 him?
12 A Every time he came into town I'd make it a
13 point to see him. He and I were the closest two even
14 though he had a twin.
15 Q How much did he drink when he was home?
16 A It depended. It -- you know, whether he was
17 at a barbecue, whether he was at home. He'd drink
18 beer, a six pack, 12-pack if he was, you know, all
19 day.
20 Q Do you know of the alcohol giving him ay
21 issues from 2009 on? Did he ever have any legal
22 issues?
23 A Not that I'm aware of.
24 Q Did Debbie kick him out of the house?
25 A When he came to stay with me, then.

1 Q After 2009?

2 A No.

3 Q How was he with regard to his parental

4 activities with his daughters?

5 A Very involved. He doted on his girls.

6 Q What kind of worker do you know him -- did

7 you know him to be?

8 A He always went to work. He didn't miss

9 work. He -- if he was riding with somebody and they

10 were late picking him up he'd say, I'm going to start

11 walking to meet them. He -- he just didn't like to be

12 late to work. He liked to go to work. He didn't like

13 it when he said people would - what did he call it -

14 he had a word for it. They would pack up their stuff

15 and leave. There was a certain word for it, a term

16 that he used when they would just gather all their

17 tools and leave and he'd get mad.

18 Q Did he want his wife working?

19 A No.

20 Q With regard to this case did you have any

21 opportunity to speak to Dr. David Price?

22 A Yes.

23 Q Do you know whether Debbie did?

24 A I believe she did, but I can't swear to it.

25 Q What was Mr. Provins before he was injured

1 in January of 2012?

2 A I like to say he was like Curly on the Three

3 Stooges because he used to emulate him. He was the

4 life of the party. He was fun. He was a giving

5 person. He would do for others and let things of own

6 go. He was a friend that you'd want to have.

7 Q And do you recall when he returned from

8 South Carolina?

9 A Yes.

10 Q And what -- what did you understand his

11 issues to be when he returned?

12 A He had been injured at work.

13 Q And what -- why -- what had happened?

14 A He had gotten a shoulder injury at work from

15 a pipe is what he told me. A pipe had injured his

16 shoulder and he couldn't lift his arm and he was in a

17 lot of pain.

18 Q How did he address the pain?

19 A He did what they told him to do. He - he,

20 you know, tried to do therapy and couldn't. He wanted

21 -- he said he needed surgery --

22 MR. LEWIS: Commissioner, I'm going to object. I

23 didn't object the last couple of times but she

24 continuously is testifying about what -- what Mr.

25 Provins said and I would ask that she be instructed

1 not to do that, please.

2 THE COURT: Yes. And you can testify as to what

3 your understanding about something was or what you

4 observed but just don't say what he said. Okay?

5 A Yes, sir.

6 THE COURT: All right. Thank you.

7 BY MR. SMITH:

8 Q To your knowledge did he ever -- was he ever

9 free of pain to your knowledge?

10 A No, he was not to my knowledge.

11 Q What was his drinking like with regard to

12 when he returned until his ultimate demise?

13 A When he returned it was not that bad. He

14 was pretty much in control. It was beer. As things

15 got worse, as their money problems got worse and the

16 pressures built up it -- it got really bad. He

17 started drinking hard liquor.

18 Q Was that before surgery or after surgery?

19 A After surgery.

20 Q And so when you tell us it was bad, what

21 does that -- what does that mean?

22 A He would go into his room and he would drink

23 by himself, not come out of his room, and I asked him

24 why.

25 Q And were you able to bring him out of the

1 room or did he come out when people came to visit to
2 your knowledge?
3 A No.
4 Q With regard to April 2014 who gave him a
5 ride to the hospital?
6 A One of his friends that he called.
7 Q Were you aware of his presence in the
8 hospital?
9 A No, I was not.
10 Q Where were you when you learned of his
11 presence in the hospital?
12 A I was actually at the hospital visiting my
13 cousin's husband who was in ICU. I happened to look
14 down in the parking lot and saw my sister-in-law and
15 my brother's van down there, which it was easily
16 recognizable as being a Dodge minivan with a red door
17 -- a gray minivan with a red door -- red back door.
18 In my mind I thought it was her mother in the
19 hospital. I was getting on the elevator and my cell
20 phone rang and it was Debbie. And I couldn't
21 understand her. She was crying and upset. And I -- I
22 finally just said, where are you? And she said, St.
23 Mary's and she was actually one floor below where I
24 was.
25 Q Did you get an opportunity to talk to your

1 brother?

2 A No.

3 Q The claim here is that work caused the --

4 caused his death. Do you -- from what you saw is that

5 your belief?

6 MR. LEWIS: Commissioner, I object. He's asking

7 for a legal -- her to give a legal conclusion.

8 THE COURT: I'll allow her to testify as to what

9 her opinion is.

10 A I believe his injury did ultimately lead to

11 his death because he was in constant pain. He changed

12 from - excuse me. He changed from the person he used

13 to be to someone who was a recluse, that was -- stayed

14 by theirself and felt like he was -- that he told me,

15 less of a man. I'm sorry. In my opinion he felt like

16 less of a man. He couldn't provide for his family and

17 that bothered him a great deal.

18 MR. SMITH: I have nothing further Commissioner.

19 THE COURT: Okay. Mr. Lewis?

20 MR. LEWIS: Thank you.

21 CROSS EXAMINATION

22 BY MR. LEWIS:

23 Q Ms. Zimmerman.

24 A Yes, sir.

25 Q Is that right, Zimmerman?

1 A Yes, sir.

2 Q My name is South Lewis. We have -- have not

3 met before today, but I'm the attorney representing

4 Spirit Construction in this case. I'm just going to

5 ask you a few questions and I want to preface the

6 questions ahead of time by telling you, number one I'm

7 sorry for the loss of your brother. I know that's

8 difficult and I don't want to ask anything to offend

9 you or to cause you more pain than necessary, so - and

10 madam court reporter has handed you some tissues.

11 A Thank you.

12 Q For you to use. And I'll let you pull one

13 of those out before we start. Now, Ms. Zimmerman,

14 you're a -- you're an RN, correct?

15 A Yes, sir.

16 Q And you moved to Florida? Was that after

17 your brother passed or before?

18 A After.

19 Q So you were -- you had an opportunity at

20 least when he was in town when you lived in Kentucky

21 to see him some, correct?

22 A Yes.

23 Q But he also traveled a lot for work when he

24 was working did he not?

25 A Yes.

1 Q And, in fact, he would be gone for weeks at
2 a time sometimes wouldn't he?
3 A Yes, he would, usually about two weeks.
4 Q And now did -- did he ever go anywhere prior
5 to his passing? Did he ever go anywhere for any
6 treatment for depression or mental health issues?
7 A As far as I know he went to the doctor.
8 Q Did you go with him? Is that why you say as
9 far as you know?
10 A No.
11 Q And you spoke -- you spoke to a Dr. Price a
12 year or more ago in this case; do you remember that?
13 A Yes, sir.
14 Q Was that by phone?
15 A Yes, sir.
16 Q Dr. Price, in his report, I think said you
17 described your brother as a social drinker?
18 A Yes, sir.
19 Q Did you -- are you aware that when your
20 brother went to the hospital in April of 2014 that the
21 history that they got was that he was a "alcoholic who
22 drinks about half a pint of vodka every day for most
23 of his life?"
24 A I'm not aware that's the history he got, but
25 that's not true.

1 Q When you got there was -- I mean I know you
2 were already at the hospital, but when you came up on
3 -- the floor he was on or wherever that was -- his --
4 his wife, Ms. Provins was already there, correct?
5 A Yes.
6 Q And in the history on page 234 there's some
7 reference to according to his wife this and another;
8 was she there giving -- had she been giving
9 information to whoever was in-taking him at the
10 hospital?
11 A I do not know.
12 Q Is it fair to say that when your brother was
13 out of town you did not know -- you didn't have any
14 personal knowledge of his daily activities?
15 A Yes.
16 Q All right. I don't have anything else for
17 you. Thank you.
18 THE COURT: Okay. Thank you. Mr. Smith?
19 MR. SMITH: Just a couple.
20 THE COURT: Sure.
21 REDIRECT EXAMINATION
22 BY MR. SMITH:
23 Q Half a pint of vodka, how often did you see
24 him drink a half a pint of vodka?
25 A Two, three times at the most.

1 Q Do you know of anyone that was contacted by
2 him to go to the hospital in April of 2014? Were you
3 contacted?
4 A For me to take him to the hospital?
5 Q Yes.
6 A No, sir.
7 Q Did he call you about his -- his issue he
8 was having that day?
9 A No, sir.
10 Q Were you aware he was that sick?
11 A No, sir. I spoke to him I don't know how
12 long before that. It was, probably several weeks.
13 Q Did you often go that long without talking
14 to him?
15 A I mean spoke to him about his sickness.
16 Q Oh.
17 A I urged him to go to the doctor.
18 Q Did you -- when was the last time you spoke
19 to him; the day before or --
20 A Two weeks. He became a recluse. He didn't
21 want to talk to anybody. And then it was only a few
22 words at that time.
23 MR. SMITH: I have nothing further.
24 THE OCURT: Okay. Thank you. Mr. Lewis?
25 MR. LEWIS: I have nothing else.

1 THE COURT: Okay. Ma'am, you can step down and
2 thank you for your testimony. And there being nothing
3 further that concludes today's hearing.
4 (The hearing concluded at 2:50 p.m.)
5
6
7
8
9
10
11
12

STATE OF SOUTH CAROLINA )
) CERTIFICATE
COUNTY OF LEXINGTON )

BE IT KNOWN THAT I TOOK THE FOREGOING WORKERS' COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT CONSISTING OF **59** TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 10TH DAY OF FEBRUARY, 2017.

_____
CORA ELLIS BRUTON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES DECEMBER 31, 2024

# TRANSCRIPT OF FULL COMMISSION HEARING
# NOVEMBER 14, 2017

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1200349

| | |
|---|---|
| James Provins,<br><br>Claimant,<br><br>v.<br><br>Spirit Construction Services,<br><br>Employer,<br><br>and<br><br>Insurance Company of Pennsylvania,<br><br>Carrier/Defendants. | ) |

COPY

# FULL COMMISSION HEARING

********

**Tuesday, November 14, 2017**
2:55 p.m. - 3:14 p.m.

The Full Commission Hearing was heard before Commissioners Melody L. James, Gene McCaskill and Aisha Taylor at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 14th day of November, 2017, before Roderick S. Fitzgerald, Court Reporter and Notary Public in and for the State of South Carolina.

## APPEARANCES

**Donald L. Smith, Esquire**
Donald Smith Law Firm
122 North Main Street
Anderson, South Carolina 29621
Attorney for the Claimant

**J. South Lewis, Esquire**
Willson, Jones, Carter & Baxley, P.A.
872 South Pleasantburg Drive
Greenville, South Carolina 29607
Attorney for the Defendants

## INDEX


| | PAGE |
|---|---|
| **CALL TO ORDER:** | |
| COURT REPORTER | 3 |
| **APPELLANT'S ARGUMENT:** | |
| MR. SMITH | 3 |
| **RESPONDENT'S ARGUMENT:** | |
| MR. LEWIS | 11 |
| **APPELLANT'S REPLY:** | |
| MR. SMITH | 20 |
| Certificate | 24 |


## EXHIBITS

(There were no exhibits marked during the hearing.)

## STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.

1 **CALL TO ORDER:**

2 **COURT REPORTER:** Today is Tuesday, November 14th,
3 2017. This is South Carolina Workers'
4 Compensation Case Number 1200349. This is the
5 case of James Provins, the Claimant, versus
6 Spirit Construction Services, Employer, and
7 Insurance Company of Pennsylvania, Carrier.
8 The Appellant is the Claimant represented by
9 Donald L. Smith. The Respondent is represented
10 by J. South Lewis. Each side is allowed ten
11 minutes for oral argument and the Appellant
12 three minutes in reply. You are requested to
13 argue the grounds of exception and stay within
14 the record.

15 **MADAM CHAIR:** All right. Mr. Smith.

16 **APPELLANT'S ARGUMENT:**

17 **MR. SMITH:** May it please the Court, ladies and
18 commissioner -- ladies and gentlemen, we
19 brought this appeal based on the fact and it's
20 our contention the Mr. Provins's death was
21 directly related to the injury and our
22 contention is based on the fact that
23 Mr. Provins was injured January 2012. He went
24 to the doctor, company doctor, immediately,
25 and, of course, he found that she had given him

1 conservative treatment for a week, come back
2 and see what's going on. He came back and she
3 saw that it -- that it was a torn rotator cuff,
4 his inability to raise his arm, and because of
5 that she asked for an MRI, and this is where
6 his demise started, and -- in my estimation.
7 He didn't get an MRI until -- I got him an MRI
8 like a week later based on the fact that the
9 company would not pay for the MRI, and the MRI,
10 of course, indicated that he did have a rotator
11 -- a torn rotator cuff just as the company
12 doctor had believed based on the -- his
13 radiculopathy or his issues with his shoulder,
14 and so it was a denied case regardless of the
15 fact that the company doctor called it and the
16 proof was there with the radiography. We went
17 to a hearing in August 2012 wherein the
18 commissioner filed that it was compensable and
19 the defense, of course, appealed, took us to
20 January, February. Mr. Provins didn't have a
21 surgery until may of 2015. 15 months had past
22 and during that time, obviously, he's
23 continuing to tear, continuing to injure his
24 dominant right side, and it's well-document
25 that he couldn't wipe his ass, which may seem

1 to be trivial, but clearly it wasn't for Mr.
2 Provins. Mr. Provins had a wife and two
3 children. The wife was disabled so he was the
4 bread winner. And while he did have marital
5 difficulties, in 2009, which came right when
6 his father died, which he took extremely hard,
7 he had rebounded with his wife, everything was
8 fine and he had progressed. Well, the injury,
9 of course, the 15 months gave him a lot of free
10 time, he wasn't able to get better, he's over
11 50 years old, so he's having difficulty
12 recovering anyway. We finally get to that
13 surgery and he goes to every single physical
14 therapy appointment, tells them in every single
15 record, he tells them about his pain and
16 there's no -- there was no reduction in pain
17 and he stated that it felt like the same.
18 Well, he finally got an MRI in October. The
19 MRI was -- if you read it, it seems as if it's
20 worse than the first one. It makes one think
21 of whether he -- wonder whether he had a
22 surgery or not. All this time the pain, the
23 pain, the pain, the continued tearing, and when
24 he found out that the shoulder had once again
25 -- or was once again torn, his -- he didn't

1 know if he was ever going to get better. I
2 mean, he's not working, he's begging this one
3 and that one for money and just -- life just
4 spiraled down, down, down. The deposition
5 testimony of his -- his wife and his sister
6 talked about how he was gregarious and so forth
7 and that -- that came to an end. And, in fact,
8 he was -- he had like a urine bottle that he --
9 stayed in is bedroom. The depression, the lack
10 of ability to earn for his family and begging
11 people, it was just very demoralizing. And the
12 phrase that I said earlier ties into that
13 perfectly. The bottom line is, had he got his
14 surgery right off the top and got the -- got
15 the shoulder fixed without allowing 15 months
16 to pass with the degeneration of the -- of the
17 ligament and so forth, we contended, of course,
18 he would still be here. There was no reason
19 for them to deny the case and he got hurt when
20 he was pulling their -- their piece. And when
21 we had the hearing, the commissioner saw that
22 the -- the Spanish coworker that testified on
23 behalf of the Spirit Construction, he didn't
24 know the language but he -- he knew that
25 Mr. Provins's shoulder hurt before that. Well,

1 Mr. Provins had sore shoulders, but he never
2 had anything like the injury he suffered. The
3 question that I had asked the young man was
4 whether he knew where Mr. Provins was from and
5 that, of course, of the statement that he was
6 -- he had hurt his shoulder before, something
7 to that effect. They -- deny, deny, deny and
8 maybe he'll die, and, in fact, that's what
9 happened here. There was no reason to deny the
10 claim, I mean, it's worker's compensation, it's
11 for the worker, he was injured the company
12 doctor saw that true and requested an MRI, it
13 was denied. And even after we got the MRI that
14 indicated that he was injured, they still
15 didn't do anything. So by April of 2014 he had
16 suffered for 27 months with the torn shoulder,
17 and unfortunately he just -- he was just a
18 small shadow of himself based on that. And if
19 there is no compensability for the death, then
20 it -- then it would appear that that would be
21 the perfect defense, just deny cases until --
22 see if -- see what goes on, maybe the guy will
23 get in trouble or maybe the woman will pass
24 away, and while that sounds sad really, that's
25 the fact. I mean, the -- maybe ---

1 **MADAM CHAIR:** Mr. Smith.
2 **MR. SMITH:** Yes?
3 **MADAM CHAIR:** Mr. Smith, is there any medical
4 evidence that causally relates any depression
5 or suicidal thoughts to the work-related
6 injury, like is there any medical evidence upon
7 -- or to link the two up?
8 **MR. SMITH:** Dr. Martin -- in the APAs Dr. Martin is
9 a doctor and he ties it in.
10 **MADAM CHAIR:** Okay. What -- which -- can you cite
11 an APA number on that?
12 **MR. SMITH:** I want to say like 105. I know that's
13 not -- that's not good, but ...
14 **MR. LEWIS:** Don, it's 110.
15 **MR. SMITH:** 110, thank you. And obviously, the
16 defense had their expert as well who opined
17 that regardless of whether Mr. Provins ripped
18 his shoulder that day and had two -- had his
19 surgery and so forth that failed, he would have
20 died the same exact day, which is, well,
21 unbelievable. And Dr. Ballenger wasn't aware
22 that he received a $5,000 retainer and Dr.
23 Ballenger has made a career of representing
24 defendants, and he did in this particular
25 setting as well telling us that Dr. Martin who

1 had given his expert opinion didn't know what
2 he was saying, and the words that he used meant
3 something entirely different, and that's --
4 that's in the deposition -- or he says that
5 he's an expert and that's why he knows what
6 Dr. Martin meant by the fact that he -- he
7 wasn't having difficulties with alcohol. After
8 2009 life was good, there's no record of him
9 having -- missing work or having any
10 alcohol-related incidents, but alcohol had --
11 had been an issue in 2009 and ---
12 **MADAM CHAIR:** Weren't there some -- you said there's
13 some incidents or anything at work, but weren't
14 -- weren't there medical records that indicated
15 during the period of time past 2009 that he was
16 still consuming every day?
17 **MR. SMITH:** There's no doubt he'd be drinking, no
18 doubt. I -- that's not been -- I don't -- I
19 don't believe that's been stated. In fact, Mr.
20 Provins stated in front of the commission that
21 he drank. I -- it wasn't an issue and -- and
22 he was functional, or whatever. I mean, I --
23 I saw him -- well, not relevant. He had --
24 alcohol was just part of his life. And in
25 2009, you know, that -- the statement he made

1 that he was killing himself with alcohol was
2 probably true. I mean, he had lost his dad and
3 now he's losing his family; however, he
4 recovered from that and the family testimony
5 was that everything was fine. While they
6 weren't with him 24 hours a day, there was --
7 there was nothing to substantiate he had
8 alcohol issues, I mean, it's all relative, and
9 he was doing fine according to society because
10 no one -- no one heard any bad things, so he
11 dealt with it.
12 **MADAM CHAIR:** Okay. Thank you, sir.
13 **MR. SMITH:** Thank you, ma'am.
14 **MADAM CHAIR:** All right. Mr. Baker.
15 **COMMISSIONER MCCASKILL:** That's Mr. Lewis.
16 **MADAM CHAIR:** I'm sorry. Mr. Lewis. Brad was on
17 the last case.
18 **COMMISSIONER MCCASKILL:** Still on the last case.
19 But before you ---
20 **MR. LEWIS:** Oh, okay.
21 **COMMISSIONER MCCASKILL:** Before you begin, Mr. Smith,
22 I didn't want to interrupt you because I didn't
23 want to throw you off of your presentation on
24 behalf of your client, which I wanted you to do
25 as well as you could, but if you have to refer

1 to your client wiping himself again, please do
2 not use the word that you used at that podium.
3 There are ladies present and I don't think
4 that's appropriate parlance at a hearing.
5 Okay?
6 **MR. SMITH:** Yes, sir.
7 **COMMISSIONER MCCASKILL:** Thank you. All right.
8 **MADAM CHAIR:** Mr. Lewis.
9 **RESPONDENT'S ARGUMENT:**
10 **MR. LEWIS:** Thank you. May it please the
11 commissioners, good to see you today. And I
12 just want to tell you before we -- I got Mary
13 -- Kate Little John from our Greenville office
14 here to observe, so this is her first time
15 seeing one of these, so.
16 **MADAM CHAIR:** Okay.
17 **MR. LEWIS:** The issue in this case is -- is pretty
18 straightforward. This case was brought -- the
19 reason we had the hearing with Commissioner
20 Campbell that brings us here today was on a
21 Form 52, a death claim. There's no question
22 that Mr. Provins had a shoulder injury at work.
23 It was initially denied. We had a
24 compensability hearing before Your Honor, in
25 fact, and it was found compensable. And Mr.

1 Provins then began receiving medical treatment
2 with a doctor, he lived in Louisville, so my
3 clients arranged for his medical treatment in
4 the area of Louisville where he lived. It was
5 always only a shoulder injury. There was never
6 an allegation of depression or any type of
7 psychological claim either at the initial
8 hearing or anything brought subsequent, there
9 had never been a mention in any of the medical
10 notes from any of the treating doctors,
11 physical therapist, Mr. Provins's own family
12 doctors that he was having depression related
13 to his pain. During the course of his
14 treatment, of course, the reason we're here
15 unfortunately is, he passed away on April 14th,
16 2014. This was, you know, about almost two and
17 a half years or two years and three months
18 after his injury. The file is pretty thick as
19 you can -- as you've seen and the specific
20 citations are in my brief and so I won't go
21 through all of them for time efficiency sake;
22 however, it's clear that when he went into the
23 hospital, when Mr. Provins went into the
24 hospital, in April 2014, there was no
25 indication in there -- there was no reference

1 whatsoever about him having had a shoulder
2 injury and this hospitalization in any way
3 being linked to his shoulder injury. In fact,
4 the history was given to the hospital by it
5 says, Mr. Provins's own family members that
6 were present. And what does it say? It says,
7 He was a lifelong alcoholic who drank over a --
8 like a half a gallon of vodka a day and X
9 amount of beers. And our purpose here today
10 isn't to try to, you know, dump on his
11 character, but that's -- that's what we're
12 dealing with here. History ---
13 **MADAM CHAIR:** Now, I'm going to stop you. It's half
14 a pint. Did you misspeak with ---
15 **MR. LEWIS:** Did I say ---
16 **MADAM CHAIR:** You said gallon.
17 **MR. LEWIS:** Did I say -- I'm so sorry.
18 **MADAM CHAIR:** That's fine.
19 **MR. LEWIS:** Yeah, half a pint.
20 **MADAM CHAIR:** Okay.
21 **MR. LEWIS:** Excuse me. But at Page 234, this
22 patient is a 52-year-old male who is an
23 alcoholic and drinks a half a pint of vodka
24 every day for most of his life. And then when
25 you go over to the other notes, Past medical --

1 at Page 264, Past medical history of
2 alcoholism. He drinks a -- and then at 264 it
3 does say gallon, He drinks a half of gallon of
4 vodka or bourbon daily. So there's conflicting
5 reports, but certainly it was a prodigious
6 amount of alcohol that he was consuming, and he
7 was doing that -- the Claimant's position, or
8 his -- the Provins's family position would be
9 that, well, he was doing that but that's just
10 in response to his pain. Well, the records are
11 replete with references before the work injury
12 and then after the work injury that he'd had
13 this drinking problem his whole live. There's
14 records in there from 2001 where he talks about
15 that. So to link the fact that he drank more,
16 so to speak, after this injury I just don't
17 think is supported by the evidence. It's
18 certainly not supported by the medical
19 evidence. Commissioner Taylor, you asked Mr.
20 Smith whether there was any medical evidence
21 linking up this depression, and he pointed out
22 Dr. Martin. Well, Dr. Martin is a psychiatrist
23 who, you know, evaluated the records at
24 Mr. Smith's request. And you've heard Mr.
25 Smith talk down Dr. Ballenger and evidently he

1 talks him down because Dr. Ballenger was paid
2 $5,000 to serve as an expert in this case.
3 There were hundreds and hundreds of pages of
4 records. Dr. Ballenger is an expert. One of
5 his expertises is in substance abuse alcohol
6 issues. Compare that to Dr. Martin, the expert
7 that the Claimant would have you rely on, under
8 Tab H of the records are -- of our exhibits,
9 excuse me, Pages 541 forward, you'll see that
10 Mr. Smith is -- there's e-mails here, he says,
11 quote, Is -- Dr. Martin, is it by chance I
12 found you and it could be a monumental twist of
13 fate. I had a workers' comp case in which my
14 guy tore his rotator cuff and then died two
15 years later. I'm attempting to tie them
16 together. And then there's some e-mails that
17 go on where they're negotiating a price. Joy,
18 I'm used to IMEs being $750. You aren't
19 expecting more than 2,500, are you? So
20 Mr. Smith is seeming to -- I mean I don't think
21 it's any news to all this that when you retain
22 an expert, you have to pay for them. So it's
23 no different from Dr. Ballenger as from
24 Mr. Smith's expert. I think the bottom line
25 is, this was initially a shoulder claim. After

1 Mr. Provins died, this was filed as a 429280
2 case. We went to Commissioner Barden for a
3 hearing, there was never a death allegation
4 made until we had a pretrial conference and he
5 withdrew the Form 50. Our position, of course,
6 being he was still treating, had not reached
7 MMI and nobody gets a 280 award. It was only
8 subsequent to that time that a death claim was
9 then filed, and we submit that it, frankly, was
10 not done in good faith. What really happened
11 was, the commission after he withdrew the 50
12 the first time, the commission then -- when he
13 refiled it, he checked the permanent and total
14 disability box and the commission sent it back,
15 and I've put the e-mails in the file,
16 commission sent it back and said, This
17 qualifies for mandatory mediation. And you'll
18 see I e-mailed them back and said, There must
19 just be a mistake. This a 429280 case, this
20 person is -- you know, unfortunately died. Mr.
21 Smith responded, Thank you for pointing that
22 out to my attention, I'm going to correct my
23 pleadings. But he didn't correct his
24 pleadings. He filed a death claim. And then
25 I subpoenaed the records, and there's e-mails

1 in there from that saying, show me what
2 evidence you have that his death is related to
3 the work injury. And the response I got from
4 him was basically, I'm gonna get the evidence,
5 I'll go find the evidence. And that's what he
6 ended up doing, he ended up going -- finding
7 Dr. Martin, Hey, I found you on the Internet,
8 this could be a monumental twist of faith and
9 I need you to link these two things up. Dr.
10 Martin's report is actually flawed in that it
11 contains a number of inaccuracies. Well, it
12 talks about him having drank some in the past.
13 It doesn't ever account for the fact that he
14 had -- he had been reported to being a lifelong
15 alcoholic. In fact, if you read Dr. Martin's
16 report, it makes it sound like the guy quit
17 drinking until he injured his shoulder again.
18 When Mr. Provins went to see Dr.
19 Bonnerance(phonetic), the orthopaedic that we
20 provided treatment for. The first time he ever
21 saw him, this is before he ever even had a
22 surgery shoulder Bonnerance about the
23 prodigious amount of alcohol he drank, and it's
24 in the records. He was telling him he was
25 drinking X amount of beers and liquor per day.

1 So this isn't somebody who had a drinking
2 problem in the past and then quit and then
3 after this work injury in response to pain he
4 developed a drinking problem. It's just an
5 unfortunate situation, but the issue here is a
6 limited one, is his death causally related to
7 this work injury? And the hearing commissioner
8 that heard this, he reviewed the expert report,
9 he saw the witnesses, the witnesses were
10 Mr. Provins's widow Ms. Provins and his sister.
11 She testified that, oh, after this --
12 essentially, she said, He used to drink a lot
13 of beer and then he started drinking liquor
14 after this injury. Well, then when she was
15 cross-examined, she acknowledged she really
16 didn't know much about his health history at
17 all. He traveled all the time, she did know
18 what he did when he was away from home. And
19 so, you know, as unfortunate as the situation
20 it is, the issue is, compensability of a death
21 claim. And that was the only thing that was
22 pled, compensability of a death claim. There
23 was never an MMI or a rating from the doctor.
24 And when this case initially was pled as a 280
25 claim three years ago, that's out the door.

1 We're here today on a Form 52, a death claim,
2 and the psychological aspect had never been a
3 part of the case. And so I would submit to you
4 that the hearing commissioner correctly waived
5 the evidence and determined that to a
6 preponderance of the evidence -- to a
7 preponderance of the evidence there wasn't
8 sufficient justification to find a causal link
9 between the work injury and the death. In
10 fact, I think it's pretty clear when you look
11 at the death certificate and then read the
12 reports at the hospital and Dr. Ballenger's
13 report and his deposition testimony, Mr. Smith
14 questioned him pretty vigorously, and Dr.
15 Ballenger explained, Look, this is just the --
16 this guy fits the typical pattern of a lifelong
17 alcoholic, you know. And finally, I'll point
18 out one other thing that -- despite Mr. Provins
19 having a family doctor in Kentucky and having
20 been admitted to the hospital in April 2014
21 where he subsequently died, there's not one
22 piece of evidence from one doctor whoever
23 treated him while he was alive to support his
24 case, not one, not a family doctor, not his
25 treating ortho, not any of the doctors who

1 treated him at the hospital, because all of
2 this was something that was somewhat concocted
3 after the fact, after he died. So we'd ask for
4 a full affirmation.
5 **MADAM CHAIR:** All right. Thank you, sir.
6 **MR. LEWIS:** Thank you so much.
7 **MADAM CHAIR:** All right. Mr. Smith, you have three
8 minutes in rebuttal.
9 **APPELLANT'S REPLY:**
10 **MR. SMITH:** Yes, ma'am. Thank you. May it please
11 the Court, he's dead, that's not a concoction.
12 The -- if he had alcohol issues prior,
13 certainly this injury exacerbated the
14 situation. Mr. Provins had full health
15 insurance while working his employer and, of
16 course, that went by the wayside as he waited
17 for the surgery to be ordered because they
18 didn't address it themselves. With regard to
19 the death and how it came and so forth, the
20 explanation by Dr. Martin is logical and
21 reasonable. The idea that Dr. Ballenger says
22 that the tear in the shoulder that was
23 continuously giving this man pain and then
24 trying to shave with that thing is unbelievable
25 from a personal standpoint. And the idea that

1 he had that ongoing for two years, over two
2 years, constant pain, constant tearing atrophy,
3 the whole thing -- there was -- there was no
4 light at the end of the tunnel for Mr. Provins
5 and -- and that is why the depression became an
6 issue. It wasn't an issue in the -- to begin
7 with, you know, I'll get surgery, I'll come
8 back to work. Well, he got his surgery finally
9 after 15 months and low and behold he's going
10 to physical therapy working on his shoulder and
11 he's -- he's -- his shoulder is torn, so the
12 pain that he had was even worse than usual.
13 April 11th, I believe, I filed a motion to
14 compel treatment because we had a phone
15 conference with the orthopaedic doctor they
16 sent him to and he said that it was ---
17 **MR. LEWIS:** Commissioner I'm going to address ---
18 **MR. SMITH:** --- directly related.
19 **MR. LEWIS:** --- because I'm going to object. He
20 can't -- he can't put information in from a
21 phone conference with a doctor that's ---
22 **MADAM CHAIR:** That's ---
23 **MR. LEWIS:** Yeah, that's sustained.
24 **MR. SMITH:** Okay. Well, there was ---
25 **MADAM CHAIR:** Limit to the record that's before us.

1 **MR. SMITH:** Right.
2 **MADAM CHAIR:** Okay.
3 **MR. SMITH:** Right. There was no -- there was
4 nothing with regard to the possibility of
5 causing the second injury or what have you.
6 They just used that in order to withdraw the
7 treatment, to keep the treatment from him. I
8 -- and so I had to file a motion to compel just
9 to get the treatment that he was entitled to.
10 And, of course, he had died by that point. He
11 wasn't functional. He was functional this
12 whole time working, had a great work ethic
13 according to his coworker, but he wasn't
14 functional at the end because he had totally
15 lost himself with regard to everything involved
16 with not working and in pain and so forth. Dr.
17 Bonnerance, he went to see him and he talked
18 about alcohol the first time with Dr.
19 Bonnerance, he never ever mentioned it again,
20 nobody ever -- no physical therapist ever said,
21 gosh, he smells like alcohol, he's stumbling,
22 there's none of that. But the first visit that
23 Dr. Bonnerance, the surgeon, he tells him about
24 his drinking which seems rather, I don't know,
25 ironic, I guess is the word.

1 **MADAM CHAIR:** Okay. All right. Thank you, sir.
2 All right. Thank, y'all very much.
3 **MR. SMITH:** Thank you.
4 **MR. LEWIS:** Thank you very much.
5 **(There being nothing further, the full commission**
6 **hearing concluded at 3:14 p.m.)**
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**CERTIFICATE**

This is to certify that the within hearing consisting of twenty three (23) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on May 9, 2018.

Roderick S. Fitzgerald
Court Reporter

Notary Public for South Carolina
My Commission Expires: May 12, 2020

# APA SUBMISSIONS AND HEARING EXHIBITS

Appellants' Submissions
APA pages 1-112

## Reason for Appointment

1. WC for Spirit Construction shoulder injury with post accident UDS.
2. Pain in right shoulder following a lifting injury 1 hour ago.
3. No PCP

## History of Present Illness

Shoulder/Upper arm:

50 year old male presents with c/o shoulder pain right shoulder pain, anteriorly, radiates down to the arm, unable to lift arm. c/o direct trauma patient was lifting a piece that was long and about 150 pounds, when someone dropped one end of it, his end snapped out of his hand, causing his right arm to fall, he heard a snapping sensation and had immediate pain. c/o weakness.

Denies: radiation of pain, fall, redness, previous injury, tingling/ numbness.

Patient has had 800mg of Ibuprofen but no other medications at this time.

## Current Medications

None

## Past Medical History

Denies

## Surgical History

Tonsillectomy

## Family History

Non-Contributory

## Social History

no Smoking.
no Recreational drug use.
Alcohol: socially.
Occupation: Construction.

## Allergies

N.K.D.A.

## Hospitalization/Major Diagnostic Procedure

Denies Past Hospitalization

## Review of Systems

Eating and drinking well, no nausea/vomiting/abdominal pain, no cough/cold/congestion, no CP, no SOB, no fever, no rash. See HPI.

## Vital Signs

BP 170/100, Temp 98.8, Repeat BP 165/120, HR 104, O2sat 97, RR 16, Wt 193.

## Examination

Urgent Care Examination:

General Appearance: pleasant, alert, nontoxic, well hydrated, appears uncomfortable, but NAD. Eyes: PERRL, EOMI, lids/conjunctivae normal. Head, Neck, Thyroid : supple, non-tender, normal inspection, no lymphadenopathy. Musculoskeletal/Extremities: decreased ROM of right upper extremity, inability to abduct above 90 degress, forced posterior motion of arm okay, tenderness to palpation over the lateral aspect of the shoulder, normal strength bilaterally. Skin: color normal, no rash, warm, dry.

## Assessments

1. Sprain of shoulder NOS - 840.9 (Primary)

## Treatment

**1. Sprain of shoulder NOS**

Start Voltaren enteric coated tablet, sodium 75 mg, 1 tab(s), orally with food, BID, 10 days, 20, Refills 0
XR shows no dislocation. Dr. Purcell examined patient and agrees that there is no dislocation. Start Voltaren BID for inflammation and pain. Patient placed in an arm sling today for support. Can ice shoulder as needed for pain. Shoulder strengthening exercises demonstrated today. Light duty at work with no heavy lifting or overuse of the right arm for 1 week. Follow up in 1 week for recheck or sooner if necessary. See scanned form.

**2. Others**

BP elevated in office. Patient advised to monitor BP and FU with PCP.

## Diagnostic Imaging

X ray : Shoulder, right No fracture or dislocation. Linder,Gabrielle N. 1/24/2012 6:56:51 PM >

## Procedure Codes

73050 X-RAY EXAM OF SHOULDERS

## Follow Up

1 Week

glinder

Electronically signed by Gabrielle Linder , PAC on 01/24/2012 at 06:57 PM EST

Electronically co-signed by Jerry Purcell on 03/23/2012 at 04:27 PM EDT

Sign off status: Completed

Redi Care
823 Pearman Dairy Road
Anderson, SC 29625-2617
Tel: 864-225-7878

## Reason for Appointment

1. Recheck shoulder
2. Pt states that he keep his arm in the sling until Friday and that he has tried to to his exercices and he is unable to move his arm at all and that is hurts alot.
3. No pcp

## History of Present Illness

General:

Patient presents for WC recheck of injury to right shoulder last week. He had normal XRs in our office and was started on Voltaren for inflammation. He was given a sling to wear and shoulder exercises to try at home. He states work sent him home after 2 days of light duty because they did not have anything for him to do. Patient states he has had no improvement of symptoms. He states he is unable to lift arm above his head and wakes up in the middle of the night if he rolls over onto his shoulder.

## Current Medications

Voltaren sodium 75 mg enteric coated tablet 1 tab(s) BID
Medication List reviewed and reconciled with the patient

## Past Medical History

Denies

## Surgical History

Tonsillectomy

## Family History

Non-Contributory

## Social History

no Smoking.
no Recreational drug use.
Alcohol: socially.
Occupation: Construction .

## Allergies

N.K.D.A.

## Hospitalization/Major Diagnostic Procedure

Denies Past Hospitalization

## Review of Systems

Eating and drinking well, no nausea/vomiting/abdominal pain, feels well, no cough/cold/congestion, no CP, no SOB, no fever, no rash. See HPI.

## Vital Signs

BP 170/100, Temp 97.4, HR 96, O2sat 97, RR 16, Wt 192.5.

## Examination

Urgent Care Examination:

General Appearance: pleasant, alert, nontoxic, well hydrated, appears uncomfortable, but NAD. Eyes: PERRL, EOMI, lids/conjunctivae normal. Head, Neck, Thyroid : supple, non-tender, normal inspection, no lymphadenopathy. Musculoskeletal/Extremities: decreased ROM of right upper extremity, inability to abduct above 90 degress, forced posterior motion of arm okay, tenderness to palpation over the lateral aspect of the shoulder; normal strength bilaterally. Skin: color normal, no rash, warm, dry.

## Assessments

1. Sprain of shoulder NOS - 840.9 (Primary)

## Treatment

**1. Sprain of shoulder NOS**

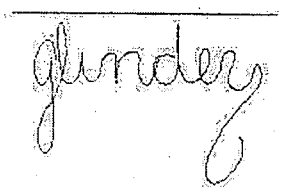
Stop Voltaren enteric coated tablet, sodium 75 mg, 1 tab(s), orally with food, BID, 10 days, 20
Start Mobic tablet, 15 mg, 1 tab(s), orally, QD, 10 days, 10, Refills 0
Start Robaxin-750 tablet, 750 mg, 2 tab(s), orally, TID, PRN MUSCLE SPASM, 25, Refills 0
PE is the same here today. Signs and symptoms suspicious for rotator cuff injury. Will have patient scheduled for MRI of shoulder pending WC approval. Patient advsied to stop Voltaren and to start Mobic for inflammation and pain. Can use Robaxin as needed for muscle spasm. Moist heat or ice okay. Continue light duty at work. See scanned form. FU pending WC approval of MRI or as needed. Side effects of medications were explained to patient.

**2. Others**

BP elevated in office. Patient advised to monitor BP and FU with PCP.

## Follow Up

prn



Electronically signed by Gabrielle Linder , PAC on 01/30/2012 at 06:37 PM EST
Sign off status: Completed

Redi Care
823 Pearman Dairy Road
Anderson, SC 29625-2617
Tel: 864-225-7878
Fax: 864-225-7863

# InMed

Diagnostic Services of S.C., LLC

PATIENT NAME: JAMES PROVINS
DOB:
MR# 515597
DATE OF STUDY 2/18/12
REFERRING PHYSICIAN: BRIDGES

MRI RIGHT SHOULDER

HISTORY: Shoulder pain.

TECHNIQUE: Coronal and sagittal T2 sequences supplemented by T2 weighted sequence and coronal T1 sequence.

FINDINGS: There is a tear of the supraspinatus tendon and likely involving a portion of the infraspinatus tendon. This tear measures approximately 2.8 cm in anterior posterior dimension. This tear extends over the distal 2 to 2.5 cm of the rotator cuff. The teres minor appears to be grossly intact. There appears to be a tear involving the subscapularis tendon as well. The long head of the biceps tendon appears grossly unremarkable. No evidence for glenoid labral avulsion is noted. There is no significant lateral down slope to the acromion. There are only mild degenerative changes at the acromioclavicular joint. No significant anterior down slope to the acromion is noted. Moderate sized joint effusion appears present. No fracture or bone bruise is seen on the study. The surrounding muscles grossly appear unremarkable.

IMPRESSION: There is a fairly extensive tear of the supraspinatus tendon and likely involving the infraspinatus. There also appears to be a tear involving the subscapularis tendon although there is no evidence for biceps dislocation. There is a small joint effusion noted.

Stephen J. Gordin, M.D.

SJG/lm

1704 E. Main Street
Duncan, S.C. 29334
T: (864) 486-8595 F: (864) 486-8433

1 0 0 0 A

BAPTIST HEALTH LOUISVILLE

PROVINS, JAMES C
9981174001 05/15/13
06/29/61 51Y M 9981174

# ADMISSION/ENCOUNTER FACESHEET

9981174001

| | | |
|---|---|---|
| Patient Information: PROVINS, JAMES C | DOB / Age 51Y / Sex M / MS M / Race W | Admit Date/Time 05/15/13 0 / Clerk MH4 |
| | SSN / Religious Preference NONE | Referral Source CLINIC/PHY / Class S / Re-Admit N |
| | Phone / County JEF | Unit / Room/Bed / Service OSC / FC W / Pt Type S |
| Insurance Plan 1 - Insured Information COB 1 REL 01<br>PROVINS, JAMES C<br>003186000589<br>SPIRIT CONSTRUCTION<br>118 COLEMAN BLVD<br>SAVANNAH, GA 31408<br>EMPLOYER: SPIRIT CONSTRUCTION<br>PLAN PHONE: 912/748-8055 EFF DATE:<br>KENPAC: MED A:<br>PRECERT: MED B: | Next of Kin/Emergency Contact<br>PROVINS, DEBRA<br>502/995-3624<br>SPOUSE | Admitting Physician Name / Number<br>BONNARENS, FRANK O. / 29483<br>Attending Physician Name / Number<br>BONNARENS, FRANK O. / 29483 |
| | Patient Employer Information<br>SPIRIT CONSTRUCTION<br>118 COLEMAN BLVD<br>SAVANNAH, GA 31408<br>912/748-8055 | Admitting Diagnosis:<br>OSC<br>Admitting Comments:<br>NLA ADNN<br>ISOLATION: |
| Insurance Plan 2 - Insured Information COB REL<br>EMPLOYER:<br>PLAN PHONE: EFF DATE:<br>KENPAC: MED A:<br>PRECERT: MED B: | Guarantor Information REL 01<br>PROVINS, JAMES C<br>13605 KINROSS BLVD<br>LOUISVILLE, KY 40272<br>502/995-3624 | Primary Care Physician<br>Consulting Physician<br>Consulting Physician |
| Insurance Plan 3 - Insured Information COB REL<br>EMPLOYER:<br>PLAN PHONE: EFF DATE:<br>KENPAC: MED A:<br>PRECERT: MED B: | Guarantor Employer Information<br>SPIRIT CONSTRUCTION<br>118 COLEMAN BLVD<br>SAVANNAH, GA 31408<br>912/748-8055 | Consulting Physician<br>Consulting Physician<br>Consulting Physician |

Accident Place & Brief Description: WORK SHOULDER INJURY
Accident Date/Time: 01/21/12 12:00
Accident Code: 4

Principal Diagnosis:

Secondary Diagnosis:

Principal Procedure:

Other Procedures:

Physician Signature:

Patient Account #: 9981174001

1000A0005 Revised 05/16/01 OPTIO PAGE 1 of 1

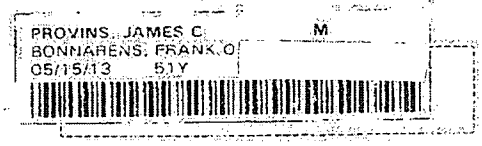


7

341

1 3 0 0 A

PROVINS, JAMES C M
BONNARENS, FRANK.O
05/15/13 51Y



BAPTIST HEALTH LOUISVILLE

# HISTORY & PHYSICAL UPDATE

Per Joint Commission Standards

- PC.2.120.2 – A medical history and physical examination are completed no more than 30 days prior to or within 24 hours after inpatient admission.
- PC.2.120.6 – For a medical history and physical examination that was completed within 30 days prior to inpatient admission, an update documenting any changes in the patient's condition is completed within 24 hours after inpatient admission or prior to surgery.
- IM.6.30.10 – The history and physical examination and the results of indicated diagnostic tests are recorded before the operative or other high-risk procedures.

Patient is scheduled for _____ which is an **INPATIENT ONLY** **PROCEDURE** per Medicare guidelines. Inpatient admission status on _____

☑ H&P reviewed – no changes

☐ H&P Reviewed with the following changes

History Update: _____

Exam Update: _____

Heart: _____

Lungs: _____

Other Findings: _____

Signature of Physician 5/15/13 Date 9A Time

1300A0071 Revised 7/2011 OPTIO PAGE 1 of 1

**ORTHOPAEDIC ASSOCIATES of KENTUCKIANA, P.L.L.C.**
**3605 Northgate Circle, Suite 202**
**New Albany, Indiana 47150**
**502-585-4376**
**OAdocs.com**

PROVINS, JAMES C
BONNARENS, FRANK O.
05/15/13 51Y

fax 502-581-1274 appointments 502-562-0346

Date: May 15, 2013 (Updated H&P)

Name: PROVIN, JAMES Age: 52 Birth Date:

**HISTORY:** The patient is a 52-year-old white male who presents complaining of pain in his right shoulder. He is an iron worker. He was down in South Carolina a year ago. He was helping to move steel decking that is used to pour concrete. He describes this as being approximately 35 feet long piece of corrugated steel. He and another person were dragging it across the ridges that were making up the floor. The other guy dropped his. It ended up twisting in the patient's hand forcing the right arm down. He said the left arm did not have this happen. It is just the right side. He had immediate onset of pain. He tried finishing work, but was not able to do that. He went to have it evaluated, was placed on light duty work. They did not have light duty work available for him. He has been out of work since. He said the pain is 10 out of 10. He said he is quite frustrated by this because he has to learn how to wipe his butt with his left hand, cannot use the right hand after doing it that way for 51 years. He is not using any medicines and he has no other problems requiring over-the-counter medicines.

**ALLERGIES:** He has no known allergies.

**PAST MEDICAL HISTORY:** Indicates general state of health is good. Childhood illness is positive for measles, mumps, and chickenpox. Last tetanus shot was four years ago.

**PAST SURGERIES:** No prior surgery.

**PAST FRACTURES:** No prior fractures.

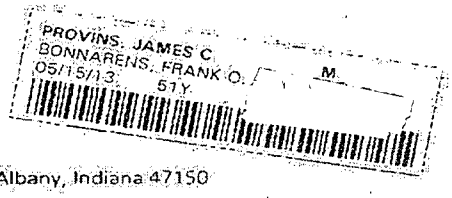
**SOCIAL HISTORY:** Indicates no use of coffee. He drinks 8 to 10 beers a day. No use of drugs or tobacco products.

**FAMILY HISTORY:** Family history is negative for diabetes and high blood pressure.

**BACKGROUND HISTORY:** The patient has worked as an iron worker.

**REVIEW OF SYSTEMS:** Indicates usual weight is 220 lbs. His right ear has had an infection. He said it smells like a dead dog when he smells the Q-tip. The patient understands that that needs to be addressed prior to surgery.

ORTHOPAEDIC ASSOCIATES
of KENTUCKIANA, P.L.L.C.




3605 Northgate Circle, Suite 202, New Albany, Indiana 47150

Date: May 15, 2013 (Updated H&P)

Name: PROVIN, JAMES Age: 52 Birth Date:

**EXAM**: Physical examination shows height is 5'7", weight is 240 lbs, and respirations 12, well developed, well nourished, oriented x 3. Has appropriate mood and affect. Passive range of motion is good. Significant weakness with abduction and external rotation against resistance, questionable belly-press test weakness. The patient does have a bulge consistent with a possible rupture of the long head of the biceps on the right side when compared to the left. Neuro is intact. Pulses are present. No evidence of lymphadenopathy. No warmth, erythema, or drainage is present. Numerous scars are present on the frontal side of his body and arms consistent with burns from being a welder.

**IMPRESSION**: Overall impression is that we are dealing with a tear of the rotator cuff and possible tear of the long head of the biceps.

**PLAN**: Pros and cons of both operative and non-operative treatments were explained. The patient understands risks, benefits, and potential complications associated with surgery including but not limited to infection, loss of motion, recurrence, and death. Further understands no guarantees or warrantees are given. The patient's questions were answered to his satisfaction. Surgery will be scheduled at his convenience once we have clearance on that right ear.

The case of the patient was discussed in detail with the nurse case manager whose questions were answered to her satisfaction. The requirement for the ENT clearance first to make sure we do not have any infection in the right ear before proceeding with the right shoulder was explained.

FOB/hba



main phone 502-585-4376 fax 502-581-1274 appointments 502-562-0346 web site OAdocs.com.

ORTHOPAEDIC ASSOCIATES
of KENTUCKIANA, P.L.L.C.

3605 Northgate Circle, Suite 202, New Albany, Indiana 47150

Date: April 15, 2013

Name: PROVIN, JAMES Age: 52 Birth Date:

**X-RAYS:** Significant AC joint arthropathy is seen on the four-view x-rays taken today. Humeral head does not appear to be high riding on the AP, internal and external rotation views, supraspinatus outlet view and axillary view taken because of the pain today.

PROVINS, JAMES C
BONNARENS, FRANK O.
05/15/13 51Y M



main phone 502-585-4376 fax 502-581-1274 appointments 502-562-0346 web site OAdocs.com

# History and Physical

| | | | |
|---|---|---|---|
| **Patient Name:** | James Provins | **Visit Date:** | April 24, 2013 |
| **Patient ID:** | 438968 | **Provider:** | Gorden T. McMurry, MD |
| **Sex:** | Male | **Location:** | Dupont Office |
| **Birthdate:** | | **Location Address:** | 4004 Dupont Circle, Louisville, KY 40207-4819 |
| | | **Location Phone:** | (502) 893-0159 |

## Chief Complaint

- Ear Infection

## History Of Present Illness

" James " is a 51 year old male who is an adult . He is seen at the request of REFERRING DOCTOR for the evaluation of a history of an Infection and and HX of right sided ear trauma involving welding sparks in the right ear. The onset of this condition has been gradual. The symptoms may be associated with recurrent drainage and smell from right ear. He stated he needs clearance for his shoulder surgery for a workers comp claim and has to have his ear looked at first. No alleviating factors have been identified. The patient has no additional complaints. He denies ear pain, vertigo, and dizziness.

## Past Medical History

| Disease Name | Date Onset | Notes |
|---|---|---|
| -no significant medical history | -- | -- |
| Abnormal auditory perception, unspecified, WNL hearing | 04/24/2013 | -- |
| deviated nasal septum right, with 50% obstruction | 04/24/2013 | -- |
| Otorrhea | 04/24/2013 | -- |

## Past Surgical History

| Procedure Name | Date | Notes |
|---|---|---|
| Tonsillectomy | @ 20 yrs old | -- |

## Allergy List

| Allergen Name | Date | Reaction | Notes |
|---|---|---|---|
| NO KNOWN DRUG ALLERGIES | -- | -- | -- |

## Family Medical History

| Disease Name | Relative/Age | Notes |
|---|---|---|
| -No reported Family History | / | -- |

## Social History

| Finding | Status | Start/Stop | Quantity | Notes |
|---|---|---|---|---|
| alcohol use | -- | --/-- | -- | -- |
| Alcohol, daily | -- | --/-- | -- | -- |
| Tobacco | Unknown | --/-- | -- | -- |

## Review of Systems

**Constitutional**
- **Denies** : chills, fatigue, fever

**Eyes**
- **Denies** : changes in vision, double vision

**Cardiovascular**
- **Denies** : chest pain, irregular heart beats

[Digital Signature Validated]

**Respiratory**
- **Denies** : cough, coughing up blood, hoarseness, shortness of breath

**Gastrointestinal**
- **Denies** : abdominal pain, constipation, diarrhea, dysphagia, heartburn, nausea, vomiting

**Genitourinary**
- **Denies** : difficulty voiding

**Integument**
- **Denies** : new skin lesions, rash

**Neurologic**
- **Denies** : seizures, speech difficulties

**Musculoskeletal**
- **Denies** : joint pain, joint swelling, muscle cramps, muscle pain

**Endocrine**
- **Denies** : cold intolerance, excessive sweating, heat intolerance, decreased libido, hot flashes, loss of hair, weight gain, weight loss

**Psychiatric**
- **Denies** : anxiety, depression

**Heme-Lymph**
- **Denies** : easy bleeding, easy bruising

**Allergic-Immunologic**
- **Denies** : currently on allergy shots, sinus allergy symptoms

**All Others Negative**

## Vitals

| Date | Time | BP | Position | Site | L\R | Cuff Size | HR | RR | TEMP(°F) | WT | HT | BMI kg/m² | BSA m² | O2 Sat | HC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 04/24/2013 | 10:39 AM | 131/76 | Sitting | | | | 68 - R | 16 | | 240lbs 0oz | | | | | |

## Physical Examination

**Constitutional**
- **General Appearance** : well-developed, well nourished, alert, oriented, in no acute distress, cooperative with examination
- **Communication Ability / Voice Quality** : communication ability normal, normal voice quality

**Head**
- **Inspection** : normocephalic, no lesions , atraumatic
- **Palpation** : no tenderness on palpation, no masses on palpation, TMJ nontender with normal range of motion bilaterally

**Face**
- **Inspection** : normal appearance, no lesions , no evidence of trauma
- **Palpation** : frontoethmoidal sinus nontender, maxillary sinuses nontender to palpation, no masses
- **Facial Strength** : facial motion symmetric, normal eye closure strength bilaterally
- **Parotid Glands** : no tenderness on palpation, no swelling , no palpable masses

**Eyes**
- **Ocular Motility/Alignment** : ocular alignment normal, ocular motility normal, no nystagmus , no proptosis
- **Pupils and Irises** : pupils equal, round and reactive to light

**Ears**
- **Hearing** : hearing to conversational voice intact A.U.
- **External Ears** : right moist debirs and pus removed form the right canal with cotton applicator
- **Otoscopic Exam** : tympanic membranes normal, no lesions, no perforations, no fluid present behind tympanic membranes, middle ear cavities appear normal without obvious fluid or masses A.U.

**Nose / Nasopharynx**
- **External Nose** : appearance normal, no tenderness on palpation, no nasal discharge , no deformities, no evidence of trauma, nostrils patent without discharge
- **Intranasal Exam** : left deviated nasal septum with 50% obstruction
- **Nasopharynx** : nasopharynx mirror exam: within normal limits, adenoids within normal limits, posterior choanae patent

**Oral Cavity / Oropharynx**
- **Lips** : upper and lower lips pink and moist

[Digital Signature Validated]

- **Teeth** : *multiple caries , poor dentition, multiple upper and lower missing teeth present*
- **Gums** : gingivae healthy
- **Oral Mucosa** : oral mucosa moist, no lesions
- **Floor of Mouth** : floor of mouth within normal limits, salivary ducts patent
- **Tongue** : tongue moist and without lesions
- **Palate** : soft and hard palates within normal limits
- **Oropharynx** : appearance within normal limits, tonsils normal in appearance, peritonsillar regions within normal limits

**Hypopharynx / Larynx**

- **Hypopharynx** : normal general appearance, no lesions
- **Larynx** : normal general appearance, epiglottis within normal limits, arytenoid cartilage within normal limits, vocal cord appearance normal

**Neck**

- **Inspection and Palpation** : appearance normal, no masses or tenderness on palpation
- **Thyroid** : size of gland normal, no tenderness, nodules or masses on palpation, position midline
- **Submandibular Glands** : normal size, nontender to palpation
- **Lymph Nodes** : no lymphadenopathy

**Chest / Respiratory**

- **Respiratory Effort** : breathing unlabored

**Cardiovascular**

- **Extremities** : no cyanosis, no edema

**Skin and Subcutaneous Tissues**

- **Skin** : normal coloration and skin turgor, no rashes, no lesions

**Neurological/Psychiatric**

- **Cranial Nerves** : CN II-XII intact
- **Cerebellum** : no ataxia, fine coordination within normal limits
- **Gait** : gait normal

## Assessment

- Right Otorrhea 388.60
- Right Otitis Externa, Acute 380.22

## Plan

**Orders**

- Culture- Ear RIGHT (CULTR) --- 04/24/2013

**Medications**

- CIPRODEX Otic Drops, Suspension 0.3-0.1 %
  SIG: Instill 3 drops into affected ear by otic route 3 times per day for 10 days.
  DISP: (1) 7.5 ml drop btl with 0 refills
  **Prescribed on 04/24/2013**

**Instructions**

- 4-24-2013- James presents for check of his right ear for clearance for open shoulder surgery due to possible risk of infection. He has had a recurrent issues with am odor and some drainage from the right ear. He has a HX of injury to the right ear due to metal welding entering the ear. The exam today revealed some moist debris which were removed with cotton applicator as well as a culture collected. Discusssed stoping q tip use and water prevention. He stated he has had hearing loss since the right ear injury during welding 5-6 yrs ago. The hearing test today revealed bilteral sensorineural hearing loss. There was no evidence of perforation today though. Placed on ear drops and use strict water precautions. ADDENDUM>>>>>>> 5-10-2013- Discussed surgical clearance with ortho office baout shoulder surgery for pt. The culture results were reviewed with them and were noted to be pseudomonois which was suseptiable to the ciprodex drops he was placed on. He should now be clezred for shoulder surgery after use of ciprodex ear drops for ear drianage.

**Disposition**

- Transcribed by Kristen Brown MA

**Electronically Signed by:** Gorden T. McMurry, MD -Author on May 10, 2013 02:50:02 PM

[Digital Signature Validated]

[Digital Signature Validated]



15

OSC - Baptist Health Louisville

PROVINS, JAMES
9981174
Date of Birth: 06/29/1961
Dictating Surgeon: Frank O. Bonnarens, M.D.*
Primary Care Physician:
Date of Operation:

---

PREOPERATIVE DIAGNOSES
1. Rotator cuff tear.
2. Impingement of AC joint.
3. Degenerative joint disease.
4. Tear of the long head of the biceps.

POSTOPERATIVE DIAGNOSES
1. Rotator cuff tear.
2. Impingement of AC joint.
3. Degenerative joint disease.
4. Tear of the long head of the biceps.

PROCEDURE(S) PERFORMED
1. Right shoulder rotator cuff repair
2. Acromioplasty/Mumford procedure.
3. Debridement of the biceps stump and labral tears.
4. Insertion of bone graft.

SURGEON
Frank O. Bonnarens, M.D.

ASSISTANT
Sampson.

ANESTHESIA
General.

DESCRIPTION OF PROCEDURE
The patient was brought to the operating room. After obtaining the appropriate consent, general anesthesia was induced. The arm was cleaned and prepped in the usual manner and sterilely draped. Standard posterior portal was made and the arthroscope was inserted. Biceps tendon was seen to be torn, the stump remaining. Anterior portal was located and the shoulder was systematically examined. The patient was seen to have a massive tear of the rotator cuff. The patient was seen to have a tear of the lung into the biceps with the stump remaining. The stump was debrided. Minor labral tears anterior and posterior were debrided. Articular cartilage showed mild degenerative changes. No evidence of loose bodies, but it looked like the supraspinatus, infraspinatus, and the rotator interval were all involved in the rotator cuff tear. The subacromial space was entered. Hypertrophied bursal tissue present and resected. A standard arthroscopic acromioplasty with release of the coracoacromial ligament was carried out. The rotator cuff was then mobilized utilizing converging sutures. Both EL and the U component of a rotator cuff tear were closed. Bone marrow aspirate had been obtained for grafting purposes with particular graft, and the marrow contents was concentrated on the back

table for later reimplantation. The anchor was then placed. Standard watertight closure of the rotator cuff was accomplished. Once this had been completed, electrocautery was used to isolate the distal centimeter of the clavicle. Soft tissue was resected within the AC joint. Distal centimeter of the bone resected. Entire area was reevaluated and no additional pathology was noted. So the concentrated bone marrow with particular graft was then reinserted at the interface between the rotator cuff and the underlying bone to act as a scaffolding. The incisions were closed. A dry sterile dressing was applied and the patient was brought to recovery without incident.

Frank O. Bonnarens, M.D.
FOB:eb
D: 05/15/2013 13:42:41
T: 05/16/2013 19:07:50
Job ID: 29968590
Document ID: 25094491
Rev: 0
cc:
Authenticated by DR. FRANK BONNARENS on 06/04/2013 09:28:16 AM

PROVINS, JAMES C
Baptist Hospital East
FROM: 05/12/13 10:46 TO: 05/13/13 10:46
ROOM: ADM:
AGE: 51Y: SFX: M MD: BONNARENS, FRANK O
DOB IIC: 9981174001 MR: 0009981174
REQUESTED: 05/13/13 10:46 (1TH9)
OPT OUT:

Order Conf Rpt - **PROVINS, JAMES C**
DEPT: **CC_PRE** ROOM: - MR: **0009981174**
Ordered by: MD BONNARENS, FRANK O
Entered by: RN HAWKINS, TARA T - 05/13/13 10:46
Order mode: Written - Session Id:34052836

ALLERGY

| Charted | Allergy name | Type | Reaction | Severity | Comment |
|---|---|---|---|---|---|
| 05/13 10:45 | No Known Allergies | Miscellaneous Allergy | | | |

DIAGNOSIS

OSC

**EKG**

| Ord# | Action | Order Name | Freq | Priority | Duration | Start | Stop |
|---|---|---|---|---|---|---|---|
| 1 | Started | EKG PAT | ONCE | ROUTINE | 1 Time | 05/13 10:46 | 05/13 10:46 |

**LAB**

| Ord# | Action | Order Name | Freq | Priority | Duration | Start | Stop |
|---|---|---|---|---|---|---|---|
| 2 | Started | Comprehensive Metabolic Panel (CMP) | ONCE | ROUTINE | 1 Time | 05/13 10:46 | 05/13 10:46 |
| 3 | Started | Hemoglobin and Hematocrit ROOM 8 | ONCE | ROUTINE | 1 Time | 05/13 10:46 | 05/13 10:46 |

MD Signature (date) __/__/__ : _____

LAST PAGE

Page 1 PERM

PROVINS, JAMES C
Baptist Hospital East
FROM: 05/12/13 11:11 TO: 05/13/13 11:11
ROOM: ADM:
AGE: 51Y SEX: M MD: BONNARENS, FRANK O
DOB: ID: 9981174001 MR: 0009981174
REQUESTED: 05/13/13 11:11 (ORH)
OPT OUT:

Order Conf Rpt - PROVINS, JAMES C
DEPT: CC PRE ROOM: - MR: 0009981174
Ordered by: MD BONNARENS, FRANK O
Entered by: RN HAYDEN, CHERYL R 05/13/13 11:11
Order mode: Written - Session Id:34053644

ALLERGY

| Charted | Allergy name | Type | Reaction | Severity | Comment |
|---|---|---|---|---|---|
| 05/13 10:45 | No Known Allergies | Miscellaneous Allergy | | | |

DIAGNOSIS

OSC

LAB

| Ord# | Action | Order Name | Freq | Priority | Duration | Start | Stop |
|---|---|---|---|---|---|---|---|
| 4 | Started | CBC WO Differential | ONCE | ROUTINE | 1 Time | 05/13 11:11 | 05/13 11:11 |

MD Signature (date) __/__/__ :_____

LAST PAGE

Page 1 PERM



19

PROVINS, JAMES C
Baptist Hospital East
FROM: 05/14/13 08:28 TO: 05/15/13 08:28
ROOM: - ADM: 05/15/13 07:41
AGE: 51Y SEX: M MD: BONNAPENS, FRANK O
DOB: F ID: 9981174001 MR: 0009981174
REQUESTED 05/15/13 08:28 (EDG0)
OPT OUT:

Order Conf Rpt - PROVINS, JAMES C
DEPT: CC OUTPT ROOM: - MR: 0009981174
Ordered by: ANESTHESIA, DOCTOR
Entered by: NAT GLINES, EDITH D 05/15/13 08:28
Order mode: Written Session Id:34101723

ALLERGY

| Charted | Allergy name | Type | Reaction | Severity | Comment |
|---|---|---|---|---|---|
| 05/13 10:45 | No Known Allergies | Miscellaneous Allergy | | | |

DIAGNOSIS
RT SHLDR ARTHRO

HEODEPT

| Ord# | Action | Order Name | Freq | Priority | Duration | Start | Stop |
|---|---|---|---|---|---|---|---|
| 18 | Started | PATIENT SPECIFIC DATA<br>Patient's weight (kgs or lbs): 109.905<br>Instructions: weight: 109.905kg/242.31b; | CONTIN | ROUTINE | | 05/13 11:22 | Indefinite |
| 19 | Started | PATIENT SPECIFIC DATA<br>Patient's height (cms or ins): 170.18<br>Instructions: height: 170.18cm/67.0in; | CONTIN | ROUTINE | | 05/13 11:22 | Indefinite |

LAB

| Ord# | Action | Order Name | Freq | Priority | Duration | Start | Stop |
|---|---|---|---|---|---|---|---|
| 20 | Started | Alcohol Blood (Ethanol) | ONCE | STAT | 1 Time | 05/15 08:27 | 05/15 08:27 |

MD Signature (date) __/__/__ : _____

LAST PAGE

Page 1 PERM



20

354

PROVINS, JAMES C. Cpt Out
BHE
Comp Orders Report
From: 05/13/2013 10:44 To: 05/15/2013 14:40
Rm-Bed: Admit Dt: 05/15/2013 07:41
Age: 51 yr Gender: M MD: Bonnarens, Frank O., MD
DOB: Acct: 9981174001
MRN: 0009981174
Requested: 05/16/2013 05:40 Page 1 of 14

INDEX SECTION:

| Name | Order# | Original Entry DT | Start DT/TM | End DT/TM |
|---|---|---|---|---|
| **Cardiovascular** | | | | |
| EKG PAT | 1 | 05/13/2013 10:46 | 05/13/2013 10:46 | 05/13/2013 10:46 |
| **East Pharmacy** | | | | |
| Famotidine [ PEPCID ] INJECTION | 5 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Scopolamine [ TRANSDERM-SCOP ] PATCH | 6 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Lidocaine-Tetracaine [ SYNERA ] PATCH | 7 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Glycopyrrolate [ ROBINUL ] INJECTION | 8 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Metoclopramide [ REGLAN ] INJECTION | 9 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Midazolam [ VERSED ] IV INJECTION | 10 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Fentanyl [ FENTANYL ] INJECTION | 11 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Diazepam [ VALIUM ] TABLETS | 12 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| LIDOCAINE ( XYLOCAINE ) PF 1% INJ (VIAL) | 13 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Hydromorphone [ DILAUDID ] Injection | 14 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Ondansetron [ ZOFRAN ] INJECTION | 15 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Promethazine [ PHENERGAN ] INJECTION | 16 | 05/14/2013 13:16 | 05/14/2013 14:00 | 05/15/2013 14:40 |
| Cefazolin 2GM [ KEFZOL ] Infusion | 17 | 05/14/2013 14:18 | 05/14/2013 15:00 | 05/15/2013 14:40 |
| Lorazepam 1MG [ ATIVAN ] TABLET | 21 | 05/15/2013 08:41 | 05/15/2013 09:00 | 05/15/2013 14:40 |
| Lorazepam 0.5MG [ ATIVAN ] TABLET | 22 | 05/15/2013 08:43 | 05/15/2013 09:00 | 05/15/2013 14:40 |
| **HEODEPT** | | | | |
| PATIENT SPECIFIC DATA | 18 | 05/15/2013 08:28 | 05/13/2013 11:22 | |
| PATIENT SPECIFIC DATA | 19 | 05/15/2013 08:28 | 05/13/2013 11:22 | |
| **Laboratory** | | | | |
| Comprehensive Metabolic Panel (CMP) | 2 | 05/13/2013 10:46 | 05/13/2013 10:46 | 05/13/2013 10:46 |
| Hemoglobin and Hematocrit | 3 | 05/13/2013 10:46 | 05/13/2013 10:46 | 05/13/2013 10:46 |
| CBC WO Differential | 4 | 05/13/2013 11:11 | 05/13/2013 11:11 | 05/13/2013 11:11 |
| Alcohol Blood (Ethanol) | 20 | 05/15/2013 08:28 | 05/15/2013 08:27 | 05/15/2013 08:27 |

BODY SECTION:

Cardiovascular

Order 1 - Version 1

EKG PAT ONCE ROUTINE 1 Times

| | | |
|---|---|---|
| **Start:** 05/13/2013 10:46<br>**End:** 05/13/2013 10:46<br>**Originally Entered:** 05/13/2013 10:46<br>**Last Modified:** 05/13/2013 10:46 | **Ordered By:** BONNARENS, FRANK O MD<br>**Entered By:** HAWKINS, TARA T RN<br>**Modified By:** HAWKINS, TARA T RN<br>**Source:** Written | **Action:** Ordered |
| | | **Application Source:** HEO<br>**Performing Dept:** CARDIOLOGY<br>**Order Group:** Cardiovascular<br>**Placer Number:** 517097882 |

Order 1 - Version 2

EKG PAT ONCE ROUTINE 1 Times

Cardiovascular (Continued):

Order 1 - Version 2 (Continued):

| | | |
|---|---|---|
| Start: 05/13/2013 10:46<br>End: 05/13/2013 10:46<br>Originally Entered: 05/13/2013 10:46<br>Last Modified: 05/13/2013 21:32 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HAWKINS, TARA T RN<br>Modified By: HAWKINS, TARA T RN<br>Source: Written | Action: Completed |
| | | Performing Dept: CARDIOLOGY<br>Order Group: Cardiovascular<br>Placer Number: 517097882 |

East Pharmacy

Order 5 - Version 1

| Famotidine [ PEPCID ] INJECTION 20 MG IV SURGPRN ROUTINE UNK DILUTE TO 10 ML TOTAL;PUSH OVER 2 MIN | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16<br>Confirmed By: COWLES, KELLY L RN<br>Confirmed Date: 05/15/2013 08:32 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413271 |

Order 5 - Version 2

| Famotidine [ PEPCID ] INJECTION 20 MG IV SURGPRN ROUTINE 25 Hours DILUTE TO 10 ML TOTAL;PUSH OVER 2 MIN | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413271 |

Order 6 - Version 1

| Scopolamine [ TRANSDERM-SCOP ] PATCH 1.5 MG TOPL SURGPRN ROUTINE UNK | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |





22

East Pharmacy (Continued)

Order 6 - Version 1 (Continued)

| | |
|---|---|
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413272 |

Order 6 - Version 2

Scopolamine [ TRANSDERM-SCOP ] PATCH 1.5 MG TOPL SURGPRN ROUTINE 25 Hours

| | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413272 |

Order 7 - Version 1

Lidocaine-Tetracaine [ SYNERA ] PATCH 70 MG TOPL SURGPRN ROUTINE UNK

| | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413273 |

Order 7 - Version 2

Lidocaine-Tetracaine [ SYNERA ] PATCH 70 MG TOPL SURGPRN ROUTINE 25 Hours

| | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413273 |

Order 8 - Version 1

Glycopyrrolate [ ROBINUL ] INJECTION 0.2 MG IV SURGPRN ROUTINE UNK

| | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>Originally Entered: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR | Action: Ordered |





23

357

East Pharmacy (Continued)

Order 8 - Version 1 (Continued)

| | | |
|---|---|---|
| Last Modified: 05/14/2013 13:16 | Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413274 |

Order 8 - Version 2

| Glycopyrrolate [ ROBINUL ] INJECTION 0.2 MG IV SURGPRN ROUTINE 25 Hours | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413274 |

Order 9 - Version 1

| Metoclopramide [ REGLAN ] INJECTION 10 MG IV SURGPRN ROUTINE UNK | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413275 |

Order 9 - Version 2

| Metoclopramide [ REGLAN ] INJECTION 10 MG IV SURGPRN ROUTINE 25 Hours | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413275 |





24

East Pharmacy (Continued)

Order 10 - Version 1

| Midazolam [ VERSED ] IV INJECTION 0.5-2 MG IV SURGPRN ROUTINE 14Days | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/28/2013 13:59<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16<br>Confirmed By: COWLES, KELLY L, RN<br>Confirmed Date: 05/15/2013 08:32 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413276 | |

Order 10 - Version 2

| Midazolam [ VERSED ] IV INJECTION 0.5-2 MG IV SURGPRN ROUTINE 14 Days | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413276 | |

Order 11 - Version 1

| Fentanyl [ FENTANYL ] INJECTION 25-50 MCG IV SURGPRN ROUTINE 14Days ** CAUTION - LOOK ALIKE/ SOUND ALIKE -DRUG ALERT; PLEASE READ THE LABEL ** | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/28/2013 13:59<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16<br>Confirmed By: COWLES, KELLY L, RN<br>Confirmed Date: 05/15/2013 08:32 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413277 | |

Order 11 - Version 2

| Fentanyl [ FENTANYL ] INJECTION 25-50 MCG IV SURGPRN ROUTINE 14 Days ** CAUTION - LOOK ALIKE/ SOUND ALIKE -DRUG ALERT; PLEASE READ THE LABEL ** | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST | Action: Future Discontinued |





25

East Pharmacy (Continued)

Order 11 - Version 2 (Continued)

| | | |
|---|---|---|
| Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | |
| Pharmacy Verified: Y<br>Verified By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX25413277 |

Order 12 - Version 1

| Diazepam [ VALIUM ] TABLETS 5-10 MG ORAL SURGPRN ROUTINE 14Days | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/28/2013 13:59<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verified By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX25413278 |

Order 12 - Version 2

| Diazepam [ VALIUM ] TABLETS 5-10 MG ORAL SURGPRN ROUTINE 14 Days | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verified By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX25413278 |

Order 13 - Version 1

| LIDOCAINE ( XYLOCAINE ) PF 1% INJ (VIAL) 0.1-2 ML INTRADERMAL SURGPRN ROUTINE UNK | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verified By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16<br>Confirmed By: COWLES, KELLY L, RN<br>Confirmed Date: 05/15/2013 08:51 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX25413279 |





26

360

East Pharmacy (Continued)

Order 13 - Version 2 (Continued)

| LIDOCAINE ( XYLOCAINE ) PF 1% INJ (VIAL) 0.1-2 ML INTRADERMAL SURGPRN ROUTINE 25 Hours | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verified By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413279 | |

Order 14 - Version 1

| Hydromorphone [ DILAUDID ] Injection 0.25-0.5 MG IV SURGPRN ROUTINE 14Days ** PER MEDICAL EXECUTIVE COMMITTEE -DOSING GUIDELINES, THE ORDERED DOSE -HAS BEEN CHANGED TO 0.5MG -Q2H; HIGHER DOSES MAY BE ORDERED IF -PHYSICIAN DOCUMENTS OPIOID TOLERANCE -** -*** HIGH RISK ALERT - 1MG HYDROMORPHONE -IS EQUIVALENT TO 7MG MORPHINE; USE | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/28/2013 13:59<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verified By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413280 | |

Order 14 - Version 2

| Hydromorphone [ DILAUDID ] Injection 0.25-0.5 MG IV SURGPRN ROUTINE 14 Days ** PER MEDICAL EXECUTIVE COMMITTEE -DOSING GUIDELINES, THE ORDERED DOSE -HAS BEEN CHANGED TO 0.5MG -Q2H; HIGHER DOSES MAY BE ORDERED IF -PHYSICIAN DOCUMENTS OPIOID TOLERANCE -** -*** HIGH RISK ALERT - 1MG HYDROMORPHONE -IS EQUIVALENT TO 7MG MORPHINE; USE | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verified By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413280 | |

Order 15 - Version 1

| Ondansetron [ ZOFRAN ] INJECTION 4 MG IV SURGPRN ROUTINE UNK FOR NAUSEA/VOMITING | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST | Action: Ordered |



27

East Pharmacy (Continued)

Order 15 - Version 1 (Continued)

| | |
|---|---|
| Source: Written | |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413281 |

Order 15 - Version 2

**Ondansetron [ ZOFRAN ] INJECTION 4 MG IV SURGPRN ROUTINE 25 Hours FOR NAUSEA/VOMITING**

| | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413281 | |

Order 16 - Version 1

**Promethazine [ PHENERGAN ] INJECTION 5-25 MG IV SURGPRN ROUTINE UNK ADMINISTER VIA LARGE-BORE VEIN (NOT ~HAND OR WRIST) THROUGH RUNNING IV LINE ~AT PORT FURTHEST FROM PATIENT'S VEIN; ~** FOR IV ADMINISTRATION, MUST ~DILUTE IN NORMAL SALINE TO 20 ML AND ~GIVE SLOW IVP OVER 3-5 MINUTES** ~FOR NAUSEA/VOMITING**

| | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/14/2013 13:16 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413282 | |

Order 16 - Version 2

**Promethazine [ PHENERGAN ] INJECTION 5-25 MG IV SURGPRN ROUTINE 25 Hours ADMINISTER VIA LARGE-BORE VEIN (NOT ~HAND OR WRIST) THROUGH RUNNING IV LINE ~AT PORT FURTHEST FROM PATIENT'S VEIN; ~** FOR IV ADMINISTRATION, MUST ~DILUTE IN NORMAL SALINE TO 20 ML AND ~GIVE SLOW IVP OVER 3-5 MINUTES** ~FOR NAUSEA/VOMITING**

| | | |
|---|---|---|
| Start: 05/14/2013 14:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 13:16<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: MOORE, COURTNEY L PHARMACIST<br>Modified By: MOORE, COURTNEY L PHARMACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verfied By: MOORE, COURTNEY L<br>Verified Date: 05/14/2013 13:16 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26413282 | |





28

East Pharmacy (Continued)

Order 17 - Version 1 (Continued)

Cefazolin 2GM [ KEFZOL ] Infusion 2 GM IVPB SURGPRN ROUTINE UNK

| | | |
|---|---|---|
| Start: 05/14/2013 15:00<br>Originally Entered: 05/14/2013 14:18<br>Last Modified: 05/14/2013 14:18 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HICKMAN, CASSANDRA PHARMACIST<br>Modified By: HICKMAN, CASSANDRA PHARMACIST<br>Source: Written | Action: Ordered |

| | |
|---|---|
| Pharmacy Verified: Y<br>Verfied By: HICKMAN, CASSANDRA<br>Verified Date: 05/14/2013 14:18 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26414646 |

Order 17 - Version 2

Cefazolin 2GM [ KEFZOL ] Infusion 2 GM IVPB SURGPRN ROUTINE 24 Hours

| | | |
|---|---|---|
| Start: 05/14/2013 15:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/14/2013 14:18<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HICKMAN, CASSANDRA PHARMACIST<br>Modified By: HICKMAN, CASSANDRA PHARMACIST<br>Source: Written | Action: Future Discontinued |

| | |
|---|---|
| Pharmacy Verified: Y<br>Verfied By: HICKMAN, CASSANDRA<br>Verified Date: 05/14/2013 14:18 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26414646 |

Order 21 - Version 1

Lorazepam 1MG [ ATIVAN ] TABLET 2 MG ORAL SURGPRN ROUTINE 14Days ** CAUTION - LOOK ALIKE/ SOUND ALIKE -DRUG ALERT; PLEASE READ THE LABEL **

| | | |
|---|---|---|
| Start: 05/15/2013 09:00<br>End: 05/29/2013 08:59<br>Originally Entered: 05/15/2013 08:41<br>Last Modified: 05/15/2013 08:41 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HICKMAN, CASSANDRA PHARMACIST<br>Modified By: HICKMAN, CASSANDRA PHARMACIST<br>Source: Written | Action: Ordered |

| | |
|---|---|
| Pharmacy Verified: Y<br>Verfied By: HICKMAN, CASSANDRA<br>Verified Date: 05/15/2013 08:41<br>Confirmed By: COWLES, KELLY L, RN<br>Confirmed Date: 05/15/2013 08:49 | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX25419808 |

Order 21 - Version 2

Lorazepam 1MG [ ATIVAN ] TABLET 2 MG ORAL SURGPRN ROUTINE 14 Days ** CAUTION - LOOK ALIKE/ SOUND ALIKE -DRUG ALERT; PLEASE READ THE LABEL **

| | | |
|---|---|---|
| Start: 05/15/2013 09:00<br>End: 05/15/2013 14:40 | Ordered By: BONNARENS, FRANK O MD | Action: Future Discontinued |





29

East Pharmacy (Continued)

Order 21 - Version 2 (Continued)

| | | |
|---|---|---|
| Originally Entered: 05/15/2013 08:41<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Entered By: HICKMAN, CASSANDRA PHARMACIST<br>Modified By: HICKMAN, CASSANDRA PHARMACIST<br>Source: Written | |
| Pharmacy Verified: Y<br>Verified By: HICKMAN, CASSANDRA<br>Verified Date: 05/15/2013 08:41 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26419808 |

Order 22 - Version 1

| Lorazepam 0.5MG [ ATIVAN ] TABLET 2 MG ORAL SURGPRN ROUTINE 14Days ** CAUTION - LOOK ALIKE/ SOUND ALIKE -DRUG ALERT; PLEASE READ THE LABEL ** | | |
|---|---|---|
| Start: 05/15/2013 09:00<br>End: 05/29/2013 08:59<br>Originally Entered: 05/15/2013 08:43<br>Last Modified: 05/15/2013 08:43 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: LARCARA, LAURA PHARACIST<br>Modified By: LARCARA, LAURA PHARACIST<br>Source: Written | Action: Ordered |
| Pharmacy Verified: Y<br>Verified By: LARCARA, LAURA<br>Verified Date: 05/15/2013 08:43 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26419830 |

Order 22 - Version 2

| Lorazepam 0.5MG [ ATIVAN ] TABLET 2 MG ORAL SURGPRN ROUTINE 14 Days ** CAUTION - LOOK ALIKE/ SOUND ALIKE -DRUG ALERT; PLEASE READ THE LABEL ** | | |
|---|---|---|
| Start: 05/15/2013 09:00<br>End: 05/15/2013 14:40<br>Originally Entered: 05/15/2013 08:43<br>Last Modified: 05/15/2013 14:40<br>D.C.: 05/15/2013 14:40 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: LARCARA, LAURA PHARACIST<br>Modified By: LARCARA, LAURA PHARACIST<br>Source: Written | Action: Future Discontinued |
| Pharmacy Verified: Y<br>Verified By: LARCARA, LAURA<br>Verified Date: 05/15/2013 08:43 | | Application Source: RX<br>Performing Dept: Pharmacy<br>Order Group: East Pharmacy<br>Placer Number: RX26419830 |

HEODEPT

Order 18 - Version 1

| PATIENT SPECIFIC DATA CONTIN ROUTINE Until Discontinued | | |
|---|---|---|
| Start: 05/13/2013 11:22<br>Originally Entered: 05/15/2013 08:28<br>Last Modified: 05/15/2013 08:28 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: GLINES, EDITH D NAT<br>Modified By: GLINES, EDITH D NAT<br>Source: Written | Action: Ordered |





30

HEODEPT (Continued)

Order 18 - Version 1 (Continued)

| | |
|---|---|
| Patient's weight (kgs or lbs): 109.905<br>Instructions: weight: 109.905kg/242.3lb; | |
| | Application Source: HEO<br>Performing Dept: HEO<br>Order Group: HEODEPT<br>Placer Number: 518771164 |

Order 19 - Version 1

| | | |
|---|---|---|
| PATIENT SPECIFIC DATA CONTIN ROUTINE Until Discontinued | | |
| Start: 05/13/2013 11:22<br>Originally Entered: 05/15/2013 08:28<br>Last Modified: 05/15/2013 08:28 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: GLINES, EDITH D NAT<br>Modified By: GLINES, EDITH D NAT<br>Source: Written | Action: Ordered |
| Patient's height (cms or ins): 170.18<br>Instructions: height: 170.18cm/67.0in; | | |
| | | Application Source: HEO<br>Performing Dept: HEO<br>Order Group: HEODEPT<br>Placer Number: 518771165 |

Laboratory

Order 2 - Version 1

| | | |
|---|---|---|
| Comprehensive Metabolic Panel (CMP) ONCE ROUTINE 1Times | | |
| Start: 05/13/2013 10:46<br>End: 05/13/2013 10:46<br>Originally Entered: 05/13/2013 10:46<br>Last Modified: 05/13/2013 10:46 | Ordered By: BONNARENS, FRANK O. MD<br>Entered By: HAWKINS, TARA T RN<br>Modified By: HAWKINS, TARA T RN<br>Source: Written | Action: Ordered |
| | | Application Source: HEO<br>Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 517097887 |

Order 2 - Version 2

| | | |
|---|---|---|
| Comprehensive Metabolic Panel (CMP) ONCE ROUTINE 1Times | | |
| Start: 05/13/2013 10:46<br>End: 05/13/2013 10:46<br>Originally Entered: 05/13/2013 10:46<br>Last Modified: 05/13/2013 11:12 | Ordered By: BONNARENS, FRANK O. MD<br>Entered By: HAWKINS, TARA T RN<br>Modified By: STAFFID, IFE<br>Source: Written | Action: Ordered |
| | | Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 517097887 |

Order 2 - Version 3





31

Laboratory (Continued)

Order 2 - Version 3 (Continued)

| Comprehensive Metabolic Panel (CMP) ONCE ROUTINE 1 Times | | |
|---|---|---|
| Start: 05/13/2013 10:46<br>End: 05/13/2013 10:46<br>Originally Entered: 05/13/2013 10:46<br>Last Modified: 05/13/2013 11:58 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HAWKINS, TARA T RN<br>Modified By: STAFFID, IFE<br>Source: Written | Action: Completed |
| | | Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 517097887 |

Order 3 - Version 1

| Hemoglobin and Hematocrit ONCE ROUTINE 1 Times ROOM 8 | | |
|---|---|---|
| Start: 05/13/2013 10:46<br>End: 05/13/2013 10:46<br>Originally Entered: 05/13/2013 10:46<br>Last Modified: 05/13/2013 10:46 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HAWKINS, TARA T RN<br>Modified By: HAWKINS, TARA T RN<br>Source: Written | Action: Ordered |
| | | Application Source: HEO<br>Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 517097896 |

Order 3 - Version 2

| Hemoglobin and Hematocrit ONCE ROUTINE 1 Times ROOM 8 | | |
|---|---|---|
| Start: 05/13/2013 10:46<br>End: 05/13/2013 10:46<br>Originally Entered: 05/13/2013 10:46<br>Last Modified: 05/13/2013 11:11 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HAWKINS, TARA T RN<br>Modified By: HAYDEN, CHERYL R RN<br>Source: Written | Action: Canceled |
| | | Application Source: HOM<br>Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 517097896 |

Order 4 - Version 1

| CBC WO Differential ONCE ROUTINE 1 Times | | |
|---|---|---|
| Start: 05/13/2013 11:11<br>End: 05/13/2013 11:11<br>Originally Entered: 05/13/2013 11:11<br>Last Modified: 05/13/2013 11:11 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HAYDEN, CHERYL R RN<br>Modified By: HAYDEN, CHERYL R RN<br>Source: Written | Action: Ordered |
| | | Application Source: HEO<br>Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 517100055 |

Order 4 - Version 2





32

366

Laboratory (Continued)

Order 4 - Version 2 (Continued)

| CBC WO Differential ONCE ROUTINE 1 Times | | |
|---|---|---|
| Start: 05/13/2013 11:11<br>End: 05/13/2013 11:11<br>Originally Entered: 05/13/2013 11:11<br>Last Modified: 05/13/2013 11:12 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HAYDEN, CHERYL R RN<br>Modified By: STAFFID, IFE<br>Source: Written | Action: Ordered |
| | | Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 517100055 |

Order 4 - Version 3

| CBC WO Differential ONCE ROUTINE 1 Times | | |
|---|---|---|
| Start: 05/13/2013 11:11<br>End: 05/13/2013 11:11<br>Originally Entered: 05/13/2013 11:11<br>Last Modified: 05/13/2013 11:34 | Ordered By: BONNARENS, FRANK O MD<br>Entered By: HAYDEN, CHERYL R RN<br>Modified By: STAFFID, IFE<br>Source: Written | Action: Completed |
| | | Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 517100055 |

Order 20 - Version 1

| Alcohol Blood (Ethanol) ONCE STAT 1 Times | | |
|---|---|---|
| Start: 05/15/2013 08:27<br>End: 05/15/2013 08:27<br>Originally Entered: 05/15/2013 08:28<br>Last Modified: 05/15/2013 08:28 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: GLINES, EDITH D NAT<br>Modified By: GLINES, EDITH D NAT<br>Source: Written | Action: Ordered |
| | | Application Source: HEO<br>Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 518771206 |

Order 20 - Version 2

| Alcohol Blood (Ethanol) ONCE STAT 1 Times | | |
|---|---|---|
| Start: 05/15/2013 08:27<br>End: 05/15/2013 08:27<br>Originally Entered: 05/15/2013 08:28<br>Last Modified: 05/15/2013 08:38 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: GLINES, EDITH D NAT<br>Modified By: STAFFID, IFE<br>Source: Written | Action: Ordered |
| | | Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 518771206 |

Order 20 - Version 3

| Alcohol Blood (Ethanol) ONCE STAT 1 Times | | |
|---|---|---|
| Start: 05/15/2013 08:27<br>End: 05/15/2013 08:27 | Ordered By: ANESTHESIA, DOCTOR<br>Entered By: GLINES, EDITH D NAT | Action: Completed |





33

Laboratory (Continued)

Order 20 - Version 3 (Continued)

| | | |
|---|---|---|
| Originally Entered: 05/15/2013 08:28<br>Last Modified: 05/15/2013 09:05 | Modified By: STAFFID, IFE<br>Source: Written | |
| | | Performing Dept: LABORATORY<br>Order Group: Laboratory<br>Placer Number: 518771206 |





34

2900A

PROVINS, JAMES C
9981174001 51 Y M 5/15/2013
9981174

9981174001

BAPTIST HEALTH LOUISVILLE
OUTPATIENT SURGERY CENTER

# PHYSICIAN'S ORDERS/POSTOPERATIVE NOTES

## PHYSICIAN'S ORDERS

☒ Discharge Home when meets Phase II discharge criteria

Prescription(s):
☐ Given to patient/called to patient pharmacy *prior* to day of surgery
☒ Placed on chart
☐ Given to family

Patient may have first dose of:

OOW
PTC Flowdy
no chest
cremasty

5-15-13
1420

Physician Signature
Physician # 29483 Date 5/15/13 Time 9A

## PROGRESS NOTES

POSTOPERATIVE NOTE:
PRIMARY SURGEON: [illegible]
ASSISTANTS: SAnifson
PREOP DIAGNOSIS: RCT

POSTOPERATIVE DIAGNOSIS:
☒ Same as Preop Diagnosis
☐ Other:

SURGICAL PROCEDURE:
See note

SURGICAL FINDINGS: Ø

SPECIMENS REMOVED:
☒ None
☐ Other:

ESTIMATED BLOOD LOSS:
☒ Minimal < _____ cc's ☐ Other: Amount

COMPLICATIONS: Ø

Physician Signature
Physician # 29483 Date 5/15/13 Time

2900A2709 Revised 5/2009 OPTIO PAGE 1 of 1

35

2 9 0 0 A

BAPTIST HOSPITAL EAST
PHASE I / PHASE II
**RECOVERY ORDERS**

PROVINS, JAMES C
9981174001
51 Y M 5/15/2013
9981174

9981174001

## PHYSICIAN'S ORDERS

•Continue $O_2$ administration.
☐ Ventilator Settings: FIO2 ____ TV ____ cc PEEP ____ R ____ Mode ____
☐ Wean and/or extubate per $O_2$ policy unless otherwise ordered by MD.
Minineb: ☐ Unit Dose Ventolin ☐ Unit Dose Atrovent ☐ Duoneb ☐ Unit Dose Racemic Epinephrine
Stat Lab Work: ☐ ABG ☐ Electrolytes ☐ PT/PTT ☐ BMP ☐ CBC w/o Diff ☐ T&C ____ units
☐ Glucometer Check: Call Dr. ____ for glucose < ____ or > ____
☐ Stat portable CXR
☐ Stat 12 lead ECG
•Continue IV fluids from OR
☐ See Routine Orders for Analgesia-Epidural
For *PAIN* give:
# 1 Fentanyl ☑ 25-50 mcg IV q 5min prn up to 100 mcg ☐ ____ mcg IV q 5min prn up to ____ mcg If pain not relieved or allergic, then give Hydromorphone
# 2 Hydromorphone ☑ 0.25-0.5 mg IV q 5-10 min prn up to 2 mg ☐ ____ mg IV q 5-10 min prn up to ____ mg. If pain not relieved or allergic, then give Morphine Sulfate
# 3 Morphine Sulfate ☐ 1-4 mg IV q 5 min prn up to 10 mg ☐ ____ mg IV q 5 min prn up to ____ mg
Adjunctive Non-opioids ☑ Ketorolac 30 mg IV x1 ☐ Acetaminophen 120 mg PR ☐ Acetaminophen 320 mg PR
☐ Acetaminophen 1000mg IV
**Outpatients may have P.O. meds per practitioner's post-op prescription or per anesthesiologist (circle choice) 1-2 tabs x1/Pain**
•Percocet 5/325mg •Percocet 7.5/325 •Percocet 10/325 •Oxy-IR 5mg •Oxy-CR 10mg
•Lortab 5/325 •Lortab 7.5/325 •Lortab 10/325 •Lortab Elixir •Oxy-CR 15mg
•Vicoprofen 7.5 mg •Phenergan 25 mg (1 tab for nausea)
•Tylenol 500mg •Tylenol # 3 •Tylenol with Codeine Elixir •Capital with Codeine
**Pain unrelieved &/or escalating despite interventions ordered - notify the ordering anesthesiologist**
For *Anxiety*: ☑ Midazolam HCL 2 mg IV q 5 min up to 5 mg
For *Shivering*: ☐ Meperidine 12.5 mg IV. Repeat x 1 in 15min.
For *Itching*: ☐ Diphenhydramine HCL 12.5 mg IV. Repeat x 1 in 15-30min.
For *Nausea* Give: # 1 Promethazine ☑ 5mg IV q 5-10min prn up to 25 mg ☐ 12.5 mg IM ☐ 25 mg PR ☐ 25 mg PO
☐ # ____ Dexamethasone SP 4 mg IV ☐ # ____ Ondansetron 4 mg IV ☐ # ____ Metoclopramide HCL 10 mg IV
For *Hypertension*: Systolic > 190 and/or Diastolic > 100 treat with
☑ # 1 Labetalol HCL 5 mg IV q 5-10 min for max of 20 mg - hold if HR <60
☐ # ____ Enalaprilat(Vasotec) ____ mg IV
☑ # 2 Hydralazine 5 mg IV q 10-20 min up to 10 mg
•For Hypotension, bradycardia or any acute change in patient's condition, notify anesthesiologist immediately
•Once DC criteria to floor met, follow surgeon's orders
**Additional Anesthesia Orders:**

Physician Signature ____ Date 5/15/13 Time 10:45 CRNA [illegible] CRNA Date 5/15/13 Time 1120
AA Hospital Cell Phone Number:

**Phase I/Phase II/Floor Additional Orders:** ☐ Continue O2 ____ Wean per O2 protocol
☐ 24 hour continuous pulse oximetry

Physician Signature ____ Date ____ Time ____

2900A2460 Revised 7/2012 OPTIO PAGE 1 of 1

2 9 0 0 A

BAPTIST HOSPITAL EAST
SURGICAL SERVICES

# INTRAOPERATIVE ORDERS

PROVINS, JAMES C
9981174001 51 Y M 5/15/2013
9981174

9981174001

## PHYSICIAN'S ORDERS

- ☐ ABG's x
- ☐ ACT x
- ☐ Other Labs
- ☐ Type & Screen
- ☐ Type & Crossmatch units of
- ☐ FFP x
- ☐ Packed Cells x
- ☐ Whole Blood x
- ☐ Platelets x
- ☐ Albumin x
- ☐ Cryo x
- ☐ Cultures
- ☐ PRP
- ☐ Cell Saver
- ☐ X-ray
- ☐ Foley Catheter
- ☐ Straight Catheter
- ☐ Autopsy for External Exam for Fetal Parts if needed
- ☐ FCD (Foot compression device)
- ☐ CCD (Calf compression device)

Medications to Field

- 1 cc epinephrine + 3000 cc x 4
- 5,000 units Thrombin + 10% NaCl

Other

Ordered by:

Read and Verified by: A. Schuyler, RN

Date/Time 05/15/13

Physician Signature

Physician #: Date/Time

Authenticated by
DR. FRANK BONNARENS
On 06/04/2013 09:29:01 AM

## PROGRESS NOTES

BIOMET SPORTS MEDICINE
56 EAST BELL DRIVE
P.O. Box 587, WARSAW, IN 46581 USA
REF 912029
2.9MM JUG/DEBRIDOT
#2 ULTIMA MAXBRAID
#2 OLD/WHITE MAXBRAID
MP SAFE
LOT 136780 EXPIRY DATE 2018-04
AFFIX TO PATIENT RECORDS

2 9 0 0 A

PROVINS, JAMES C.
9981174001
F 51 Y M 5/15/2013
9981174

9981174001

BAPTIST HOSPITAL EAST
OUTPATIENT SURGERY CENTER

# PREOPERATIVE ANESTHESIA ORDERS

FAXED

## PHYSICIAN'S ORDERS

- ☐ H & H
- ☐ CBC ☐ w Diff
- ☐ PT
- ☐ PTT
- ☐ Serum HCG ☐ Urine HCG Pregnancy
- ☐ BMP ☐ CMP
- ☐ Potassium
- ☐ Accucheck
- ☐ EKG
- ☐ Urinalysis
- ☐ Metoclopramide 10mg IVPB
- ☑ Famotidine 20mg IV
- ☐ Glycopyrrolate 0.2 mg IV

For Anxiety:

- ☑ Midazolam 1mg IV-2mg IV may repeat x1 after 10 min
- ☐ Diazepam 5mg PO

For Pain:

- ☐ Fentanyl 25 mcg IV. May repeat after 10 min x 2.
- ☐ Nasal $O_2$ PRN / R.A. sat < _____
- ☐ Nausea and Vomiting Protocol
  - ☐ Female ☐ Hx PONV/Motion Sickness
  - ☐ Nonsmoker ☐ Postoperative Opioids

| | Sum | Level | % Risk | # of Prophylactic |
|---|---|---|---|---|
| ☐ | 0-1 | low | 10-20% | 0 |
| ☐ | 2 | mod | 40% | 1 |
| ☐ | 3 | severe | 60% | 2 |
| ☐ | 4 | very severe | 80% | 3 |

1. _____
2. Atrium Emy PA
3. _____

- ☐ Scopolamine 1.5 mg Patch/Transdermal

IV Orders

- ☐ 1000cc LR @ KVO
- ☐ Lidocaine 1% 10mg/ml SC/ID up to 1ml to IV site pm pain avoidance
- ☐ Lidocaine 70mg/Tetracaine 70mg (Synera) Patch/ Transdermal to IV site
- ☐ 1000cc/500cc NS
- ☐ No IV

☐ Hold Beta Blocker due to _____

Other

- ☐ _____
- ☐ _____

Physician Signature _____

Physician # _____ Date 5/15/13 Time _____

## PROCEDURAL ORDERS

- ☐ Fentanyl _____ mcg IV
- ☐ Midazolam _____ mg IV
- ☐ Nasal O2
- ☐ Other _____

Physician Signature _____

Physician # _____ Date _____ Time _____

## PROGRESS NOTES

FAXED

0010 Zfodlund 5-15-13 0015

2900A2701 Revised 0312

PAGE 1 of 2

# PREOPERATIVE ANESTHESIA ORDERS - OUTPATIENT SURGERY CENTER

## For Postoperative Admissions or Observation Patients
## (BHE Main OR, BHE OSC)

| TEST | INDICATION |
|---|---|
| No tests | Healthy individuals <18 yrs |
| CBC | All Adults and females <18 who have started mense. CBC w diff if documented need ie. hematologic disorder, recent chemo, etc. |
| BMP | Individuals with HTN, ASCVD, Diabetes, renal failure, or individuals on diuretics or multiple meds<br>Repeat K+ AM of OR if PAT K is < 3.0 or >5.0 |
| CMP | Individuals with history of Hep B or C, liver disease, or excessive alcohol intake |
| PT/PTT | Individuals on anticoagulant therapy (coumadin), history of liver disease, and excessive ETOH use |
| K | Repeat AM of surgery if K level is < 3.0 or > 5.0 |
| Accucheck | AM of surgery on all diabetics |
| EKG | On ALL patients > 60 years of age<br>Individuals with HTN, CAD, h/o arrythmias, recent chest pain not worked up, Diabetes on medication, SOA on minimal exertion, Sleep Apnea (diagnosed), Morbid obesity (BMI >30), and h/o Murmur (based on APRN judgement)<br>***EKG done within prev 6 months acceptable if pt history unchanged!** |
| CXR | Individuals with h/o COPD, severe asthma, recent pulmonary disease (i.e. pneumonia etc), CHF |
| Serum HCG | All females with intact uterus from menses to menopause. Can be done up to 6 days prior to surgery, otherwise do urine AM of surgery. |
| ABG's | Individuals with SaO2 <90% |
| C-spine X-rays | Individuals undergoing general anesthesia with a h/o rheumatoid arthritis on steroids, and individuals with Down Syndrome. Check with ARNP or AA if questions. |

## For Patients Having Outpatient Surgery
## (BHE Main OR, BHE OSC)

| TEST | INDICATION |
|---|---|
| No tests | Healthy individuals <18 yrs. |
| H & H | H/O anemia in past year<br>Any patient having a surgery that could experience a significant blood loss<br>Any patient with significant cardiac and/or pulmonary disease<br>All patients with h/o hematologic disorder |
| K | Day of surgery if on diuretics and not previously measured. Repeat day of surgery if <3 or >5 |
| BMP | Patients with CAD, Diabetes, Renal failure, or patients on diuretics or multiple meds. |
| CMP | History of Hep B or C, liver disease, or excessive ETOH intake |
| PT/INR | Patients on anticoagulant therapy (coumadin), h/o liver disease, excessive ETOH intake |
| Accucheck | All diabetics day of surgery |
| EKG | On ALL patients > 60 years of age, HTN, CAD, h/o arrythmias, recent chest pain not worked up, h/o diabetes on medication, SOA w/ minimal exertion, PVD, Sleep apnea (diagnosed), morbid obesity (BMI>30), h/o valvular disease that requires treatment.<br>* EKG within past 6 months acceptable if no change in pt history |
| CXR | Individuals w/ h/o COPD, severe asthma, recent pulmonary disease, CHF |
| Serum HCG | ALL females menses to menopause with intact uterus. Do within 6 days of surgery, or do urine HCG day of surgery |
| ABG's | Individuals with SaO2 <90% |

BAPTIST HOSPITAL EAST
Dr. Frank Bonnarens
PREOPERATIVE ORDERS

FAXED

PROVINS, JAMES C M
BONNARENS, FRANK O.
05/15/13 51Y 9981174001

| PHYSICIAN'S ORDERS | PROGRESS NOTES |
|---|---|
| 1. Cefazolin 1 gm IV pre-op for weight < 175 lbs<br>Cefazolin 2 gms IV preop for weight ≥ 175 lbs<br><br>2. If allergic to PCN give **weight based** Vancomycin<br>750 mg IV for weight < 154 lbs<br>1 gm IV for weight 154 lbs thru 219 lbs<br>1250 mg for weight ≥ 220 lbs<br><br>3. Femoral sciatic blocks on all knees<br><br>4. Calf compression device on non-operative leg<br><br>5-15-13 | |
| Physician Signature<br>Physician # Date/Time | |

2900A Revised / new 2/2013 PRINT SHOP PAGE 1 of 1

2 9 0 0 A

BAPTIST HOSPITAL EAST

Poor original

PROVINS, JAMES C M
BONNARENS, FRANK O
05/15/13 51Y 9981174001

## SURGERY ORDER

☐ PREADMISSION TESTING (Fax: 259-5937) ☐ MAINOR (Fax: 897-8872) ☒ OSC (Fax: 259-4209)

SURGERY DATE: 5/15/13 SURGERY TIME: _____ PATIENT ARRIVAL TIME: 8:50A

PATIENT NAME: provins (LAST) James (FIRST) MIDDLE INITIAL _____ DOB: 6/29/61

PHYSICIAN: Bonnarens

Diagnosis: pain

For Permit: Specify surgical sites with laterality. Please indicate Right, Left or Bilateral. For surgical sites with level, digit, teeth or lesion, please indicate specific site. Abbreviations are not to be used on permit.

Permit/ Primary Procedure: right shoulder arthroscopy, rotator cuff tear, mumford

Permit/ Secondary: _____

Permit/ Additional Procedure: _____

PREADMISSION TESTING APPOINTMENT: DATE: _____ TIME: _____

**Pre-Admission Orders**

☒ Implement Anesthesia orders day of surgery
☒ Implement Surgeon's orders day of surgery
☒ Other: BMA

5-15-13 ONS

PHYSICIAN SIGNATURE: Bonnarens DATE: 5/14/13 TIME: 1160

2900A2695 Revised 4/2013 PAGE 1 of 1

41

5/15

FRANK O. BONNARENS, M.D.
ORTHOPAEDIC ASSOCIATES

Jewish Outpatient Care Center
225 Abraham Flexner Way, Ste 403
Louisville, KY 40202
Telephone: (502) 585-4376

Preston Medical Center
2926 Preston Highway, Ste 103
Louisville, KY 40219
Telephone: (502) 969-2302

Northeast
2404 Term Crossing Blvd, Ste 40
Louisville, KY 40243
(502) 585-4376

Name: James Provins

Date: 05/10/2013

5/13 12:20
CBC, CMP, EKG
Dx Obesity, 8 104 dress
[illegible]

DOB:
Anesthesia guidelines
Surgery: 05/15/2013
PPT: 05/13/2013

Refill NR 1 2 3 4 5

Surgery date: Bonnaren md
Park towers Bonnarens

Each pad is for 1 more than one (1) prescription is written per blank

[illegible]
1102
5/13/13

PROVINS, JAMES C
BONNARENS, FRANK O.
05/15/13 517 M
9981174001

5/15

FRANK O. BONNARENS, M.D.
ORTHOPAEDIC ASSOCIATES

Jewish Outpatient Care Center
225 Abraham Flexner Way, Ste 403
Louisville, KY 40202
Telephone: (502) 585-4376

Preston Medical Center
7926 Preston Highway, Ste 103
Louisville, KY 40219
Telephone: (502) 969-2302

Northeast
2401 Terra Crossing Blvd, Ste 40
Louisville, KY 40245
(502) 585-4376

Name James Provins Date: 05/10/2013

DOB
Anesthesia guidelines
Surgery: 05/15/2013
PPT: 05/13/2013

Refill NR 1 2 3 4 5

Surgery date: Bonnarens and Bonnarens
Park towers

Each blank is void if more that one (1) prescription is written per blank.

PROVINS, JAMES C 9981174001 ****174

PROVINS, JAMES C
BONNARENS, FRANK O.
05/15/13
51Y
9981174001

**Final Discharge Cumulative Report**
Printed: 05/16/2013 23:32
Run: R1313607

Baptist Health Louisville Laboratoryy
4000 Kresge Way, Louisville, Kentucky 40207
Christopher M. Kauffmann, M.D. Laboratory Medical Director
John A. Lloyd, M.D. Respiratory Medical Director

Patient: PROVINS, JAMES C
Acct: 9981174001

Location: E OPS Center
Adm Physician: Bonnarens, Frank O, MD

## *Hematology*

| | | Reference | Units |
|---|---|---|---|
| Blood Collected | 05/13 10:55 | | |
| Released | 05/13 11:34 | | |
| Ord Physician | Bonnarens, Frank C, MD | | |
| WBC | 5.71 | 4.50-10.70 | K/Cumm |
| RBC | 5.16 | 4.60-6.00 | Million |
| Hemoglobin | 15.3 | 13.7-17.6 | g/dL |
| Hematocrit | 43.6 | 40.4-52.2 | % |
| MCV | 84.5 | 79.8-96.2 | fL |
| MCH | 29.7 | 27.0-32.7 | pg |
| MCHC | 35.1 | 32.6-36.4 | g/dL |
| RDW | 13.4 | 11.5-14.5 | % |
| Platelet | 212 | 140-500 | K/Cumm |

Final Discharge Cumulative Report
Printed: 05/16/2013 23:32
Run: R1313607

Baptist Health Louisville Laboratoryy
4000 Kresge Way, Louisville, Kentucky 40207
Christopher M. Kauffmann, M.D. Laboratory Medical Director
John A. Lloyd, M.D. Respiratory Medical Director

Patient: PROVINS, JAMES C
Acct: 9981174001

Location: E OPS Center
Adm Physician: Bonnarens, Frank O, MD

## Chemistry

| | | | | |
|---|---|---|---|---|
| Blood Collected | 05/15 08:29 | 05/13 10:55 | | |
| Released | 05/15 09:05 | 05/13 11:58 | Reference | Units |
| Ord Physician | ANESTHESIA, DOCTOR | Bonnarens, Frank O, MD | | |
| Glucose | | **138 H** | 74-106 | mg/dL |
| BUN | | 10 | 6-20 | mg/dL |
| Creatinine | | 0.71 | 0.70-1.20 | mg/dL |
| Sodium | | **132 L** | 136-145 | mmol/L |
| Potassium | | 3.8 | 3.5-5.0 | mmol/L |
| Chloride | | **92 L** | 98-107 | mmol/L |
| Carbon Dioxide | | 23 | 22-29 | mmol/L |
| Calcium | | 9.4 | 8.6-10.0 | mg/dL |
| Total Protein | | 7.7 | 6.4-8.3 | g/dL |
| Albumin | | 4.4 | 3.5-5.2 | g/dL |
| ALT | | **128 H** | 5-41 | U/L |
| AST | | **141 H** | 5-40 | U/L |
| Alkaline Phos | | 60 | 40-129 | U/L |
| Bilirubin,Total | | 0.6 | 0.1-1.2 | mg/dL |
| Est MDRD GFR | | >60 | | ml/min/1.732 |
| Alcohol,Ethyl | <10 | | 0-10 | mg/dL |

| | |
|---|---|
| GFR Normal | >60 |
| Chronic Kidney Disease | <60 |
| Kidney Failure | <15 |

Patient: PROVINS, JAMES C
1 51Y/M
MRN: 9981174

Location: EOSC
Admit: 05/15/2013
Printed: 05/16/2013 23:32



45

Final Discharge Cumulative Report
Printed: 05/16/2013 23:32
Run: R1313607

Baptist Health Louisville Laboratoryy
4000 Kresge Way, Louisville, Kentucky 40207
Christopher M. Kauffmann, M.D. Laboratory Medical Director
John A. Lloyd, M.D. Respiratory Medical Director

Patient: PROVINS, JAMES C
Acct: 9981174001

Location: E OPS Center
Adm Physician: Bonnarens, Frank O, MD

***Cancelled Tests***

| Collection Date | Specimen | Test Name | Reason |
|---|---|---|---|
| 05/13/2013 10:46 | Blood | Hgb and Hct | Canceled by Patient Ordering System |

9981174 PROVINS, JAMES C 13-May-2013 11:18:47

Male

Dept. PAT
Room: -
Oper: MR

| | | | |
|---|---|---|---|
| HR | 81 | [SR] | . SINUS RHYTHM |
| | | [NPT] | * NO PRIOR TRACING AVAILABLE FOR COMPARISON |
| PR | 176 | [NSSTT] | * NON-SPECIFIC ST-T WAVE CHANGES |
| QRSD | 88 | | |
| QT | 360 | | |
| QTc | 418 | | |

-- AXIS --

| | |
|---|---|
| P | 78 |
| QRS | 79 |
| T | 56 |

Order #: 517097914
Enc ID: 9981174001

- NORMAL ECG -

Standard 12
Requested By: BONNARENS, FRANK

Baptist Healthcare System - Baptist East (1-00-17) Edited Confirmed by: Rogers, Paul, MD 13-May-2013 21:28:27

Device: PAT Speed: 25 mm/sec Limb: 10 mm/mV Chest: 10 mm/mV F 60~ 0.5-100 Hz W PH090A b L P?

# BAPTISTWORX

PROVINS, JAMES

## Physical Therapy Initial Evaluation
## Special Report

HISTORY

M.D.: Bonnaring
DIAGNOSIS: R SHOM AGE:

BACKGROUND
DATE OF INJURY / SURGERY? 1/2/12 / 3-4 wks ago INSIDIOUS? Y / N
MECHANISM OF INJURY? Dragging a desk - S HOM pain
Sx PCR - 2 surgeon teams

OTHER HEATLH CARE INTERVENTION? Sx ; PT? w/ SC ~ Sx ; out of sling

PAST MEDICAL HISTORY: HTN (no meds)

ANY KNOWN ALLERGIES? NKDM LATEX Y / N

RHD

CURRENT MEDICATIONS? Lortab 7.5

LIFE STYLE

OCCUPATION 30 yrs. Iron worker - Gas off

ADL'S / REGULAR PHYSCIAL ACTIVITIES? Q outside nl

RECENT DIAGNOSTIC TESTS? MRI CAT SCAN X-RAY
OTHER
RESULTS? 2 large tears
PER MD OR PATIENT

PAIN

COURSE OF PAIN: worse since Sx

PRIMARY COMPLAINT / LOCATION whole SHOM

NATURE: CRAMP ACHE SHOOT BURN THROB
STAB SORE NAGGING

OTHER:
RADICULAR SYMPTOMS:
NUMBNESS / TINGLING:

PAIN RATING: CONSTANT INTERMITTENT

0 1 2 3 4 5 6 7 8 9 10

48

# BAPTISTWORX

Physical Therapy Shoulder Evaluation Special Report

Nar PROVINS JAMES

Dat

RE

Observation/posture: Guarding flexion, incision scars sl. red, tent healing

Palpation: Ant Aspect GHJ (R)

| ROM: | Patient position | L A/P | R A/P | Comments |
|---|---|---|---|---|
| Shoulder flexion: | | | ~90° | |
| Extension: | | | | |
| External rot: | | | 26° | in Neutral |
| Internal rot: | | | 52° | (to abdomen) |
| Abduction: | | | ~100° | |
| Elbow: | | | | |
| Cervical: | | | | |

| MMT: | Patient position | L | R | Comments |
|---|---|---|---|---|
| Shoulder flexion: | | | | |
| Abduction: | | | | |
| ER: | | | | |
| IR: | | | | |
| Extension: | | | | |
| Elbow flexion: | | | Deferred | |
| Extension: | | | | |
| Upper trap: | | | | |
| Middle trap: | | | | |
| Lower trap: | | | | |
| Rhomboids: | | | | |
| Supraspinatus: | | | | |
| Serratus: | | | | |
| Other: | | | | |

| Reflexes: | NT | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Biceps | L: | 0 | 1 | 2 | 3 | R: | 0 | 1 | 2 | 3 |
| | Brachioradialis | L: | 0 | 1 | 2 | 3 | R: | 0 | 1 | 2 | 3 |
| | Triceps | L: | 0 | 1 | 2 | 3 | R: | 0 | 1 | 2 | 3 |

| Sensation: Intact? Yes No | L | R |
|---|---|---|
| Light touch | | |
| Sharp/dull | | |
| Proprioception | | |

| Grip strength: | L | R | Comments |
|---|---|---|---|
| Position I II III IV V | | | |
| Position I II III IV V | | | |
| Position I II III IV V | | | |

BAPTISTWORX | PROVINS, JAMES

ID

Physical Therapy Initial Evaluation
Special Report

AGGRAVATED BY: Roll over on it, bend up, move it

DECREASED BY: Rest

24 HOUR PATTERN:

DISRUPT SLEEP (Y) / N

SLEEP POSITION? SIDELYING R (L) SUPINE PRONE

PILLOWS? propped up

JOINT CHARACTERISTICS: (0) CATCHES LOCKS SWELLS POPS GIVES AWAY DISLOCATES

PATIENT GOALS? Get Better

PATIENT PARTICIPATED IN PLAN OF TREATMENT AND GOAL SETTING? (Y) / N

O: SEE OBJECTIVE DATA ON ATTACHED SHEET

ASSESSMENT & PLAN:

SEE PLAN OF TREATMENT FORM FOR ASSESSMENT, GOALS AND PLAN.

SIGNATURE [signature] PT #3603

6/7/13

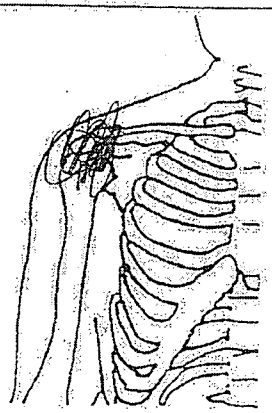
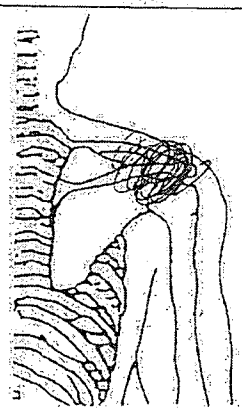
# BAPTISTWORX

Physical Therapy Shoulder Evaluation Special Report

**HERE**

PROVINS, JAMES

| Special tests: | | | | Comments |
|---|---|---|---|---|
| Drop arm test | + | - | NT | |
| Empty can test | + | - | NT | |
| Speed's test | + | - | NT | |
| Yergason's test | + | - | NT | |
| Impingement sign | + | - | NT | |
| Painful arc | + | - | NT | |
| Thoracic outlet | + | - | NT | |
| A/C mobility | + | - | NT | |
| Scapular mobility | + | - | NT | |
| Apprehension sign | + | - | NT | |
| Clunk test | + | - | NT | |
| Sulcus sign | + | - | NT | |
| Capsule mobility | + | - | NT | |
| O'Brien's test | + | - | NT | |
| A/P/MD instability | + | - | NT | |
| Other | + | - | NT | |

| Ant | Post |
|---|---|
|  |  |

Treatment: ___ MH x ___ min to _____; ✓ Ice x 15 min to CKS

___ US (cont/pulsed ___%) ___ MHz @ ___ wts/cm2 x ___ min to _____

___ Ionto ___ mA/min @ ___ mA to _____

✓ Estim ___ IFC ___ Pre-mod ___ combo to (M) STIM

10 Patient positioned ___ supine ___ prone ___ sidelying L R

___ Other PROM AG FLEX @ STIM ELLIP. PA, ABD, GH/ST OSCILLATION BALLS

Exercises: ARM & CANE – ER NEUTRAL x10, PENDULUM x10 – CANE

TABLE SLIDES x10 SCAP PINCH x10 PULLEY FF x10

Education: ARTHRITIS, PAIN, RATIONALE + POT

Signature: _____ MOTS #3609 Date: 6/7/13

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: Phillips, Tonia
Patient #: 9356
Date: 6/12/13

Time In: 2:20 Time Out: 3:14

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
Doing OK F Guess - still hurts

**OBJECTIVE:** Observation/Posture/Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: ES Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 15 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other: (P) SLHM

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour pad
Location:

Traction 97012: RX Minutes: S/I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140, 11 Ther Exercise 97110, 23 NMR 97112, Ther Act 97530, Gait Training 97116,
Other Procedure CPT Minutes

✓ See Attached Flow Sheet(s) (Exercise and Manual PT)
☐ TM
☐ UBE
☐ Bike

GAIT PATTS SCAP FGHS (P)
Pain AS TOL (P) SLHM
F&C Board

Timed Code Treatment Minutes 34 Minutes Total Treatment Time: 54 Minutes

**PATIENT EDUCATION:**
☑ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** Good improvement as far c̄ AA/PLSM but still c̄ notable tight F&C grinding + pain

**PLAN:**
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e. Cont to focus on P/AAROM & 3/5 min [illegible]
Other:

**SIGNATURE:** DATE: 6/12/13

Kim Abell, PT, OCS 3609 Stacy Johnson PTA A1181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: Prawns, Jane
Patient #:
Date: 11 June 13

Time In: Time Out:

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
pt vague historian & poor / reluctant communicator initially eventually states "high blood pressure" & "I had to go to court again to make them pay for my (injury)"

**OBJECTIVE:** Observation/ Posture/ Gait: Disheveled / Shocking Tramp Type presentation

Palpation:

AROM: N 30-40 Abduct Rt

Strength: NT

Special Tests: BP taken x 2 ~ 130/88 pt advised to monitor

Abdom ~ 75° ↓ pelvis

**PROCEDURES & MODALITIES**

MH: Ice CESM Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp: 17
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other: Sacral & Shld
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: S/T Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140, Ther Exercise 97110, 35 NMR 97112, Ther Act 97530, Gait Training 97116
Other Procedure CPT Minutes

☐ **See Attached Flow Sheet(s) (Exercise and Manual PT)**
☐ TM
☑ UBE → 97110 – Cont'd & consult atten c̄ mit exer technique was required as pt is very erratic c̄ his exe technique. Axial spine ward bent for flexion & AB/Add bed creatively dec as pt repeatedly demonstrates Valsalva Sx c̄ ↑ bed time, "thorax", etc & pt is repeatedly advised dec holding breath while straining. Cat at other exercises problem subsides when el
☐ Bike:

NO MANUAL – 97140 NOSS

**Timed Code Treatment Minutes** 35 **Minutes** **Total Treatment Time:** 62 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:**
(1) Pt not exercise tol upper end of movement, hips rotate
(2) Obvious signs of ETOH abuse & his presentation (e.g. tremors, yellow-red eyes, erratic, agitated) el
(3) Overall he did comply c̄ pt but recovery may be prolonged

**PLAN:**
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e. CoA Mon Mths per 1° PT
Other:

**SIGNATURE:** **DATE:** 11 June 13

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Scott Miller, PTA A1181

**BAPTIST PHYSICAL THERAPY**
Daily Progress Note

Patient Name: James Provins
Patient #: 8356
Date: 6/14/13

Time In: 2:06 Time Out: 2:52

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
Out of pain pills but not hurting (R) right Now but amount still hurts

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: ☑ Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☑ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp: _____
RX Minutes: Supervised 97014 _____ / 15 Constant Attend 97032 _____ UNattended G0283 _____
Location / Electrode Placement/ Other: (R) shoulder
Ultrasound 97035: RX Minutes: _____ Combo Rx 97032: Minutes: _____ Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: _____ x _____ milliamps _____ MA/min *Dexamethasone used:* ____ Lg / Med / Sm / Butterfly / 24 hour pad
Location:
Traction 97012: RX Minutes: _____ S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: _____ / Hold _____ / Relax _____ Progression _____ / Regression _____

**RX Minutes:** Manual PT 97140, 10 Ther Exercise 97110, 17 NMR 97112, _____ Ther Act 97530, _____ Gait Training 97116 _____
Other Procedure CPT: _____ Minutes _____
☑ **See Attached Flow Sheet(s) (Exercise and Manual PT)** Bonus time Rec
☐ TM
☐ UBE: Grade mobs (R) SCAR + GHJ
☐ Bike: from Ax tol GHJ in ER, IR, FF, ABD

**Timed Code Treatment Minutes:** 27 **Minutes** **Total Treatment Time:** 46 **Minutes**

**PATIENT EDUCATION:**
☑ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☑ Other

**ASSESSMENT:** Goals on Plan, FF + ABD still tight but improving IR most tight; Pain not constant now

**PLAN:**
☐ Progress per Plan Of Care Continue
☐ Progress strengthening / stabilization / functional activity i.e. Capsular stretches
Other:

**SIGNATURE:** [signature] **DATE:** 6/14/13

Craig Smith, PT 1214 Kim Abell, PT, OCS 3609 Sarah Miller, PTA A1181



54

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name [illegible]
Patient #
Date: 6/18/13

Time In: 2:45 Time Out: 4:10

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
(R) [illegible] limits, [illegible] mobility affecting ADLs. Q/A of pain meds; [illegible]

**OBJECTIVE:** Observation/ Posture/ Gait:
[illegible]
Palpation:

| AROM: | [illegible] | [illegible] | Strength: | Special Tests: |
|---|---|---|---|---|
| (R) [illegible] | 135° | 130° | | |
| [illegible] | 45° | 45° | | |

IR (60° abd) → 60° (to belly)
ER (60° abd) → 45°

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other: [illegible] (R) [illegible]
Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS. Max mAmp:
RX Minutes: Supervised 97014 [illegible] Constant Attend 97032: UNattended G0283:
Location / Electrode Placement/ Other: (R) [illegible] OA/post [illegible] UT/lx [illegible]
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax. Progression / Regression

RX Minutes: Manual PT 97140, 25 Ther Exercise 97110, 20 NMR 97112, Ther Act 97530, 16 Gait Training 97116
Other Procedure CPT Minutes

**See Attached Flow Sheet(s) (Exercise and Manual PT)**

☐ TM
☐ UBE:
☐ Bike:

Manual therapy [illegible]
- [illegible] (R) [illegible]
- [illegible] joint mobilization grade I / II (R) [illegible]
- [illegible] (R) [illegible]

[illegible]
[illegible]

Timed Code Treatment Minutes 61 Minutes. [illegible] Total Treatment Time: 88 Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

Home ex, pacing
Ventilatory techniques
cues to relax & [illegible] exercises
- Posture
- Continue; Perform ex properly
- Aim positions; [illegible] on techniques

**ASSESSMENT:**
Patient (R) to [illegible] upper extremity discomfort & pain intensity, able to relax & ventilate better cues. Patient's pain flares [illegible] limits by pain/[illegible] (R) [illegible]. Ventilatory cues [illegible] proper ex performance

**PLAN:**
Continue manual therapy techniques to + (R) [illegible]
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e.
Progress thera ex/activity as appropriate
Other:

SIGNATURE: [illegible] PTA 11861 DATE: 6/18/13
Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Sean Sullivan, PTA A1181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Powers
Patient #: 8356
Date: 6/19/13

Time In: 10:51 Time Out: 11:50

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
Hamstrings

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Bag Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 15 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other: (R) Sciatic
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min Dexamethasone used Lg / Med / Sm / Butterfly / 24 hour-pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140 16 Ther Exercise 97110 24 NMR 97112 Ther Act 97530 Gait Training 97116
Other Procedure CPT Minutes

✓ See Attached Flow Sheet(s) (Exercise and Manual PT)
☐ TM
☐ UBE:
☐ Bike:

GR II Mobs – GHJ + Scapula (R)
Prone As tol FF, ABD (Scapular, Int, Ext

Timed Code Treatment Minutes 40 Minutes Total Treatment Time: 59 Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** ER Plane impairment mainly but cont c̄ moderate tightness c̄ others, especially c̄ IR + ABD, scapular mobs tightness as well

**PLAN:**
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e. UE + Core strengthening
Other:

SIGNATURE: MA OCS DATE: 6/19/13

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Sean Sullivan, PTA A1181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Powers
Patient #: 6356
Date: 6/21/13

Time In: 2:39 Time Out: 3:42

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10

Hurts when I get my arm in certain spots - OK
c arm at side - pain c raising it

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: 3x5 Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☑ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014: 15 Constant Attend 97032: Unattended G0283:
Location / Electrode Placement/ Other: Bilat
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: X milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 17 Ther Exercise 97110: 26 NMR 97112: Ther Act 97530: Gait Training 97116:
Other Procedure CPT: Minutes:

☑ **See Attached Flow Sheet(s) (Exercise and Manual PT)** Rotator stretching
☐ TM
☐ UBE:
☐ Bike:
Grade II mobs (P) GH & GHJ
Prone IR, full ER, abd/scaption, IR, ER
GH & ER stretching as tol

Timed Code Treatment Minutes: 43 Minutes Total Treatment Time: 63 Minutes

**PATIENT EDUCATION:**
☑ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** Cont c significant posterior capsular tightness (limiting Rom), both post limited testing c IR + ER + Pain AND ER + scaption improving

**PLAN:**
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e. Cont c focus on stretching + Rom
Other:

**SIGNATURE:** MOUS **DATE:** 6/21/13

57

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Sean Sullivan PTA A1181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: Jonny Provins
Patient #: 8356
Date: 6/24

Time In: 2:51 Time Out: 3:52

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
NSAME

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: 35 Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014: 15 Constant Attend 97032: UNattended G0283:
Location / Electrode Placement/ Other: (R) Stim
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140, 17 Ther Exercise 97110, 25 NMR 97112, Ther Act 97530, Gait Training 97116
Other Procedure CPT Minutes

☐ **See Attached Flow Sheet(s) (Exercise and Manual PT)**
☐ TM
☐ UBE
☐ Bike

(R) Scap Mobs
(R) GHJ Glide Mobs
Pain in Trap: In, on, ft, sensitive
Front AND, Rz Diagram
UT + LSO Stretches

Timed Code Treatment Minutes 42 Minutes Total Treatment Time: 60 Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** Pt c̄ notable tightness, posterior capsule affecting proper GH motion; pain gradually improving, but c̄ notable weakness + pain

**PLAN:**
☐ Progress per Plan Of Care: focus on scapular mobility as well as GH mobility
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

SIGNATURE: MV, OCS DATE: 6/24/03
Kevin Abell PT, OCS 3600 Jason Hinman PTA A11181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Pow
Patient #
Date: 6/26/13

Time In: 2:30 Time Out: 3:50

SUBJECTIVE: Pain 0 1 2 3 4 5 6 7 8 9 10
Still feel like I can't raise arm. Pain still there all the time stiffness

OBJECTIVE: Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

Flex 130° 145 Pain
Abd 90° 120 Pain
IR (behind) 65° 80° Pain
ER (behind)

PROCEDURES & MODALITIES

MH: Ice: Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: IFC Pre-Mod FES HVGS Max mAmp:
RX Minutes: Supervised 97014: Constant Attend 97032: UNattended G0283:
Location / Electrode Placement/ Other:
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min Dexamethasone used Lg / Med / Sm / Butterfly / 24hour-pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
Lumbar Cervical Weight: / Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140: 20 Ther Exercise 97110: 28 NMR 97112: Ther Act 97530: 5 Gait Training 97116:
Other Procedure CPT: Minutes:

See Attached Flow Sheet(s) (Exercise and Manual PT)

TM
UBE
Bike:

Timed Code Treatment Minutes 53 Minutes Total Treatment Time: 80 Minutes

PATIENT EDUCATION:
Purpose of Rx Orthotic/ Splint Usage
Proper body mechanics Posture
Compliance with HEP Other

ASSESSMENT:
Pt presents with pain/weakness limiting activity tolerance. Pain limits ROM. Last measurement. Adaptive equipment required for daily activities. Continue to monitor progress.

PLAN: Measure ROM, MMT, functional goals, continue as tolerated

Progress per Plan Of Care
Progress strengthening / stabilization / functional activity i.e:
Other:

SIGNATURE: Sean Sullivan PTA DATE: 6/26/13

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Sean Sullivan PTA A1181

59

**BAPTIST PHYSICAL THERAPY**
Daily Progress Note

Patient Name James Prince
Patient #
Date: 6/28/13

Time In: 1:45 Time Out: 2:40

SUBJECTIVE: Pain 0 1 2 3 4 5 6 7 8 9 10

OBJECTIVE: Observation/ Posture/ Gait:

Palpation:

~~AROM~~ Strength: Special Tests:

| | | |
|---|---|---|
| Flex 143° | 90 (AROM=120) | Abd 63° |
| Ext 145° | 80° | Add 60° |
| Rot (L side) 80 | 80° | Flex thoracic & lumbar |
| Rot (R side) 52° | 45° | Ext thoracic & lumbar |

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 Unattended G0283
Location / Electrode Placement/ Other:
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min Dexamethasone used Eg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140, 15 Ther Exercise 97110, 25 NMR 97112, Ther Act 97530, 13 Gait Training 97116
Other Procedure CPT Minutes

See Attached Flow Sheet(s) (Exercise and Manual PT)

☐ TM
☐ UBE:
☐ Bike:

Timed Code Treatment Minutes 53 Minutes Total Treatment Time: 55 Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** Progression / #3

See MD letter

**PLAN:** To see 7/1 Start functional exercises

☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

SIGNATURE: DATE: 6/28/13

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Jason Gillman PTA A1181

60

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James [illegible]
Patient #
Date: 7/2/13

Time In: 3:15 Time Out: 4:25

**SUBJECTIVE:** Pain: 0 1 2 3 4 5 6 7 8 9 10
Returns [illegible] to continue PT.

**OBJECTIVE:** Observation/ Posture/ Gait:
[illegible]
Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:
[illegible]

Electrical Stimulation: IFC Pre-Mod FES HVGS Max mAmp:
RX Minutes: Supervised 97014 15 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other: [illegible]

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour pad
Location:

Traction 97012: RX Minutes: S/1 Position: Program:
Lumbar Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140 28 Ther Exercise 97110 20 NMR 97112 Ther Act 97530 5 Gait Training 97116
Other Procedure CPT Minutes

**See Attached Flow Sheet(s) (Exercise and Manual PT)**

TM
UBE:
Bike:
[illegible]

[illegible]

**Timed Code Treatment Minutes** 53 **Minutes** **Total Treatment Time :** 75 **Minutes**

**PATIENT EDUCATION:**
Purpose of Rx Orthotic/ Splint Usage
Proper body mechanics Posture
Compliance with HEP Other
[illegible]

**ASSESSMENT:**
[illegible]

**PLAN:**
Progress per Plan Of Care [illegible]
Progress strengthening / stabilization / functional activity i.e. [illegible]
Other:

**SIGNATURE:** [illegible] **DATE:** 7/2/13

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 [illegible] PTA A1181

61

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Pt. Name: James Brown
Patient #:
Date: 7/3/13

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10 Time In: 1:20 Time Out: 2:30

(R) Shoulder feeling a little better, still painful but getting [illegible]

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice Paraffin 97018 Vasopneumatic 97016 Rx Minutes: Location / Other:
Pain (R) shoulder x 15m

Electrical Stimulation: ☒ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 15(x7) Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other: (R) shoulder, supraspinatus

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour patch
Location:

Traction 97012: RX Minutes: S/L Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140, 25 Ther Exercise 97110, 20 NMR 97112 Ther Act 97530 Gait Training 97116
Other Procedure CPT Minutes

**See Attached Flow Sheet(s) (Exercise and Manual PT)**

☐ TM
☒ UBE: Manual therapy (R) shoulder
☒ Bike:
- Pain management/stabilization, flex, abd, IR/ER
- Pain management/stabilization, flex, abd, IR/ER
- Strengthening rotators, scapular stabilizers
- Pain management (R) shoulder

**Timed Code Treatment Minutes:** Minutes 17 min **Total Treatment Time:** 70 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:**

Pain improving (R) shoulder, AROM remains limited & painful, GHJ mobility still compromised. Therapy should slowly progress / complete a return to apply this week.

**PLAN:**
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

Continue therapy / extend as appropriate. Continue manual, PROM, L.S. & Pain management. Pain GHJ movement.

SIGNATURE: [signature] PTA 11181 DATE: 7/3/13

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Scan [illegible] PTA A1181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Prowitz
Patient #: 8356
Date: 7/5/13

Time In: 1:15 Time Out: 2:15

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10

No Better c Pain c Motion No Better

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

Pain Flex 149° ABD 150°
ER 90° IR 67°
IR ~60° ABD

**PROCEDURES & MODALITIES**

MH: Ice: 25 Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 15 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other: Shoulder
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour patch
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140 24 Ther. Exercise 97110 16 NMR 97112 Ther Act 97530 Gait Training 97116
Other Procedure/ CPT Minutes

☐ **See Attached Flow Sheet(s) (Exercise and Manual PT)**
☐ TM:
☐ UBE:
☐ Bike:

(8) Scap Mobs GR II/III
(2) Glenohumeral Mobs GR II
Pain Rs tol

**Timed Code Treatment Minutes** 40 **Minutes** **Total Treatment Time:** 60 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** Very slow improvement c pt Pain but still limits ADL's c notable Antalgic, Wear fright Pain Bad mm, New Goals x 4 wk: — (1) Pain FF + ABD ≥160° (2) ARom FF + ABD ≥120° c min substitution (3) IR + ER Rotation ≥ WFL (4) Strength ≥ 4/5 (Pain Free Motion) (5) Pain ≤ 4/10 c ADLs

**PLAN:**
☐ Progress per Plan Of Care Manual Pain Mobs, Stretching, Rom
☐ Progress strengthening / stabilization / functional activity i.e. Cont c therex - progress Rs. / pain tol
Other: Modalities pm

**SIGNATURE:** **DATE:** 7/5/13

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Sean Sullivan, PTA A1181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: JAMES PROVINS
Patient #: 8356
Date: 7/8/13

Time In: 1:07 Time Out: 2:10

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
~ SAME ↳ ⓒ MOVEMENT

SEE RE-EVAL

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: ⓒ STIM Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 15' Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other: (R) SHD
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140, 25 Ther Exercise 97110, 28 NMR 97112, Ther Act 97530, Gait Training 97116
Other Procedure CPT Minutes

✓ **See Attached Flow Sheet(s) (Exercise and Manual PT)**
☐ TM
☐ UBE:
☐ Bike:

MANUAL: SCAP MOBS GR II / III
GH JT: PROM, GR III - IV JT MOBS IN ALL PLANES

**Timed Code Treatment Minutes** 48 ~~53~~ 48 **Minutes** **Total Treatment Time:** 63 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☑ Other SCAPULAR MOBILITY

**ASSESSMENT:** SEE POC / RE-EVAL

**PLAN:**
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

**SIGNATURE:** [signature] PT, DPT **DATE:** 7-8-13

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Sean Smith, PTA A1181

64

*BAPTIST PHYSICAL THERAPY*
Daily Progress Note

Patient Name: James Powers
Patient #: 8356
Date: 7/10/13

Time In: 1:07 Time Out: 2:10

SUBJECTIVE: Pain 0 1 2 3 4 5 6 7 8 9 10
"Hurting" – same, can't push off on (R) getting out of bed + still difficult moving standing / sitting but more movement laying down

OBJECTIVE: Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests: (+) Patrick's (Int) [illegible]

PROCEDURES & MODALITIES

MH: Ice: ES Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp: _____
RX Minutes: Supervised 97014 15 Constant Attend 97032 _____ Unattended G0283 _____
Location / Electrode Placement / Other: (R) SHOR & Sc
Ultrasound 97035: RX Minutes: _____ Combo Rx 97032: Minutes: _____ Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:
Iontophoresis 97033: RX Minutes: _____ x _____ milliamps _____ MA/min Dexamethasone used _____ Lg / Med / Sm / Butterfly / 24 hour pad
Location:
Traction 97012: RX Minutes: _____ S / I Position Program:
☐ Lumbar ☐ Cervical Weight: _____ Hold _____ / Relax _____ Progression _____ / Regression _____

RX Minutes: Manual PT 97140 24 Ther Exercise 97110 20 NMR 97112 _____ Ther Act 97530 _____ Gait Training 97116 _____
Other Procedure / CPT _____ Minutes _____
☑ See Attached Flow Sheet(s) (Exercise and Manual PT)
☐ TM
☐ UBE:
☐ Bike:
SCAP mobs Gr III
Gr II/III GHJ mobs
Prone PA's tol (R) shoulder
LBW + LE stretches

Timed Code Treatment Minutes 44 Minutes Total Treatment Time: 63 Minutes

PATIENT EDUCATION:
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☑ Compliance with HEP ☐ Other

ASSESSMENT: Cont c̄ work with personal therapist (waiting ~~GHJ~~ SHJ movement) (R) prone w/ pillow c̄ side lying – ff to ADL therapist but arguing (R) most limited

PLAN:
☑ Progress per Plan Of Care Aggressive stretching as tol – work personal mm
☐ Progress strengthening / stabilization / functional activity i.e. ABD & Bar w work work
Other:

SIGNATURE: [illegible] DATE: 7/10/13

**BAPTIST PHYSICAL THERAPY**
Daily Progress Note

Pati. Name: Francis Phillips
Patient #: 8356
Date: 7/12/13

Time In: 1:15 Time Out: 1:59

SUBJECTIVE: Pain 0 1 2 3 4 5 6 7 8 9 10
Workers comp IN Pain Some Yesterday

OBJECTIVE: Observation/ Posture/ Gait:

Palpation:

AROM: Standing Abd ~ 90° Supine Flex ≥ 120°
Strength:
Special Tests: + Ant Reverse for instability

PROCEDURES & MODALITIES

MH: Ice: NV pt pregnant Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014: Constant Attend 97032: UNattended G0283:
Location / Electrode Placement/ Other:
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: S/T Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140: 23 Ther Exercise 97110: 19 NMR 97112: Ther Act 97530: Gait Training 97116:
Other Procedure CPT: Minutes:
✓ See Attached Flow Sheet(s) (Exercise and Manual PT) Add'l MMT & Bike on low Tables + Roll up wall
☐ TM
☐ UBE
☐ Bike
Scap mobs GH AIR
(B) ut + low strengthening
Sleeper stretch
GH IT GHJ mobs
PRM As tol

Timed Code Treatment Minutes: 42 Minutes Total Treatment Time: 44 Minutes

PATIENT EDUCATION:
✓ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other:

ASSESSMENT: Cont c Very limited Abduction c works lifting. PRM also still limited but improving. Suspect Hx of instability

PLAN:
☐ Progress per Plan Of Care
✓ Progress strengthening / stabilization / functional activity i.e. CKC Rom Ex As tol
Other:

SIGNATURE: [signature] DATE: 7/12/13

66

400

PTA AUTH

*BAPTIST PHYSICAL THERAPY*
**Daily Progress Note**

Patient Name James Crow
Patient #
Date: 7/16/17

Time In: 12:45 Time Out: 1:35

SUBJECTIVE: Pain 0 1 2 3 4 5 6 7 8 9 10
C/o persistent R pain

OBJECTIVE: Observation/ Posture/ Gait:
[illegible] R UE [illegible], rounded R posture/position, elevated R UT
Palpation:

AROM: Strength: Special Tests:
[illegible]
Flex 147°
Abd 95° (135° [illegible])
ER (90° abd) 82°
IR (90° abd) 42° [illegible] pain

**PROCEDURES & MODALITIES**

MH: Ice Paraffin 97018 Vasopneumatic 97016 Rx Minutes Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other: Collins [illegible]
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min Dexamethasone used Lg / Med / Sm / Butterfly / 24 hour -ped
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140 25 Ther Exercise 97110 15 NMR 97112 Ther Act 97530 5 Gait Training 97116
Other Procedure CPT Minutes

**See Attached Flow Sheet(s) (Exercise and Manual PT)** [illegible]

☐ TM
☐ UBE
☐ Bike:

Manual therapy X 25 min
- (R) SH posterior glide, AC, IR [illegible]
- (R) SH posterior glide, AC, IR
- [illegible], [illegible] (R) SH [illegible]
- [illegible] UT/levator stretch, scapular mobility

Timed Code Treatment Minutes 45 Minutes Total Treatment Time : 50 Minutes

PATIENT EDUCATION:
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

- Verbal / tactile cues to improve proper technique / performance / posture

ASSESSMENT:
Continues (R) SH pain complaints & reports. Continues to benefit from verbal & tactile cues to ensure proper technique/performance/posture. AIHA non-neurogenic det from full [illegible] notes [illegible] GW [illegible]

PLAN: Cont [illegible] & manual therapy (R) SH
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

SIGNATURE: [illegible] PTA 1181 DATE: 7/16/17 [illegible] PTA A1181

*BAPTIST PHYSICAL THERAPY*
**Daily Progress Note**

Pat. Name: James Provins
Patient #
Date: 7/17/13

Time In: 1:13 Time Out: 2:20

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10

No new reports / changes

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

~~AROM:~~ Strength: Special Tests:

Flex 154°
Abd 140°
ER 84°
IR 56°

**PROCEDURES & MODALITIES**

MH: Ice Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ ~~Pre-Mod~~ ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014: Constant Attend 97032: UNattended G0283:
Location / Electrode Placement/ Other: Cervical / Low Back

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:

Iontophoresis 97033: RX Minutes: x: milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:

Traction 97012: RX Minutes: S/T: Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 25 Ther Exercise 97110: 20 NMR 97112: Ther Act 97530: 5 Gait Training 97116:
Other Procedure CPT: Minutes

☒ **See Attached Flow Sheet(s) (Exercise and Manual PT)**

☐ TM
☐ UBE:
☐ Bike:

Manual therapy x 25 min
- Pain free supine / sidelying flexion, ER
- Pain free standing flex, abd, ER
- gently increasing ROM
- stop when pain / tenderness
- [illegible]

**Timed: Code Treatment Minutes** 50 **Minutes** **Total Treatment Time:** 67 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:**

Pain improving but still limited by pain / guarding especially ER

**PLAN:** Cont to manual exercise to increase GHJ mobility
☒ Progress per Plan Of Care to achieve goals
☒ Progress strengthening / stabilization / functional activity i.e. as appropriate
Other:

**SIGNATURE:** [signature] **DATE:** 7/17/13

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Prawings
Patient #: 8356
Date: 7/19/13

Time In: 1:16 Time Out: 2:15

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10

Still hurting - still wakes me up every night

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ TES ☐ HVGS Max mAmp: ____
RX Minutes: Supervised 97014 ____ Constant Attend 97032 ____ UNattended G0283 ____
Location / Electrode Placement/ Other:
Ultrasound 97035: RX Minutes: ____ Combo Rx 97032: Minutes: ____ Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:
Iontophoresis 97033: RX Minutes: ____ % ____ milliamps ____ MA/min *Dexamethasone used* ____ Lg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: ____ S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: Hold ____ / Relax ____ Progression ____ / Regression ____

**RX Minutes:** Manual PT 97140: 24 Ther Exercise 97110: 31 NMR 97112: ____ Ther Act 97530: ____ Gait Training 97116: ____
Other Procedure/CPT ____ Minutes ____

☑ See Attached Flow Sheet(s) (Exercise and Manual PT)
☐ TM:
☐ UBE:
☐ Bike:

Passive ut + lev stretch
Scap mobs
Gr II/III G-H mobs (post, inf, ant/inf)
Scapular stretch
Prone as tol c̄ ltn lev (ff + abd)
Dr Diagonal Prone
Nmw → Rs 90° ff supine c̄ 2# 2x30"

**Timed Code Treatment Minutes** 55 **Minutes** **Total Treatment Time:** 59 **Minutes**

**PATIENT EDUCATION:**
☑ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** Very slow progress - cont c̄ mod c/o pain c̄ ABs + Pkm ; very tight posterior unit

**PLAN:**
☐ Progress per Plan Of Care Cont Mobilization + Therex to ↑ Rom
☐ Progress strengthening / stabilization / functional activity i.e. Try Wm Wrk or Bar Pose w/ arm
Other:

**SIGNATURE:** [signature] PT-OCS **DATE:** 7/19/13

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Sarah Hill PTA A1181

69

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: JAMES PROVINS
Patient #:
Date: 7/22/13

Time In: 1:02 Time Out: 1:55

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
Nothing new (MD 7/24)

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other:

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:

Traction 97012: RX Minutes: S/T Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 24 Ther Exercise 97110: 29 NMR 97112: Ther Act 97530: Gait Training 97116
Other Procedure CPT: Minutes:

☐ **See Attached Flow Sheet(s) (Exercise and Manual PT)** — Δ ISOM to ISOTONIC
☐ TM: Passive OKC + CKC Stretches
☐ UBE: Sling pulls
☐ Bike: GHJ pulls as tol
Prone ACs tol
Sleeper stretch
D2 diagonals 2x 45"
PS 90° 2# 50

**Timed Code Treatment Minutes** 50 **Minutes** **Total Treatment Time:** 53 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** Improved tolerance to ISOTONICS vs. ISOMETRICS but fatigued easily, cont c̄ mod progression

**PLAN:**
☐ Progress per Plan Of Care Cont c̄ progression to P Plan
☐ Progress strengthening / stabilization / functional activity i.e. P motol
Other:

**SIGNATURE:** [signature] DATE: 7/22/13

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Provins
Patient #:
Date: 7/24/13

Time In: 10:00 Time Out: 11:12

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
Same - still pops + stiffness plus same

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: IR to first left hip
(in significantly limited functionally)
(but full pain)

Strength:

Special Tests: (+) Drop Arm

ER = 60° ABD 47°

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014: Constant Attend 97032: UNattended G0283:
Location / Electrode Placement/ Other:
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour pad
Location:
Traction 97012: RX Minutes: S/ I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 17 Ther Exercise 97110: 26 NMR 97112: Ther Act 97530: Gait Training 97116:
Other Procedure CPT: Minutes:

☐ **See Attached Flow Sheet(s) (Exercise and Manual PT)**
☐ TM
☐ UBE
☐ Bike:

Ex as noted
GHJ mobs tx pm
Pain / stretching ST & tol

**Timed Code Treatment Minutes:** 43 **Minutes** **Total Treatment Time:** 56 **Minutes**
(Down time 2° other pt in clinic)

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** pt may be plateauing c̄ program - possible new or re-eval

**PLAN:**
☐ Progress per Plan Of Care Pt expresses fear of surg to MD
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

**SIGNATURE:** [signature] **DATE:** 7/24/13

Craig Smith, PT 1314 Kim Abell, PT OCS 3609 Scott Klein PTA A1181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Prowlins
Patient #: 9356
Date: 7/26/13

Time In: 1:02 Time Out:

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
It's [illegible] & popping

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: FF 75° ABD 48° Strength: [illegible] IR 4/5 Special Tests: ⊖ [illegible] 1st
Sitting ER 60° IR [illegible] ER 50° ABD ER 4/5 ⊕ " " 2nd

Pain [illegible] ER - full IR [illegible]°
FF 156° ABD [illegible]° [illegible]

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other:

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min Dexamethasone used Lg / Med / Sm / Butterfly / 24 hour -pad
Location:

Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140, 13 Ther Exercise 97110, 20 NMR 97112, Ther Act 97530, 12 Gait Training 97116,
Other Procedure CPT Minutes

☐ **See Attached Flow Sheet(s) (Exercise and Manual PT)**
☐ TM
☐ UBE
☐ Bike

GR II oscillations / mobs
Pain [illegible]
wt flex strengthening
SCAP mobs

Timed Code Treatment Minutes 45 Minutes Total Treatment Time: 49 Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:**
See PMS note

**PLAN:**
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

**SIGNATURE:** [illegible] DATE: 7/26/13

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Phalin
Patient #: 8356
Date: 7/31/13

Time In: 7:55 Time Out: 8:41

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
Hamming

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 _____ Constant Attend 97032 _____ UNattended G0283 _____
Location / Electrode Placement/ Other:
Ultrasound 97035: RX Minutes: _____ Combo Rx 97032: Minutes: _____ Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:
Iontophoresis 97033: RX Minutes: _____ x _____ milliamps _____ MA/min Dexamethasone used ____ Lg / Med / Sm / Butterfly / 24 hour pad
Location:
Traction 97012: RX Minutes: _____ S/1 Position: Program:
☐ Lumbar ☐ Cervical Weight: _____ / _____ Hold _____ Relax _____ Progression _____ / Regression _____

RX Minutes: Manual PT 97140, 15 Ther Exercise 97110, 29 NMR 97112, _____ Ther Act 97530, _____ Gait Training 97116 _____
Other Procedure CPT _____ Minutes _____
✓ See Attached Flow Sheet(s) (Exercise and Manual PT) 30 days finish up c̄ home AT home
☐ TM
☐ UBE:
☐ Bike:
→ Ex THA Mobs
Oscillations for Pain
Scar Mobs
Prone c̄ gentle HR (Lt. IR, Ff, ABD)

Timed Code Treatment Minutes 44 Minutes Total Treatment Time: 46 Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** Pt c̄ possible tightness, pain + limited flexion & flexion very limited functional use of RLE

**PLAN:**
☐ Progress per Plan Of Care
✓ Progress strengthening / stabilization / functional activity i.e. ↑ As tol
Other:

SIGNATURE: DATE: 7/31/13
Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Scott Sullivan PTA A1181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Williams
Patient #
Date: 8/21/17

Time In: 10:15 Time Out: 11:35

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10

No new/ 2 complaints

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other:

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:

Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 25 Ther Exercise 97110: 32 NMR 97112: Ther Act 97530: 8 Gait Training 97116:
Other Procedure CPT: Minutes:

☐ **See Attached Flow Sheet(s) (Exercise and Manual PT)**

☐ TM
☐ UBE:
☐ Bike:

[illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]

**Timed Code Treatment Minutes:** 57 62 **Minutes** **Total Treatment Time:** 80 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

Verbal/Tactile cues to assume proper posture/ therapeutic exercise

**ASSESSMENT:**

Student notes decreased pain after PT session as well as amount of movement. Requires verbal/tactile cues to assume proper posture & stretching techniques

**PLAN:** [illegible]
☐ Progress per Plan Of Care
☒ Progress strengthening / stabilization / functional activity i.e.
Other:

**SIGNATURE:** [illegible] **DATE:** 8/21/17

74

408

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: JAMES PROVINS
Patient #:
Date: 8/15/13

Time In: 9:15 Time Out: 10:35

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
Sx stable [illegible]

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:
Spine Flexion 140°
ABD 110°

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☑ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other:
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz W/s/cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 15 Ther Exercise 97110: 30 NMR 97112: Ther Act 97530: 15 Gait Training 97116:
Other Procedure CPT: Minutes:

**See Attached Flow Sheet(s) (Exercise and Manual PT)**

☐ TM
☐ UBE
☑ Bike:

[illegible]
prone ext (R) UE x 15
prone "[illegible]" (R) LE x 15
prone scapular (prone [illegible] plane) x 15 reps

manual therapy
[illegible]
- Prone (R) LE flexion, ABD, ER, IR
- Prone stretching (R) LE all planes (supine / [illegible])
- [illegible] (supine, prone)

Timed Code Treatment Minutes: 60 Minutes Total Treatment Time: 80 Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

- Verbal / tactile cues
[illegible] scapular retraction x [illegible] seconds

**ASSESSMENT:**
Cooperative / compliant c therapist / exercises. Still c (R) [illegible] pain. Complaints ABD to perform prone [illegible] & [illegible]. Limited by weakness, discomfort c prone scapular to ~0-35°. Requires verbal / tactile cues for proper scapular retraction / positioning c [illegible].

**PLAN:** Pt. cont per 1° PT next visit.
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

SIGNATURE: [illegible] PTA LMT DATE: 8/15/13

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: JAMES PROVINS
Patient #
Date: 8/7/13

Time In: 10:07 Time Out:

**SUBJECTIVE:** Pain 0 1 2 3 4 (5) 6 7 8 9 10
Some - pain + popping

**OBJECTIVE:** Observation/ Posture/ Gait: Guarding (R) LE c̄ crutch 2° popping
Palpation:

AROM: FF 55° and 46° Strength: ER 4/5 ✓ IR 4/5 Special Tests: (+) Drop Arm but c̄ pain
Measure comp IR to posterior hip in Neutral
Pain FF 152° and 153° w/ physical
ER 72° ✓ IR 40°
90° abd

**PROCEDURES & MODALITIES**

MH: (Ice) ES Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 15 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other: Posterior Tx
Ultrasound 97035: RX Minutes: Combo RX 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps: MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140, 14' Ther Exercise 97110, 27' NMR 97112, Ther Act 97530, 6' Gait Training 97116
Other Procedure CPT Minutes:
☐ **See Attached Flow Sheet(s) (Exercise and Manual PT)**
☐ TM
☐ UBE:
☐ Bike:
SCAP MOBS
GH & HH GLIDS POST MOBS, INF MOBS
Pain as tol

Timed Code Treatment Minutes 47 Minutes Total Treatment Time : 67 Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** No notable gains post couple weeks - Pain ↑'d c̄ some + ↓'d c̄ others - Control but pain c̄ drop arm, still c̄ mod pain - New goals x 4 wks - (1) ↑'d AROM FF + abd to ≥90° (2) IR functional range to post. waist + ER to side of head (3) Pain c̄ ex/ADLs ≤ 4/10 (4) all pain ≥ 75% ease

**PLAN:**
☐ Progress per Plan Of Care Cont c̄ manual, therex, act, ther + monitor pain
☐ Progress strengthening / stabilization / functional activity i.e. SCAP STAB + PC as tol
Other:

SIGNATURE: DATE: 8/7/13

Chris Smith, PT 1314 Kim Abell, PT, OCS 3600 Jim Hill, PTA A1181

76

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: JAMES PROVINS
Patient #:
Date: 8/9/13

Time In: 10:00 Time Out: 11:20

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
(R) Sh still hurts. Able to move arm above head but takes a lot of effort

**OBJECTIVE:** Observation/ Posture/ Gait: Crepitus / pops (R) sh c PAIN (R) sh
Palpation:

AROM: Gravity - 90° flex (R) sh
- 80° abd
(R) sh

Strength:

Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014: Constant Attend 97032: UNattended G0283:
Location / Electrode Placement/ Other:
Ultrasound 97035: RX Minutes: Combo Rx 97032 Minutes: Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:
Traction 97012: RX Minutes: S / I: Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 25 Ther Exercise 97110, 30 NMR 97112, Ther Act 97530, 5 Gait Training 97116
Other Procedure CPT: Minutes

**See Attached Flow Sheet(s) (Exercise and Manual PT)**

☐ TM
☐ UBE: manual therapy x 25 min
☐ Bike:
- Supine pulleys flex (R) sh flex, abd, ER
- Supine stretching (R) sh flex, abd, ER
- [illegible]
- [illegible]

**Timed Code Treatment Minutes** 60 **Minutes** **Total Treatment Time:** 75 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☑ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other
- Verbal / tactile cues re: posture, arm positioning & scap stabilizers during exercise & ther ex / Rx

**ASSESSMENT:**
Complicated / Cooperative & alert w/ ability. Pt's (R) sh remains limited & pt continues to require verbal / tactile cues to ensure proper form / performance, posture & scapular positioning. Pt's sh still tender & Active Rx / activity (R) sh

**PLAN:**
☑ Progress per Plan Of Care: Cont c ther ex / activity progression as appropriate; Continue manual therapy to (R) sh / rom
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

**SIGNATURE:** [illegible] **DATE:** 8/9/13



77

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: Jane Doe
Patient #:
Date: 8/13/13

Time In: 8:40 Time Out:

**SUBJECTIVE:** Pain 0 1 2 3 4 (5) 6 7 8 9 10

I feel like I need more meds

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation: TP (R) infraspinatus tender

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 8 Constant Attend 97032: UNattended G0283
Location / Electrode Placement/ Other:

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour pad
Location:

Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 30 Ther Exercise 97110: 15 NMR 97112: Ther Act 97530: Gait Training 97116:
Other Procedure CPT: Minutes:

**See Attached Flow Sheet(s) (Exercise and Manual PT)**

☐ TM
☐ UBE:
☐ Bike:

Manual therapy
positional release to biceps and subscapularis, STM to pecs, UT biceps and thoracic muscles, glenohumeral and scapular mobs
(R) arm pulls, posterior capsule glides

**Timed Code Treatment Minutes:** 45 **Minutes** **Total Treatment Time:** 50 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other:

**ASSESSMENT:** Initiated prone scapular strengthening - assistance required for proper technique. Manual stretching addressed limited glenohumeral and scapular mobility. Updated HEP

**PLAN:** Cont PT

☐ Progress per Plan Of Care

☐ Progress strengthening / stabilization / functional activity tie:

Other:

**SIGNATURE:** Phoebe Powell PT **DATE:** 8/13/2013

Craig Smith, PT 1314 Kim Abell, PT, OCS 3609 Sam Sullivan PTA A1181

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Prowins
Patient #: 9356
Date: 8/14/13

Time In: 10:15 Time Out: 10:55

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
Doing New Ex At Home - Tolling Heat
Sore from massage yesterday

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014: Constant Attend 97032: UNattended G0283
Location / Electrode Placement / Other:
Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz W/s/cm²
Location:
Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour pad
Location:
Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: % Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 12 Ther Exercise 97110: 26 NMR 97112: Ther Act 97530: Gait Training 97116:
Other Procedure CPT: Minutes:
☑ See Attached Flow Sheet(s) (Exercise and Manual PT) No New
☐ TM
☐ UBE
☐ Bike
SCAP + GHJ Mobs
Pnm Rs fol c HP

**Timed Code Treatment Minutes** 38 **Minutes** **Total Treatment Time:** 40 **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic / Splint Usage
☐ Proper body mechanics ☐ Posture
☑ Compliance with HEP ☑ Other
**ASSESSMENT:** Improved Passive Flexion Noted P Manual Rx
But cont c moderate pain + limited AROM

**PLAN:**
☐ Progress per Plan Of Care
☑ Progress strengthening / stabilization / functional activity i.e. SCAP STABILIZERS
Other:

**SIGNATURE:** [illegible] MOCS **DATE:** 8/14/13

*BAPTIST PHYSICAL THERAPY*
**Daily Progress Note**

Patient Name: James Brown
Patient #
Date: 8/16/13

Time In: Time Out:

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10

no new complaints Pain A report

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ IES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other:

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:

Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140, Ther Exercise 97110, NMR 97112, Ther Act 97530, Gait Training 97116
Other Procedure CPT Minutes

**See Attached Flow Sheet(s) (Exercise and Manual PT)**

☐ TM
☐ UBE:
☐ Bike:

manual therapy
X Rom
- Pain @ the [illegible], [illegible]
- Pain [illegible] @ the [illegible] } [illegible]
- [illegible] technique
- Pain [illegible] @ [illegible]
- Pain [illegible] @ [illegible] (GH/B), [illegible]

**Timed Code Treatment Minutes** Minutes **Total Treatment Time:** Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:**

Pain complaints remain elevated as does pain limiting ROM. Continue to benefit from [illegible] / [illegible] cues to improve proper scapular positioning at initiation of shoulder movement. GHJ limitations remain present 2 pain [illegible]

**PLAN:** Cont 2 manual efforts to f pain improve GHJ scapular movement / [illegible]

☐ Progress per Plan Of Care

☐ Progress strengthening / stabilization / functional activity i.e.

Other:

**SIGNATURE:** [illegible] PT **DATE:** 8/16/13

80

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: [illegible]
Patient #:
Date: 8/15/13

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10 Time In: Time Out:

Sh 37.0 hrs, "can't go as far as you do" states pt

**OBJECTIVE:** Observation/ Posture/ Gait:
[illegible] posture, [illegible] by [illegible] @ [illegible]
Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283:
Location / Electrode Placement/ Other:

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz W/cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour pad
Location:

Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression

RX Minutes: Manual PT 97140: Ther Exercise 97110: NMR 97112: Ther Act 97530: Gait Training 97116:
Other Procedure CPT: Minutes:

☑ **See Attached Flow Sheet(s) (Exercise and Manual PT)**

☐ TM
☐ UBE
☑ Bike:

manual therapy x25 min @ [illegible]
- [illegible] PRM, [illegible] to [illegible]
- [illegible] @ [illegible]
- [illegible] techniques & [illegible]

Timed Code Treatment Minutes: Minutes Total Treatment Time: Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other:

**ASSESSMENT:**
Pt improved in [illegible] & PRM activities. Still deficits remain [illegible] to ex / functional activity & activity [illegible]

**PLAN:** See 2 additional visits from [illegible] prior to [illegible] 8/26
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

SIGNATURE: [illegible] PTA
Craig Smith, PT 1314

DATE: 8/15

415

81

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Previns
Patient #: 9356
Date: 8/21/13

Time In: 10:15 Time Out: 11:00

**SUBJECTIVE:** Pain 0 1 2 3 4 5 6 7 8 9 10
NSAMA

**OBJECTIVE:** Observation/ Posture/ Gait:

Palpation:

AROM: Strength: Special Tests:

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016: Rx Minutes: Location / Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other:

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/ cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour -pad
Location:

Traction 97012: RX Minutes: S / I Position: Program:
☐ Lumbar ☐ Cervical Weight / Hold / Relax Progression / Regression

**RX Minutes:** Manual PT 97140: 10 Ther Exercise 97110: 25 NMR 97112: Ther Act 97530: Gait Training 97116:
Other Procedure CPT: Minutes

**See Attached Flow Sheet(s) (Exercise and Manual PT)** 1 x 1 green Band to PRN

☐ TM
☐ UBE:
☐ Bike:

GHJ + SCAP MOBS
PROM & STRETCHING

Timed Code Treatment Minutes 45 Minutes Total Treatment Time: 45 Minutes

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:** Improved GHJ + SCAP MOBILITY But Cont c̄ moderate PAIN c̄ STRETCHING + LIMITED BY SORE ARM

**PLAN:**
☐ Progress per Plan Of Care REASSESS for PT TO MD
☐ Progress strengthening /stabilization / functional activity i.e.
Other:

SIGNATURE: MOCS DATE: 8/21/13

Craig Smith PT 1314 Kim Abell PT OCS 3600

82

**BAPTIST PHYSICAL THERAPY**
**Daily Progress Note**

Patient Name: James Downs
Patient #:
Date: 8/23/13

Pain: Rest (0) | Ave (5) | Worst (8/9)

Time In: 10:18 Time Out: 11:45

SUBJECTIVE: Pain 0 1 2 3 4 5 6 7 8/9 10

OBJECTIVE: Observation/ Posture/ Gait:

Palpation:

| AROM: | Strength: | Special Tests: |
|---|---|---|
| Shoulder (R) | Shoulder (R) | Shoulder (R) |
| Flex 131° | 153° | 90° |
| Abd 124° | 154° | 68° |
| ER (side) 78° | | |
| IR (side) 40° | | |

**PROCEDURES & MODALITIES**

MH: Ice: Paraffin 97018: Vasopneumatic 97016 Rx Minutes: Location/ Other:

Electrical Stimulation: ☐ IFC ☐ Pre-Mod ☐ FES ☐ HVGS Max mAmp:
RX Minutes: Supervised 97014 Constant Attend 97032 UNattended G0283
Location / Electrode Placement/ Other:

Ultrasound 97035: RX Minutes: Combo Rx 97032: Minutes: Parameters: % 1.0 / 3.3 MHz Wts/cm²
Location:

Iontophoresis 97033: RX Minutes: x milliamps: MA/min *Dexamethasone used* Lg / Med / Sm / Butterfly / 24 hour pad
Location:

Traction 97012: RX Minutes: S/I Position: Program:
☐ Lumbar ☐ Cervical Weight: / Hold / Relax Progression / Regression:

**RX Minutes:** Manual PT 97140: Ther Exercise 97110: NMR 97112: Ther Act 97530: Gait Training 97116:
Other Procedure CPT Minutes:

☐ **See Attached Flow Sheet(s) (Exercise and Manual PT)**
☐ TM
☐ UBE
☐ Bike:

**Timed Code Treatment Minutes** _____ **Minutes** **Total Treatment Time :** _____ **Minutes**

**PATIENT EDUCATION:**
☐ Purpose of Rx ☐ Orthotic/ Splint Usage
☐ Proper body mechanics ☐ Posture
☐ Compliance with HEP ☐ Other

**ASSESSMENT:**
See MD letter

**PLAN:** To MD letter. Anti Further orders
☐ Progress per Plan Of Care
☐ Progress strengthening / stabilization / functional activity i.e.
Other:

**SIGNATURE:** [illegible] DATE: 8/23/13

# TREATMENT FLOW SHEET

Facility:

Physician: Bunnnnnnnn

Patient Name: James Prawins

Diagnosis: (B) ACT – S/P Rev

Date of Birth: 8356

Precautions:

| Ther. Procedure/Exercise | Tx. Type | Date 7/31 | Date 8/2 | Date 8/5 | Date 8/7 | Date 8/9 | Date 8/13 | Date 8/14 | Date 8/16 | Date 8/19 | Date 8/21 | 8/12 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| (B) FF Sanding c̄ Cane | | 5"x10 | x15 | ✓ | x5 | x15 | | x15 | | x15 | 5" Band x10 | ✓ |
| UBE F/R | | 2'/2' | 3'/3' | 3F/3F | ✓ | 3F 3R | 3F/3R | 3F/3R | ✓ | 3F 3R | 2'/4' | ✓ |
| ABD (Scapl) c̄ Cane | | 5"x10 | x15 | ✓ | ✓ | x15 | | x15 | | x15 | ✓ | ✓ |
| Wall walk ABD + FF | | x5 | ✓ | x5 | FF x10 | x5 | | NT | | | | |
| LPD, | | Blue x15 | ✓ | Blue x15 | ✓ | Blue x15 | | Blue x15 | | Blue x15 | ✓ | ✓ |
| Scap Ret | | Blue x20 | ✓ | ✓ | ✓ | Blue x15 | Purple x20 | Blue x15 | | Blue x15 | ✓ | ✓ |
| Shdr roll | | Blue x20 | ✓ | ✓ | ✓ | Blue x15 | | | | Blue x15 | ✓ | ✓ |
| IR c̄ Band | | Yellow x15 | Blue x20 | ✓ | ✓ | Blue x15 | | | | Blue x15 | ✓ | ✓ |
| Triceps | | Yellow x15 | ✓ | ✓ | ✓ | Yellow x15 | | Yellow x15 | | Yellow x15 | Red x15 | ✓ |
| Ext Ecr (to 1HP) | | Yellow x15 | ✓ | ✓ | ✓ | Yellow x15 | | | | | Red x15 | ✓ |
| Bicep | | Yellow x15 | ✓ | ✓ | ✓ | Yellow x15 | | | | | Red x15 | ✓ |
| S/L ER | | 1# x15 | x17 | ✓ | ✓ | 1# x15 | 1# x20 | 1# x20 | | 1# x20 | ✓ | ✓ |
| Bar circles (45° Cw/Ccw) | | x10 | 20 cw x20 ccw | x20 | ✓ | x20 | | x20 | | x20 | ✓ | ✓ |
| SB ABD Scapts | | 5"x10 | x20 | x20 | ✓ | x20 | | x20 | | x20 | — | |
| SB FF Scapts | | 5"x10 | ↓ | ↓ | ✓ | x20 | | x20 | | x20 | 5"x10 | ✓ |
| Pulley 3way | | x20 | x20 | x20 | ✓ | x20 | | x20 | ✓ | x20 | ✓ | ✓ |
| Pulley c̄ SB ow/wm | | x10 | x10 | x10 | ✓ | x10 | | x10 | | x10 | x15 | ✓ |
| Prone Row | | | | | DW x10 | Rowcall x10 | x10 | x10 | | x10 | — | |
| prone t's thumbs down | | | | | | | x10 | x10 | ✓ | x10 | x10 | ✓ |
| prone w's | | | | | | | x10 | x10 | ✓ | | x10 | |
| prone retractions | | | | | | | x10 | x10 | ✓ | | x10 | |
| peers | | | | | | | x10 | x10 | ✓ | | x10 | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| Provider Initials (See Provider Key) | | Ka | (E) | (S) | ✓ | (S) | | Ka (J) | | (S) | Ka | (S) |

ABBREVIATIONS KEY: G = Group Therapy; Min = Minutes; Rep = Repetitions; ✓ = Same as Prior Entry; – = Not Done
TA = Therapeutic Act; NR = Neuromuscular Reed.; TE = Therapeutic Exercise

PROVIDER KEY:
Ka – Kim Aspell, PT, OCS
(S) – Susan Ro

84

K.V. 7/00

# TREATMENT FLOW SHEET

Facility:

Physician: Bowmans

Patient Name: James Powers

Diagnosis: (R) RCT - S/P Rep

Date of Birth:

Precautions:

| Ther. Procedure/Exercise | Tx. Type | Date 7/5 | Date 7/8 | Date 7/10 | Date 7/12 | Date 7/16 | Date 7/17 | Date 7/19 | Date 7/22 | Date 7/24 | Date 7/26 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| pendulum | | 2# x20 | 2# x20 | ✓ | ✓ | | ✓ | ✓ | 2# x20 | ✓ | — |
| pulley / 3way | | x15 each | x15 each | ✓ | ✓ | x15 each Flex/Ext/Abd | ✓ | x20 | x20 | ✓ | x15 |
| ball roll on table | | x25 | x25 | ✓ | x20 | x20 | ✓ | x20 | x20 | ✓ | x20 |
| chair rolls | | blue x25 | blue x25 | ✓ | ✓ | | ✓ | x25 | x25 | ✓ | Blue x20 |
| scap ret | | x25 | x25 | Blue x20 | Blue x20 | | ✓ | x20 | x20 | ✓ | Blue x20 |
| supine AAROM flex (Cane) | | x20 | x20 | Cane x20 | | | ✓ | ✓ | x20 | ✓ | x10 |
| stand AAROM | | x20 | x20 | x15 | ✓ | | ✓ | ✓ | x20 | ✓ | x20 |
| AAROM cane ER | | x20 | x20 | x10 | ✓ | x15 | ✓ | ✓ | x20 | ✓ | — |
| sidelying ER | | x20 | x20 | ✓ | ✓ | 1# x10 0# x10 | 1# x10 0# x10 | ✓ | 1# x10 0# x10 | ✓ | 1# x20 |
| Sometics flex (Arm) | | x10 | x10 | ✓ x5 | 5" x5 | | ✓ | ✓ | — | — | — |
| (Sub Max) ext | | x10 | x10 | ✓ | 5" x10 | | ✓ | ✓ | — | — | — |
| IR / ~~Ext~~ | | x10 | x10 | ✓ | 5" x10 | | ✓ | ✓ | — | — | — |
| UUT + LE stretches | | 4x20" | 4x20" | ✓ | ✓ | ✓ | ✓ | 4x20" | Home | — | — |
| hamstring stretch | | 5x10" | | ✓ | ✓ | ✓ | ✓ | 5x10" | Home | — | — |
| IBE F/R | | 2F 2R | 2F 2R | 2'/2' | 2.5/2.5 | 3F/3R | ✓ | 3F 3R | ✓ | ✓ | 2'/2' |
| Scapula ABD Arm c̄ SBand | | | | | x10 | x20 | ✓ | x10 | x10 | ✓ | x10 |
| SB Rock up wall | | | | | x5 | 10 | ✓ | x10 | ✓ | ✓ | — |
| SB ABD Rock up wall | | | | | | | | | x10 | NT | — |
| IR c̄ Band | | | | | | | | | Yellow x10 | ✓ | Y x15 |
| ER c̄ Band | | | | | | | | | Yellow x10 | ✓ | Y x15 |
| Triceps | | | | | | | | | Yellow x10 | ✓ | Y x15 |
| Biceps | | | | | | | | | Yellow x10 | ✓ | Yellow x15 |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Provider Initials (See Provider Key) | | KV | | KV | KV | SJ | SJ | KV | KV | KV | KV |

ABBREVIATIONS KEY: G = Group Therapy; Min = Minutes; Rep = Repetitions; ✓ = Same as Prior Entry; - = Not Done
TA = Therapeutic Act.; NR = Neuromuscular Reed.; TE = Therapeutic Exercise

PROVIDER KEY:

KV — Kim Abell, PT, OCS

SJ — Sarah Jo

KV-7/00

85

# TREATMENT FLOW SHEET

Facility:

Physician: Bonnemens

Patient Name: James Prawins

Diagnosis: (R) ACL

Date of Birth:

Precautions:

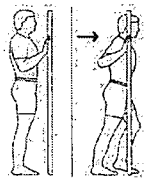
| Ther. Procedure/Exercise | Tx. Type | Date 6/12 | Date 6/14 | Date 6/17 | Date 6/19 | Date 6/21 | Date 6/24 | Date 6/26 | Date 6/28 | Date 7/2 | Date 7/5 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Prone Hip | | 2# 2x10 | ✓ | 1# 20 2# 2x10 | ✓ | 2# 2x10 | 2# x20 | 2# x20 | ✓ | ✓ | 2# x20 |
| Ankle ECAN LTR | | 5"x10 | x15 | x10 | ✓ x20 | ✓ | — | — | x15 | ✓ | |
| FF Sitting - Scap | | 3"x10 | x15 | x20 | ✓ | ✓ | x20 | x20 | ✓ | ✓ | x20 |
| Scap Ret | | x10 | ✓ | x20 | ✓ | ✓ | x20 | x20 | ✓ | ✓ | x20 |
| Shoulder Pools (Post) | | x10 | ✓ | Red x20 | ✓ | Red x20 | Red x20 | Red x20 | blue x20 | ✓ | blue x20 |
| Pulley - 3 way | | x10 | ✓ | ✓ | ✓ | ✓ | x10 ea | x10 | x10 | ✓ | x10 ea |
| UBE F/R | | 2'/2' | 2'/2' | 2F/2R | 2'/2' | 2'/2' | 2F/2R | 2F/2R | ✓ | ✓ | ✓ |
| Bow Pose on Table | | | x10 | x20 | ✓ | ✓ | x20 | x20 | x20 | ✓ | x20 |
| Spine Rotation Flex | | | | x10 | x20 | x10 | x10 | x20 | ✓ | ✓ | x20 |
| " " Ext | | | | x10 | ✓ | Stand x10 | x10 | x20 | ✓ | ✓ | x20 |
| (R) Lat + Med Stretching | | | | | | 20"x4 | 4x20" | 4x20" | ✓ | ✓ | 4x20" |
| (B) Rotation Stretch | | | | | | 10"x5 | 10"x5 | 10"x5 | ✓ | ✓ | 5x10" |
| Sidelying Hand 2 Ab/Add ECAN | | | | | | | x10 | x10 | ✓ | ✓ | x20 |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Stretching | | | | | | | | | | x15 | x10 |
| Quadriceps | | | | | | | | | | x10 | x10 |
| Ext | | | | | | | | | | x10 | x10 |
| Tx | | | | | | | | | | x10 | x10 |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Provider Initials (See Provider Key) | | KA | KA | SD | KA | KA | | SD | SD | SD | SD |

ABBREVIATIONS KEY: G = Group Therapy; Min = Minutes; Rep = Repetitions; ✓ = Same as Prior Entry; – = Not Done
TA = Therapeutic Act; NR = Neuromuscular Reed.; TE = Therapeutic Exercise

PROVIDER KEY: KA - Kim Abbe, PT, OCS
SD - Sean Sill PTA

This program was Emailed To: ssullivan@bhsi.com

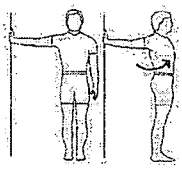
1. Exercise: Stretch Pectoral standing bil at door



Perform 1 set of 4 Repetitions, twice a day.

Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

2. Exercise: Stretch Pectoral standing uni



Perform 1 set of 4 Repetitions, twice a day.

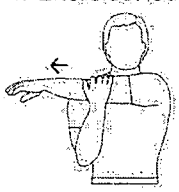
Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

3. Exercise: Stretch shld capsule inferior

Perform 1 set of 4 Repetitions, twice a day.

Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

4. Exercise: Stretch shld capsule posterior w/arm



Perform 1 set of 4 Repetitions, twice a day.

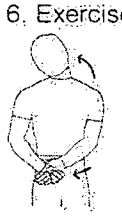
Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

5. Exercise: Stretch shld IR w/towel

Perform 1 set of 4 Repetitions, twice a day.

Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

6. Exercise: Stretch Trapezius upper



Perform 1 set of 4 Repetitions, twice a day.

Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

**Issued By:** Phoebe Powell PT **Signature:**_____

87

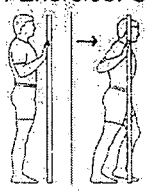
These exercises are to be used only under the direction of a licensed, qualified professional.



Except as to user supplied material, © 1997-2002 BioEx Systems, Inc

This program was Carbon Copied(CC) To: kimberly.abell@bhsi.com

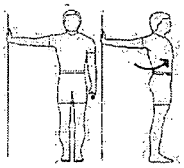
1. Exercise: Stretch Pectoral standing bil at door



Perform 1 set of 4 Repetitions, twice a day.

Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

2. Exercise: Stretch Pectoral standing uni



Perform 1 set of 4 Repetitions, twice a day.

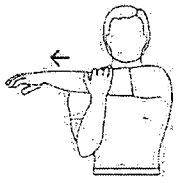
Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

3. Exercise: Stretch shld capsule inferior

Perform 1 set of 4 Repetitions, twice a day.

Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

4. Exercise: Stretch shld capsule posterior w/arm



Perform 1 set of 4 Repetitions, twice a day.

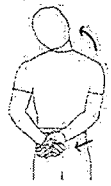
Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

5. Exercise: Stretch shld IR w/towel

Perform 1 set of 4 Repetitions, twice a day.

Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

6. Exercise: Stretch Trapezius upper



Perform 1 set of 4 Repetitions, twice a day.

Hold exercise for 15 Seconds. Rest 30 Seconds between sets.

**Issued By:** Phoebe Powell PT **Signature:**_____

These exercises are to be used only under the direction of a licensed, qualified professional.



Except as to user supplied materials, © 1996-2002 BioEx Systems, In

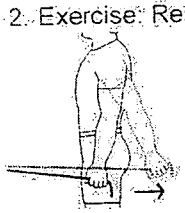
This program was Carbon Copied(CC) To: kimberly.abell@bhsi.com, kimberly.abell@bhsi.com

1. Exercise: Resist shld IR uni w/elastic

Perform 1 set of 15 Repetitions, once a day.

Perform 1 repetition every 4 Seconds.
Use yellow Elastic.
Rest 1 Minute between sets.

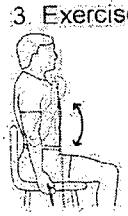
2. Exercise: Resist shld ext uni stand w/elastic



Perform 1 set of 15 Repetitions, once a day.

Perform 1 repetition every 4 Seconds.
Use yellow Elastic.
Rest 1 Minute between sets.

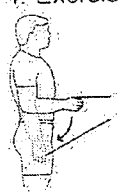
3. Exercise: Resist elbow flx uni w/elastic



Perform 1 set of 15 Repetitions, once a day.

Perform 1 repetition every 4 Seconds.
Use yellow Elastic.
Rest 1 Minute between sets.

4. Exercise: Resist elbow ext w/elastic



Perform 1 set of 15 Repetitions, once a day.

Perform 1 repetition every 4 Seconds.
Use yellow Elastic.
Rest 1 Minute between sets.

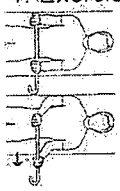
**Issued By:** Kim Abell, PT, OCS **Signature:**_____

These exercises are to be used only under the direction of a licensed, qualified professional.

Except as to user supplied materials, © 1996-2002 BioEx Systems, i

This program was Carbon Copied(CC) To: kimberly.abell@bhsi.com, kimberly.abell@bhsi.com

1. Exercise: AAROM shld ER bil supine w/cane neutral



Perform 1 set of 10 Repetitions, three times a day.

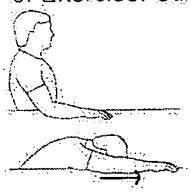
Perform 1 repetition every 4 Seconds.
Use Cane.
Rest 1 Minute between sets.

2. Exercise: AAROM shld flx uni w/pulley self high level

Perform 1 set of 10 Repetitions, three times a day.

Perform 1 repetition every 4 Seconds.
Use Pulley.
Rest 1 Minute between sets.

3. Exercise: Stretch shld flx uni sit slide



Perform 1 set of 10 Repetitions, three times a day.

Hold exercise for 15 Seconds.
Rest 30 Seconds between sets.

4. Exercise: AROM shld pendulum

Perform 1 set of 10 Repetitions, three times a day.

Rest 1 Minute between sets.

5. Exercise: AROM shld retract bil stand arms at side

Perform 1 set of 10 Repetitions, three times a day.

Perform 1 repetition every 4 Seconds.
Rest 1 Minute between sets.

Issued By: Kim Abell, PT, OCS Signature:_____

These exercises are to be used only under the direction of a licensed, qualified professional.

Except as to user supplied materials, © 1996-2002 BioEx Systems, In

# BAPTISTWORX

## Physical Therapy

7092 Distribution Drive
Louisville, KY 40258
502-935-9970

Kim Abell, PT, OCS
Physical Therapist
KY License #3609

Sean Sullivan, PTA
Physical Therapy Assistant
KY License #A01181

Craig Smith, PT
Physical Therapist
KY License #1314

---

**Date:** 8/23/13
**To:** Dr. Bonnarens
**From:** Sean Sullivan PTA
**Re:** Jamey Provins

---

Mr. Provins has attended 12 additional sessions of PT since last MD follow-up, 34 times overall. Treatment has included ther-ex, A/PROM and manual stretching techniques.

S: States that he can move arm a little better (raise it, touch hand to head) but still limited with self care activities (toileting, dressing, bathing, etc) involving right UE.. Rates self 5/10 on average and 8-9/10 with certain movement/positions/activities on pain scale.

O: Patient Demonstrates:

1. ROM:

| | Supine | | Seated |
|---|---|---|---|
| | A | P | A |
| Flexion | 131 deg | 153 deg | 90 deg |
| Abd | 124 deg | 154 deg | 68 deg |
| IR(90) | 40 deg | 46 deg | thumb to R buttock |
| ER(90) | 78 deg | 80 deg | thumb side of head |

2. Strength: in available range flexion/abduction 3-, IR/ER 4-/5.

3. Function: Performing ROM, stretching and scapular exercises for affected musculature.

A. Compliant/Cooperative with rehabilitation efforts. Subjectively, he reports still limited ability to perform self care/ADL with right UE due to pain and motion limitations. Objectively his motion has improved vs. last measurement but deficits remain in regards to pain free active shoulder movement. GHJ tightness and scapular dyskinesis remain present right UE.

P: Please advise after your exam!

Thank you for this referral.

# BAPTISTWORX
## Physical Therapy

7092 Distribution Drive
Louisville, KY 40258
502-935-9970

Kim Abell, PT, OCS
Physical Therapist
KY License #3609

Sean Sullivan, PTA
Physical Therapy Assistant
KY License #A01181

Craig Smith, PT
Physical Therapist
KY License #1314

**Date:** 6/28/13
**To:** Dr. Bonnarens
**From:** Sean Sullivan PTA
**Re:** Jamey Provins

Mr. Provins has attended 10 sessions of PT since initial start date of 6/7/13. Treatment has included ther-ex, PROM and manual stretching techniques, prn modalities and patient education.

S: Reports right shoulder feels about the same since start of PT/last seeing MD. States that he "still can't raise arm on own without help". Rates self 0/10 at rest and 5/10 with movement on pain scale.

O: Patient Demonstrates:

1. ROM:

| | Supine | | | Seated |
|---|---|---|---|---|
| | A | AA | P | A |
| Flexion | 90 deg | 120 deg | 143 deg | 63 deg |
| Abd | 80 deg | | 145 deg | 60 deg |
| IR(60) | 80 deg | | 80 deg | thumb to R buttock |
| ER(60) | 45 deg | | 52 deg | thumb to R sh |

2. Palpation: diffuse tenderness right GHJ.

3. Strength: not tested due to recent surgery

4. Function: Instructed in home pulleys and ROM activities as well as postural and scapular strengthening exercises.

A. ROM improved right shoulder vs. initial evaluation but still with notable effort and pain reports. Decreased postural and positional awareness of right shoulder with notable tightness that affects proper glenohumeral motion. Should benefit from continued PT efforts.

P: Please advise after your exam!

Thank you for this referral.

# BAPTISTWORX
## Physical Therapy

7092 Distribution Drive
Louisville, KY 40258
502-935-9970

Kim Abell, PT, OCS
Physical Therapist
KY License #3609

Craig Smith, PT
Physical Therapist
KY License #1314

**Date:** July 26, 2013
**To:** Frank Bonnarens, MD
**From:** Kim Abell, PT, OCS
**Re:** **James Provins**

Mr. Provins has attended 22 sessions of PT. Treatment has included ther-ex as tolerated, a HEP, manual PT for flexibility/ROM, modalities prn and patient education.

S: Says his shoulder is still hurting a lot and it is popping also. Says he likes it when it pops. Can't use his right arm to do much at home. Rates his pain at 5/10 today.

O: Patient Demonstrates:

1. AROM: FF 75°; ABD 48°; supine with ~ 90° ABD ER is 60° and IR 64°; functional IR reach to post-lat hip and very limited ER reach towards head
   PROM supine: FF 156°; ABD in plane of scap 140°; ER full; IR70°
2. Palpation: tender sup/post GHJ
3. Strength: in neutral IR and ER 4/5
4. Special Tests: Drop Arm was + last visit (tested after exercises) but negative today when tested before exercises
5. Function: NT in clinic due to notable limitations with movement and pain

A: AROM has shown a recent decline. He continues to report moderate pain and limited use of the RUE. Signs/sxs of possible re-tear but could be just extreme weakness and fatigue as tests vary pre and post exercises.

P: Please advise.

Thank you for this referral.

**Orthopaedic Associates**

**Frank Bonnarens, MD**

Orthopaedic Surgeon

LIC #: 29483 • DEA #: _____

NPI #: 1821021783

☐ 3001 Kresge Way, Suite 330
Louisville, KY 40207
Tel: 502-585-4376 • Fax: 502-581-1274

☐ 2410 Ring Road, Suite 500
Elizabethtown, KY 42701
Tel: 270-763-0238 • Fax: 502-581-1274

FileRx.com 800-307-7717 RxPads.com

Name Jamey Provins DOB

Address Date 7/1/13

℞ Physical Therapy Rt shoulder
2-3x/wk x4wks focus on GH motion

Order # 1028494-1

| | |
|---|---|
| 1 - 24 | ☐ |
| 25 - 49 | ☐ |
| 50 - 74 | ☐ |
| 75 - 100 | ☐ |
| 101 - 150 | ☐ |
| 151 & over | ☐ |

RX-2-KY_H

Refill: NR 1 2 3 4 5 VOID AFTER _____

FC Bonnarens MD

MD

SCRIPT# 1905

PRESCRIPTION IS VOID IF MORE THAN ONE (1) PRESCRIPTION IS WRITTEN PER BLANK.

FRANK O. BONNARENS, M.D.
ORTHOPAEDIC ASSOCIATES

Jewish Outpatient Care Center
225 Abraham Flexner Way, Ste 403
Louisville, KY 40202
Telephone: (502) 585-4376

Preston Medical Center
7926 Preston Highway, Ste 103
Louisville, KY 40219
Telephone: (502) 969-2302

Northeast
2401 Terra Crossing Blvd, Ste 401
Louisville, KY 40245
(502) 585-4376

Name James Prain Date 7/29/13

Physical Therapy

2-3x wk x 4 wks

(R) shoulder

FOBsuu allmmo/kn

Prescription is void if more that one (1) prescription is written per blank.



95

FRANK O. BONNARENS, M.D.
ORTHOPAEDIC ASSOCIATES 935-9970

Jewish Outpatient Care Center
225 Abraham Flexner Way, Ste 403
Louisville, KY 40202
Telephone: (502) 585-4376

Preston Medical Center
7926 Preston Highway, Ste 103
Louisville, KY 40219
Telephone: (502) 969-2302

Northeast
2401 Terra Crossing Blvd, Ste 401
Louisville, KY 40245
(502) 585-4376

Name James Provin Date 6/3/13

Physical Therapy Rt shoulder

2-3x/wk x4wks

F O Bonnarens MD/NB

Prescription is void if more that one (1) prescription is written per blank.

RTO 4wks July 1st



96

# BAPTIST HEALTH

Name: James Provins Pt#: _____
Date: 7/8/13 PLACE LABEL HERE

## Physical Therapy Plan of Treatment

**Diagnosis**: s/p R rotator cuff, LHB, AC decompression repair **Physician**: Dr. Bonarrens

**Therapy Assessment:** Patient presents to clinic with R shoulder pain and dysfunction following surgery. He presents with: 1. Decreased R shoulder/scapular ROM, 2. Decreased R scapular/shoulder strength 3. Inability to perform essential job duties 4. Pain with any movement 5. Poor scapular mobility and GH joint mobility.

**Rehab Potential:** **Good**

**Plan of Treatment:** **Ultrasound** **Electrical Stimulation** **Heat/Cold** **Manual Treatment Therapeutic Exercise** **Patient Education** **Work Simulation** **HEP**

**Frequency of visits:** 3 x/week

**Expected Duration of Treatment:** 4 weeks

**Short Term Goals:** met by ____ weeks ____

| | | |
|---|---|---|
| Independent with HEP | Y | N |
| Decreased postural guarding | Y | N |
| Shoulder PROM to ≥ 120 deg in flex/abduction | Y | N |
| Pain with ex and light ADL's ≤5-6/10 at worst | Y | N |

**Long Term Goals:** met by 4 weeks

| | | |
|---|---|---|
| AROM to 90 deg in sitting without substitution | Y | N |
| No signs/symptoms of impingement at low level elevation | Y | N |
| Pain will not awaken patient for 5 hour span | Y | N |
| | Y | N |

**PT Signature:** N Williams PT, DPT **Date Treatment Initiated:** 7/8/13
Nicole Williams, PT, DPT KY lic #004979

**Initial Certification / 30 Day Recertification** **Certification Period:** 7/8/13-8/8/13

I certify that the therapy services are furnished while this patient is under my care. The services outlined above are required by this patient, and will be reviewed every 30 days.

**M.D.:** _____ **Date:** _____

*Please sign and return via fax to 935-9577.* Thank you, Baptist Health Physical Therapy

## Discharge Summary from Physical Therapy

Dates Seen: _____ Number of Visits: _____ Final Diagnosis: _____

Treatment: _____

Discharge Status of Patient: _____

Goals: All Met Partially Met Not Met Prognosis: _____

Comments: _____

PT SIGNATURE DISCHARGE DATE

# BAPTISTWORX

PROVINS, JAMES

## Physical Therapy Plan of Treatment

Diagnosis: R RCT – s/p repair Physician: F. Bonnarens, MD

Therapy Assessment: 51 yo M presents 3-4 wks after repair to dominant shdr with: 1. very limited ROM; 2. obvious weakness due to injury and sx; 3. current pain mild to intense; 4. dec tol for ADLs involving any use of the RUE away from body

Rehab Potential: Excellent **Good** Fair Guarded

Plan of Treatment: Ultrasound Iontophoresis **Electrical Stimulation** **Heat/Cold** **Manual Treatment** **Therapeutic Exercise** Traction **Patient Education** Work Simulation **HEP** Other

Frequency of visits: QD **TIW** **BIW** WEEKLY One time only

Expected Duration of Treatment: 2-3 mos

| Short Term Goals: met by 3 wks | | | Long Term Goals: met by D/C | | |
|---|---|---|---|---|---|
| | Y | N | | Y | N |
| 1. tol initial ex | Y | N | 1. (I) with HEP and body mech for prevention | Y | N |
| 2. decreased postural guarding | Y | N | 2. AROM ≥ WFL with min to no pain and strength > 4+/5 for improved ADLs | Y | N |
| 3. demonstrates cont progress with P/AAROM | Y | N | 3. no signs/sxs of impingement | Y | N |
| 4. pain with ex and light ADLs ≤ 5-6/10 | Y | N | 4. demos tol for ret to prior levels ADLs with min to no restriction | Y | N |

PT Signature: [signature] OCS #3609 Date Treatment Initiated 6/7/03

Kim Abell, PT, OCS KY LIC # 3609

**Initial Certification / 30 Day Recertification** **Certification Period:** _____

I certify that the therapy services are furnished while this patient is under my care. The services outlined above are required by this patient, and will be reviewed every 30 days.

**M.D.:** _____ **Date:** _____

***Please sign and return via fax to 935-9577.*** Thank you, BaptistWorx Physical Therapy

## Discharge Summary from Physical Therapy

Dates Seen: _____ Number of Visits: _____ Final Diagnosis: _____

Treatment: _____

Discharge Status of Patient: _____

Goals: All Met Partially Met Not Met Prognosis: _____

Comments: _____

PT SIGNATURE DISCHARGE DATE

6/2005

# BAPTISTWORX

PROVINS, JAMES

## Physical Therapy Plan of Treatment

Diagnosis: R RCT – s/p repair

Physician: F. Bonnarens, MD

Therapy Assessment: 51 yo M presents 3-4 wks after repair to dominant shdr with: 1. very limited ROM; 2. obvious weakness due to injury and sx; 3. current pain mild to intense; 4. dec tol for ADLs involving any use of the RUE away from body

Rehab Potential: Excellent Good Fair Guarded

Plan of Treatment: Ultrasound Iontophoresis Electrical Stimulation Heat/Cold Manual Treatment Therapeutic Exercise Traction Patient Education Work Simulation HEP Other

Frequency of visits: QD TIW BIW WEEKLY One time only

Expected Duration of Treatment: 2-3 mos

Short Term Goals: met by 3 wks

1. tol initial ex Y N
2. decreased postural guarding Y N
3. demonstrates cont progress with P/AAROM Y N
4. pain with ex and light ADLs ≤ 5-6/10 Y N

Long Term Goals: met by D/C

1. (1) with HEP and body mech for prevention Y N
2. AROM ≥ WFL with min to no pain and strength > 4+/5 for improved ADLs Y N
3. no signs/sxs of impingement Y N
4. demos tol for ret to prior levels ADLs with min to no restriction Y N

PT Signature: Kim Abell, PT, OCS KY LIC # 3609 Date Treatment Initiated: 6/7/13

**Initial Certification / 30 Day Recertification** **Certification Period:**

I certify that the therapy services are furnished while this patient is under my care. The services outlined above are required by this patient, and will be reviewed every 30 days.

M.D.: Date: 6/14/13

*Please sign and return via fax to 935-9577.* Thank you, BaptistWorx Physical Therapy

## Discharge Summary from Physical Therapy

Dates Seen: Number of Visits: Final Diagnosis:

Treatment:

Discharge Status of Patient:

Goals: All Met Partially Met Not Met Prognosis:

Comments:

PT SIGNATURE DISCHARGE DATE

6/2005

*The Leader in Advanced Patient-Friendly Imaging*

OPEN MRI, LLC | Ph: (502)-429-6500 | FAX: (502)-429-0770

7807 Shelbyville Road, Louisville, KY 40222 5227 Dixie Highway, Louisville, KY 40216

**Patient Name:** PROVINS, JAMES

**Patient No:** 181765
**Accession #:** 369857
**Interpreting Rad:** Dunn, George M.D.

**Exam:** Shoulder (R) ARTHROGRAPHY MRI
**DATE OF EXAM:** 10/02/2013
**Referring Physician:** Bonnarens, Frank O M.D.

**HISTORY**: 52 year-old male with right shoulder pain. History of previous rotator cuff repair, subacromial decompression and biceps tendon debridement and May, 2013.

**DISCUSSION**: MRI of the right shoulder was performed on a 1.5 Tesla system. Axial and coronal T1 fat suppressed and T2 fat suppressed series; coronal T1 and T2-weighted series and sagittal T1 series acquired. Imaging performed following adequate intra-articular distention with 10 cc dilute MultiHance. Arthrography performed by Dr. Robinson, utilizing 13 seconds of fluoroscopy.

**Rotator cuff**: There is a large recurrent full thickness tear at the supraspinatus tendon insertion, measuring approximately 20 mm in AP width. The tendon is retracted approximately 25 mm. There is mild supraspinatus muscle atrophy.

There is full-thickness tearing of the majority of the subscapularis tendon. The tendon has retracted cephalad and is likely scarred in to the rotator interval capsule. There is moderate subscapularis muscle atrophy.

There is mild tendinopathy of the infraspinatus, without tearing. The teres minor is intact.

**Glenoid labrum and long head biceps tendon**: There is mild blunting of surface irregularity of the superior labrum, without detachment. The posterior labrum is blunted as well. There is no para labral cystic change. The long head biceps tendon is not present within the field-of-view.

**Bony structures and articular surfaces**: There is an anchor tract within the lateral humeral head consistent with history of previous rotator cuff repair. There is mild glenohumeral arthritic spurring. There is no significant cartilage defect identified. There are multiple small filling defects within the glenohumeral joint space likely representing underlying synovitis.

The acromioclavicular joint is intact. Subacromial space is preserved. Contrast extravasates from the glenohumeral joint into the subacromial space.

**IMPRESSION:**
1. There is a large recurrent full thickness tear of the supraspinatus tendon insertion, with the tendon retracted approximately 25 mm. There is mild supraspinatus muscle atrophy.
2. Full-thickness tearing of the subscapularis tendon, with the tendon retracted cephalad and likely scarred in to the rotator intervalule. This likely represents a chronic injury, and there is moderate subscapularis muscle atrophy.
3. Nonvisualization of the long head biceps tendon, consistent with history of previous surgical debridement.
4. Glenohumeral synovitis.

Thank you for referring PROVINS, JAMES to High Field and Open MRI.
If you have any questions or would like to speak to one of our Radiologists regarding this exam, please call (502) 429-6500.

Dictated by: George Dunn MD
Signed: Oct 3 2013 12:43AM
**RAD LOC 10**

***This report is preliminary unless signed by a physician.***

# OAKTREE ORTHOPAEDICS

115 Brushy Creek Road
Easley, SC 29642

Phone: 864-855-1633 Fax: 864-855-1323


December 23, 2014

Don Smith, Attorney-At-Law

RE: Patient: James Provins

Dear Mr. Smith:

In regard to your communication concerning patient by the name of James Provins, I am responding to your communication and aspect of information concerning injuries that occurred to his right shoulder. This patient was not able to be examined because he is deceased, but in regard to the history that was obtained in my review of his MRIs that were done, the following is offered.

As you are aware, this patient had an injury to his right shoulder which resulted in a rotator cuff tear, subacromial decompression, and changes along the labrum. This occurred in January of 2012. The patient then had surgery on May 16, 2013 because of noted loss of motion increasing pain and change in his every day functional activity associated with his right shoulder. Post-operatively, the patient's repair allowed him to begin increasing his activity levels; however, he had increasing pain and discomfort and loss of function and further degenerative changes that occurred. The patient had a second MRI done in October of 2013 and that MRI that was done of the right shoulder revealed a large recurrent full thickness tear of the supraspinatus tendon. I personally did review this MRI and there was a tear of the supraspinatus border affective the rotator cuff and labrum of the right shoulder. There was also supraspinatus muscle degenerative changes and atrophy noted. The long head of the biceps tendon had increased irritation at the areas, but it was not visualized very well radiographically. Synovitis was present.

In regard to that, a second surgery was recommended to be done, but before there could be follow through of the second surgery, the patient died.

I have reviewed the history and it is a history of painful injuries with residual symptoms. The MRI confirmed symptomatic changes of the rotator cuff and labrum. The operative findings reestablished the objective noted rotator cuff injury by history. Again, a second surgery was recommended, but was not done because of the death of the patient.

As you may be aware, the shoulder is comprised of the mid-humeral bone border going to the area of the scapular thoracic region. This includes all of the bone, the joint, the ligament structures, and soft tissue structures.

Continued...

Most the impairments are based on the diagnostic-based impairment in which impairment class is determined by the diagnosis and specific criteria and then this is then adjusted into the upper extremity factor for disability related to *The Guides and Evaluation of Permanent Impairment*. Generally, the impairment rating that I use is through the Sixth Edition. It should be noted that it is important that not only history is completed, but that physical examination is carried through and that is compared to the clinical studies that have been done. This percentage of disability that we are completing today is based only on the MRI findings and has not been compared with physical examination other than as historically completed.

This patient's history that was done does show consistent findings of rotator cuff pathology as documented as a full thickness tear and also associated with the labral border. These findings radiographically would lead to a 10% to 13% disability rating utilizing the shoulder regional grid border of the upper extremity on per Table 15-5, page 403, of *The Guides and Evaluation of Permanent Impairment, Sixth Edition*.

If further information would be requested or possible further review of historical aspect of this patient's care, that can be carried through.

Sincerely,

Dwight A. Jacobus, D.O.
Board Certified Orthopedist

DAJ:ats12
Voice File: 1223.048
Audio Position: 0:00

# OAKTREE ORTHOPAEDICS

*115 Brushy Creek Road*
*Easley, SC 29642*

*Phone: 864-855-1633* *Fax: 864-855-1323*


January 5, 2015

Don Smith, Attorney-At-Law

RE: Patient: James Provins

Dear Mr. Smith:

This is to confirm my opinion that the above-captioned patient, who is now deceased, would have a 10% to 13% disability rating utilizing the shoulder regional grid border of the upper extremity on Table 15-5, page 403, of *The Guides and Evaluation of Permanent Impairment, Sixth Edition*. It should be noted that it is also my opinion that whether the patient was not deceased and was able to have a second surgery, he would still have a disability percentage of at least 10% to 13% in regard to the findings of pre-operatively, surgically, and post-operatively. It is my opinion that a second surgery would not relate to a diminished percentage of disability because of the pathology that was present at the time the first surgery was completed. If I can be of further assistance to you, please do not hesitate to contact my office.

Sincerely,

Dwight A. Jacobus, D.O.
Board Certified Orthopedist

DAJ:ats12
Voice File: 0106.199
Audio Position: 0:00

July 14, 2015

Donald Smith, Esquire
122 North Main Street
Anderson, South Carolina 29621

re: James C. Provins

Dear Mr. Smith:

Thank you for referring this case to me for review. In arriving at my opinions, I have reviewed the following records and documents:

Records Reviewed:

Baptist Community Health Services
- Fax Transmission/Information Sheet - Undated, 07/01/13

Baptist Health Louisville
- Admission/Encounter Facesheet 05/15/13
- History and Physical Update 05/15/13
- Operative Note 05/15/13
- Order Conf Report 05/13/13
- Comp Orders Report
- Physician's Orders 05/15/13
- Recovery Orders 05/15/13
- Intraoperative Orders
- Preoperative Anesthesia Orders
- Preoperative Orders
- Surgery Order 05/14/13
- Lab Results
- ECG 05/13/13
- Nicole Williams, PT, DPT
  - Physical Therapy Plan of Treatment 07/08/13

Baptist Physical Therapy
- Daily Progress Note 06/11/13, 06/12/13, 06/14/13, 06/18/13, 06/19/13, 06/21/13, 06/24/13, 06/26/13, 06/28/13, 07/02/13, 07/03/13, 07/05/13, 07/08/13, 07/10/13, 07/12/13, 07/16/13, 07/17/13, 07/19/13, 07/22/13, 07/24/13, 07/26/13, 07/31/13, 08/02/13, 08/05/13, 08/07/13, 08/09/13, 08/13/13, 08/14/13, 08/15/13, 08/16/13, 08/21/13, 08/23/13

Mailing Address:
PO Box 27161
Greenville, SC 29616

Office Address:
304 W. Stone Ave.
Greenville, SC 29609

864/232-0858
800/355-4989
FAX 864/232-0859
http://www.forensicnetwork.com

Records reviewed: (cont.)

Baptistworx Physical Therapy
- Discharge Check List
- Therapy Evaluations and Re-Evaluation
- Body Parts Service
- Physical Therapy Initial Evaluation Special Report
- Physical Therapy Shoulder Evaluation Special Report
- Physical Therapy Re-Evaluation/Brief Evaluation Special Report
- Treatment Plan Flow Sheet
- Exercise Sheet
- Sean Sullivan, PTA
  - to Dr. Bonnarens Memo 06/28/13, 08/23/13
- Kim Abell, PT, OCS
  - to Frank Bonnarens, M.D. Memo 07/26/13
  - Physical Therapy Plan of Treatment 06/07/13
- New Injury Patient Information 06/07/13
- Urgent Care Medical & Health History Form 06/07/13
- Occupational Health and Wellness Conditions and Consents
- Fax Transmission Cover Sheet 07/05/13, 07/10/13, 07/26/13, 08/23/13

Commonwealth of Kentucky Department of Workers' Claims
- Medical Waiver and Consent

Court Documents
- Notice of Witnesses and Written Report(s)/Physician or Other Evidence to be Introduced on Behalf of Claimant James Provins 01/06/15
- Waiver of Potential Claim of Alice Marie Zimmerman 07/23/14
- Waiver of Potential Claim of Jessica Mae Provins 07/23/14
- Waiver of Potential Claim of Amanda Jean Provins 07/23/14

High Field & Open MRI
- Arthrography MRI Shoulder (R) 10/02/13

InMed Diagnostic Services of S.C., LLC
- MRI Right Shoulder 02/18/12

Kentucky Registrar of Vital Statistics
- Certificate of Death 04/14/14

Gorden T. McMurry, M.D.
- History and Physical 04/24/13

Oaktree Orthopaedics
- Dwight J. Jacobus, D.O.
  - To Don Smith 12/23/14, 01/05/15

Orthopaedic Associates of Kentuckiana, P.L.L.C.
- Frank O. Bonnarens, M.D.
  - Note 05/15/13
  - Prescription Note 05/10/13, 06/03/13, 07/01/13, 07/29/13

Redi Care
- Gabrielle Linder, PA-C
  - Note 01/24/12, 01/30/12

Interviews:
Alice Marie Zimmerman
Debra Ann Provins

**OVERVIEW:**

As you know, Mr. Provins was injured at work on 01/24/12 while in employment as an ironworker with Spirit Construction Company. While he originally complained of shoulder pain and difficulty in the use his arm, he was initially treated for a sprain and was prescribed Voltaren. A week later his medication was changed to Mobic and Robaxin.

An MRI on 02/18/12 as interpreted by Stephen Gordin, M.D. indicated that on his right shoulder he had a fairly extensive tear of the supraspinatus tendon, likely involving the infraspinatus. Also, Dr. Gordin noted that there appeared to be a tear involving the subscapularis tendon. There was no evidence of bicep dislocation. He was initially put on light duty but since his employer did not have light duty, he was let go. Ultimately, on 05/15/13, Frank O. Bonnarens, M.D. diagnosed him with a rotator cuff tear, impingement of the AC joint, degenerative joint disease and tear of the long head of the biceps. Dr. Bonnarens noted on 05/15/13 that his overall impression was that they were dealing with a tear of the rotator cuff and a possible tear of the long head of the biceps. On 05/15/13, Dr. Bonnarens performed a right shoulder rotator cuff repair, acromioplsty/Mumford procedure, debridement of the biceps stump and labral tears, and insertion of bone graft. Unfortunately, this surgical procedure was not a success and a second MRI done in October of 2013, revealed a large recurrent full thickness tear of the subspinatus tendon, a tear of the subspinatus border affecting the rotator cuff and labrum of the right shoulder. There was also subspinatus muscle degenerative changes and atrophy noted. A second surgery was recommended, however, prior to that surgical procedure being done, on 04/14/14, Mr. Provins died. His certificate of death indicated that he died as a result of an acute respiratory failure, septic shock, pneumonia, renal failure and alcohol abuse.

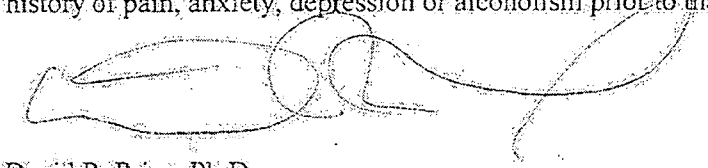
Interestingly, interviews with his wife, Debra Ann Provins and his sister, Mary Alice Zimmerman (who is a nurse), indicated that accompanying this injury Mr. Provins had developed pain, depression, and anxiety. An indication of the progression of his depression may well be reflected in his weight going from 193 pounds in 2012 to 242 pounds at the time of surgery in May of 2013. He also developed an Alcohol Abuse problem as related to his pain and suffering. This was noted on his death certificate. The Baptist Physical Therapy noted on 06/11/13 that there were "Obvious signs of ETOH abuse in his presentation (e.g., tremors, yellow/red eyes...)". Mrs. Provins noted that her husband was in pain for going on three years and had fought Workers' Compensation for treatment. Mrs. Provins reported that he was depressed, that he would stay in his home and in his bedroom. Mr. Provins would talk about suicide, death and dying. She reported that her husband did not want their children to see him dying. She said that he was progressively more depressed and just laid in bed. Then he started drinking until he would pass out. She described him as a severely depressed gentleman in pain who had developed an Alcohol Abuse problem secondary to his injury.

An interview with Ms. Zimmerman was illuminating. Ms. Zimmerman is a registered nurse who currently serves as a shift supervisor at a hospital in Florida. Ms. Zimmerman reported that Mr. Provins' became more depressed following his injury. She said he worried about not having any insurance and not being able to afford for any health care. He began to withdraw and would not communicate with his family. She tearfully reported that he "changed overall". Ms. Zimmerman said Mr. Provins could not do anything he used to do and became very reclusive. Ms. Zimmerman reported that by the time he went to the emergency room for care it was too late and he ultimately succumbed to the flu, pneumonia, sepsis and his organs began shutting down.

Historically, Ms. Zimmerman reported that Mr. Provins had previously smoked but quit years ago. She reported that pre-injury he had been a social drinker but had not consumed alcohol the way he did following his injury. She reported that he withdrew from his family to the extent that he started staying in a separate bedroom. He would stay in bed and not get up. She estimated that he had crying spells four to five times a week. Irritability was a problem. He became increasingly nonverbal. The symptoms of depression she specifically reported were pessimism, withdrawal, reports of malaise and sadness. He became increasingly hopeless. He reported feeling worthless. He had hypersomnia, sleeping long hours. He isolated himself and began to become overly dependent upon alcohol as an escape and a self-medication. She said that following his injury he became progressively depressed and she said he became unlikeable. Ms. Zimmerman reported she was at the hospital when he died. She actually extubated him from the ventilator.

These records would reflect that subsequent to Mr. Provins' shoulder injury he developed pain and suffering as well as a loss of income and an ability to use his right arm. Mr. Provins then likely developed a Somatic Symptom Disorder With Predominant Pain (DSM-5™ V30.82), a Major Depressive Disorder, Single Episode, Severe, Without Psychotic Features (DSM-5™ 296.23) and a moderate to severe Alcohol Use Disorder (DSM-5™ 303.9).

Obviously the process that ultimately led to Mr. Provins' demise appears to have been the injury followed by prolonged pain, financial distress, loss of the use of his right arm, impaired activity of daily living, depression, anxiety about his future and his self-medication with alcohol that led to his death. These would appear to be related to his shoulder injury of 01/24/12 as he had no history of pain, anxiety, depression or alcoholism prior to that event.



David R. Price, Ph.D.
Licensed Clinical Psychologist
The Forensic Network PA

# PHYSICIAN'S ASSESSMENT STATEMENT

| YES | NO | |
|---|---|---|
| X | | 1. I have had the opportunity to treat Mr. James C. Provins for difficulties that he had with his right shoulder following an on-the-job accident on January 24, 2012. |
| X | | 2. It is my understanding that Mr. Provins was working construction for Spirit, Inc. |
| X | | 3. It is my understanding that Mr. Provins injured his right shoulder when someone dropped the other end of a 150 lb. piece that they were lifting |
| X | | 4. It is my understanding that Mr. Provins heard a snapping sensation and immediate pain. |
| X | | 5. That I referred Mr. Provins for an MRI due to the symptomology that he exhibited. |
| X | | 6. That the carrier in this matter denied my request. |
| | X | 7. It is my understanding that the employer let Mr. Provins go prior to my last visit with him on January 30, 2012. |
| UNABLE | | 8. I have since been provided with an MRI report which indicates that Mr. Provins has a fairly extensive tear of the supraspinatus tendon and involving the infraspinatus. |
| UNABLE | | 9. This finding supports the symptomology exhibited on January 24, 2012 when I saw Mr. Provins, and subsequently referred him for an MRI. |
| UNABLE | | 10. It is my belief that Mr. Provins suffered the tear in the on-the-job accident of January 24, 2012. |

All of my analysis and subsequent conclusions are to a reasonable degree of medical certainty.

glinder PA-C 5/1/12

Gabrielle Linder, PA-C Date

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | BEFORE THE SOUTH CAROLINA |
| COUNTY OF ANDERSON | ) | WORKERS COMPENSATION COMMISSION |
| James Provins, | ) | W.C.C. File No. 1200349 |
| Claimant | ) | |
| vs | ) | AFFIDAVIT OF THOMAS V. MARTIN, M.D. |
| Spirit Construction Services, Inc. | ) | |
| Employer | ) | |
| and | ) | |
| Insurance Company of the PA. | ) | |
| Insurance Carrier. | ) | |
| Defendants | ) | |

I, Thomas V. Martin, M.D., am a licensed physician (psychiatrist) in the state of South Carolina. I am Board Certified in General and Forensic Psychiatry by the American Board of Psychiatry and Neurology and the American Board of Forensic Psychiatry. My practice is located at 1330 Richland Street, Columbia, SC. My practice includes the care and treatment of patients from childhood to geriatrics. I have been qualified to testify in numerous counties in South Carolina as well as the United States Federal Courts. My practice of twenty five years includes the care and treatment of patients from childhood to geriatrics. I have been qualified to testify in Criminal, Family, Juvenile, and Federal Courts in numerous counties in South Carolina as well as other parts of the United States. Areas of testimony include diagnoses of major mental illnesses, personality disorders, substance abuse, as well as evaluations of competency to stand trial and criminal responsibility.

Being duly sworn I do swear and affirm the following:

1) A posthumous forensic psychiatric evaluation of Mr. James Curtis Provins (W.C.C. File No. 1200349) was requested by the deceased Claimant's attorney, Mr. Donald L. Smith, Esq. on May 18, 2016. Specifically requested was an opinion as to whether Mr. Provins' past psychiatric history, work-related injury on January 24, 2012, and manner of timely medical/surgical treatment contributed to his eventual demise on April 11, 2014.
2) Records reviewed included: Records from BaptistWorx Physical Therapy, Various Affidavits, Transcript of Testimony of Luis Carrion, Death Certificate of James Provins, Records from Orthopaedic Associates of Kentuckiana, P.L.L.C., Baptist Hospital Records, Records from Amin's Family Practice, Neuropsychological Examination Report by David Price, M.D., Records from High Field & Open MRI, InMed, and RediCare, Records from KentuckyOne Health Hospital Admission, SCWCC Pre-Hearing Brief dated October 2015, and a brief synopsis of events by Donald Smith, Esq.
3) At the time of his death, Mr. Provins was a 52-year-old, married man, formerly employed in Kentucky by Spirit Construction Services, Inc. as an Iron Worker. In 2001, he had a psychiatric history of "syncope" following the excessive consumption of alcohol. Mr. Provins reportedly used alcohol as a form of self-medication for stress.
4) Depressive illness and suicidal ideation plagued Mr. Provins in 2009 surrounding present-time marital discord and financial problems. As in the past and according to medical records, Mr.

# MARTIN PSYCHIATRIC SERVICES, PC

Provins coped by drinking excessively in an effort to medicate his depressive symptoms. Still his overuse of alcohol led to his termination from employment. His prior struggle with alcohol use also led to one DUI and three Public Intoxication charges. Mr. Provins was stabilized at the University of Louisville Hospital in Louisville, KY and diagnosed with "alcohol dependence." Subsequent to his hospital release, there was no record or evidence provided to suggest that Mr. Provins suffered from ongoing alcohol or mood related issues. He returned to the workforce, reunited with his family, and reportedly, reintegrated into the community unfettered by his 2009 bout with alcohol and depression.

5) Mr. Provins was on an out-of-state construction assignment in South Carolina with Spirit Construction Services, Inc. when he incurred a work-related injury to his right shoulder on January 24, 2012. According to Mr. Provins' attorney, no MRI of the shoulder was authorized or approved through Workers' Compensation and the attorney made arrangements for the imaging study. In subsequent medical and court documents, it was stipulated that Mr. Provins' shoulder injury was legitimate and serious. The initial MRI and later orthopedic surgical records indicated that Mr. Provins sustained tears to tendons and rotator cuff in his right shoulder that significantly compromised his range of motion, strength and left him in persistent pain. Although "light duty" was recommended, no such position was available and Mr. Provins was relieved of his position at Spirit Construction Services, Inc.

6) Mr. Provins was medically evaluated immediately following the injury and he filed a Workers' Compensation case within approximately one month. According to Mr. Provins' attorney, Mr. Provins received no financial medical aftercare until the spring of 2013. In May 2013, Mr. Provins underwent orthopedic surgery by Frank Bonnarens, M.D. to remediate his condition. This was followed by opiate pain medication and physical therapy (PT) where after more than 30 PT sessions, notes indicated there was nearly no amelioration of Mr. Provins' pain or mobility. These PT notes appeared in direct contrast to Dr. Bonnarens report of Mr. Provins' range of motion was "good," rotation was "strong," and his condition was "progressing." Dr. Bonnarens further opined that Mr. Provins would have limited use of his right arm at his place of employment and that he would likely reach Maximum Medical Improvement (MMI) by November 2013. An MRI in October 2013 indicated that Mr. Provins' condition persisted and a second surgery was contemplated but no further treatment was provided on the injured shoulder.

7) According to Mr. Provins' attorney, by December 2013 Mr. Provins' medical/surgical support ended. According to family reports, Mr. Provins became increasingly depressed suffering insatiable pain and returned to alcohol as a form of self-medication. He became reclusive and nearly unreachable by friends and family. With persistent pain and lack of management, Mr. Provins' psychiatric condition took a downward spiral course. By all accounts, he drank alcohol excessively and sunk into a severe depressive condition and failed to maintain or seek any self-care.

8) On April 10, 2014, Mr. Provins' medical and psychiatric condition was so dire, he was emergently admitted to the St. Mary and Elizabeth Hospital. He was admitted with a myriad of multi-organ decompensated illnesses. He was not able to be medically stabilized and was not a candidate for surgical intervention. Mr. Provins was intubated, later extubated, and was eventually placed on palliative care. Mr. Provins died in the hospital on April 14, 2014. His Death Certificate sited causes of death: "acute respiratory failure, septic shock, pneumonia, acute renal failure, and alcohol abuse."

# MARTIN PSYCHIATRIC SERVICES, PC

9) A posthumous psychological evaluation were requested by Mr. Provins' attorney. Psychologist, David R. Price, Ph.D. in his July 14, 2015 report opined that Mr. Provins suffered from "Somatic Symptom Disorder with Predominant Pain; Major Depressive Disorder, Single Episode, Severe, without Psychotic features; and moderate to severe Alcohol Use Disorder." He further opined that Mr. Provins' "injury followed by prolonged pain, financial stress, loss of the use of his right arm, impaired activity of daily living, depression, anxiety about his future and his self-medication with alcohol that led to his death."

10) It is clear from the records provided that Mr. Provins suffered from depressive illness and alcohol abuse disorders that preexisted his work-related injury in 2012. Furthermore, it has been stipulated that he suffered from a serious right shoulder injury that required medical and surgical treatment. It is also apparent that while under significant psychosocial stress or in pain, Mr. Provins would self-medicate pain and depression with alcohol. While awaiting professional medical/surgical and pain management after incurring his injury, Mr. Provins used alcohol to cope and self-medicate depressive and pain symptoms, thereby exacerbating a preexisting condition. Following his surgery in 2013, he did not gain significant remediation or pain relief. When medical assistance ceased in latter 2013, Mr. Provins again used alcohol in excess. This further enhanced his neurovegetative symptoms of depression, reclusiveness, and lack of self-care. It is this Examiner's opinion to a reasonable degree of medical and psychiatric certainty that Mr. Provins suffered from ***Depressive Disorder due to Another Medical Condition (right shoulder injury), Somatic Symptom Disorder with Predominant Pain, Substance (alcohol)-Induced Depressive Disorder, and Alcohol Use Disorder, severe***. These psychiatric conditions oftentimes lead to the reclusive, depressive and apathetic persona of individuals where self-care and maintenance of activities of daily living are seriously compromised, especially after prolonged lack of treatment. This likely contributed to Mr. Provins' medical, multi-organ decompensation requiring emergency hospitalization in 2014.

Further affiant sayeth not.

Sworn to before me this 16th of June, 2016

Thomas V. Martin, M.D.

Joy G. Covington Grimsley
A Notary Public for South Carolina
My Commission Expires: 12-15-2017

Respondents' Submissions

APA pages 113-547

**Amin's Family Practice Associates, P.S.C.**

Name James Prorina Allergies
DOB Age 40

DATE 7/30/01
TEMP 97.6
B.P. 120/80 223 1/2

CC – Quit Smoking X/mo.
– no coughing or hard breathing
he denies pain out eyes nose
drinks beer mostly –
& hard liquor @ times
– coughing up dark crusty
phlegm.
– chronic tender @ chest
– has cramps & tender
chest pain @ times

(+) DM – mother
(–) CA
(–) Smoking

Pt has had 3 blood cast spots recently. Denies Bleeding, Pt states he's expressed lot in his chest.

Fasting BMP, Acute

Pg. Kurz RR(8)
Mug chem
Hepatitis

Refer to pulmonologist

Dx. Symptomatic, positive sputum cytology
Refer to pulmonologist


2015-10-16 10:40 AMINS FAMILY MED CNT 502 937 0632 >> P 9/18

# Amin's Family Practice Associates, P.S.C.

Name _____ Allergies _____

DOB _____ Age _____

9/25/01 - Pt does not want to see neurological

refused S. Brauner.

7/30/01. JAMES C. PROVINS

S: The patient comes in saying that he has passed out five t...
Drinks a fair amount of beer. This does not usually occur when he
drinks heavier. The patient states that people tell him his eyes
roll back and he is out for one or two minutes and does not recall
what happens. Patient also has a family history of sugar.
O: Physical Exam Heart regular sinus rhythm without murmur.
Lungs clear. Head, ears, eyes, nose and throat negative.
A: (1) Syncopal episodes. (2) Possible seizures.
P: Will refer to a Neurologist. The patient will come in for a
fasting basic metabolic panel. DS/rlb

7/31/01 Lab work only
SMP

7/31/01. JAMES PROVINS

S: The patient is here for lab only; BMP JSB/rlb



2015-10-16 14:11 AMINS FAMILY MED CNT 502 937 0632 >> P 18/18

Incident # 4520 Date 7/7/09 **BULLITT COUNTY EMS** Patient Name Provins, James

**Airway** ☒ Patent ☐ Obstructed ☒ Self ☐ Oral ET mm:____ Time:____ ☐ Nasal ET mm:____ Time:____ ☐ B.V.M. ☐ Suction

**Breathing** L ☒ Normal ☐ Absent ☐ Decreased ☐ Rales ☐ Rhonchi ☐ Wheezes **Resp Effort** ☒ Normal ☐ Increased
R ☒ Normal ☐ Absent ☐ Decreased ☐ Rales ☐ Rhonchi ☐ Wheezes ☐ Decreased ☐ Absent

**Carotid Pulse** L ☒ Present ☐ Decreased ☐ Absent **Skin Color** ☒ Normal ☐ Pale ☐ Cyanotic ☐ Flush ☐ Ashen
R ☒ Present ☐ Decreased ☐ Absent **Skin Condition** ☒ Normal ☒ Warm ☒ Dry ☐ Moist ☐ Hot ☐ Cool

**Neuro.** Responds To: ☒ Alert ☐ Voice ☐ Pain ☐ Unresponsive
Oriented To: ☒ Person ☒ Place ☒ Time ☐ Event ☐ Other:

**Head** ☒ Normocephalic ☐ Other:

**Pupils** L ☒ Normal ☐ Dilated ☐ Constricted ☒ Reactive ☐ Non-React
R ☒ Normal ☐ Dilated ☐ Constricted ☒ Reactive ☐ Non-React

**Neck** ☒ Unremarkable ☐ J.V.D. ☐ Pain ☐ Tracheal Deviation ☐ L ☐ R ☐ Deformity
☐ Other:

**Chest / Back** ☒ Asymmetrical ☐ Crepitus ☐ Guarding ☐ Unknown ☐ Flail Segment ☐ Accessory Muscle Use
☐ Deformity ☐ Other:

**Abdomen** ☒ Normal ☐ Distended ☐ Tender ☐ Rigid ☐ Guarding ☐ Pain ☐ Nausea ☐ Vomiting
☐ Other:

**Abd Sounds** ☐ Normal ☐ Increased ☐ Decreased ☐ Absent

**Pelvis** ☒ Unremarkable ☐ Pain ☐ Crepitus ☐ Other:

**Extrem.** LU ☒ Normal ROM ☐ Decreased ROM ☒ Pulse ☒ Sensation Cap Refill ☒ < 2sec ☐ >2sec
☐ Other:

RU ☒ Normal ROM ☐ Decreased ROM ☒ Pulse ☒ Sensation Cap Refill ☒ < 2sec ☐ >2sec
☐ Other:

LL ☒ Normal ROM ☐ Decreased ROM ☒ Pulse ☒ Sensation Cap Refill ☒ < 2sec ☐ >2sec
☐ Other:

RL ☒ Normal ROM ☐ Decreased ROM ☒ Pulse ☒ Sensation Cap Refill ☒ < 2sec ☐ >2sec
☐ Other:

| | | |
|---|---|---|
| Time | 1437 | 1445 |
| B/P | 115/78 | 159/100 |
| HR | 77 | 98 |
| Resp. | 20 | 20 |
| Temp. | 0-98 | 0-98 |
| GCS | 15 | 15 |

BG Chemstrip: 89 Trauma Score:

Oxygen ☐ Cannula @ ____ LPM ☐ Mask @ ____ LPM ☐ B.V.M. @ ____ LPM

☐ I.V. ☐ I.O. Fluid / Rate / Gauge / Location / Volume In / Time / Initial

EKG Interpretation Lead

☐ Countershock / ☐ Cardiovert
____ x @ ____ Joules
____ x @ ____ Joules
____ x @ ____ Joules
____ x @ ____ Joules

| Medication | Dose | Route | Time | Initial |
|---|---|---|---|---|
| | | | | |

PROVINS JAMES
1209903 [redacted] 48 M
42609495 07/07/09

Physician # ____ ☐ Phone / ☐ Radio Orders Requested:

48 y/o M found sitting in a chair. Pt. admits to ingesting large quantities of ETOH. Pt. is having suicidal thoughts. Pt. denies wanting to hurt anyone else. Pt. vitals assessed. Pt. BG assessed. Pt. → to Vol. Pt. care → to staff. Dim OD. (END)

Report Prepared By: [signature] Received By: [signature]

Date 7/7/09 License # 1613 **BULLITT COUNTY EMS** Response # 4520 Unit # 21

0113 — 1507 Winers Run Road — Scene Address / City / State / Zip

100220 — Vol L — Destination

| Warning Equip. Used | | | | |
|---|---|---|---|---|
| To Scene | ☐ Lights | ☐ Siren | ☒ None | |
| From Scene | ☐ Lights | ☐ Siren | ☒ None | |

| | Times | Mileage |
|---|---|---|
| Unit Notified | 1355 | 228254 |
| Unit Enroute | 1355 | XXXXXXXXXXXXXX |
| Arrived Scene | 1424 | 228267 |
| Enroute Dest. | 1424 | XXXXXXXXXXXXXX |
| Arrived Dest | | 228297 |
| Back In Service | | 228311 |
| ALS Arrival | | XXXXXXXXXXXXXX |

Crew ID
1 Driver / Attendant — Certification # 562265
2 Driver / Attendant — 47770
3 Driver / Attendant

Name (Last, First, MI): PROVINS JAMES C

Address

City St Zip

DOB / Age 48 yrs mos / Sex M F

SSN / Phone 124

☐ Hispanic ☐ Non-Hispanic ☒ Unk. ☐ White ☐ Black ☐ Other ☐ Asian / P.I. ☐ Alaska Nat. ☐ Amer. Ind. ☒ Unk.

Run Type: ☒ Dispatch ☒ Transport — 1- Emergency 2- Non-Emergency

**Response Type**
01 Emerg. Dispatch 03 Sced. Trans 05 Standby
02 Intrpt./Assist 04 Non-Emergency 99 N/A

**Destination Determined By**
01 Closest Fac. 04 Protocol 07 Law Enf.
02 Patient 05 M.D. on Scene 08 Managed Care
03 Patient M.D. 06 Medical Control 99 N/A

**Circumstance Codes**
01 Weather 05 Infect. Exper. 09 Veh. Collision
02 Crowd Control 06 Lang. Barrier 10 Veh. Problems
03 Ext. > 20 min. 07 Road Cond. 11 Unsafe Scene
04 Haz-Mat 08 Traffic 99 N/A
00 Other

**Patient Disposition**
01 Trtd.,Trans 05 No Trmt. Req. 09 Call Cancelled
02 Trtd.,Trsf Care 06 Trmt. Refused 98 Unknown
03 Trtd.,Trsf.POV 07 Obv. Deceased 99 N/A
04 Trtd.,Released 08 No Pt. Found

**Aid Before Arrival**
01 Bystander 03 ALS 1st Resp. 05 N/A
02 BLS 1st Resp. 98 Unknown 00 Other

**Other Responders**
01 EMS/BLS 04 Fire Dept. 08 Coroner
02 EMS/ALS 05 Rescue Sqd. 09 Law Enf.
03 EMS/AIR (ALS) 06 Medical Resp. 99 N/A
07 Haz-Mat 00 Other

**Restraints Used**
YES NO Reason:

**Medical Necessity**
XB Bedridden XG Susp. Fracture XL No Bed Avail.
XD Restrained XH Stretcher Only XM Surg./Test @ 2nd Hosp
XE L.O.C./Shock XI Stroke / M.I. XO Trans. to Approved Dialysis Clinic
XJ Sev. Hemorrhage

Reason:

**Primary Impression-** 4 5

**Signs / Symptoms**
01 Abdo. Pain 17 Chills 33 Hyperthermia
02 Airway Obstr. 18 Confusion 34 Hypothermia 49 Seiz./ Convlsn.
03 Allergic React. 19 Cough 35 Shock/Hypovol. 50 Sexual Assault
04 Altered LOC 20 Obvious Death 36 Hemor./Bleeding 51 Smoke Inhal.
05 Anxiety 21 Dehydration 37 Inhalation Inj. 52 Sting / Bite
06 Asthma Attack 22 Diabetic Emerg. 38 Myocard. Inf. 53 Stroke / CVA
07 Back Pain 23 Diarrhea 39 Nausa / Vom. 54 Syncope / Faint
08 Behavior Disorder 24 Dizziness 40 Numbness 55 Tachycardia
09 Bloody Stool 25 Ear Pain 41 Palpitations 56 Trauma
10 Bradycardia 26 Electrocution 42 Paralysis 57 Unresponsive
11 Burning Sens. 27 Eye Pain 43 Poison / Drug 58 Vaginal Hemm.
12 Cardiac Arrest 28 Flank Pain 44 Preg./ O.B. Del. 59 Vent. Fibrillation
13 Cardiac Comp. 29 Fracture (Narr.) 45 Psych. Eval. 60 Weakness
14 Car. Rythi. Dist. 30 Gen. Sickness 46 Resp. Arrest 98 Unknown
15 Chest Pain 31 Headache 47 Resp. Distress 99 N/A
16 Chest Tightness 32 Hypertension 48 Rib Pain 00 Other (Narrative)

**Chief Complaint-** 4 5

**Injury Matrix**
00 Head 07 Flank 00 Amputate 07 GSW
01 Face 08 Arm/Shoulder 01 Blunt 08 Laceration
02 Neck 09 Hand 02 Burn 09 Pain
03 Thorax 10 Leg 03 Crush 10 Puncture
04 Abdomen 11 Hip/Pelvis 04 Dislocate 11 Swelling
05 Spine 12 Foot 05 Frac. Open 12 Abrasion
06 Back 13 External 06 Frac. Closed 13 Contusion

**Cause of Injury**
01 Aircraft 08 Drug Poison 15 Knife 22 Rad. Exposure
02 Assault 09 Electrocution 16 Lightning 23 Rape/Sex Assault
03 Bicycle 10 Excess Heat 17 Machinery 24 Smoke Inhal.
04 Blunt Object 11 Excess Cold 18 Mec. Suffocat. 25 Sting / Bite
05 Watercraft 12 Fall or Jump 19 M/Veh. Traf. 26 Work Related
06 Chem. Poison 13 Firearm 20 M/Veh. Other 98 Unknown
07 Drowning/ N.D. 14 Fire / Flames 21 Ped. Traf 99 N/A
00 Other

**Intent of Injury** ☐ Accidental ☐ Self ☐ Other ☐ Unknown

**Medical History**
01 Asthma 04 Cardiac Dis. 08 Renal Dis. 12 Tobacco 99 N/A
02 Behav. Dis. 05 Diabetes 09 Seizures 13 Tracheostomy 00 Other (Narrative)
03 Cancer 06 Emphys/COPD 10 Stroke/CVA 14 Tuberculosis
07 Hypertension 11 Subst. Abuse 15 Unknown

**Allergies & Medications** ☒ NKDA ☒ No Regular Meds ☐ Listed in Narrative

**Safety Devices**
01 Air Bag 03 Shldr Belt Only 06 Eye Protection 09 Lap Belt Only
02 Lap/Shldr. Belt 04 Helmet 07 Protect. Cloth. 98 None/ Unknown
05 Child Car Seat 08 Float Device 00 Other (See Narr.)

**Suspected Use/Abuse** ☒ Alcohol ☐ Drugs ☐ Both ☐ Unknown ☐ None

**Cardiac Arrest Witnessed By** ☐ Bystander ☐ BLS ☐ ALS ☐ Unknown ☒ None

**CPR Provided By:** ☒ N/A ☐ Unknown ☐ BLS ☐ ALS ☐ Bystander

**Time of Cardiac Arrest** **Time CPR Initiated**

**Pt Condition at Dest.** ☒ Unchanged ☐ Better ☐ Worse ☐ Expired ☐ Unknown ☐ N/A

**Treatment Procedure Codes**

B/L/S
01 Airway, Oral 09 Cold/Hot Applied 16 MAST/PASG 23 Short Bd/K.E.D.
02 Airway, Nasal 10 CPR Initiated 17 OB Care/Del. 24 Splint, Arm
03 Asst. Ventilation 11 Defib.,Auto 18 Oxygen, Mask 25 Splint, Leg
04 Bandage/Dreng. 12 Extrication 19 Oxygen, Cannula 26 Splint, Traction
05 Bleeding Control 13 O.C.S. (E.V.M.) 20 Position/Elev. 27 Suction Airway
07 Burn Care 14 IV Maintenance 21 Revised Trauma Scr 28 Vital Signs
08 C-Collar Applied 15 Long Bd/Scoop 22 Ped. Trauma Scr 00 Other BLS

A/L/S
50 Admin. Medication 54 Chest Decomp. 58 Glucose, Blood 62 Intravenous Access
51 Cardiac Pacing 55 Cricothyrotomy 59 Gastric Tube 63 Pulse Oximetry
52 Cardioversion 56 Defib., Manual 60 Intubation 00 Other ALS
53 Capnometry 57 ECG Monitoring 61 Intraosseous Access

Time / Crew I.D. / Procedure (Attempts/Success) Time / Crew I.D. / Procedure (Attempts/Success)

PROVINS ,JAMES
1209903 48 M
42609495 07/07/09

Signature of Representative of Facility Assuming Care: X

UofL Health Care
University Hospital

Emergency Department
530 S. Jackson Street
Louisville, Kentucky 40202

| SSN | Height | Weight | Treatment Room |
|---|---|---|---|
| | ' " | | EPS-03 |

| Patient Name | Triage Date | Triage Time | DOB | Age | Sex | Patient Number | MR Number |
|---|---|---|---|---|---|---|---|
| PROVINS ,JAMES | 07/07/09 | 15 : 27 | | 48 | M | 42609495 | 1209903 |

cc:SUICIDAL

Allergies: No Known Allerg No Known Drug A No Known Food A

More Allergies?

## PHYSICIAN ORDERS

Triage Vitals: Temp °F HR RR B/P SaO2 %

☐ CBC ☐ BMP ☐ CMP ☐ Amylase ☐ Lipase ☐ GGT ☐ U/A ☐ Old Chart
☐ PT/PTT ☐ BNP ☐ BSM x3 ☐ ECG ☐ BSM EKG x3 ☐ D-Dimer
☐ BHCG Qual ☐ BHCG Quant ☐ T & S ☐ T & C ☐ KOH/Wet Prep ☐ GC/CHLAM ☐ ABG
☐ Unk Tox ☐ Acet ☐ ASA ☐ ETOH ☐ UCOC ☐ UAMP ☐ UOP ☐ UTHC
☐ DAU ☐ UBAR ☐ UBZP ☐ UPPX ☐ STCA ☐ SBAR ☐ SBZP ☐ Dilantin ☐ Rapid Strep

Initial/ Order #

| Time | RADIOLOGY | REASON | TIME | ADDITIONAL ORDERS | REASON |
|---|---|---|---|---|---|
| | ☐CXR ☐ PA/Lat ☐ Portable | | | ☐ | |
| | ☐5V C-spine | | | ☐ | |
| | ☐CT without HEAD | | | ☐ | |
| | ☐CT C-spine | | | ☐ | |
| | ☐CT with IV/PO Abd/Pelvis | | | ☐ | |
| | ☐CT Chest PE Protocol | | | ☐ | |
| | ☐CT Abd/Pelvis Renal Stone | | | ☐ | |
| | ☐CT Chest Abd/Pelvis | | | ☐ | |
| | ☐CT Chest Abd/Pelvis w/ T/L Recon | | | ☐ | |

OBSERVATION ORDERS SELECT:
☐ Admitted to EPC Date: __/__/__ Time: ____
NPO after ____

CONSULTS/TIME:

☐ Monitor ☐ BP Monitor ☐ Pulse Ox ☐ IV Access ☐ ACCUCHECK ____
☐ URINE DIP ☐ URINE PREGNANCY POS NEG ☐ SECURITY HOLD

| Time | Order | Nurse Signature / Time | Time | Order | Nurse Signature / Time |
|---|---|---|---|---|---|
| | 1. | | | 6. | |
| | 2. | | | 7. | |
| | 3. | | | 8. | |
| | 4. | | | 9. | |
| | 5. | | | 10. | |

Discharge: ☐ Date: __/__/__ Time: ____
Transfer to: ☐ L&D ☐ EPS ☐ Dialysis

Follow-up with Dr(s): ____

INSTRUCTIONS:

Rx / Meds: ____

PT Admit ☐ Date __/__/__ ☐ CHARGES DONE
BSS Time: ____
Type Bed: ____ Left ED Date: __/__/__
Admit Bed: ____ Left ED Time: ____

Discharge Nurse Signature: Time: ____

MS or Intern Signature: Date: __/__/__ Time: ____

Attending/Resident Signature: Date: 7/9/09 Time: ____

Orange Sticker Registered

Green Security Sticker Hold

IMPRESSION:
1.
2.
3.
4.

Page 1 of 2

University of Louisville Hospital
James Graham Brown Cancer Center
Trauma Center
530 South Jackson Street | Louisville, KY 40202

PROVINS, JAMES
1209903 048 M
42609495 07/07/2009

**EMERGENCY PSYCHIATRY EVALUATION**
**PHYSICIAN SUMMARY**

Initial Physician Assessment

Date: 7/7/09 Time: 1548 Dr. Ali

☑ Reviewed VS 166/102 96 16 166/102 96 16 @ 3:11 am 7/4/09

☑ Pain/Physical Complaints + HTN, ⊘ pain, ⊘ DM, ⊘ thyroid dz, ⊘ heart dz, ⊘ seizure hx

☑ Reviewed Medical History/Medical Illnesses has had episodes of syncope (4 episodes in 2 months time 2 yrs ago, none since) Reports SI x 2 months

☑ Surgeries/Traumas Appendectomy / ⊘

☑ Substance Abuse: ☐ YES ☐ NO ☑ ETOH 16-18 beers/day, ½ pint - 1 pint liquor drank today (10 beers & quarter whiskey today, vodka) drinks daily x 4 yrs

☑ Illicit Substances Cocaine 2 yrs ago, ⊘ ☑ Tobacco quit 7/10 yrs ago, used dip mint 3 wks ago (smoking)

| CURRENT MEDICATIONS | DOSAGE | LAST USE |
|---|---|---|
| None | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

☐ Medications Reviewed ☑ Medications Reconciled

☑ Past Medications Vicodin 2 yrs, tooth extractions

☑ NKDA ☑ Allergies Sulfur

☐ LABS ordered

| | | | | | |
|---|---|---|---|---|---|
| ☐ BHCG | ☐ BMP | ☑ Serum Etoh BAL | ☐ UA | ☐ EKG | ☐ CT of (with/without contrast) |
| ☑ CBC | ☑ CMP | ☑ Urine tox DAU | ☐ CXR | ☐ TSH | ☐ Level |

☑ Medications Ordered Ativan, Folate, Thiamine

☑ Other Orders ⊘

**Security Hold**

Hold at Triage ☑ Meets Criteria Continue Hold ☐ Drop Security Hold
Voluntary at Triage ☐ Continue as Voluntary ☐ Add Security Hold

J. A. Ali
Physician Signature

**Plan**

☐ Ready for LCSW Evaluation ☐ Transfer to ER for further Medical Evaluation/Treatment ☑ Other Guard BAL

UL779200 (04/09) Page 1 of 3

University of Louisville Hospital
James Graham Brown Cancer Center
UofL HealthCare
530 South Jackson Street | Louisville KY 40202

PROVINS, JAMES
1209903 48 M
42609495 07/07/09

# EMERGENCY DEPARTMENT SECURITY DETENTION

## AUTHORIZATION

Ordered By: _____ Signature of Physician  Released by: _____ Signature of Physician

Service: ☐ EMERGENCY MEDICINE ☐ EMERGENCY PSYCHIATRY  Initiated by: _____ Signature of RN

## RATIONALE

☐ Suicidal/Homicidal Threats or Attempts
☐ Combativeness
☐ Assaultive Behavior
☐ Agitation
☐ Treatment Interference/Inability to Recognize or Identify Objects with Intact Sensory Function
☐ Sedation/Unconscious
☐ Falls Potential/Wandering/Unsteady
☐ Disorientation: Person, Place and Time
☐ Confusion or Psychosis

SECURITY ORDERS (Unless otherwise specified, order covers up to 24 hours. A face to face reassessment must be done by an RN at least every 2 hours to determine need for continuation.)

**DETENTION (HOLD)**
Placed 7/7/09 (Date) 1530 (Time)
Released: _____ Date _____ Time
Order Covers: _____ TO _____
RN/MD In Attendance: Kathy Magner

**DETENTION (HOLD)**
Placed _____ Date _____ Time
Released: _____ Date _____ Time
Order Covers: _____ TO _____
RN/MD In Attendance: _____

**ROOM 4 SECLUSION**
Placed _____ Date _____ Time
Released: _____ Date _____ Time
Personal Property: ☐ None: ☐ Disposition: _____ ☐ Returned to Patient ☐ N/A
Order Covers: _____ TO _____
RN/MD In Attendance: _____

**ROOM 4 SECLUSION**
Placed _____ Date _____ Time
Released: _____ Date _____ Time
Personal Property: ☐ None: ☐ Disposition: _____ ☐ Returned to Patient ☐ N/A
Order Covers: _____ TO _____
RN/MD In Attendance: _____

**RESTRAINTS**
Placed _____ Date _____ Time
Released: _____ Date _____ Time
Order Covers: _____ TO _____
RN/MD In Attendance: _____

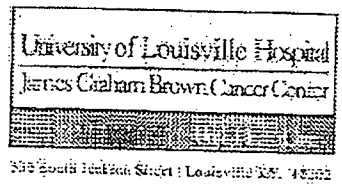
**RESTRAINTS**
Placed _____ Date _____ Time
Released: _____ Date _____ Time
Order Covers: _____ TO _____
RN/MD In Attendance: _____

**TYPE OF RESTRAINTS**
☐ Chest Strap ☐ Velcro
☐ Knee Strap ☐ Vest
☐ Hard ☐ Mittens
☐ Soft

**Criteria for Patient's Early Release From Restraints**
☐ Patient no longer dangerous to self
☐ Patient no longer dangerous to others
☐ Other (specify): _____

UL780225 (03/08)

ED0190




PROVINS, JAMES

1209903 6/29/1961 M

42609495 7/7/2009

## ADVANCE DIRECTIVE INFORMATION

### LIVING WILL AND ADVANCE DIRECTIVE INFORMATION

**Does the patient have a Living Will or other advance directive?**

☐ Yes ☒ No ☐ UNABLE TO ANSWER BECAUSE _____

**If Yes, does the patient have a copy with them?**

☐ Yes (make a copy for the chart)

☒ No (ask the patient or representative to deliver a copy to the Inpatient Nursing Unit)

**If No, does the patient desire additional information about an Advance Directive?**

☐ Yes (Nursing to call a consult to Social Services to Social Services at (562-3008)

☐ No

| Advance Directive Information Completed By | Registration Staff or Nurse<br>Signed by ESTEP, BEATRICE on 07-Jul-2009 16:04:33 -0400 | Date<br>7/7/2009 |
|---|---|---|

UL906-103 (12/07)

Clinical Report - Nurses
U of L Healthcare
Emergency Department
530 S. Jackson St., Louisville, KY 40202
502-562-3015
07/07/2009 15:27
---
Patient: PROVINS, JAMES
MRN: 1209903 Encounter: 42609495
Sex: M DOB: Age: 48y
Room: HBU-01

TRIAGE
Initial Assessment
Acuity: LEVEL 3.
Chief Complaint: SUICIDAL THOUGHTS.
BP: 166 / 102. HR: 96. RR: 16. Alert. No acute distress. --7/7/09 15:41 Kathleen Magnuson, RN.

Medications
None. --1531 (07/07/09) Kathleen Magnuson, RN.

Allergies
NKA. --1531 (07/07/09) Kathleen Magnuson, RN.

History
Onset (about 2 months). Pain level now: 0/10. The patient describes feelings of depression. Has been feeling agitated. The patient has had sleeping difficulties ("I can't sleep at ALL UNLESS I GET DRUNK"). Admits to having hallucinations (FOR THE LAST TWO MONTHS I'VE BEEN DRINKING HEAVILY AND I'VE HEARD SOME SHIT").
PAST MEDICAL HX: Hypertension (Untreated for elevated bp.).
SOCIAL HX: Heavy alcohol use. Last drink was 1 hours ago. Patient is a longstanding alcoholic (16 to 18 beers a day, 1/2 pt to 1 pint, Client said he drank both beer and liquor today.). Nonsmoker. A potential harm assessment was performed. The patient answered "yes" to the question "Are you here because you tried to hurt yourself?" and "Have you recently had thoughts about killing yourself?" and "no" to the question "Have you ever tried to hurt yourself before today?" and "Have you recently had thoughts about harming or killing others?". Functional assessment: no impairments noted. The nutritional risk assessment revealed no deficiencies. No report of abuse. No infectious disease exposure.
Historian: patient. Arrived in police custody (from sister's house).
--7/7/09 15:41 Kathleen Magnuson, RN.

Interventions
Fall risk assessment completed. No fall risk identified. TOR. --7/7/09 15:41 Kathleen Magnuson, RN.

PHYSICAL ASSESSMENT
Alert. Oriented X 3. Patient's speech is loud. The patient describes suicidal thoughts ("I wanted to either jump off the bridge or blow my brains out"). Appears anxious, sad and suicidal. The patient appears moderately overweight. Patient appears unkempt. Respirations not labored. Skin is warm. Skin rash (Client is a welder and has evidence of old burns on arms and upper chest.). --7/7/09 15:45 Kathleen Magnuson, RN.

NURSING PROGRESS NOTES
16:14. (LYING ON LONG CHAIR IN EPS TREATMENT OBSERVATION ROOM.). --7/7/09 16:14 Mary Clay, RN

Regular diet offered. --7/7/09 16:46 Kathleen Magnuson, RN

Patient ID band checked for patient name: patient confirmed. Blood samples drawn from the left antecubital space with 21g by nurse per protocol ; labeled in presence of the patient and sent to lab: red, green and purple top. --7/7/09 16:56 Kathleen Magnuson, RN

18:07. The patient reports no complaints and the patient is calm and resting quietly. --7/7/09 18:07 Mary Clay, RN

21:30. BP: sitting L arm auto 203 / 104. HR: 67. RR: 18 regular. (Pt tremulous, and complains of headache.). --7/7/09 21:30 Masterson, Amanda, RN

21:35. (Dr. Campbell, and Dr. Roberts notified of elevated blood pressure. Pt now resting in HBU bed #1.). --7/7/09 21:35 Masterson, Amanda, RN

21:43. (Pt given 0.1 mg Clonidine orally, and 1 tablet multivitamin orally. Pt declined a snack at this time.). --7/7/09 21:44 Masterson, Amanda, RN

2144. (Folic acid and thiamine given per order.). --7/7/09 21:47 Green, Rhonda, RN

23:27. BP: 151 / 82 lying L arm auto. HR: 70. RR: 16 regular. --7/7/09 23:28 Masterson, Amanda, RN

01:09. (Snoring loudly in HBU bed # 1). The patient reports no complaints and the patient is calm and sleeping. --7/8/09 01:09 Masterson, Amanda, RN

0230. (In talking with Social Worker). --7/8/09 02:42 Masterson, Amanda, RN

0326. (Pt given 2 mg Ativan orally at this time per Dr. Igbal for tremors.). --7/8/09 03:27 Masterson, Amanda, RN

0400. The patient reports no complaints and the patient is calm and resting quietly. --7/8/09 05:50 Moore, Susan, RN

0530. The patient is calm and resting quietly. --7/8/09 06:54 Green, Rhonda, RN

(In hbu 1,). The patient is resting quietly. --7/8/09 06:56 Green, Rhonda, RN

BP: 134 / 68 lying R arm. HR: 58. --7/8/09 07:06 Green, Rhonda, RN

Regular diet offered; patient consumed 100% and tolerated well. --7/8/09 08:09 Kathleen Magnuson, RN

0837. BP: 168/98. HR: 71. RR: 16. Temp: 96.7 oral. (TREMULOUS IN BILATERAL UPPR EXTREMITIES. ATIVAN 2 MG ORALLY GIVEN FOR S/S OF ETOH WITHDRAWAL.). --7/8/09 08:59 Mary Clay, RN

09:18. (To treatment team meeting, ambulatory, gait steady). --7/8/09 09:18 Urton, Sarah, RN

BP: 149 / 101. HR: 100. --7/8/09 09:58 Kathleen Magnuson, RN

(Given Librium 50 mg po per orders for elevated bp and pulse. Continues to rest in HBU bed #1.). --7/8/09 10:25 Kathleen Magnuson, RN.

Locked/Released at 07/08/2009 11:24 by Kathleen Magnuson, RN

.....

Patient: PROVINS, JAMES OrderSheet
MRN: 1209903 U of L Healthcare
VisitID: 42609495 530 S. Jackson St., Louisville, KY 40202 502-562-3015
48y, M Registration Date/Time: 07/07/2009 15:28

ORDER SHEET

Allergies: NKA

GENERAL ORDERS:

MEDICATION ORDERS:

IV FLUIDS:

ORDER SHEET NOTES:

This document has not been locked and should not be saved in the medical record.

University of Louisville Hospital
James Graham Brown Cancer Center

NADFORMF8 E ^i&SoarianEDM^i& ^mod&soarian^mod& ^formID&NADFORMF8^ for mID& ^acct&42609495^acct&

# REGISTRATION FORM

| Patient Number | | Room | Adm. Date | Adm. Time | Attn Phys No. | Attending Physician | Dept | Med Rec. |
|---|---|---|---|---|---|---|---|---|
| 42609495 | ER | HBU-01 | 07/08/09 | 11:27 | 237883 | ALI, JERMAINE A. | EMR | 1209903 |

| Patient Name and Address | S.S. Number | Status | P T | FC | Date of Birth | Sex | Mar. Sts |
|---|---|---|---|---|---|---|---|
| PROVINS ,JAMES | | EA | Z | R | 48 | M | M |

| Telephone | Maiden Name | Religion | Race | Admit By | Source |
|---|---|---|---|---|---|
| | | NON | 1 | PW8033 | EO |

| Patient's Employer | Telephone | Next of Kin | Relation |
|---|---|---|---|
| UNEMPLOYED | | ZIMMERMAN ,ALICE | SIBLING |

| Guarantor Name and Address | Relation | Guarantor's Employer | Telephone |
|---|---|---|---|
| PROVINS ,JAMES | S | UNEMPLOYED | |

| Carrier No. | Name | P | Insured | Rel | Precert. No. | | Cert. Policy HIB # |
|---|---|---|---|---|---|---|---|
| R10 | JEFFERSON | 1 | PROVINS ,JAMES | S | | | 400 |

| Nature of Accident | On Job | Where | Date | Time |
|---|---|---|---|---|
| | | | 07/07/09 | 00:00 |

| Chief Complaint | Comments |
|---|---|
| ALCOHOL DEPENDENCE | NO PP OR MC PER HDX..PT UPDATE |

| Primary Language | Primary Care Physician |
|---|---|
| ENGLISH | ASSOCIATES, E D |

Comments/Notes:

Physican's Copy

RG0030

University of Louisville Hospital
James Graham Brown Cancer Center
530 South Jackson Street | Louisville KY, 40202

PROVINS, JAMES
1209903 048 M
42609495 07/07/2009

# APPLICATION AND REQUEST FOR VOLUNTARY ADMISSION (FOR ADULT PERSONS)

(Pursuant to KRS 202A and 202B)

☐ MENTAL ILLNESS ☐ MENTAL RETARDATION
☑ ALCOHOL ☐ DRUG DEPENDENCE

I, James Provins, residing at 13605 Lou Ky. KY 40272 (CITY) (COUNTY), Kentucky make application for admission on a voluntary basis to EP 3 hospital/facility, located at _____, Kentucky for such care and treatment individualized for my needs, as may be determined by authorized medical/professional staff to be necessary.

I understand that I should participate in my individualized treatment plan which may include, but is not limited to: diagnosis, evaluation, group and individual therapy, and general medical, psychiatric and dental care.

I agree to remain in the herein-named hospital/facility voluntarily until I am discharged by the medical staff, or until I make written request to the medical staff. I understand that a request for my release, made by a person or persons other than myself, must be acceptable and agreed to by me.

Date 7-8-09 Signature [signature]

Witnessed by:

1) [signature] Date 7/8/09

2) [signature] Date 7/8/09

UL656217 (02/09)

BH002D

# U of L Health Care ~ University Hospital

U of L Health Care
University Hospital
Louisville, Kentucky 40202

**EMERGENCY PSYCHIATRY SERVICES**

☐ Previous Medical Record Reviewed

ULH Medical Record # 01209903
Patient Name James Provins
Seven Counties ID# 406948356
Date: 07/08/2009
Time: 2:15am

## Social Worker Evaluation

**Legal Status When First Seen** Security Hold (V) **Referral Source** Law Enforcement (33)

**Informant(s)** ☒ Patient ☐ Family ☐ Friend ☐ Therapist ☐ M.D. ☒ Law Enforcement ☐ Other

**Identifying Data**

Date of Birth: Age: 48 Sex: ☒M ☐F Race: 01 - White / Caucasion ☐ Hispanic

Deaf or Hard of Hearing ☒ No ☐ Yes Marital Status: Married (2)

Comments:

Contact Person's Name: Alice Zimmerman Relationship to Patient: sister

Telephone Number: 922-0399

**Chief Complaint** "I'm drinking myself to death"

**Presenting Problem(s) / Reason for referral**

Patient was brought to EPS by police following call from patient's sister who reported patient made comments of wanting to kill himself. Patient reported he is depressed due to losing his job, has been drinking daily and agreed that when intoxicated he makes comments about wanting to die. Patient is a union iron worker, was fired from his job June 2009 for suspicion of alcohol / drug use on the job, one week a go a fellow ironworker completed suicide by hanging"he had just lost his job too". Patient was visblyu upset when discussing his friend's death. patient is separated from his wife and lving with his sister, reported daily alcohol usage. Patient stated he wants help but doesn't know if he wants to stop drinking.

| Past Psychiatric History | Severe Mental Illness ☐ No ☐ Yes | | |
|---|---|---|---|
| **INPATIENT FACILITY** | **DATES** | **MD/THERAPIST (If known)** | **DX (If known)** |
| | | | |
| none | | | |
| | | | |
| | | | |
| **CURRENT OUTPATIENT PROVIDER** | **DATES** | **MD/THERAPIST (If known)** | **DX (If known)** |
| none | | | |
| | | | |
| **PAST OUTPATIENT PROVIDER** | **DATES** | **MD/THERAPIST (If known)** | **DX (If known)** |
| none | | | |
| | | | |

Living Arrangements In Own Home (22) Employment Status / Occupation Unemployed /

Education HS Graduate/GED (12) Special Education ☐ Yes ☐ No Religion Christian

Military 0 - No Military Service Branch, Dates, Type of Discharge:

PROVINS JAMES
1209903 48 M
42609495 07/07/09

03.15.09

U of L Health Care ~ University Hospital

Patient Name / Medical Record # PROVINS JAMES 1209903 [redacted] 48 M 42609495 07/07/09

**Family**

Family history of Mental Illness: denied

Family history of Alcohol/Substance abuse: father recovering alcoholic paternal uncles

Family history of Suicide: denied

Does patient have children? ☒ Yes ☐ No Ages: 17,13

Child care arrangements during hospitalization: ☐ N/A ☒ Yes with his wife

**Alcohol/Drug Use**

| Substance | Amount/Frequency | Duration of Use | Last Use |
|---|---|---|---|
| Alcohol | daily 1/2 gallon whiskey or vodka 14-24 beers | age 16 | 07-07-09 |
| | | | |
| | | | |
| | | | |
| | | | |

Comments: Patient reported blackouts, loss of control becoming more depressed when drinking physical and psychological withdrawal symptoms

| Abuse | | DATES/DURATION | ABUSER(S) |
|---|---|---|---|
| Physical Neglect or Abuse | ☐ Yes ☒ No | | |
| Sexual Abuse | ☐ Yes ☒ No | | |
| Emotional Neglect or Abuse | ☐ Yes ☒ No | | |
| Other Traumatic Experience | ☐ Yes ☒ No | | |

Comments:

**Legal** (Arrests, DUIs, Probations, Pending Charges)

☐ Patient has never been arrested ☐ Pending charges:

☒ Patient has been arrested. What charges: 1 DUI 3 PI's

☐ Patient has been convicted. What charges:

☐ Patient is currently on probation/parole. Who is probation officer?:

Comments:

**History of Violence**

☐ Y ☒ N Recent violence ☐ Person ☐ Property (explain)

☐ Y ☒ N Past Violence ☐ Person ☐ Property (explain)

Comments:

U of L Health Care – Uni

PROVINS, JAMES
1209903 48 M
42609495 07/07/09

Patient Name / Medical Record # _____

Suicidal Ideation? ☒ No ☐ Yes If yes, describe denied

☐ Has a PLAN to attempt suicide (describe): denied

☐ Plan is specific ☐ Method is lethal ☐ Firearms available
☐ Means to complete plan are available ☐ Little or no chance of rescue

☐ Current suicide attempt

| Previous Attempts? ☒ No ☐ Yes, If yes, how many | | | |
|---|---|---|---|
| | When | Method | Outcome |
| #1 | | | |
| #2 | | | |
| #3 | | | |
| If more that 3 attempts, summarize history | | | |

☐ **REVIEWED RISK FACTORS and MODERATION FACTORS LISTED BELOW**

| Current Status | |
|---|---|
| ☐ Possession and/or direct access to firearms | ☐ Humiliation or perception of failure |
| ☐ Sees situation as hopeless | ☐ Withdrawn or isolated from others |
| ☐ Recovering from a deep depression | ☐ Preoccupation with death |
| ☒ In a current state of depression | ☐ Ideas of "reuniting with a loved one" |
| ☐ Aggressive behavior | ☐ Experiencing severe anxiety |
| ☐ Highly impulsive | ☐ Severe insomnia |
| ☒ Acute ETOH/drug intoxication (BAL ____) | ☐ Current psychotic episode |
| ☒ Withdrawing from drugs/alcohol | ☐ Command auditory hallucinations |
| ☐ Refusing help | ☐ Recent psychiatric hospital discharge |
| ☐ Inconsistent reporting | |
| **Stressors** | |
| ☐ Domestic violence / current sexual or physical abuse | ☐ Mental illness |
| ☐ Sexual orientation conflict | ☐ Suicide / suicide attempts of family member or friend |
| ☒ Interpersonal relationship turmoil | ☒ History of substance abuse (past or present) |
| ☐ Medical / physical problems | ☐ Minimal social support |
| ☒ Recent or impending personal loss | ☐ Other (describe): |
| ☒ Work / academic problems | |
| **Historical / Demographics** | |
| ☐ Geriatric/adolescence | ☒ Substance abuse co-morbid with depression |
| ☐ History of suicide ideation/behavior | ☐ History of sexual abuse |
| ☐ Family history of suicidal ideation/behavior | ☐ White/Male/Unmarried |
| | ☐ Cluster B traits |
| **Moderating Factors (may decrease a person's risk for suicide)** | |
| ☐ Good support systems | ☐ Religious/ethical beliefs that prohibit suicide |
| ☐ Children | ☐ Built-in rescue plan |
| ☐ Strong coping skills in the past | ☐ Future orientation/planning |

Comments:

03.15.09

U of L Health Care – University Hos

PROVINS, JAMES
1209903
42609495 07/07/09 48 M

Patient Name / Medical Record #: _____

**Mental Status Exam**

☐ Alert ☒ Other groggy but able to provide relevant answers to questions!

Orientation Person yes Place yes Time

Appearance/Behavior unkempt malodorous, shaking tremors, cooperative congenial talkative

Speech normal cadence Mood reported as depressed

Affect congruent with mood Thought Process

Sleep ☒ Poor ☐ Fair ☐ Good due to alcohol use

Appetite ☒ Poor ☐ Fair ☐ Good

Thought ☐ Suicidal ideation ☐ Intent ☐ Plan denied

Content ☐ Homicidal ideation denied (Intended victim's name)

Hallucination(s) denied

Delusions(s) denied

Judgment fair Insight adequate

Attention adequate Concentration adequate

Memory ☒ Immediate Recall ☒ Recent ☒ Remote

Other

Intellectual Functioning average

**Comments:**

**GUIDE FOR SUICIDE RISK ASSESSMENT AND INTERVENTION**

☐ **NO SIGNIFICANT CURRENT RISK** ☒ **LOW RISK** ☐ **MEDIUM RISK** ☐ **HIGH RISK**

**Rationale for risk:** Patient denied current suicide ideation or plan but admitted when drinking ETOH he has thoughts of suicide and recently had fellow coworker complete suicide by hanging which affects thoughts when drinking.

**Plan to reduce risk:** *Evaluation by MD for suicide risk. i*

**Collateral Information** (Contact with therapist, family members, significant others) ☐ if SCS client, therapist or on-call clinician contacted

Patient does not want family members contacted, :"don't want them to be bothered"..

**Diagnostic Impressions**

Axis I: Alcohol Dependency continuous

Axis II Deferred

**Recommendations:** ☐ Duty to Warn to _____ phone # _____

Admit to HBU for stabilization, refer to inpatient JADAC when stable.

Carolyn Rugdale LCSW

Social Worker's Signature, Credentials, Date
Seven Counties Services, Inc.

03.15.09

page 4 of 6

U of L Health Care ~ Uni PROVINS JAMES 1209903 [redacted] 48 M 42609495 07/07/09

Patient Name / Medical Record :

## PAYOR/INSURANCE INFORMATION

**Date** 07/08/2009 **Clinician Name:** Carolyn Ragsdale LCSW **Employee ID#** 0005078
**Patient SSN or Ins. Policy #:** [redacted] **Patient DOB:** [redacted]

**PAYOR SOURCE (Basic Information)**

- ☒ NO PAYOR SOURCE (Use Activity Code 900 on your SAL)
- ☐ PRIMARY PAYOR SOURCE None — Policy # _____
- ☐ SECONDARY PAYOR SOURCE None — Policy # _____
- ☐ ADDITIONAL PAYOR SOURCE None — Policy # _____

**ADDITIONAL PAYOR SOURCE REMARKS**

**~IF THE PATIENT HAS ONLY MEDICAID OR MEDICARE, PLEASE STOP HERE~**

**PRIVATE INSURANCE SECTION**

Is the patient the policy holder? ☐ Yes ☐ No Policy holder's SSN (*if different from patient*) #: _____

**If the patient is NOT the policy holder, please complete following:**

Name of Policy Holder _____ The Policy Holder Is the Patient's N/A

**AUTHORIZATION INFORMATION**

Always refer to the back of the insurance card for correct numbers. If you do not have an insurance card, refer to the numbers given below.

(**TIP:** Always ask for a CPT Code of **90801**. The description of a "90801" is "*Psychiatric diagnostic interview examination. Psychiatric diagnostic interview examination includes a history, mental status, and a disposition, and may include communication with family or other sources.*")

| Choose the Insurance Company: | Mental Health Company Choices: |
|---|---|
| ☐ Humana | ☐ Corphealth (800-659-0349)<br>☐ Cigna Behavioral Health – GE Retired only (800-442-4227) |
| ☐ Anthem BC/BS | ☐ Anthem Behavioral Health (866-582-2293, option 2)<br>☐ Magellan– Federal Employee Program (877-782-2368 or 800-456-3967)<br>☐ Other plans (800-880-2583) ~ out of state plans usually require no authorization for a 90801. |
| ☐ Aetna Healthcare | ☐ Value Options (800-435-1006)<br>☐ Magellan Behavioral Health (800-424-5955)<br>☐ UPS Solutions/Value Options – UPS Employees (800-336-9117 or 800-237-0575) |
| ☐ United Healthcare | ☐ United Behavioral Health (800-468-2111) |
| ☐ Alternative Health | ☐ Cigna Behavioral Health (800-444-2294) |
| ☐ Tricare | 877-874-2273 — *additional info:* |
| ☐ Other Insurance | Who is the mental health carrier? _____ Phone #: _____ |

**AUTHORIZATION NUMBER:**

**BILLING ADDRESS:**

**If you were unable to get authorization, please complete:**

Name of Representative you talked with:

If you did not talk to a representative, please explain why: N/A

Did the representative note your call in the system? ☐ Yes ☐ No ☐ Didn't ask

Notes/Explanation:

☐ **Final Authorization Obtained by** _____ **Date** _____
**Representative that gave authorization** _____ **Telephone #:** _____
**Notes:**

03.15.09 page 5 of 6

U of L Health Care – University Hospital

PROVINS JAMES 48 M
1209903
42609495 07/07/09

Patient Name / Medical Record #:

**Follow up Needed by Social Worker before Discharge:** (Include p

D/c to Healing Place via Cab

**Discharge Plan**

- ☐ Patient's family notified
- ☐ Petitioner notified of MIW outcome
- ☐ Transportation arrangements discussed with discharge facility
- ☐ Educational material provided

(describe):

- ☐ Other

Brenda James LCSW 1-9-09

Carolyn Ragsdale LCSW

Social Worker's Signature, Credentials, Date
Seven Counties Services, Inc.

03.15.09

page 6 of 6

University of Louisville Hospital
James Graham Brown Cancer Center
530 South Jackson Street | Louisville KY 40202

PROVINS, JAMES
1209903 048 M
42609495 7/07/2009

**EMERGENCY PSYCHIATRY EVALUATION**
**PHYSICIAN SUMMARY**

**Differential Diagnosis**
I. Alcohol dependance, rule out Substance induced mood disorder DSM IVR code 303.90
II. deferred DSM IVR code
III. none
IV. drug dependance
V. less than thirty

**Medical Plan for Treatment/Discharge/Safety** **Time Disposition Made:** 3:30 am

Pt at this point contract for safety. He is willing to get help with alcohol dependance. Discussed option of inpatient JADAC treatment. Pt agreeable to this will have him wait in our ER and referral to JADAC after reevaluation by treatment team in AM.
- on alcohol withdrawal protocol bein monitored for safe detox

**Legal disposition upon discharge** ☐ 72 Hour Hold ☐ MIW ☐ Voluntary
**If sent to the HBU, what is the diagnosis category:**
☐ ETOH only (1) ☐ Drug Only (2) ☐ Psych only (3) ☐ Psych and ETOH (4) ☐ Psych and Drug (5)
☐ **Collateral Contacted** ☐ **Patient started on medication**

Physician Signature: [signature] Physician ID #: 82009 Date: 7/8/2009

**Attending Note:** ☒ Patient agrees to the presence of all visitors in the Morning Treatment Team.

EPS Attending: Pt Seen & evaluated Chart Reviewed D/W Tx team
Pt is a 48yo WM Hx of Etoh Dependence - Heavy Daily Drinker
Presented by police 2° SI - Intoxicated on arrival - 231. Pt. denies SI - reports that stopped. Reports interest in substance tx
MSE: A'OX3, Cooperative, nl speech, euthymic, congruent, goal directed, ØSI, ØHI, J/I intact
DDX: Etoh Dependence
Plan: Refer to JADAC, Ø beds today, will make intake appt:

Attending Signature: C Butler MD Physician ID #: 37410 Date: 7/8/09

Ativan 2mg PO x2 - 3:26 am, 8:31 am

UL779200 (04/09) Page 3 of 3 96.7 16 71 168/98 VS this A.M. - 8:30 am

ED0150

University of Louisville Hospital
James Graham Brown Cancer Center
Univ. Health Care
530 South Jackson Street | Louisville KY, 40202

PROVINS, JAMES
1209903 048 M
42609495 07/07/2009

**EMERGENCY PSYCHIATRY EVALUATION**
**PHYSICIAN SUMMARY**

Physician Evaluation (Initial) H. I

Date 7/8/09 Time 3:30am Dr. IQBAL

Discussed with: ☑ Social Worker ☐ Attending MD ☐ Other

Pt is a 48 year old Caucasian male with a long history of alcohol dependence who presented to EPS after he made statement saying he was SI under influence of alcohol. BAC 235. Pt currently denies SI and says he makes such statements when "I'm too drunk". He recently lost his job (was found drinking at work) and had a friend who recently completed suicide after he lost his job similarly. He report drinking vodka 1½ gallon and 10-14 beers/day (increased recently) over the last 20 plus years. He had one period of sobriety of 9 months but has never been into a drug rehab program. He has an extensive family hx alcohol abuse. no recent change in appetite/sleep. No evidence of mania/psychosis observed.

**Mental Status Exam**

☑ Alert ☐ Other

Orientation Person ✓ Place ✓ Time ✓

Appearance/Behavior in casual attire, alert and cooperative

Speech Clear + fluent Mood depressed

Affect flattened Thought Process coherent

Thought ☐ Suicidal Ideation ☐ Intent ☐ Plan denies

Content ☐ Homicidal Ideation denies (intended victim's name)

Hallucination (s) none

Delusion (s)

Other: none

Judgement limited Insight: impaired

Attention fair ~~poor~~ Concentration ~~none~~ fair

Memory ☐ Immediate Recall ✓ ☐ Recent ✓ ☐ Remote ✓

MMSE Exam Details

**Lab Results**

BAC = 235. CBC WNL

AST 194↑ ALT 50↑ GI like nml

University of Louisville Hospital
James Graham Brown Cancer Center
Kapl.l Tasbid Inc
530 South Jackson Street | Louisville KY, 40202

PROVINS, JAMES
1209903 048 M
42609495 07/07/2009

## EMERGENCY PSYCHIATRY SERVICES
## PHYSICAL EXAMINATION

| Temp 96 oral | Pulse 96 | Resp 16 | B/P 111/102 | Weight | Height | Date 7/8/09 | Time 1155 |
|---|---|---|---|---|---|---|---|

General Observations
48yo WM, Tremulous

Review of Systems nausea, diarrhea, weak, chills, reports bright red and dark (approx for time) blood in stools, not for cough, less frequent urination, legs feel restless + tingling (hx of PN in past few days)

Skin
multiple small scars from burns on arms + chest from occupation

Head: ATNC | Scalp: clear | Face: Symmetric

Ears
Right ear could not be visualized due to wax, L EAC patent TM clear/white/dull

Nose
erythema, discharge (B)

Eyes/Pupils/Sclera
EOMI, PERRL

Fundi
NOT performed

Throat/Mouth
intact dentition, No erythema, No edema

Neck
supple, Ø LAD, Ø thyromegaly

Heart
RRR normal $S_1S_2$, No murmur, gallops, or rubs

Lungs
wheeze heard (B) at end of exhale through lung fields

Abdomen
soft, NT, ND (+) BS Ø HSM Ø masses

Spine/Back
straight

Extremities
Ø c/c/e

Nervous System | Strength 5/5 global

Tone: Good | Atrophy: Ø

| Rapid Alternating Movement | Finger to Nose | Heel to Shin |
|---|---|---|
| done slowly | Tremor, Fall backwards | done w/o fall but unsteady |
| **Babinski** | **Station/Gait** | **Romberg** |
| Present (B) | Stable | Drift backward |

Abnormal Movement (e.g. Chorea, Tardive Dyskinesia, Tremors, Extra Pyramidal Symptom)
Tremors (B) globally

Deep Tendon Reflexes
absent in L arm biceps (L) triceps present, all other DTRs present

Sensory
loss of soft touch to L arm

| Cranial Nerves | |
|---|---|
| 1 Denies olfactory complaints | 2, 3, 4, 6 EOMI, No visual complaints |
| 5, 7 face symmetrical, facial sensory and motor equal | 8 (B) reports hearing loss in R ear |
| 9, 10 palate rise equal, uvula midline | 11 shoulder shrug equal, tongue midline |

Student Signature: [signature]
Physician Signature: J. G. Ali
Date: 7/8/09 Time: 11:28 Physician ID Number: A16626

UL779161 (04/09)

ED0160

University of Louisville Hospital
James Graham Brown Cancer Center
530 South Jackson Street Louisville KY, 40202

PROVINS, JAMES
1209903
42609495
048 M
07/07/2009

# PATIENT PROGRESS NOTES

ALL SEPARATE ENTRIES REQUIRE A DATE, TIME, SIGNATURE AND PHYSICIAN'S ID #

7/9/09. 10 Am. Attending w MD & AM Team

48 y.o. (W) c̄ PMH EtOH dependence Now drinking large volume. LFT's ↑ & EtOH 231. Pt wants to stop EtOH in HBU overnight

A, O x3 Speech: well-modulated Mood: anxious. Affect: approp. Behav: coop. TC: ⊖ SAS - TF: coherent Goal-directed - No thought DD. No psychosis. Insight - poor ↓ Judgment ↓ Cognition: intact

Assess: Alcohol Dependence

Plan: Librium 50 q now

Refer to treatment plan

D — Ewaz

PROGRESS NOTES

UL600016 (04/09)

PN0040

UofL Health Care
University Hospital

University of Louisville Hospital - Emergency Services
530 S. Jackson St., Louisville, KY 40202 – (502) 562-3015
Date: 07/09/2009 Time: 11:10
Patient: James Provins, Medical Rec. No: 1209903

→ Patients with orthopedic (bone and muscle) injuries whose insurance coverage includes Drs. Seliqson and Roberts as participating providers may contact them at (502) 629-5460 for possible follow-up care.

**********

If you experience difficulty obtaining a timely Clinic appointment with any Clinic other than the Orthopedics Clinic, call 561-8811 for assistance.

---

Cigarette Smoking

If you smoke, this is clearly your greatest health problem! The facts are clear that cigarette smoking will shorten your life. It will cause a great deal of illness along the way. If you need help quitting, talk to your regular doctor.

---

Seatbelts

There is no doubt that seatbelts save lives. Every day in the Emergency Department we see how people without seatbelts are more severely hurt. We always buckle up! Please do the same!

---

Air Bag Warning

Air bags can save lives, but you should also be aware that they can cause death or serious injury if your head, chest, or arms are on or are close to the Air Bag module cover when the Air Bag deploys.

Portions Copyrighted 1987-2009, LOGICARE Corporation 

UofL Health Care
University Hospital

University of Louisville Hospital - Emergency Services
530 S. Jackson St., Louisville, KY 40202 – (502) 562-3015
Date: 07/09/2009 Time: 11:10
Patient: James Provins, Medical Rec. No: 1209903

Discharge Instructions

IMPORTANT: We examined and treated you today on an emergency basis only. This was not a substitute for, or an effort to provide, complete medical care. In most cases, you must let your doctor check you again. Tell your doctor about any new or lasting problems. We cannot recognize and treat all injuries or illnesses in one Emergency Department visit. If you had special tests, such as EKG's or X-rays, we will review them again within 24 hours. We will call you if there are any new suggestions. After you leave, you should follow the instructions below.

You were treated today by Rif El Mallakh, MD.

YOU HAVE BEEN SEEN BY THE DOCTOR TODAY AND THE DOCTOR HAS DETERMINED THAT YOU ARE SAFE TO LEAVE THE HOSPITAL AND RETURN HOME. BY SIGNING THIS YOU AGREE THAT YOU DO NOT HAVE SUICIDAL OR HOMICIDAL THOUGHTS AND WILL REMAIN SAFE. ALL BELONGINGS HAVE BEEN RETURNED TO YOU.

THIS INFORMATION IS ABOUT YOUR FOLLOW UP CARE

FOLLOW-UP WITH AA MEETINGS

THIS INFORMATION IS ABOUT YOUR DIAGNOSIS

Today your diagnosis is Behavioral Health. Behavioral health problems can be caused from any number of physical, emotional, or mental conditions. Most of these problems can be treated effectively with continued counseling and medications.

Your behavioral health problem, along with your examination and lab tests did not show a harmful situation at this time. However, serious situations can arise from less serious conditions. If you feel your symptoms are getting worse, you have new symptoms, or are not feeling better in two days, call your therapist or doctor.

YOU ARE THE MOST IMPORTANT FACTOR IN YOUR RECOVERY. Follow the above instructions carefully. Take your medicines as prescribed. Most important, see a doctor again as discussed. If you have problems that we have not discussed, call or visit your doctor right away. If you cannot reach your doctor, return to the Emergency Department.

"I have received this information and my questions have been answered. I have discussed any challenges I see with this plan with the nurse or physician."

X James Provins
James Provins or Responsible Person

James Provins or Responsible Person has received this information and tells me that all questions have been answered.

J. Davis RN
RN Staff Signature

*******WE VALUE YOUR OPINION*******
Shortly after your visit, you will receive a survey in the mail. We ask that you complete the survey and return it to us. We appreciate your participation in making us better!

If you have any questions or concerns about your care, please call (502) 562-3015 and ask for the Charge Nurse. We hope you are satisfied with our services. We appreciate your comments regarding your care during your Emergency Services visit. Thank you for choosing University of Louisville Hospital for your emergency care!

FIRST CARE is a service that is available to treat quickly and efficiently the medical needs of our patients who have minor injuries or illnesses. FIRST CARE is open six days a week, Monday through Saturday, from 9:00AM to 11:00PM, and on Sundays from 1:00PM to 9:00PM. It is staffed by Nurse Practitioners or Physician Assistants under the supervision of Emergency Medicine attending physicians. During the hours of operation, the triage nurse will determine if your condition is appropriate for FIRST CARE treatment and will refer you directly to that area. If your insurance (HMO, Kenpac) requires you to have your primary doctor's approval before coming to FIRST CARE, be sure to contact him/her.

Portions Copyrighted 1987-2009, LOGICARE Corporation Page 1 of 2

1

UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY CPOE EMAR
START DATE RANGE: 07/07/09 THRU 07/09/09
PROVINS ,JAMES M 48 HBU-01 EMR PT#: 42609495
ATN DR: 237883 ALI, JERMAINE A. ER
ADM DT: 07/08/09 EA DISCH DT: 07/09/09 ISOL: MR#: 1209903

MEDICATION ADMINISTRATION RECORD * =MED NOT ADMINISTERED

| ORDER INFORMATION | 07/07 | 07/08 | 07/09 | 07/10 | 07/11 |
|---|---|---|---|---|---|
| ROUTINE ORDERS | | | | | |
| THIAMINE 100. MG ORAL QAM<br>ORDER # 6<br>ONE DOSE NOW<br>07/07 09:00 TO / : | 2058SM4476 | 0831MC0999 | 0843KM5491 | | |
| CHROMAGEN 1. CAPSULE ORAL QAM<br>ORDER # 7<br>ONE DOSE NOW<br>07/07 09:00 TO / :<br>DISCONTINUED: 07/07 21:31 | *2120AR4668 | 0831MC0999<br>**** DISCONTINUED ORDER *** | | | |
| FOLIC ACID 1. MG ORAL QAM<br>ORDER # 8<br>ONE DOSE NOW<br>07/07 09:00 TO / : | 2058SM4476 | 0831MC0999 | 0843KM5491 | | |
| CLONIDINE 0.1 MG ORAL NOW SEVE RE HTN<br>ORDER # 9<br>07/07 21:36 TO 07/07 21:36 | 2136SM4476 | | | | |

11:25 07/09/09 FROM @04C,OCMARDF1
AWTK8483 PAGE 001 OF 005

1

UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY CPOE EMAR
START DATE RANGE: 07/07/09 THRU 07/09/09
PROVINS ,JAMES M 48 HBU-01 EMR PT#: 42609495
ATN DR: 237883 ALI, JERMAINE A. ER
ADM DT: 07/08/09 EA DISCH DT: 07/09/09 ISOL: MR#: 1209903

MEDICATION ADMINISTRATION RECORD * =MED NOT ADMINISTERED

| ORDER INFORMATION | 07/07 | 07/08 | 07/09 | 07/10 | 07/11 |
|---|---|---|---|---|---|
| MULTIVITAMIN 1. TABLET ORAL NOW<br>ORDER # 10<br>07/07 21:40 TO 07/07 21:40 | 2140SM4476 | | | | |
| CHLORDIAZEPOXIDE 50. MG ORAL NOW NAUSEA/VOMITING<br>ORDER # 12<br>07/08 10:06 TO 07/08 10:06 | | 1023KM7823 | | | |
| FAMOTIDINE 20. MG ORAL NOW<br>ORDER # 24<br>07/09 00:35 TO 07/09 00:35 | | | 0130AR4668 | | |
| CHLORDIAZEPOXIDE 50. MG ORAL NOW ALCOHOL WITHDRAWAL<br>ORDER # 25<br>07/09 10:09 TO 07/09 10:09 | | | 1035KM5491<br>D=50 MG | | |
| PRN ORDERS | | | | | |
| LORAZEPAM 2. MG ORAL Q4H PRN WITHDRAWAL SYMPTOMS<br>ORDER # 5<br>07/07 20:42 TO / : | | 0326AR4668<br>D=2 MG<br>0831MC0999<br>D=2 MG | | | |

11:25 07/09/09 FROM @04C,OCMARDF1
AWTK8483 PAGE 002 OF 005

1

UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY CPOE EMAR
START DATE RANGE: 07/07/09 THRU 07/09/09
PROVINS ,JAMES M 48 HBU-01 EMR PT#: 42609495
ATN DR: 237883 ALI, JERMAINE A. ER
ADM DT: 07/08/09 EA DISCH DT: 07/09/09 ISOL: MR#: 1209903

MEDICATION ADMINISTRATION RECORD * =MED NOT ADMINISTERED

| ORDER INFORMATION | 07/07 | 07/08 | 07/09 | 07/10 | 07/11 |
|---|---|---|---|---|---|

NURSE IDENTIFICATION

| | | | | | | |
|---|---|---|---|---|---|---|
| SM4476 | SUSAN | MOORE | RN | MC0999 MARY L | CLAY | RN |
| KM5491 | KIMBERLY | MCMAHON | RN | AR4668 AMANDA | MASTERSON | RN |
| KM7823 | KATHY T | MAGNUSON | RN | | | |

PATIENT ALLERGIES

No Known Food Allergies

Sulfa (Sulfonamide Antibiotics)

11:25 07/09/09 FROM @04C,OCMARDF1
AWTK8483 PAGE 003 OF 005

1

UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY CPOE EMAR
START DATE RANGE: 07/07/09 THRU 07/09/09
PROVINS ,JAMES M 48 HBU-01 EMR PT#: 42609495
ATN DR: 237883 ALI, JERMAINE A. ER
ADM DT: 07/08/09 EA DISCH DT: 07/09/09 ISOL: MR#: 1209903
MEDICATION ADMINISTRATION RECORD: REASON/EFFECT AND CHARTING HISTORY

CHARTING REASON AND EFFECT

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| THIAMINE 100. MG ORAL QAM | | | | 100. MG | PO | QAM | DAILY | ROUTINE |
| 07/07 | | 2058 | SM4476 | EFFECT: . | | | | |
| 07/08 | | 0831 | MC0999 | EFFECT: . | | | | |
| 07/09 | | 0843 | KM5491 | EFFECT: . | | | | |
| CHROMAGEN 1. CAPSULE ORAL QAM | | | | 1. CAA | PO | QAM | DAILY | ROUTINE |
| 07/07 | 0900 | 2120 | AR4668 | REASON: REFUSED | | | | |
| 07/08 | | 0831 | MC0999 | EFFECT: . | | | | |
| FOLIC ACID 1. MG ORAL QAM | | | | 1. MG | PO | QAM | DAILY | ROUTINE |
| 07/07 | | 2058 | SM4476 | EFFECT: . | | | | |
| 07/08 | | 0831 | MC0999 | EFFECT: . | | | | |
| 07/09 | | 0843 | KM5491 | EFFECT: . | | | | |
| CHLORDIAZEPOXIDE 50. MG ORAL N | | | | 50. MG | PO | NOW | DAILY | ROUTINE |
| 07/08 | | 1023 | KM7823 | EFFECT: . | | | | |
| FAMOTIDINE | | | | 20. MG | PO | NOW | DAILY | ROUTINE |
| 07/09 | | 0130 | AR4668 | EFFECT: . | | | | |
| LORAZEPAM 2. MG ORAL Q4H PRN W | | | | 2. MG | PO | Q4 | DAILY | PRN |
| 07/08 | 0326 | | AR4668 | REASON: WITHDRAWAL SYMPTOMS | | | | |
| 07/08 | 0831 | | MC0999 | REASON: WITHDRAWAL SYMPTOMS | | | | |

NURSE IDENTIFICATION

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| SM4476 | SUSAN | MOORE | RN | MC0999 | MARY L | CLAY | RN |
| KM5491 | KIMBERLY | MCMAHON | RN | AR4668 | AMANDA | MASTERSON | RN |
| KM7823 | KATHY T | MAGNUSON | RN | | | | |

PATIENT ALLERGIES

No Known Food Allergies
Sulfa (Sulfonamide Antibiotics)

11:25 07/09/09 FROM @04C,OCMARDF2
AWTK8483 PAGE 004 OF 005

1

UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY CPOE EMAR
START DATE RANGE: 07/07/09 THRU 07/09/09
PROVINS ,JAMES M 48 HBU-01 EMR PT#: 42609495
ATN DR: 237883 ALI, JERMAINE A. ER
ADM DT: 07/08/09 EA DISCH DT: 07/09/09 ISOL: MR#: 1209903
IV MEDICATION ADMINISTRATION RECORD * =MED NOT ADMINISTERED

| ORDER INFORMATION | 07/07 | 07/08 | 07/09 | 07/10 | 07/11 |
|---|---|---|---|---|---|

NO QUALIFYING ORDERS FOUND

11:25 07/09/09 FROM 804C,OCIVARF1
AWTK8483 PAGE 005 OF 005

1 UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY ADMISSION ASSESSMENT
PROVINS ,JAMES M 48 / EMR Pt#: 42609495 Page: 1
Atn Dr: 237883 ALI, JERMAINE A. ER
Adm Date: 07/08/09 EA Disch Dt: Isol: MR#: 1209903 FINAL REPORT

| ASSESED TIME / BY | GEN PT INFO | |
|---|---|---|
| 07/08/09 11:47 MC0999 | Informant | Patient |
| 07/08/09 11:47 MC0999 | Admit From | Home |

| ASSESED TIME / BY | PT HIST | |
|---|---|---|
| 07/08/09 11:47 MC0999 | Reason for Admission | |
| | ALCOHOL DEPENDENCE | |
| 07/08/09 11:47 MC0999 | Circumstances of Admission | |
| | intoxicated,suicidal | |
| 07/08/09 11:47 MC0999 | Readmission within 30 Days | No |
| 07/08/09 11:47 MC0999 | Recurrent Illness | No |
| 07/08/09 11:47 MC0999 | Previous Transfusion | No |
| 07/08/09 11:47 MC0999 | Language Spoken | |
| | English | |

| ASSESED TIME / BY | ADVANCE DIR | |
|---|---|---|
| 07/08/09 11:47 MC0999 | Executed Advance Directive | No |
| 07/08/09 11:47 MC0999 | Person Able to Grant Consent | |
| | alicezimmerman | |
| 07/08/09 11:47 MC0999 | Phone Number | |
| | 922-0399 | |
| | 995-5351 | |
| 07/08/09 11:47 MC0999 | Relationship to Patient | |
| | Other | |

| ASSESED TIME / BY | HABITS HX | | | | |
|---|---|---|---|---|---|
| 07/08/09 11:47 MC0999 | Alcohol | | Yes | | |
| | | Last used yesterday | Amount 10 or > | Frequency per Day | Used for Longest w/o |
| 07/08/09 11:47 MC0999 | Withdrawal from Drinking | | Yes | | |
| 07/08/09 11:47 MC0999 | Need to CUT DOWN Drinking | | Yes | | |
| 07/08/09 11:47 MC0999 | ANNOYED by Critics of Drinking | | No | | |
| 07/08/09 11:47 MC0999 | GUILTY about Drinking | | Yes | | |
| 07/08/09 11:47 MC0999 | Drink for EYE OPENER | | Yes | | |
| 07/08/09 11:47 MC0999 | Tobacco | | Denies | | |
| 07/08/09 11:47 MC0999 | Caffeine | | Denies | | |
| 07/08/09 11:47 MC0999 | Drugs/Substances | | Denies | | |

| ASSESED TIME / BY | SLEEP PROBLM | |
|---|---|---|
| 07/08/09 11:47 MC0999 | Problems Getting to Sleep | Yes |
| 07/08/09 11:47 MC0999 | Insomnia | Yes |
| 07/08/09 11:47 MC0999 | Nightmares | Yes |
| 07/08/09 11:47 MC0999 | Average # Hours Slept | 03 |

| ASSESED TIME / BY | EDUCATION HX | |
|---|---|---|
| 07/08/09 11:47 MC0999 | Highest Level Education | |
| | High School Graduate | |
| 07/08/09 11:47 MC0999 | Knowledge of Illness/Injury | |
| | Good | |
| 07/08/09 11:47 MC0999 | Learning Preference | |
| | Discussion/Explanation | |

GROUP CONTINUED

Printed By: JD3618 "+" denotes present "E" denotes erroneous data
11:25 07/09/09 FROM @04C,UMCADMF1

478

143

1 UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY ADMISSION ASSESSMENT
PROVINS ,JAMES M 48 / EMR Pt#: 42609495 Page: 2
Atn Dr: 237883 ALI, JERMAINE A. ER
Adm Date: 07/08/09 EA Disch Dt: Isol: MR#: 1209903 FINAL REPORT

| ASSESED TIME / BY | | |
|---|---|---|
| | EDUCATION HX CONT | |
| 07/08/09 11:47 MC0999 | Readiness to Learn | |
| | Cooperative | |
| ASSESED TIME / BY | NUTRITION HX | |
| 07/08/09 11:47 MC0999 | #Meals a Day | 1 |
| 07/08/09 11:47 MC0999 | Last Meal Date | 07/08/09 |
| 07/08/09 11:47 MC0999 | Last Meal Time | 1130 |
| 07/08/09 11:47 MC0999 | Diet Restrictions | None |
| 07/08/09 11:47 MC0999 | Nutritional Risk Factors | None |
| ASSESED TIME / BY | HX OF PAIN | |
| 07/08/09 11:47 MC0999 | PAIN 1: | ... |
| 07/08/09 11:47 MC0999 | Location | |
| | abdomen and legs | |
| 07/08/09 11:47 MC0999 | Onset of Symptoms Date: | 07072009 |
| 07/08/09 11:47 MC0999 | Verbal | 2 |
| 07/08/09 11:47 MC0999 | Pain Tolerance | 2 |
| 07/08/09 11:47 MC0999 | Description | Aches |
| 07/08/09 11:47 MC0999 | Description | Sharp |
| 07/08/09 11:47 MC0999 | Description | Throbs |
| 07/08/09 11:47 MC0999 | Worsened by Other: | |
| | withdrawal from etoh | |
| 07/08/09 11:47 MC0999 | Effects Appetite | Yes |
| 07/08/09 11:47 MC0999 | Effects Concentration | Yes |
| 07/08/09 11:47 MC0999 | Effects Physicial Activity | Yes |
| 07/08/09 11:47 MC0999 | Effects Sleep | Yes |
| ASSESED TIME / BY | PRESSURE ULC | |
| 07/08/09 11:47 MC0999 | History of Pressure Ulcers: | |
| | No Pressure Ulcers Present on Admission | |
| ASSESED TIME / BY | HEENT HX | |
| 07/08/09 11:47 MC0999 | Denies HEENT Problems | Yes |
| ASSESED TIME / BY | NEUROMUSC HX | |
| 07/08/09 11:47 MC0999 | Seizures | Yes |
| 07/08/09 11:47 MC0999 | Arthritis | Yes |
| | Osteo | |
| ASSESED TIME / BY | PSYCHIAT HX | |
| 07/08/09 11:47 MC0999 | Denies Psychiatric History | Yes |
| ASSESED TIME / BY | RESPIRATORY | |
| 07/08/09 11:47 MC0999 | Denies Respiratory Problems | Yes |
| ASSESED TIME / BY | CARDIOVASCUL | |
| 07/08/09 11:47 MC0999 | Hypertension | Yes |
| 07/08/09 11:47 MC0999 | Angina | Yes |

Printed By: JD3618 "+' denotes present "E" denotes erroneous data
11:25 07/09/09 FROM @04C,UMCADMF1

1 UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY ADMISSION ASSESSMENT
PROVINS ,JAMES M 48 / EMR Pt#: 42609495 Page: 3
Atn Dr: 237883 ALI, JERMAINE A. ER
Adm Date: 07/08/09 EA Disch Dt: Isol: MR#: 1209903 FINAL REPORT

| ASSESED TIME / BY | | |
|---|---|---|
| | ENDOCRINE HX | |
| 07/08/09 11:47 MC0999 | Denies Endocrine Problems | Yes |
| ASSESED TIME / BY | GI HX | |
| 07/08/09 11:47 MC0999 | Inflammatory Bowel Disease | Yes |
| ASSESED TIME / BY | IMMUNE HX | |
| 07/08/09 11:47 MC0999 | Denies Immune Problems | Yes |
| ASSESED TIME / BY | GU HX | |
| 07/08/09 11:47 MC0999 | Denies Genitourinary problems | Yes |
| ASSESED TIME / BY | CANCER HX | |
| 07/08/09 11:47 MC0999 | Family Hx Cancer | . |
| 07/08/09 11:47 MC0999 | Family Member | Father |
| 07/08/09 11:47 MC0999 | Type Cancer | |
| | unknown | |
| ASSESED TIME / BY | FALL RISK HX | |
| 07/08/09 11:47 MC0999 | Risk Factors: | ... |
| 07/08/09 11:47 MC0999 | No Risk Identified | No Risk |
| 07/08/09 11:47 MC0999 | Safety: | ... |
| 07/08/09 11:47 MC0999 | ID Bracelet | Yes |
| 07/08/09 11:47 MC0999 | Bed Lowest Position/Wheels Lock | Yes |
| 07/08/09 11:47 MC0999 | Non-Skid Footware | Yes |
| ASSESED TIME / BY | OTHER MED HX | |
| 07/08/09 11:47 MC0999 | Assessed By: | CLAY |
| | CLAY ,MARY L - RN | |
| | ********** | |

==========END OF REPORT==========
Printed By: JD3618 "+' denotes present "E" denotes erroneous data
11:25 07/09/09 FROM @04C,UMCADMF1

480

1 UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY SHIFT ASSESSMENT
PROVINS ,JAMES M 48 / HBU-01 EMR Pt#: 42609495 PAGE: 1
Atn Dr: 237883 ALI, JERMAINE A. ER
Adm Date: 07/08/09 EA Disch Dt: 07/09/09 Isol: MR#: 1209903

| ASSESED TIME / BY | ASSESSMENTS |
|---|---|
| 07/08/09 11:15 MC0999 | . |
| | ==========VALUABLES========== |
| 07/08/09 11:15 MC0999 | Clothing Yes |
| 07/08/09 11:15 MC0999 | Jewelry No |
| 07/08/09 11:15 MC0999 | Dentures No |
| 07/08/09 11:15 MC0999 | Hearing Aid No |
| 07/08/09 11:15 MC0999 | Admission Focus Charting<br>48 Y/O W/M ADMITTED WITH DIAGNOSIS OF ALCOHOL DEPENDENCE.A&O X 3.DENIES CURRENT SI/HI AND VERBALLY CONTRACTS FOR SAFETY.COOPERATIVE WITH ASSESSMENT. CHANGED INTO HOSPITAL GARB.ADMITTED TO HBU# 1. |
| 07/08/09 11:15 MC0999 | Assessed by CLAY<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:30 MC0999 | Pt Care Focus Charting<br>RECEIVED LUNCH. |
| 07/08/09 11:30 MC0999 | Assessed by CLAY<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/03/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY E<br>CLAY ,MARY L - RN<br>********** |
| 07/08/09 11:47 MC0999 | Assessed by CLAY<br>CLAY ,MARY L - RN |

==========TEXT CONTINUED ON NEXT PAGE==========

Printed By: JD3618 "+" denotes present "E" denotes erroneous data
11:25 07/09/09 FROM @04C,UMCADMF4

481

```
1       UNIVERSITY OF LOUISVILLE HOSPITAL          LOUISVILLE, KENTUCKY                SHIFT ASSESSMENT
        PROVINS ,JAMES              M   48        / HBU-01  EMR  Pt#:     42609495                PAGE:     2
        Atn Dr: 237883  ALI, JERMAINE A.            ER
        Adm Date: 07/08/09   EA   Disch Dt: 07/09/09  Isol:     MR#: 1209903
-----------------------------------------------------------------------------------------------------------------------
    ASSESED TIME / BY     | ASSESSMENTS    CONT
   07/08/09 11:47 MC0999  | Assessed by                        CLAY
                          |     ***************************************************************
   07/08/09 12:00 MC0999  | Pt Care Focus Charting
                          |     RESTING QUIETLY ABED.
   07/08/09 12:00 MC0999  | Assessed by                        CLAY
                          |     CLAY            ,MARY L - RN
                          |     ***************************************************************
   07/08/09 12:03 MC0999  | HR/Pulse                           74       /MIN  RAD
   07/08/09 12:03 MC0999  | Resp. Rate                         16       /MIN
   07/08/09 12:03 MC0999  | Temperature                        97       F     ORAL
   07/08/09 12:03 MC0999  | Blood Press                        145/93   MM HG
   07/08/09 12:03 MC0999  | SAO2                               94
   07/08/09 12:10 MC0999  | .
                          |     ==========================DIAGNOSES/PROBLEMS==========================
   07/08/09 12:10 MC0999  | Diagnosis/Problem
                          |     Date:07/08/09
                          |
                          |     Problem: INAPPROPRIATE COPING INDIVIDUAL
                          |     Goal:PATIENT WILL REMAIN DURING HOSPITAL STAY
                          |     User:MC0999*****************************************************
   07/08/09 12:10 MC0999  | Diagnosis/Problem
                          |     Date:07/08/09
                          |
                          |     Problem: POTENTIAL FOR WITHDRAWAL
                          |     Goal:PATIENT WILL WITHRAW FROM ETOH SAFELY
                          |     User:MC0999*****************************************************
   07/08/09 12:12 MC0999  | .
                          |     ==========================DIAGNOSES/PROBLEMS==========================
   07/08/09 12:12 MC0999  | Diagnosis/Problem
                          |     Date:07/08/09
                          |
                          |     Problem: INAPPROPRIATE COPING INDIVIDUAL
                          |     Goal:PATIENT WILL REMAIN DURING HOSPITAL STAY
                          |     User:MC0999*****************************************************
   07/08/09 12:12 MC0999  | Diagnosis/Problem
                          |     Date:07/08/09
                          |
                          |     Problem: POTENTIAL FOR WITHDRAWAL
                          |     Goal:PATIENT WILL WITHRAW FROM ETOH SAFELY
                          |     User:MC0999*****************************************************
   07/08/09 13:17 KM7823  | Pt Care Focus Charting
                          |     Resting in bed.
   07/08/09 13:17 KM7823  | Assessed by                        MAGNUSON
                          |     MAGNUSON        ,KATHY T - RN
                          |     ***************************************************************
   07/08/09 13:29 MC0999  | Pt Care Focus Charting
                          |     PATIENT IS RESTING QUIETLY BAED.
   07/08/09 13:29 MC0999  | Assessed by                        CLAY
                          |     CLAY            ,MARY L - RN
                          |     ***************************************************************
   ==========================GROUP CONTINUED==========================================================
 Printed By: JD3618       "+' denotes present    "E" denotes erroneous data
11:25 07/09/09 FROM @04C,UMCADMF4
```

482

147

1 UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY SHIFT ASSESSMENT
PROVINS ,JAMES M 48 / HBU-01 EMR Pt#: 42609495 PAGE: 3
Atn Dr: 237883 ALI, JERMAINE A. ER
Adm Date: 07/08/09 EA Disch Dt: 07/09/09 Isol: MR#: 1209903

| ASSESED TIME / BY | ASSESSMENTS CONT |
|---|---|
| 07/08/09 14:00 SU7962 | Pt Care Focus Charting<br>Abed, resting quietly w/o complaint. respirations even and unlabored |
| 07/08/09 14:00 SU7962 | Assessed by URTON<br>URTON ,SARAH K - RN<br>********** |
| 07/08/09 14:30 SU7962 | Pt Care Focus Charting<br>Abed resting, snoring at intervals |
| 07/08/09 14:30 SU7962 | Assessed by URTON<br>URTON ,SARAH K - RN<br>********** |
| 07/08/09 15:00 SU7962 | Pt Care Focus Charting<br>Resting abed w/o complaint |
| 07/08/09 15:00 SU7962 | Assessed by URTON<br>URTON ,SARAH K - RN<br>********** |
| 07/08/09 15:30 SU7962 | Pt Care Focus Charting<br>watching tv |
| 07/08/09 15:30 SU7962 | Assessed by URTON<br>URTON ,SARAH K - RN<br>********** |
| 07/08/09 16:09 SU7962 | Pt Care Focus Charting<br>Client attempting to assist with peers. Otherwise resting in HBU bed #1. |
| 07/08/09 16:09 SU7962 | Assessed by URTON<br>URTON ,SARAH K - RN<br>********** |
| 07/08/09 16:17 SU7962 | HR/Pulse 86 /MIN RAD |
| 07/08/09 16:17 SU7962 | Blood Press 133/98 MM HG |
| 07/08/09 17:15 KM7823 | Pt Care Focus Charting<br>Resting after dinner. |
| 07/08/09 17:15 KM7823 | Assessed by MAGNUSON<br>MAGNUSON ,KATHY T - RN<br>********** |
| 07/08/09 18:19 KM7823 | Pt Care Focus Charting<br>Resting at present. |
| 07/08/09 18:19 KM7823 | Assessed by MAGNUSON<br>MAGNUSON ,KATHY T - RN<br>********** |
| 07/08/09 18:55 KM7823 | HR/Pulse 76 /MIN MONTR |
| 07/03/09 18:55 KM7823 | Blood Press 143/95 MM HG LYING |
| 07/03/09 18:55 KM7823 | Noninvasive + |
| 07/03/09 18:55 KM7823 | Mean Arterial Pressure 111 MM HG |
| 07/03/09 19:30 AR4668 | Shift Summary Focus Charting<br>PT LAYING IN BED QUIETLY WATCHING T.V. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/08/09 19:30 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/08/09 20:00 AR4668 | Shift Summary Focus Charting<br>PT LAYING IN BED QUIETLY WATCHING T.V. NO COMPLAINTS VOICED AT THIS |

==========TEXT CONTINUED ON NEXT PAGE==========

Printed By: JD3618 "+' denotes present "E" denotes erroneous data
11:25 07/09/09 FROM @04C,UMCADMF4

483

148

1 UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY SHIFT ASSESSMENT
PROVINS ,JAMES M 48 / HBU-01 EMR Pt#: 42609495 PAGE: 4
Atn Dr: 237883 ALI, JERMAINE A. ER
Adm Date: 07/08/09 EA Disch Dt: 07/09/09 Isol: MR#: 1209903

| ASSESED TIME / BY | ASSESSMENTS CONT |
|---|---|
| 07/08/09 20:00 AR4668 | Shift Summary Focus Charting TIME. |
| 07/08/09 20:00 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/08/09 20:30 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/08/09 20:30 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/08/09 21:00 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/08/09 21:00 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/08/09 21:10 AR4668 | HR/Pulse 72 /MIN MONTR |
| 07/08/09 21:10 AR4668 | Resp. Rate 18 /MIN |
| 07/08/09 21:10 AR4668 | Temperature 98.2 F ORAL |
| 07/08/09 21:10 AR4668 | Blood Press 153/95 MM HG |
| 07/08/09 21:30 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/08/09 21:30 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/08/09 22:00 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/08/09 22:00 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/03/09 22:30 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/08/09 22:30 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/08/09 23:00 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/08/09 23:00 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN |

==========TEXT CONTINUED ON NEXT PAGE==========

Printed By: JD3618 "+' denotes present "E" denotes erroneous data
11:25 07/09/09 FROM @04C,UMCADMF4

484

1 UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY SHIFT ASSESSMENT
PROVINS ,JAMES M 48 / HBU-01 EMR Pt#: 42609495 PAGE: 5
Atn Dr: 237883 ALI, JERMAINE A. ER
Adm Date: 07/08/09 EA Disch Dt: 07/09/09 Isol: MR#: 1209903

| ASSESED TIME / BY | ASSESSMENTS CONT | | | |
|---|---|---|---|---|
| 07/08/09 23:00 AR4668 | Assessed by | MASTERSO | | |
| | ********** | | | |
| 07/08/09 23:17 AR4668 | HR/Pulse | 76 | /MIN | MONTR |
| 07/08/09 23:17 AR4668 | Resp. Rate | 18 | /MIN | |
| 07/08/09 23:17 AR4668 | Temperature | 98 | F | ORAL |
| 07/08/09 23:17 AR4668 | Blood Press | 143/100 MM HG | | |
| 07/08/09 23:24 AR4668 | Shift Summary Focus Charting | | | |
| | DR. KHAN NOTIFIED OF ELEVATED BLOOD PRESSURE. | | | |
| 07/08/09 23:24 AR4668 | Assessed by | MASTERSO | | |
| | MASTERSON ,AMANDA - RN | | | |
| | ********** | | | |
| 07/08/09 23:30 AR4668 | Shift Summary Focus Charting | | | |
| | PT LAYING IN BED QUIETLY. | | | |
| 07/08/09 23:30 AR4668 | Assessed by | MASTERSO | | |
| | MASTERSON ,AMANDA - RN | | | |
| | ********** | | | |
| 07/09/09 00:00 AR4668 | Shift Summary Focus Charting | | | |
| | PT REQUESTING SOMETHING FOR INDIGESTION. DR. KHAN NOTIFIED. | | | |
| 07/09/09 00:00 AR4668 | Assessed by | MASTERSO | | |
| | MASTERSON ,AMANDA - RN | | | |
| | ********** | | | |
| 07/09/09 00:30 AR4668 | Shift Summary Focus Charting | | | |
| | PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. | | | |
| 07/09/09 00:30 AR4668 | Assessed by | MASTERSO | | |
| | MASTERSON ,AMANDA - RN | | | |
| | ********** | | | |
| 07/09/09 01:00 AR4668 | Shift Summary Focus Charting | | | |
| | PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. | | | |
| 07/09/09 01:00 AR4668 | Assessed by | MASTERSO | | |
| | MASTERSON ,AMANDA - RN | | | |
| | ********** | | | |
| 07/09/09 01:14 AR4668 | HR/Pulse | 80 | /MIN | MONTR |
| 07/09/09 01:14 AR4668 | Resp. Rate | 18 | /MIN | |
| 07/09/09 01:14 AR4668 | Blood Press | 142/101 MM HG | | |
| 07/09/09 01:18 AR4668 | Shift Summary Focus Charting | | | |
| | DR. KHAN NOTIFIED OF ELEVATED BLOOD PRESSURE. | | | |
| 07/09/09 01:18 AR4668 | Assessed by | MASTERSO | | |
| | MASTERSON ,AMANDA - RN | | | |
| | ********** | | | |
| 07/09/09 01:30 AR4668 | Medication Focus Charting | | | |
| | PT GIVEN 20 MG FAMOTIDINE FOR INDIGESTION. | | | |
| 07/09/09 01:30 AR4668 | Assessed by | MASTERSO | | |
| | MASTERSON ,AMANDA - RN | | | |
| | ********** | | | |
| 07/09/09 02:00 AR4668 | Shift Summary Focus Charting | | | |
| | PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND | | | |

==========TEXT CONTINUED ON NEXT PAGE==========

Printed By: JD3618 "+" denotes present "E" denotes erroneous data
11:25 07/09/09 FROM @04C,UMCADMF4

485

1 UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY SHIFT ASSESSMENT
PROVINS ,JAMES M 48 / HBU-01 EMR Pt#: 42609495 PAGE: 6
Atn Dr: 237883 ALI, JERMAINE A. ER
Adm Date: 07/08/09 EA Disch Dt: 07/09/09 Isol: MR#: 1209903

| ASSESED TIME / BY | ASSESSMENTS CONT |
|---|---|
| 07/09/09 02:00 AR4668 | Shift Summary Focus Charting<br>UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 02:00 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 02:30 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 02:30 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 03:00 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 03:00 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 03:14 AR4668 | HR/Pulse 77 /MIN MONTR |
| 07/09/09 03:14 AR4668 | Resp. Rate 18 /MIN |
| 07/09/09 03:14 AR4668 | Temperature 97.3 F ORAL |
| 07/09/09 03:14 AR4668 | Blood Press 127/90 MM HG |
| 07/09/09 03:30 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 03:30 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 04:00 MB5019 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 04:00 MB5019 | Assessed by BEETS<br>BEETS ,MARY - RN<br>********** |
| 07/09/09 04:01 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 04:01 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 04:30 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |

==========GROUP CONTINUED==========

Printed By: JD3618 "+" denotes present "E" denotes erroneous data
11:25 07/09/09 FROM @04C,UMCADMF4

1 UNIVERSITY OF LOUISVILLE HOSPITAL LOUISVILLE, KENTUCKY SHIFT ASSESSMENT
PROVINS ,JAMES M 48 / HBU-01 EMR Pt#: 42609495 PAGE: 7
Atn Dr: 237883 ALI, JERMAINE A. ER
Adm Date: 07/08/09 EA Disch Dt: 07/09/09 Isol: MR#: 1209903

| ASSESED TIME / BY | ASSESSMENTS CONT |
|---|---|
| 07/09/09 04:30 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 05:00 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 05:00 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 05:09 AR4668 | HR/Pulse 77 /MIN MONTR |
| 07/09/09 05:09 AR4668 | Resp. Rate 18 /MIN |
| 07/09/09 05:09 AR4668 | Temperature 96.3 F ORAL |
| 07/09/09 05:09 AR4668 | Blood Press 118/88 MM HG |
| 07/09/09 05:30 AR4668 | Pt Care Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 05:30 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 06:02 AR4668 | Pt Care Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 06:02 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 06:30 AR4668 | Shift Summary Focus Charting<br>PT RESTING IN BED QUIETLY WITH EYES CLOSED. BREATHING EVEN AND UNLABORED. NO S/S OF DISTRESS NOTED. NO COMPLAINTS VOICED AT THIS TIME. |
| 07/09/09 06:30 AR4668 | Assessed by MASTERSO<br>MASTERSON ,AMANDA - RN<br>********** |
| 07/09/09 08:04 CJ4748 | HR/Pulse 80 /MIN |
| 07/09/09 08:04 CJ4748 | Resp. Rate 18 /MIN |
| 07/09/09 08:04 CJ4748 | Blood Press 161/99 MM HG |
| 07/09/09 09:49 CJ4748 | Pt Care Focus Charting<br>Pt resting in bed |
| 07/09/09 09:49 CJ4748 | Assessed by JARRETT<br>JARRETT ,CHERYL - CLINICAL ASSISTANT<br>********** |
| 07/09/09 10:40 KM5491 | Pt Care Focus Charting<br>Pt given Librium 50 mg PO x 1 dose now per MD orders for withdrawal symptoms. |
| 07/09/09 10:40 KM5491 | Assessed by MCMAHON<br>MCMAHON ,KIMBERLY - RN<br>********** |

==========END OF REPORT==========

Printed By: JD3618 "+" denotes present "E" denotes erroneous data
11:25 07/09/09 FROM 804C,UMCADMF4

487

11:28 07/08/09 FROM @06A,NRSORDN1

***** NURSING ORDER NUMBER: 22 *****

PATIENT NAME: PROVINS ,JAMES
MED REC #: 1209903 ACCOUNT#: 42609495 ROOM: EPS / HBU-01
HOSP SERVICE: EMR AGE: 48 DOB:
PATIENT TYPE: E

ORDER : REQUEST CHANGE TO OBSERVATION ROUTINE 11:27
ROUTINE

EFFECTIVE
DATE/TIME : 07/08/09 11:27
ADMIT/OBS
DATE/TIME:
DISCHARGE DATE/TIME CHANGE:
REQUESTED NEW PATIENT TYPE: Z ATT PHY CHANGE:
ADMIT REASON: ALCOHOL DEPENDENCE
COMMENT : 23 HOUR OBSERVATION

ORDERING PHYSICIAN 237883 ALI, JERMAINE A.

FROM: @06A BY : KM7823

**ORTHOPAEDIC ASSOCIATES of KENTUCKIANA, P.L.L.C.**
**3605 Northgate Circle, Suite 202**
**New Albany, Indiana 47150**
**502-585-4376**
**OAdocs.com**

fax 502-581-1274 appointments 502-562-0346

Date: April 15, 2013

Name: PROVIN, JAMES Age: 52 Birth Date: [redacted]

**HISTORY:** The patient is a 52-year-old white male who presents complaining of pain in his right shoulder. He is an iron worker. He was down in South Carolina a year ago. He was helping to move steel decking that is used to pour concrete. He describes this as being approximately 35 feet long piece of corrugated steel. He and another person were dragging it across the ridges that were making up the floor. The other guy dropped his. It ended up twisting in the patient's hand forcing the right arm down. He said the left arm did not have this happen. It is just the right side. He had immediate onset of pain. He tried finishing work, but was not able to do that. He went to have it evaluated, was placed on light duty work. They did not have light duty work available for him. He has been out of work since. He said the pain is 10 out of 10. He said he is quite frustrated by this because he has to learn how to wipe his butt with his left hand, cannot use the right hand after doing it that way for 51 years. He is not using any medicines and he has no other problems requiring over-the-counter medicines.

**ALLERGIES:** He has no known allergies.

**PAST MEDICAL HISTORY:** Indicates general state of health is good. Childhood illness is positive for measles, mumps, and chickenpox. Last tetanus shot was four years ago.

**PAST SURGERIES:** No prior surgery.

**PAST FRACTURES:** No prior fractures.

**SOCIAL HISTORY:** Indicates no use of coffee. He drinks 8 to 10 beers a day. No use of drugs or tobacco products.

**FAMILY HISTORY:** Family history is negative for diabetes and high blood pressure.

**BACKGROUND HISTORY:** The patient has worked as an iron worker.

**REVIEW OF SYSTEMS:** Indicates usual weight is 220 lbs. His right ear has had an infection. He said it smells like a dead dog when he smells the Q-tip. The patient understands that that needs to be addressed prior to surgery.

ORTHOPAEDIC ASSOCIATES
of KENTUCKIANA, P.L.L.C.

3605 Northgate Circle, Suite 202, New Albany, Indiana 47150

Date: April 15, 2013

Name: PROVIN, JAMES Age: 52 Birth Date:

**EXAM:** Physical examination shows height is 5'7", weight is 240 lbs, and respirations 12, well developed, well nourished, oriented x 3. Has appropriate mood and affect. Passive range of motion is good. Significant weakness with abduction and external rotation against resistance, questionable belly-press test weakness. The patient does have a bulge consistent with a possible rupture of the long head of the biceps on the right side when compared to the left. Neuro is intact. Pulses are present. No evidence of lymphadenopathy. No warmth, erythema, or drainage is present. Numerous scars are present on the frontal side of his body and arms consistent with burns from being a welder.

**IMPRESSION:** Overall impression is that we are dealing with a tear of the rotator cuff and possible tear of the long head of the biceps.

**PLAN:** Pros and cons of both operative and non-operative treatments were explained. The patient understands risks, benefits, and potential complications associated with surgery including but not limited to infection, loss of motion, recurrence, and death. Further understands no guarantees or warrantees are given. The patient's questions were answered to his satisfaction. Surgery will be scheduled at his convenience once we have clearance on that right ear.

The case of the patient was discussed in detail with the nurse case manager whose questions were answered to her satisfaction. The requirement for the ENT clearance first to make sure we do not have any infection in the right ear before proceeding with the right shoulder was explained.

FOB/hba

ORTHOPAEDIC ASSOCIATES
of KENTUCKIANA, P.L.L.C.

3605 Northgate Circle, Suite 202, New Albany, Indiana 47150

Date: April 15, 2013

Name: PROVIN, JAMES Age: 52 Birth Date: [redacted]

**X-RAYS:** Significant AC joint arthropathy is seen on the four-view x-rays taken today. Humeral head does not appear to be high riding on the AP, internal and external rotation views, supraspinatus outlet view and axillary view taken because of the pain today.

ICM

May 22, 2013

Dr. Frank Bonnarens
148 Dr Arla Way
Hillview, KY 40229

Re: Employee: James Provins
DOB: _____
DOI: 01/24/2012

Dear Dr. Bonnarens,

Thank you for allowing me to attend James Provins's appointment today. To recap the treatment to date, you decided that Mr. Provins should undergo shoulder surgery and that was completed on 05/15/13 and the initial post-operative evaluation completed on 05/20/13.

I look forward to working with you in order to assist in coordinating the medical care for James Provins. I will be attending appointments, obtaining medical notes and discussing the ongoing treatment plan with you.

- Surgical procedure per operative report was right shoulder rotator cuff repair, acromioplasty/Mumford procedure, debridement of the biceps stump and labral tears and insertion of bone graft.
- Current evaluation finding? Cont w/ pain Ron Ant
- Further treatment plan? PT @ Riverwoods PT Hydrocodone refilled
- Work status currently? No use of arm (R)
- When do you feel Mr. Provins will be able to RTW in a modified duty capacity and what would the restrictions that Mr. Provins should adhere to 24 hrs a day for optimal recovery? No use of (R) Arm
- When do you feel Mr. Provins will be able to RTW in a full duty capacity?
- When do you estimate that Mr. Provins will attain maximum medical improvement following treatment? 6 MMI

Copies of all office notes and diagnostic procedure reports may be faxed to me at 678-533-5801.

Integrated Care Management
3440 Preston Ridge Road, Suite 300 - Alpharetta, GA 30005 - 770-730-8400 - Fax 678-942-9563 - 800-500-3270
www.integratedcare.com

Should you have any questions or concerns you wish to discuss regarding James Provins, you may contact me at 502-649-3026.

Sincerely,

Cynthia Dilamarter, RN, CCM
Case Manager
Phone: 502-649-3026

cc: Sharon West
Donald Smith, Attorney

**ORTHOPAEDIC ASSOCIATES of KENTUCKIANA, P.L.L.C.**
**3605 Northgate Circle, Suite 202**
**New Albany, Indiana 47150**
**502-585-4376**
**OAdocs.com**

fax 502-581-1274 appointments 502-562-0346

Date: June 03, 2013

Name: PROVIN, JAMES Age: _____ Birth Date: [redacted]

Address: _____ Home Phone: [redacted]

Occupation: _____ S.S.#: _____

Referred by Dr.: _____ X-Ray #: _____

**HISTORY:** The patient returns today in followup on his right shoulder. Surgical pathology was explained. Wound care instructions were given. We are going to get him going with the post rotator cuff repair protocols, renew the Lortab. He is out of work. We will see him return here in four weeks' time.

Discussion was carried out with the nurse case manager whose questions were answered to her satisfaction. The patient is allowed to return to work, no use of the right arm, and he will be doing his physical therapy over at BaptistWorx, River Port.

FOB/hba

New Albany Office: 3605 Northgate Court, Suite 102, New Albany, Indiana 47150
Elizabethtown Office: 2410 Ring Road Suite 500, Elizabethtown, KY 42701
Louisville Office: 4001 Kresge Way, Suite 330, Louisville, KY 40207
9070 Dixie Highway Suite 6 Louisville KY 40258
170 Dr Arla Way Louisville KY 40207

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com