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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Panel Decision
SCWCC No. 1102937

Case No. 2019-001141

Barry Adickes, Claimant,

Respondent,

v.

Philips Healthcare, Employer, and Fidelity and
Guarantee Insurance Company, Carrier,

Appellants.

RECORD ON APPEAL

VOLUME II of II

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1 people to express that level of entitlement to
2 a car that, you know, they're being allowed to
3 use for purposes of doing their job. It's not
4 their personal property.

5 He indicated that, you know, I need
6 this because of, you know, a leg problem, a
7 back problem. I can't remember what the
8 specifics were. So I approached human
9 resources and, you know, we agreed that, okay,
10 you know, to get past this hurdle, let him have
11 his car, but in the future he would have to
12 submit some type of medical request to deviate
13 from the company policy.

14 Q. And was this a transition into this
15 different car, did everybody else on the team
16 eventually kind of get that car as they needed?

17 A. Over the years the company
18 definitely is moving in that direction, getting
19 away from four-wheel drives, cars so as people
20 come up they are rolling more and more into a
21 Ford Fusion. I believe everybody on my team
22 now, with the exception of one individual who
23 lives in Denver and goes into mountainous
24 areas, has been transitioned to the Ford
25 Fusion.

1 Q. Smaller car?

2 A. Smaller car, yeah. For the most
3 part, the indirect channel managers, that's the
4 position that Barry was transitioning into,
5 they carry very little inventory. The products
6 we sell are very small. There's really not a
7 need to have a large car and the saving to the
8 company is pretty significant to go with the
9 sedans versus SUVs.

10 Q. There was some discussion earlier
11 and Mr. Adickes testified about some text
12 messages that had been sent from him to you.
13 Can you kind of explain the circumstances of
14 what was going on when you received those text
15 messages and the time frame?

16 A. Oh, gosh. It was sometime last
17 fall. I was in Florida working and seemed to
18 me, if I recall correctly, one evening I got
19 this text message from Barry. I immediately
20 forwarded it to Brooke because I didn't feel it
21 was, you know -- didn't feel appropriate, I was
22 uncomfortable with it, and then he followed up
23 with a second one. I don't believe I saw the
24 second one until the next day, but I couldn't
25 swear to that, the timing of the two.

1 Q. We've already testified to -- or
2 Barry has already testified to the content of
3 the text messages, but do you agree what was
4 read into the record previously was accurate as
5 to what you received?

6 A. Yeah, that was right from the text
7 message.

8 Q. While he was working under your
9 supervision, did he ever complain of any
10 headaches?

11 A. Yes. Immediately after the
12 accident, you know, following up with him when
13 he came off of his medical leave, you know, he
14 said, "Yeah, I'm still having headaches from
15 time to time." I remember having a team
16 meeting in Alpharetta and he had a headache
17 and, you know, my response was, you know, "What
18 can we do for you and, you know, do what you
19 have to do."

20 And it seemed to me that over time,
21 you know, his comments -- it wasn't routine
22 that he would complain about the headaches and
23 that over time, you know, I don't recall
24 hearing about them. He seemed to be working
25 through the issue and that satisfied my

1 curiosity and I felt I was doing what I was
2 supposed to do as a manager.

3 Q. Down the road after -- immediately
4 after his accident, but down the road from
5 there, would he ever call and say, "I need to
6 take a day? I've got a headache. I'm out of
7 commission today," or anything like that?

8 A. I don't recall that. I recall at
9 some point, I guess it was in 2013, you know,
10 he had some issues with, you know, other
11 operations, knees or something. There were
12 some other, you know, physical ailments that he
13 had. I don't recall that they specifically
14 were tied to his accident, you know.

15 It seemed to me, if memory serves me
16 correctly, he had issues with his knees and had
17 to take some time off for a couple of
18 operations, but I could be wrong about that.
19 It could have been shoulders. It could have
20 been neck. I wasn't that focused on it. I
21 vaguely remember, you know, again, do what you
22 need to do. And, you know, he probably took
23 PTO, you know, on days that he had to have
24 those procedures done, but he was not off, if
25 memory serves me correctly. He did not take

1 any extended period of time off.

2 Q. Based on your prior experience with
3 Barry in supervising him both before the
4 accident and after the accident, would you say
5 that you noticed in change in him?

6 A. I didn't notice any change in him.
7 I never had any comments from his co-workers,
8 those that were closely -- you know, more
9 closely related working with him on a
10 day-to-day basis. There was a hospital rep and
11 then the person that Barry swapped positions
12 with. I never received any feedback of, hey,
13 there's an issue there, you know. His
14 performance is about the same. His, you know,
15 approach to business was about the same.

16 Q. And based on what you had heard
17 about Barry or your knowledge of him before he
18 came under your supervision, would you say that
19 your experience with him lined up with what
20 your expectations were based on your feedback?

21 A. Yeah. I found him a likable guy, a
22 guy you'd love to have a beer with, a guy that
23 I was concerned about performance with. My
24 income and my job security are tied to my
25 employees' ability to perform. I was concerned

1 about lack of follow-up, that was before and
2 after the accident.

3 Frankly, when I ran into those
4 concerns after the accident, I didn't tie them
5 to the accident because I had experienced that
6 and had feedback, you know, prior to the
7 accident. And, yeah, I saw that there were
8 occasions where, you know, he was a bit chippy
9 when you provided coaching. If you were
10 critical and, you know, tried to provide him
11 direction, he was, at times, a little chippy.

12 MR. OXFORD: No further questions.

13 THE COURT: All right. Thank you.
14 Mr. Smith.

15 MR. SMITH: Thank you.

16 CROSS-EXAMINATION

17 BY MR. SMITH:

18 Q. Mr. Johnson, you have been at
19 Philips since 1997?

20 A. Yes, sir.

21 Q. So you've been there 18 years?

22 A. Yes, sir.

23 Q. And you've been the regional sales
24 manager there for nine years, since '06?

25 A. Since '06. Yes, sir.

1 Q. Would you consider yourself a loyal
2 employee of Philips?

3 A. Yes.

4 Q. And you're the person that Philips
5 has here today representing them to testify
6 concerning Mr. Adickes; is that correct?

7 A. I was asked to testify on what I
8 knew about the situation.

9 Q. What do you earn at Philips? What's
10 your pay?

11 A. I would --

12 MS. PAYNE: Objection. Relevance.

13 THE WITNESS: -- rather not say.

14 MR. SMITH: Your Honor, it goes to
15 bias.

16 THE COURT: It does indeed.
17 Overruled.

18 BY MR. SMITH:

19 Q. What do you make at Philips?

20 A. My base salary is \$130,000, and then
21 I have incentive of \$55,000.

22 Q. Do you have any bonus structure on
23 top of that 55?

24 A. No, sir.

25 Q. So 135 plus 55, you make 190 a year?

1 A. If my team performs 100 percent.

2 Yes, sir.

3 Q. Okay. Now, you started
4 supervising -- actually, let me back up.
5 Mr. Adickes was transferred to your team
6 effective January 1, 2011; is that correct?

7 A. Yes, sir.

8 Q. But as you -- as he testified to
9 earlier and as you now recall, there was a
10 transition period in there. So he didn't
11 actually come work full-time for you on --

12 A. No, he worked full-time for me.

13 Q. But there was a transition he was
14 working --

15 A. In between his EMS role which
16 reported to me and his new role which reported
17 to me. He did not report to another manager
18 after January 1st.

19 Q. And you recall me taking your
20 deposition a couple months ago?

21 A. Yes, sir.

22 Q. By telephone?

23 A. Yes, sir.

24 Q. And you told me in that deposition
25 that you had never met Mr. Adickes prior to him

1 coming to work for you; is that correct?

2 A. I cannot recall.

3 Q. Would you like me for me to show it
4 to you in the deposition?

5 A. Sure.

6 Q. I'm referring to Page 9 of the
7 deposition, Line 4. I said, "Did you know
8 him" -- excuse me. Let me back up a couple of
9 lines. "You began managing him January 1,
10 2011?" And what was your answer?

11 A. Yes, sir.

12 Q. "And did you know him prior to that
13 time?"

14 A. I said, "I knew of him. I did not
15 know him closely. We may or may not have met.
16 I can't recall."

17 Q. So if you had ever met him, you're
18 not even sure you had met him prior to him
19 coming to work for you; is that right?

20 A. I had time to think about it since
21 and I met him at a Southeastern Emergency
22 Equipment meeting. He was there. He did not
23 participate in the meeting. He was there.

24 Q. It was, "Hi, I'm Barry Adickes.
25 Hello," and that's it?

1 A. Basically, yes.

2 Q. Okay. So other than a chance
3 meeting at a meeting, you had never met him
4 till he came to work for you?

5 A. That would be correct.

6 Q. Now, Mr. Adickes was injured on
7 March 23, 2011; is that correct?

8 A. I believe so.

9 Q. So he had been under your
10 supervision for 11 weeks at the time of his
11 accident; is that right?

12 A. Yes, sir.

13 Q. Now, when I took your deposition, we
14 had not yet been provided performance
15 appraisals, and I think you told me you had not
16 reviewed any performance appraisals other than
17 the ones that you may have completed yourself
18 of Mr. Adickes; is that right?

19 A. Yes.

20 Q. I have since been provided with
21 those performance appraisals. Have you had an
22 opportunity to review those performance
23 appraisals since I took your deposition?

24 A. Yes, sir, I have.

25 Q. And did you review those performance

1 appraise in preparation for your testimony
2 today?

3 A. I took a quick glance at them, yes.

4 Q. You also told me, I believe, that
5 you had never -- you had never seen the -- had
6 you seen the PIP before?

7 A. I had not seen his PIP.

8 Q. That's the performance improvement
9 plan?

10 A. Performance improvement plan, yeah.

11 Q. And that is the plan that he was
12 placed on in 2009 because his sales were
13 lagging; is that correct?

14 A. I'm assuming. I did not manage him
15 then.

16 Q. Have you reviewed that in
17 preparation for your testimony today?

18 A. No, sir.

19 Q. I'm looking at Page Exhibit D-17
20 from defendants' exhibit package, and this was
21 to Barry Adickes from James Hendricks, copy to
22 Tracy DeBruhl (phonetic). Tracy DeBruhl is in
23 HR, correct?

24 A. Yes, sir.

25 Q. Who is James Hendricks?

1 A. That would have been a former
2 regional manager.

3 Q. Okay. And did they state in there,
4 "Barry, I know that your sales territory has
5 been harshly affected by the economic downturn.
6 The State of North Carolina has been especially
7 hard hit with state and county employee layoffs
8 and furloughs."

9 A. That appears to be what's in that
10 memo.

11 Q. Now, you guys do a performance
12 evaluation at the end of each year, correct?

13 A. Yes.

14 Q. And 2009 was the year that
15 supposedly Barry's sales lagged, right?

16 A. Yes, sir.

17 Q. Now, this PPM or people performance
18 management form, is completed by Paul Stoddard.
19 Who is Mr. Stoddard?

20 A. He would have been the regional
21 manager that took the place of Jim Hendricks.

22 Q. He was Barry's direct supervisor at
23 that time?

24 A. At that time, yes.

25 Q. In fact, he's your boss now, I

1 believe; is that right?

2 A. Yes, sir.

3 Q. All right. Now, let me get you to
4 look at this with me a little bit.

5 MR. SMITH: And, Your Honor, for the
6 record, this is Exhibit 2 in claimant's exhibit
7 package.

8 BY MR. SMITH:

9 Q. Now, this form is the performance
10 review for the year 2009, correct?

11 A. Yes, sir.

12 Q. It appears to have been completed on
13 January 2, 2010. Does that look correct?

14 A. Yeah, that would make sense.

15 Q. Okay. Now, at that time -- and
16 these -- on the right side of the page in the
17 shaded part -- you're familiar with these
18 forms?

19 A. Yes.

20 Q. That is the supervisor comments,
21 correct?

22 A. Yes, sir.

23 Q. And on that form he's stated, "I
24 started working with Barry in late November.
25 So far I've been impressed with all his key

1 areas of responsibility." Is that what
2 Mr. Stoddard said?

3 A. It appears to be so.

4 Q. And, again, he's your boss, right?

5 A. Yes.

6 Q. Now, the next thing says, "Given the
7 economic conditions, I think Barry did a decent
8 job versus AOP. I've talked with Barry to
9 express how critical it is to obtain quota on a
10 more regular basis. Barry had a great December
11 2009 and I look forward to a great start in
12 2010;" is that correct?

13 A. It appears to be.

14 Q. 2009 was a pretty tough year
15 economically, wasn't it?

16 A. Every year is tough economically.

17 Q. Well, and I'm not speaking so much
18 of you guys. But from a national standpoint,
19 we were in the worst recession we had been in
20 since the depression of 1929?

21 A. I believe that started in 2008, but,
22 you know, these have been challenging years.

23 Q. And, in fact, that's exactly what
24 Mr. Stoddard said on here. He said -- well,
25 let me get you to review this one. He says,

1 "Delighting customers is Barry's best strength.
2 His willingness to dive into the most difficult
3 customer-facing issues is impressive. While
4 doing this, he also finds time to be a great
5 team player, to help me develop the rest of the
6 region to the better, and is someone I can
7 always depend on. His passion for great sales
8 results is extremely strong and I could not ask
9 for more than he gives today. I know that with
10 the return of a stronger economy that Barry
11 will have many years of over-quota results;" is
12 that correct?

13 A. It appears to be what is written.

14 Q. Okay. Did you -- you were talking
15 about the things you heard about Mr. Adickes
16 before he came on your team. Did you hear any
17 of this stuff?

18 A. No, sir.

19 Q. And in the manager's reflections on
20 Page 202 --

21 MR. OXFORD: I'm just going to
22 object to best evidence of -- these are all
23 coming in as -- they are all being tendered
24 into evidence. I mean, reading them into the
25 record is just like reading a medical report

1 into the record.

2 THE COURT: Which we did. Go ahead.

3 BY MR. SMITH:

4 Q. Manager's reflections. "Even though
5 Barry did not take any courses outside of his
6 territory due to the financial cutbacks at
7 Philips and the time-consuming customer-facing
8 issues, I believe there was great development
9 with Barry. This was possibly the toughest
10 year we have all faced due to the recession and
11 cutbacks. Everyone was doing the work of many
12 and this in itself produced an opportunity for
13 tremendous new knowledge and development.
14 We've all seen things and learned from them
15 this year and not happening in many years and
16 we have all furthered our knowledge base and
17 developed from this."

18 Would you characterize this as a
19 good performance review?

20 A. I would say that's pretty much a
21 boilerplate response.

22 Q. A boilerplate response?

23 A. Yeah.

24 Q. You would not characterize that as a
25 good performance review?

1 A. I would say that's an acceptable
2 performance review.

3 Q. Okay. Well, let's keep going. But
4 he was on -- at this point in time when this
5 performance review was coming out with all of
6 this praise, he was on your PIP, correct? He
7 was supposed to be improving?

8 A. I was not part of the PIP, so I
9 don't know the timing of that plan, sir.

10 Q. All right. Let me get you now to
11 review Defendants' Exhibit D-22. And this,
12 again, is from Mr. Stoddard. This is a letter
13 to Barry from Mr. Stoddard dated January 15,
14 2010, and in this letter he's congratulating
15 him on a great December. He finished at 180
16 percent and number one in the region. That's
17 good, isn't it?

18 A. That would be good.

19 Q. "I see great improvement in your
20 skills and I'm confident you'll continue to
21 achieve and produce great results for Philips."
22 That's good too, isn't it?

23 A. That would be good.

24 Q. Now, let me also ask before I get
25 into more of this performance stuff, when you

1 supervised Mr. Adickes, you would only see him
2 in person five to six days a year, correct?

3 A. Yeah, more or less. Yes.

4 Q. You were in Atlanta?

5 A. These are field-based employees. We
6 don't have a lot of face time.

7 Q. And most of your contact would be by
8 e-mail?

9 A. E-mail. Some phone. Probably
10 primarily e-mail.

11 Q. All right. Now, the next
12 performance appraisal that I have here is
13 Exhibit 3. This one is for the year 2010.
14 I'll show it to you. Is that correct, that's
15 for the year 2010?

16 A. Yes.

17 Q. But you completed it even though he
18 was not your employee in 2010, correct?

19 A. I would have delivered it because it
20 would have been delivered in 2011. So I would
21 have delivered, but I would not have written
22 it.

23 Q. When it says, "Manager, Mark
24 Johnson," you didn't write this stuff? Is that
25 what you're saying?

1 A. No.

2 Q. All right. Would that have been
3 Mr. Stoddard that did it?

4 A. Yes.

5 Q. Goes through, Barry meets or exceeds
6 all of his key areas of responsibility?

7 A. Uh-huh.

8 Q. "Barry was on PIP for most of 2010
9 and I'm thrilled to mention he has been removed
10 completely and is on his way to great things in
11 2011."

12 A. Apparently so.

13 Q. Good comments?

14 A. They would be good.

15 Q. "Barry does a fantastic job with his
16 channel partners. His communication with them
17 is current and timely." Isn't that what you
18 were complaining about, that he wasn't
19 communicating with his clients?

20 A. I didn't write those comments, so I
21 stand by mine.

22 Q. But your comments or your
23 supervision of him did not occur until -- with
24 the exception of 11 weeks, all your supervision
25 of Mr. Adickes was after the injury; is that

1 right?

2 A. Correct.

3 Q. Okay. But his supervisor before the
4 injury said that his contact with his clients
5 is current and timely; is that right?

6 A. In that document, yes. What he
7 conveyed to me was different.

8 Q. And that is the performance review
9 for 2010, the calendar year prior to his date
10 of injury?

11 A. Yes, sir.

12 Q. "Barry had an outstanding year in
13 2010. He's taken his territory to a great
14 consistent performance level. I would be
15 remiss if I did not state how professional and
16 upbeat Barry was throughout the entire PIP
17 process." Good comments?

18 A. Good comments.

19 Q. "Stayed focused all year and really
20 paid off for him. Great job, Barry." Good
21 comments?

22 A. Good comments.

23 Q. "Barry does a very nice job with
24 Philips' values. He works every day to embody
25 those values and I believe he comes across

1 professional and is exactly the type person we
2 need here at Philips. His ability to deliver
3 great results this year was impressive and a
4 great comeback for him." Good comments?

5 A. I would consider those good
6 comments.

7 Q. "I believe Barry will be well placed
8 in his role for 2011. If there's a desire to
9 go to the next level, Barry could do that
10 within the two to three years of consistent
11 performance." Good comments?

12 A. Good comments.

13 Q. And, again, this is a 2010 one, the
14 year prior to his injury?

15 A. Yes, sir.

16 Q. All right. Let's go to the next
17 performance appraisal. This one is for the
18 performance review of 2011, and this one you
19 actually did complete; is that right?

20 A. Yes, sir.

21 Q. Now, "For 2011, Barry fell short of
22 meeting his financial commitment to the
23 company. He finished the year at approximately
24 87 percent of AOP." So that's something you're
25 not happy about, I assume; is that right?

1 A. No, sir.

2 Q. "Barry failed to manage his
3 inventory to the goal of no writeoffs. During
4 the year, Barry had a writeoff of \$652." But
5 that's equipment that was lost in his accident;
6 is that right?

7 A. That may or may not have been the
8 case. I don't know.

9 Q. Okay. I'm sorry. I should have
10 gone on for you. The next sentence says, "This
11 unit was lost as a result of Barry's accident."

12 A. (Witness shrugs shoulders.)

13 Q. "An area of concern is Barry's
14 timely territory status feedback. Barry is
15 routinely among the last to respond to requests
16 for input from his manager." These were things
17 you were not happy about; is that right?

18 A. Correct, sir.

19 Q. "2011 was a challenging year for
20 Barry. Shortly after he began his new role of
21 indirect channel manager, Barry went on
22 short-term disability." That was because of
23 his accident; is that right?

24 A. Yes, sir.

25 Q. "This no doubt showed his

1 transition -- excuse me, slowed his transition
2 into his new role. Barry met several of her
3 personal objectives, but failed to meet all of
4 them, including his primary objective of
5 meeting the AOP commitment to the company."
6 Again, something you weren't happy about?

7 A. Correct, sir.

8 Q. "He fell short on delivering on his
9 AOP commitment by finishing the year at only
10 78 percent." So the year following his
11 accident, he did not meet his quota, correct?

12 A. Correct.

13 Q. "Barry has a wealth of experience
14 and should focus on sharing best practice ideas
15 for the team. As a result, I believe that
16 Barry needs to focus on improving his sense of
17 urgency and driving results of his territory.
18 Barry should focus more attention on providing
19 feedback that adds more substance and value."

20 Did you realize that you placed
21 three things in that performance appraisal on
22 your final comments about focus?

23 A. I didn't notice it until you pointed
24 it out. Focus is the nice way of saying you're
25 not getting the job done in this area. It's

1 not a clinical diagnosis.

2 Q. Now, let me show you Page 199 of
3 Claimant's Exhibits, Exhibit 1. And explain
4 this to me because this says at the top Tracy
5 DeBruhl. That looks like who it's from. But
6 then it says it's addressed to Barry and at the
7 bottom it's signed by you. Did you write that
8 or did Tracy DeBruhl write that?

9 A. I probably wrote that with Tracy. I
10 had concerns and went to human resources and
11 they helped author that.

12 Q. This is March 9, 2012, almost
13 exactly a year from the time of Barry's
14 accident?

15 A. Uh-huh.

16 Q. And you say, "I believe your
17 performance is now suffering in areas,"
18 correct? Feel free to look at it.

19 A. I'll take your word for it.

20 Q. Okay. You go on to talk about, "in
21 the future, if you know you're going to be out
22 for the day or out of your territory for
23 personal business, you must enter into the one
24 portal under our leave request PTO." Were you
25 aware that Barry was missing days from time to

1 time because of headaches?

2 A. I don't know what the nature was and
3 I don't recall the circumstances.

4 Q. All right. In the second paragraph
5 you say, "You are exhibiting a lack of focus on
6 time management in addition to your
7 year-to-date number;" is that right?

8 A. Yes, sir.

9 Q. "My concern about your" -- next
10 sentence says, "We have concerns about time
11 management and/or focus;" is that right?

12 A. Yes, sir.

13 Q. Down here under this bullet you
14 say -- you talk about poor or slow follow-up,
15 correct?

16 A. Correct.

17 Q. And then at the bottom,
18 "Collectively they point to a potential problem
19 in both focus as well as territory management,"
20 correct?

21 A. Yes, sir.

22 Q. So in this e-mail to him, on four
23 different occasions you made comments about his
24 focus, correct?

25 A. Yes, sir.

1 Q. I'm assuming you haven't, but you
2 haven't reviewed the neuropsychological
3 evaluation from Dr. Waid or the deposition of
4 Dr. Mandell, have you?

5 A. No, sir.

6 Q. On Page 35 of Dr. Mandell's
7 deposition he says -- and I want to get you to
8 see if this is similar with what you saw.
9 "Where he did have difficulties were with
10 concentration, executive function, capacity to
11 sustain attention and concentration, difficulty
12 with attentional executive aspects of immediate
13 learning, or thought to be the complaints for
14 forgetfulness on daily pursuits. Mild
15 executive dysfunction, shorter fuse, easy to
16 frustration." The same things you were
17 commenting on here, wasn't it?

18 A. No, sir.

19 Q. Lack of focus, inability to
20 concentrate, those aren't the same things?

21 A. I said my comments are not clinical
22 in nature. They are a function of you're not
23 getting the job done in my opinion.

24 Q. Which is a manifestation of exactly
25 what this clinical information says?

1 A. I can't speak to that, sir.

2 Q. Likewise on Page 8 of Dr. Waid's
3 report he said, "Mr. Adickes did demonstrate
4 varied ability in his capacity to sustain
5 attention and concentration." Isn't that
6 similar to what you were finding right here on
7 these reports?

8 A. No, sir, not in my mind. Again, I'm
9 not a clinician.

10 Q. You can't comment one way or the
11 other?

12 A. No. I didn't exhibit -- or I did
13 not witness those issues. I witnessed output.

14 Q. And that's all you could see, was
15 the output, because you only saw him five or
16 six days a year, correct?

17 A. Correct.

18 Q. I hesitate to even go into this, but
19 you said there was a problem with personal
20 charges on his AmEx bill, correct?

21 A. Yes, sir.

22 Q. Those came about when Mr. Adickes'
23 son was in a hospital in Virginia having
24 surgery. They made him show a credit card and
25 that was the only card he had and he called and

1 reported that to you, didn't he?

2 A. I don't recall that. I recall
3 numerous charges hitting his American Express
4 corporate card from over an extended period of
5 time, is how I remember it.

6 Q. Well, we can get into that, but what
7 you said in your performance appraisal was not
8 that it was personal charges, but that his
9 charges -- that he hadn't paid the bill on
10 time. Do you recall that?

11 A. Likely that would be the first
12 notification to me is employee is past due.
13 Then when you start to look in and you see
14 personal charges, you know, you have two
15 issues.

16 Q. Let me go to Claimant's Exhibit 5,
17 and this would be another performance appraisal
18 that you completed for the calendar year 2012;
19 is that correct?

20 A. Yes.

21 Q. So that would be for the year -- two
22 years post-accident, not the year of the
23 accident?

24 A. 2012.

25 Q. Okay. All right. Once again, for

1 that year he finished at 96 percent of his AOP.
2 So he didn't meet quota that year either,
3 correct?

4 A. Correct.

5 Q. And you note on here that you had
6 received complaints regarding being difficult
7 to get in touch with Barry?

8 A. Yes. That would be consistent with
9 my experience pre- and post-accident.

10 Q. That would be your experience for
11 those 11 weeks pre-accident?

12 A. Well, that was also the feedback
13 that I had received.

14 Q. But it's not showing up on any of
15 those performance appraisals, is it? In fact,
16 it says quite the opposite of that on those
17 performance appraisals?

18 A. I didn't write those, sir.

19 Q. But had you read those prior to, you
20 would have had that feedback, right?

21 A. If I had read them, yes, I would
22 have had that feedback.

23 Q. And you state again, "Barry needs to
24 continue to focus on making himself available
25 providing timely responses." So, again, you

1 question his focus?

2 A. Yes, sir.

3 Q. And you said, "Barry needs to focus
4 attention on managing the situation more
5 closely moving forward. Barry will need to
6 keep focused and demonstrate that he can
7 deliver on the AOP commitment." So in your
8 final comments on his 2012 performance
9 appraisal, three more times you question his
10 focus?

11 A. Yes. And if I recall looking at
12 that final rating -- what was my final rating
13 for Barry? That would be valued player,
14 delivers solid results. So a good PPM provided
15 in the --

16 Q. Well placed is what I see on here.

17 A. Flip the page right there, valued
18 player.

19 Q. Now, you talked about the issues of
20 getting in touch with him from time to time?

21 A. Yes.

22 Q. Barry wasn't coming to you and
23 saying, "Hey, I've got a headache and I'm down
24 for two or three days," was he?

25 A. I don't recall that, no.

1 Q. But it could certainly explain why
2 you had a hard time getting in touch with him
3 at times?

4 A. I wouldn't be able to address that.

5 Q. Just briefly on the phone call in
6 which you terminated him, you do recall him
7 asking you about if there was a probationary
8 period, correct?

9 A. I believe I stated that under oath
10 here today.

11 Q. And it is correct that since
12 January 17, 2014, Philips has not provided
13 Mr. Adickes with any employment, correct?

14 A. That's to the best of my knowledge,
15 no.

16 Q. And there's no offer for him to
17 return at this point in time, is there?

18 A. Not that I'm aware of. I believe he
19 was free to, like all employees that were RIF,
20 to apply for jobs that became open at Philips.
21 Whether he has done that, I wouldn't have
22 visibility to.

23 MR. SMITH: Thank you, sir. No
24 further questions.

25 THE COURT: Mr. Oxford.

1 MR. OXFORD: Just briefly.

2 REDIRECT EXAMINATION

3 BY MR. OXFORD:

4 Q. Prior to Barry coming under your
5 supervision as far as his personal record
6 something that was provided to you?

7 A. It was not provided to me, no.

8 Q. Is that something you could have
9 logged on a computer and pulled up?

10 A. No. I would have had to have made a
11 request to human resources.

12 Q. Go through some channels to get
13 that?

14 A. When we write these PPMs, it's all
15 done electronically. I sign off on it
16 electronically, the employee signs off
17 electronically, it goes into an archive.
18 Frankly, in sales most people are really
19 focused on where they finish to quota. And
20 once you're done with the PPM, it's -- you move
21 on pretty quickly.

22 Q. That was going to be my next
23 question. As far as your experience with --
24 you supervised plenty of these sales
25 specialists. In your experience are they more

1 concerned about the raw data or commentary?

2 A. Commentary. They're interested in,
3 you know, first of all, did I hit AOP? And the
4 rest of it is kind of white noise still.

5 Q. So they care more about the numbers
6 than what's said?

7 A. Oh, absolutely.

8 Q. And you were shown an e-mail. I
9 believe it was an e-mail. You were shown
10 Exhibit D, Page 22. Is that correct, you were
11 just shown this e-mail by Mr. Smith?

12 A. Yes.

13 Q. I'm showing you "D," Page 21. As
14 far as his performance at the end of 2009,
15 beginning of 2010, what do these numbers down
16 here -- what do those tell you?

17 A. Poor performance. January,
18 28 percent. February, 56 percent. March,
19 54 percent. As you can see, he achieved over
20 65 percent only once in the last six months.

21 Q. And that would have been it says
22 here in November. So this e-mail was from May
23 2010, so November 2009?

24 A. Yes.

25 Q. Again, you were also shown an

1 exhibit that was on Page 199. Let me get
2 there. Exhibit 12. I'm sorry. That's not
3 right. Claimant's Exhibit 1. I apologize.
4 This was the -- this was the letter from Tracy
5 DeBruhl that was written to Barry?

6 A. Uh-huh.

7 Q. Written by you; is that correct?

8 A. Yes.

9 Q. And Mr. Smith pointed out that you
10 wrote this line. Can you read the line that
11 starts right here, "In the future?"

12 A. "In the future if you know you're
13 going to be out for the day or out of your
14 territory for personal business, you must enter
15 in the one portal under leave request PTO
16 time."

17 Q. Does that say anything about why he
18 may have been out of the area during the time
19 that you were speaking of as far as the reason?

20 A. I really can't recall.

21 Q. It doesn't say that he was out of
22 the area for headaches?

23 A. No. I mean, it could have been for
24 any number of reasons, you know. Sometimes
25 sales reps, again, these are field-based

1 employees. We're not with them all the time.
2 Sometimes they will take time off and they
3 forget to enter it into the system. It may
4 have been a reminder for that. I can't recall
5 anything at this point in time that
6 specifically triggered that response.

7 Q. Are you aware of -- this is an
8 e-mail that was sent to you July 25, 2013. Are
9 you aware of these times where he asked for PTO
10 for other reasons not related to headaches?

11 A. Yeah, I remember that. That seems
12 to be related to some of his other issues, yes,
13 the knee.

14 Q. Knee surgery, going to Alaska?

15 A. Yeah.

16 Q. And so after counseling him on
17 proper procedure for asking for time off, he
18 would request time off if needed, if he was
19 going to be out of the area or if he was going
20 to be off work?

21 A. Correct.

22 Q. And do you recall any times where he
23 asked for time off related to his headaches?

24 A. I do not.

25 MR. OXFORD: Nothing further from

1 me.

2 THE COURT: Mr. Smith.

3 RECROSS-EXAMINATION

4 BY MR. SMITH:

5 Q. In your deposition you indicated you
6 didn't really -- correct me if I'm wrong. You
7 don't really care -- didn't really care when he
8 was there or when he wasn't there as long as he
9 got the work done; is that correct?

10 A. That's pretty much how field sales
11 is. It's a performance-oriented position.
12 You're focused on are they delivering on their
13 financial commitment to the company or aren't
14 they?

15 Q. So if Mr. Adickes was down for two
16 days with a headache, he wouldn't have had to
17 call you to report that so long as he made the
18 work up; is that right?

19 A. He should be loading it into the
20 system if he was taking a sick day or PTO day.

21 Q. You were asked about his sales
22 numbers in 2009 when he was on the PIP, and I
23 don't want to go into this very much. But by
24 the end of 2009, he finished at 180 percent and
25 number one in the region?

1 A. Yes.

2 Q. And he was off the PIP?

3 A. Yes. And to me that would support
4 the claim that this was not a performance
5 decision that the company made. The company
6 changed their business model and --

7 Q. I'm talk about 2009.

8 A. No. But I'm talking about his
9 performance, you know, was not a factor in his
10 position being eliminated from the company.

11 MR. SMITH: Thank you, sir. No
12 further questions.

13 THE COURT: All right. Mr. Oxford.

14 MS. PAYNE: Nothing further.

15 MR. OXFORD: Nothing further.

16 THE COURT: All right, sir. You may
17 step down. Any other witnesses?

18 MS. PAYNE: No, Your Honor.

19 THE COURT: All right. That's your
20 case?

21 MS. PAYNE: Yes. We would like to
22 submit our APAs as an exhibit, but yes.

23 THE COURT: All right. Thank you
24 all very much. That concludes this hearing.

25 (The hearing concluded at 2:45 p.m.)

1 CERTIFICATE OF REPORTER

2
3 I, Kimberly T. Power, Court Reporter
4 and Notary Public for the State of South
Carolina at Large, do hereby certify:

5 That the foregoing transcript of
6 proceedings was taken before me on the date and
7 at the time and location stated on Page 1 of
8 this transcript; that the witness was duly
9 sworn to testify to the truth; that the
10 testimony of the witness and all objections
11 made at the time of the proceeding were
recorded stenographically by me and were
thereafter transcribed; that the foregoing
transcript of proceedings as typed is a true,
accurate, and complete record of the
proceedings made at the time to the best of my
ability.

12 I further certify that I am neither
13 related to nor counsel for any party to the
14 cause pending or interested in the events
thereof.

15 Witness my hand, I have hereunto
16 affixed my official seal this 25th day of July,
2015, Lexington County, South Carolina.

17
18
19
20 _____
21 Kimberly T. Power, Court Reporter
22 Notary Public State of South Carolina
23 My Commission Expires: 04/24/2025
24
25

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Pain Management Visit Note(.)
Document Date: 16 July 2014 12:59 EDT
Document Status: Auth (Verified)
Document Title/Subject: Office Visit
Performed By/Author: PARK, RICHARD I MD on 16 July 2014 12:59 EDT
Verified By: PARK, RICHARD I MD on 18 July 2014 14:07 EDT
Encounter info: 1418800066, CMC-P, OPP - Outpatient Procedure Patient, 7/16/2014 - 7/16/2014
Contributor System: ESCRIPT

*** Final Report *****Office Visit (Verified)**

Pt Name: ADICKES, BARRY
Date of Service: 07/16/2014

MRN: 3461092

Date of Birth: [REDACTED] 961

Mr. Adickes is a pleasant 52-year-old gentleman who presents with right-sided cervicogenic pain. He is a patient who has C4-C5 facet generated neck pain. On January 6th of this year, I performed a successful radiofrequency denervation of right C4, right C5 medial branches, with almost complete relief of his neck pain. Recently he has been experiencing tightness and some return of the same pain and this is beginning to interfere with his daily activities and ability to work and drive. It is in the same distribution. No numbness, weakness.

PHYSICAL EXAMINATION:

Vitals stable, afebrile, in no acute distress. Extension, right rotation causes discomfort over the C4-C5 facets segments. Once again, no radicular component of the pain, no weakness.

IMPRESSION:

1. Cervicalgia.
2. Right C4-C5 facet generated neck pain.

PLAN:

1. Successful radiofrequency denervation was performed right C4, right C5 medial branches, total of 2. Separate procedure note was dictated. At discharge, he was reporting complete relief of his neck pain. Range of motion is improved. He was very pleased. Usual instructions were given and he will return when needed.

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Printed on: 8/5/2014 14:45 EDT

Page 1 of 2
(Continued)

Dr Park

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

D: 07/16/2014 12:59PM RICHARD I. PARK, MD
T: 07/16/2014 14:25PM NTS
Job # 9981393/Conf # 1908355
cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD
07/18/2014 02:07 PM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 16 July 2014 12:59 EDT
- * Transcribe by ESCRIPTION , TRANSCRIPTIONIST on 16 July 2014 14:25 EDT
- * Sign by PARK , RICHARD I MD on 18 July 2014 14:07 EDTRequested on 16 July 2014 14:25 EDT
- * VERIFY by PARK , RICHARD I MD on 18 July 2014 14:07 EDT

Printed by: KEMERAIT , EVA
Printed on: 8/5/2014 14:45 EDT

Page 2 of 2
(End of Report)

Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Operative/Procedure Reports
Document Date: 16 July 2014 0:00 EDT
Document Status: Auth (Verified)
Document Title/Subject: Operative Note
Performed By/Author: PARK, RICHARD I MD on 16 July 2014 12:57 EDT
Verified By: PARK, RICHARD I MD on 18 July 2014 14:07 EDT
Encounter info: 1418800066, CMC-P, OPP - Outpatient Procedure Patient, 7/16/2014 - 7/16/2014
Contributor System: ESCRIPT

*** Final Report *****Operative Note (Verified)**

Pt Name: ADICKES, BARRY
Date of Service: 07/16/2014

MRN: 3461092

Date of Birth: 12/11/1961

DATE OF PROCEDURE: 07/16/2014

PROCEDURE: Radiofrequency thermocoagulation with fluoroscopy.

POSITION: Right C4 and right C5 median branches, total of 2 lesioning.

ANESTHESIA: 1% lidocaine local.

AGENT: 80 degrees Celsius for 60 seconds radiofrequency thermocoagulation.

INDICATION:

1. Cervicalgia
2. Facet generated neck pain.

Chart was reviewed, questions were answered, consent was obtained.

DESCRIPTION OF PROCEDURE: The patient was placed prone and comfortable on fluoroscopic table. The surgical field was sterilely prepped with ChloraPrep and draped in the usual fashion. Using fluoroscopy, the right C4-C5 and facet joints and accompanying anatomic landmarks were identified. One percent lidocaine local was given prior to placing 2 separate 10 mm radiofrequency probes corresponding to right C4 and right C5 median branches. Sensorimotor confirmation were performed at each level for final placement of the probes. A

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Printed on: 8/5/2014 14:45 EDT

Page 1 of 2
(Continued)

Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

right C4 positive concordance of pain at 0.4 volts negative motor; right C5 positive concordance of pain 0.4 volts, negative motor. One percent lidocaine local given prior to lesioning at each level independently at 80 degrees Celsius for 60 seconds radiofrequency thermocoagulation. Prior to removal of the probes intact, 0.25% bupivacaine with 20 mg of Depo-Medrol, 1 cc, was injected. At discharge, he was complaining of pruritus and rash which often he gets with steroid injections as he had before and I suspect this might be a mild allergy to the preservative. He was given Benadryl IM and the symptoms resolved.

D: 07/16/2014 12:57PM RICHARD I. PARK, MD

T: 07/16/2014 13:39PM NTS

Job # 9981384/Conf # 1908350

cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD

07/18/2014 02:07 PM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 16 July 2014 12:57 EDT
- * Transcribe by ESCRIPTION , TRANSCRIPTIONIST on 16 July 2014 13:39 EDT
- * Sign by PARK , RICHARD I MD on 18 July 2014 14:07 EDTRequested on 16 July 2014 13:40 EDT
- * VERIFY by PARK , RICHARD I MD on 18 July 2014 14:07 EDT

Printed by: KEMERAIT , EVA
Printed on: 8/5/2014 14:45 EDT

Page 2 of 2
(End of Report)

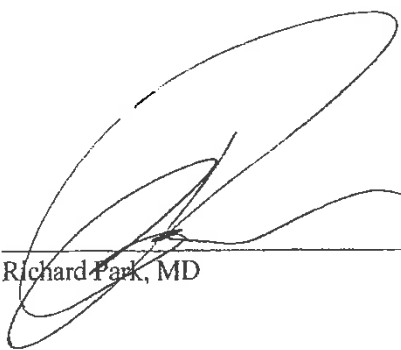
Re: Barry Simmons Adickes

DOB: [REDACTED] 961

SSN: [REDACTED]

DOI: 3/22/2011

I have been treating Barry Adickes as a result of an on the job injury. Initial treatment included pain medications and injections. Recently I performed a radio frequency ablation for Mr. Adickes and this has provided great relief for him. It is impossible for me to predict the exact future for Mr. Adickes but my experience and studies have shown the radio frequency ablations are typically repeated every six to twenty-four months for pain relief. Typically speaking successful radio frequency ablations provide pain relief and prevent the need for pain medications and injections.



Richard Park, MD

Dated: 3/24/14

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Pain Management Visit Note(.)
Document Date: 06 January 2014 15:44 EST
Document Status: Auth (Verified)
Document Title/Subject: Office Visit
Performed By/Author: PARK, RICHARD I MD on 06 January 2014 15:44 EST
Verified By: PARK, RICHARD I MD on 08 January 2014 8:10 EST
Encounter info: 1335800052, CMC-P, OPP - Outpatient Procedure Patient, 1/6/2014 - 1/6/2014
Contributor System: ESCRIPT

* Final Report *

Office Visit (Verified)

Pt Name: ADICKES, BARRY

MRN: 3461092

Date of Birth: [REDACTED] 1961

DATE OF SERVICE: 01/06/2014

DATE OF BIRTH: [REDACTED] 1961

Mr. Adickes is a very pleasant 52-year-old gentleman who has right cervicalgia as a chief complaint. He is a patient who was kindly referred by Dr. Welshofer.

He underwent 2 diagnostic injections including the last median branch blocks C4 and C5, corresponding to C4-C5 facet joint. For 12 hours, he had almost complete relief of his neck pain and he had the ability with normalization of range of motion. Given this finding to the previous diagnostic injections, he is a good candidate for radiofrequency thermocoagulation of these medial branches for long-term relief.

PHYSICAL EXAMINATION: Vitals stable, afebrile, no contraindications to planned procedure. Exam is unchanged; right-sided cervicogenic pain with extension and rotation.

IMPRESSION:

1. Cervicalgia.
2. Facet generated neck pain.

PLAN: Successful radiofrequency thermocoagulation were performed right C4 and right C5 median branches, corresponding to C4-C5 facet joint. A total of 2 lesioning. He tolerated the procedure well and at discharge he had complete relief of his neck pain. Usual instructions were given and he will return when needed.

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Printed on: 3/4/2014 15:33 EST

Page 1 of 2
(Continued)

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

D: 01/06/2014 03:44PM RICHARD I. PARK, MD
T: 01/07/2014 10:45AM NTS
Job # 9354279/Conf # 1724532
cc: JOHN A. WELSHOFER, MD

Signature Line

Electronically Signed By: PARK, RICHARD I MD
01/08/2014 08:10 AM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 06 January 2014 15:44 EST
- * Transcribe by ESCRIPTION , TRANSCRIPTIONIST on 07 January 2014 10:45 EST
- * Sign by PARK , RICHARD I MD on 08 January 2014 8:10 ESTRequested on 07 January 2014 10:45 EST
- * VERIFY by PARK , RICHARD I MD on 08 January 2014 8:10 EST

Printed by: KEMERAIT , EVA
Printed on: 3/4/2014 15:33 EST

Page 2 of 2
(End of Report)

Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Operative/Procedure Reports
Document Date: 06 January 2014 0:00 EST
Document Status: Auth (Verified)
Document Title/Subject: Operative Note
Performed By/Author: PARK, RICHARD MD on 06 January 2014 15:43 EST
Verified By: PARK, RICHARD MD on 08 January 2014 8:10 EST
Encounter info: 1335800052, CMC-P, OPP - Outpatient Procedure Patient, 1/6/2014 - 1/6/2014
Contributor System: ESCRIPT

* Final Report *

Operative Note (Verified)

Pt Name: ADICKES, BARRY

MRN: 3461092

Date of Birth: [REDACTED] 1961

DATE OF SERVICE: 01/06/2014

DATE OF BIRTH: [REDACTED] 1961

PROCEDURE: Radiofrequency thermocoagulation with fluoroscopy.

POSITION: Right C4 and right C5 medial branches, total of 2 lesioning.

ANESTHESIA: 1% lidocaine local.

AGENT: 80 degrees Celsius for 60 seconds radiofrequency thermocoagulation.

INDICATIONS:

1. Cervicalgia.
2. Facet generated neck pain.

DESCRIPTION OF PROCEDURE: Chart was reviewed, questions were answered, consent was obtained. The patient was placed prone and comfortable on fluoroscopic table. The surgical field was sterilely prepped with ChlorPrep and draped in the usual fashion. Using fluoroscopy, the right C4-C5 facet joints and accompanying anatomic landmarks were identified. One percent lidocaine local given prior to placing 2 separate 10 mm radiofrequency probes corresponding to right C4 and right C5 medial branch. Sensorimotor confirmation were performed at each level for final placement of the probes. At right C4 positive concordance of pain at 0.3 volts,

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Printed on: 3/4/2014 15:40 EST

Page 1 of 2
(Continued)

Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

negative motor; right C5 positive concordance at 0.5 volts and negative motor. One percent lidocaine local given prior to lesioning at each level independently at 80 degrees Celsius for 60 seconds radiofrequency thermocoagulation. Prior to removal of the probes intact, 0.25% bupivacaine with 10 mg Depo-Medrol, 1 cc, was injected. No complications. At discharge, he had complete relief of his neck pain.

D: 01/06/2014 03:43PM RICHARD I. PARK, MD

T: 01/06/2014 16:08PM NTS

Job # 9354267/Conf # 1724528

cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD

01/08/2014 08:10 AM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 06 January 2014 15:43 EST
- * Transcribe by ESCRIPTION , TRANSCRIPTIONIST on 06 January 2014 16:08 EST
- * Sign by PARK , RICHARD I MD on 08 January 2014 8:10 EST Requested on 06 January 2014 16:27 EST
- * VERIFY by PARK , RICHARD I MD on 08 January 2014 8:10 EST

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Printed on: 3/4/2014 15:40 EST

Page 2 of 2
(End of Report)

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Pain Management Visit Note(.)
Document Date: 16 December 2013 15:22 EST
Document Status: Auth (Verified)
Document Title/Subject: Office Visit
Performed By/Author: PARK, RICHARD I MD on 16 December 2013 15:22 EST
Verified By: PARK, RICHARD I MD on 18 December 2013 8:44 EST
Encounter info: 1334000182, CMC-P, OPP - Outpatient Procedure Patient, 12/16/2013 - 12/16/2013
Contributor System: ESCRIPT

* Final Report *

Office Visit (Verified)

Pt Name: ADICKES, BARRY

MRN: 3461092

Date of Birth: [REDACTED] 1961

DATE OF SERVICE: 12/16/2013

DATE OF BIRTH: [REDACTED] 1961

Mr. Adickes is a pleasant 52-year-old gentleman who has chronic right-sided cervical pain. After the 2 diagnostic facet joint injections C4-C5, his referred pain to the shoulder and right arm pain, paresthesia has almost completely resolved. He is left with discomfort in the right side of the neck, but overall he is very pleased with the improvement. He is here for diagnostic median branch block to see whether or not he would be a good candidate for radiofrequency ablation at this level.

PHYSICAL EXAMINATION

Vitals stable, afebrile, in no acute distress, 4/10 pain score. He has full range of motion, but full extension, right rotation and lateral bends cause increased pain in the right mid cervical spine near the C4-C5 facets segments. Once again, there is no weakness or neurologic deficits in the upper extremities.

IMPRESSION:

1. Cervicalgia.
2. Right C4-C5 facet generated neck pain.

PLAN:

1. Successful diagnostic medial branch blocks were performed, right C4 and right C5, corresponding to C4-C5

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Printed on: 3/4/2014 15:33 EST

Page 1 of 2
(Continued)

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

facet joint. At discharge, he had complete relief of his cervical pain. Range of motion is full, normal extension, rotation and lateral bends did not create any pain. Given this finding, we will pursue the radiofrequency denervation of C4-C5 median branch at next visit.

D: 12/16/2013 03:22PM RICHARD I. PARK, MD

T: 12/17/2013 09:47AM NTS

Job # 9290745/Conf # 413057

cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD

12/18/2013 08:44 AM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 16 December 2013 15:22 EST
- * Transcribe by ESCRIPTION , TRANSCRIPTIONIST on 17 December 2013 9:47 EST
- * Sign by PARK , RICHARD I MD on 18 December 2013 8:44 EST Requested on 17 December 2013 9:48 EST
- * VERIFY by PARK , RICHARD I MD on 18 December 2013 8:44 EST

Printed by: KEMERAIT , EVA
Printed on: 3/4/2014 15:33 EST

Page 2 of 2
(End of Report)

Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Operative/Procedure Reports
Document Date: 16 December 2013 0:00 EST
Document Status: Auth (Verified)
Document Title/Subject: Operative Note
Performed By/Author: PARK, RICHARD I MD on 16 December 2013 15:20 EST
Verified By: PARK, RICHARD I MD on 18 December 2013 8:44 EST
Encounter info: 1334000182, CMC-P, OPP - Outpatient Procedure Patient, 12/16/2013 - 12/16/2013
Contributor System: ESCRIPT

* Final Report *

Operative Note (Verified)

Pt Name: ADICKES, BARRY

MRN: 3461092

Date of Birth: 12/11/1961

DATE OF SERVICE: 12/16/2013

DATE OF BIRTH: 12/11/1961

PROCEDURE: Medial branch block with fluoroscopy.

POSITION: Cervical, right C4 and right C5, corresponding to right C4-C5 facet joints, total of 1.

ANESTHESIA: 1% lidocaine.

AGENT: 0.5% bupivacaine, 1 mL each.

INDICATIONS:

1. Cervicalgia.
2. Facet generated back, neck pain.

DESCRIPTION OF PROCEDURE: Chart was reviewed, questions were answered, consent was obtained. The patient was placed prone and comfortable. The surgical field was sterilely prepped with Chloraprep and draped in the usual fashion. Using fluoroscopy, right C4-C5 facet joint and accompanying anatomic landmarks were identified. One percent lidocaine local given prior to placing 2 separate 22-gauge spinal needles corresponding to right C4 and right C5 medial branches. After correct placement under fluoroscopy, therapeutic agent of 0.5% bupivacaine, 1 mL was injected at each level and the needle removed. Hemostasis was achieved. At discharge,

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(Continued)

Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

he was reporting complete relief of his neck pain even with range of motion, rotation and extension.

D: 12/16/2013 03:20PM RICHARD I. PARK, MD

T: 12/17/2013 03:46AM NTS

Job # 9290733/Conf # 413053

cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD

12/18/2013 08:44 AM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 16 December 2013 15:20 EST
- * Transcribe by ESCRIPTION , TRANSCRIPTIONIST on 17 December 2013 3:46 EST
- * Sign by PARK , RICHARD I MD on 18 December 2013 8:44 ESTRequested on 17 December 2013 3:47 EST
- * VERIFY by PARK , RICHARD I MD on 18 December 2013 8:44 EST

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Page 2 of 2
(End of Report)

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Pain Management Visit Note(.)
Document Date: 13 November 2013 11:22 EST
Document Status: Auth (Verified)
Document Title/Subject: Office Visit
Performed By/Author: PARK , RICHARD I MD on 13 November 2013 11:22 EST
Verified By: PARK , RICHARD I MD on 15 November 2013 13:08 EST
Encounter info: 1330800066, CMC-P, OPP - Outpatient Procedure Patient, 11/13/2013 - 11/13/2013
Contributor System: ESCRIPT

* Final Report *

Office Visit (Verified)

ADICKES, BARRY

3461092

DATE OF SERVICE: 11/13/2013

DATE OF BIRTH: 08/18/1961

Mr. Adickes is a 52-year-old gentleman who has chronic right-sided cervicalgia and episodic right arm pain. He had his first diagnostic right C4-C5 facet joint injection last visit. According to the patient, he had short-term relief where he noticed some improvement, but overall his symptoms have returned. It is still on the right side with headaches. He is also experiencing episodic pain radiating down the arms, numbness. He is here for a second diagnostic facet joint injection.

PHYSICAL EXAMINATION

Vitals stable, afebrile, in no contraindications to planned procedure, continues to exhibit increased neck pain with right rotation, extension of the C4-C5 facets segments. There is no profound weakness in the upper extremities. Reflexes are intact.

IMPRESSION:

1. Cervicalgia.
2. Facet arthropathy.
3. Cervical spondylosis.

PLAN: Intraarticular facet joint injections were performed right C4-C5 and at discharge, he was comfortable

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(Continued)

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

with marked decrease in his neck pain. Range of motion was also improved. He will keep a pain diary and depending on response, we may consider purely diagnostic medial branch blocks prior to radiofrequency ablation if the symptoms are not controlled long-term versus an intralaminar cervical epidural steroid injection at next visit.

D: 11/13/2013 11:22AM RICHARD I. PARK, MD

T: 11/13/2013 15:34PM NTS

Job # 9174468/Conf # 394813

cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD

11/15/2013 01:08 PM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 13 November 2013 11:22 EST
- * Transcribe by ESCRIPTION , TRANSCRIPTIONIST on 13 November 2013 15:34 EST
- * Sign by PARK , RICHARD I MD on 15 November 2013 13:08 EST Requested on 13 November 2013 15:34 EST
- * VERIFY by PARK , RICHARD I MD on 15 November 2013 13:08 EST

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Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Operative/Procedure Reports
Document Date: 13 November 2013 0:00 EST
Document Status: Auth (Verified)
Document Title/Subject: Operative Note
Performed By/Author: PARK, RICHARD I MD on 13 November 2013 11:20 EST
Verified By: PARK, RICHARD I MD on 15 November 2013 13:09 EST
Encounter info: 1330800066, CMC-P, OPP - Outpatient Procedure Patient, 11/13/2013 - 11/13/2013
Contributor System: ESCRIPT

* Final Report *

Operative Note (Verified)

ADICKES, BARRY

3461092

DATE OF SERVICE: 11/13/2013

DATE OF BIRTH: 01/13/1961

PROCEDURE: Facet joint injection with fluoroscopy.

POSITION: Right C4-C5.

ANESTHESIA: 1% lidocaine local.

AGENT: 0.25% bupivacaine with 80 mg Depo-Medrol, 1.5 mL.

INDICATIONS:

1. Cervicalgia.
2. Facet arthrosis.

POSTOPERATIVE DIAGNOSES:

1. Cervicalgia.
2. Facet arthrosis.

DESCRIPTION: After obtaining informed consent, the patient was positioned on the padded fluoroscopy table as above. The skin overlying the spine in the area of interest was prepped and draped in the usual fashion.

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(Continued)

Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

Fluoroscopy was utilized to choose a site for needle insertion. Local anesthesia was administered at this site.

A sterile 22-gauge stylet spinal needle was advanced through the anesthetized skin and manipulated into the facet joint under fluoroscopic guidance. Aspiration was negative. Therapeutic agent was administered in increments. The needles were removed intact.

The patient tolerated the procedure well and recovered uneventfully in the pain center recovery room. Discharge instructions were given.

ADDENDUM: Intraarticular right C4-C5 facet joint injection was performed. At discharge, he had almost complete relief of his right-sided neck pain, range of motion was normalized.

D: 11/13/2013 11:20AM RICHARD I. PARK, MD

T: 11/13/2013 14:14PM NTS

Job # 9174463/Conf # 394808

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Signature Line

Electronically Signed By: PARK, RICHARD I MD

11/15/2013 01:09 PM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 13 November 2013 11:20 EST
- * Transcribe by ESCRIPTION , TRANSCRIPTIONIST on 13 November 2013 14:14 EST
- * Sign by PARK , RICHARD I MD on 15 November 2013 13:09 EST Requested on 13 November 2013 14:15 EST
- * VERIFY by PARK , RICHARD I MD on 15 November 2013 13:09 EST

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Printed on: 3/4/2014 15:33 EST

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Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Operative/Procedure Reports
Document Date: 21 October 2013 0:00 EDT
Document Status: Auth (Verified)
Document Title/Subject: Operative Note
Performed By/Author: PARK, RICHARD | MD on 21 October 2013 12:43 EDT
Verified By: PARK, RICHARD | MD on 22 October 2013 8:51 EDT
Encounter info: 1328300045, CMC-P, OPP - Outpatient Procedure Patient, 10/21/2013 - 10/21/2013
Contributor System: ESCRIPT

* Final Report *

Operative Note (Verified)

ADICKES, BARRY

3461092

DATE OF SERVICE: 10/21/2013

DATE OF BIRTH: 06/11/1961

PROCEDURE: Facet joint injection with fluoroscopy.

POSITION: Right C4-C5 facet joint.

ANESTHESIA: 1% lidocaine local.

AGENT: 0.25% bupivacaine with 60 mg Depo-Medrol, 1 mL.

INDICATIONS:

1. Cervicalgia.
2. Facet arthrosis.
3. Back and neck pain.

POSTOPERATIVE DIAGNOSES:

1. Cervicalgia.
2. Facet arthrosis.
3. Back and neck pain.

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Printed on: 3/4/2014 15:33 EST

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(Continued)

Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

* Final Report *

DESCRIPTION OF PROCEDURE: After obtaining informed consent, the patient was positioned on the padded fluoroscopy table as above. The skin overlying the spine in the area of interest was prepped and draped in the usual fashion. Fluoroscopy was utilized to choose a site for needle insertion. Local anesthesia was administered at this site.

A sterile 22-gauge styletted spinal needle was advanced through the anesthetized skin and manipulated into the facet joint under fluoroscopic guidance. Aspiration was negative. Therapeutic agent was administered in increments. The needles were removed intact.

The patient tolerated the procedure well and recovered uneventfully in the pain center recovery room. Discharge instructions were given.

ADDENDUM: Intraarticular facet joint injection was performed right C4-C5. At discharge, he had 0/10 pain score and improved range of motion. During the recovery, he began to complain of pruritus and Benadryl 50 mg was given with complete resolution.

D: 10/21/2013 12:43PM RICHARD I. PARK, MD
T: 10/21/2013 13:05PM NTS
Job # 9085581/Conf # 6902670
cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD
10/22/2013 08:51 AM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 21 October 2013 12:43 EDT
- * Transcribe by DESCRIPTION , TRANSCRIPTIONIST on 21 October 2013 13:05 EDT
- * Sign by PARK , RICHARD I MD on 22 October 2013 8:51 EDTRequested on 21 October 2013 13:06 EDT
- * VERIFY by PARK , RICHARD I MD on 22 October 2013 8:51 EDT

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(Continued)

Operative/Procedure Reports

ADICKES, BARRY S - 0003461092

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(End of Report)

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Pain Management Visit Note(.)
Document Date: 21 October 2013 12:44 EDT
Document Status: Auth (Verified)
Document Title/Subject: Office Visit
Performed By/Author: PARK, RICHARD I MD on 21 October 2013 12:44 EDT
Verified By: PARK, RICHARD I MD on 24 October 2013 13:12 EDT
Encounter info: 1328300045, CMC-P, OPP - Outpatient Procedure Patient, 10/21/2013 - 10/21/2013
Contributor System: ESCRIPT

* Final Report *

Office Visit (Verified)

ADICKES, BARRY

3461092

DATE OF SERVICE: 10/21/2013

DATE OF BIRTH: 10/1/1961

Mr. Adickes is a pleasant 52-year-old gentleman with chronic right neck pain. He is here for diagnostic facet joint injections C4-C5.

No changes are seen during interval.

PHYSICAL EXAMINATION:

Vitals stable, afebrile. No contraindications to planned procedure, 6/10 pain score.

IMPRESSION:

1. Intraarticular right C4-C5 facet joint injection was performed. At discharge, he had 0/10 pain score. Range of motion was normalized. In the recovery room he began to experience pruritus and he states that he had "cortisone shot" in the past by an orthopedist and he had the same reaction that was relieved with Benadryl. Benadryl 50 mg IM was given with complete relief. He may be allergic to the Depo-Medrol or the preservative. However, at the next visit in 3-4 weeks, if we have to repeat the injection for augmented response, we may consider a different steroid preparation.

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(Continued)

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

D: 10/21/2013 12:44PM RICHARD I. PARK, MD
T: 10/22/2013 09:04AM NTS
Job # 9085586/Conf # 6902671
cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD
10/24/2013 01:12 PM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 21 October 2013 12:44 EDT
- * Transcribe by DESCRIPTION , TRANSCRIPTIONIST on 22 October 2013 9:04 EDT
- * Sign by PARK , RICHARD I MD on 24 October 2013 13:12 EDTRequested on 22 October 2013 9:04 EDT
- * VERIFY by PARK , RICHARD I MD on 24 October 2013 13:12 EDT

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Printed on: 3/4/2014 15:32 EST

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(End of Report)

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Pain Management Visit Note(.)
Document Date: 25 September 2013 12:45 EDT
Document Status: Auth (Verified)
Document Title/Subject: Office Visit
Performed By/Author: PARK, RICHARD I MD on 25 September 2013 12:45 EDT
Verified By: PARK, RICHARD I MD on 26 September 2013 8:46 EDT
Encounter info: 1325900139, CMC-P, OP - Outpatient, 9/25/2013 - 9/25/2013
Contributor System: ESCRIPT

* Final Report *

Office Visit (Verified)

ADICKES, BARRY

3461092

DICTATOR FILL IN BLANKS

DATE OF SERVICE: 09/25/2013

DATE OF BIRTH: 01/01/1961

Mr. Adickes is a very pleasant 52-year-old gentleman who was initially evaluated from a referral from Dr. Welshofer for this patient's ongoing right cervicogenic pain. After assessment, my plan was to consider a right C4-C5 diagnostic facet joint injection. He was initially evaluated on July 30th. There was a long delay due to insurance issues as well as his recent trip to Alaska. Nevertheless, his neck pain is persistent, unchanged since the initial evaluation.

PHYSICAL EXAMINATION:

Vitals stable, afebrile, no acute distress. Still discomfort with extension, right lateral bends and rotation on the right cervical segment, C4-C5 region. No new neurologic deficits.

IMPRESSION:

1. Cervicalgia, right C4-C5 facet generated neck pain.

PLAN:

1. The plan was to consider diagnostic right C4-C5 facet joint injection as planned from the initial evaluation.

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(Continued)

Pain Management Visit Note(.)

ADICKES, BARRY S - 0003461092

* Final Report *

However, I was notified that the insurance company, his insurance workman's comp, has _____ approved this procedure. We will reschedule this planned procedure ASAP. His workman's compensation insurance will approve this.

D: 09/25/2013 12:45PM RICHARD I. PARK, MD
T: 09/26/2013 07:48AM NTS
Job # 8989177/Conf # 361207
cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD
09/26/2013 08:46 AM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 25 September 2013 12:45 EDT
- * Transcribe by DESCRIPTION , TRANSCRIPTIONIST on 26 September 2013 7:48 EDT
- * Sign by PARK , RICHARD I MD on 26 September 2013 8:46 EDT Requested on 26 September 2013 7:48 EDT
- * VERIFY by PARK , RICHARD I MD on 26 September 2013 8:46 EDT

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(End of Report)

Pain Management Consult(.)

ADICKES, BARRY S - 0003461092

* Final Report *

Document Type: Pain Management Consult(.)
Document Date: 30 July 2013 12:58 EDT
Document Status: Auth (Verified)
Document Title/Subject: Ambulatory Consultation
Performed By/Author: PARK, RICHARD I MD on 30 July 2013 12:58 EDT
Verified By: PARK, RICHARD I MD on 31 July 2013 8:07 EDT
Encounter info: 1320700213, CMC-M, OP - Outpatient, 7/30/2013 - 7/30/2013
Contributor System: ESCRIPT

* Final Report *

Ambulatory Consultation (Verified)

ADICKES, BARRY

3461092

DATE OF VISIT: 07/30/2013

DATE OF BIRTH: 08/17/1961

Mr. Adickes is a pleasant 51-year-old gentleman who presents today with a chief complaint of right cervicogenic pain. He is referred by Dr. Welshofer for my opinion and possibly treatment considering facet joint injection therapy.

The patient was involved in a motor vehicle accident in March 2011 at which time he states on a mountain road he flipped a car incurring multiple injuries including post-concussive syndrome, headaches, had a _____ and biceps tear on the right which was repaired. Dislocated the right shoulder. During the interval with time, he has recovered from the surgeries. His headaches are improving. He is under the care of Dr. Mandell, neurologist for his headaches. However, his cervical pain has been persistent on the right side. He has difficulty with movement of the neck. Range of motion is difficult. Pain is there constantly, but there are days with activity it worsens. He has some discomfort radiating to the shoulders on the right side. I reviewed Dr. Welshofer's notes. An MRI showed foraminal facet arthrosis C4-C5 on the right side. No evidence of fracture. The bone scan is also correlated to the right C4-C5 facet joint. He has not had any injection therapy for this. Minimal physical therapy other than the shoulder therapy that he had received.

PAST MEDICAL HISTORY:

1. Hiatal hernia.
2. Headaches.

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(Continued)

Pain Management Consult(.)

ADICKES, BARRY S -0003461092

* Final Report *

PAST SURGICAL HISTORY: Recent right knee surgery, right shoulder surgery.

ALLERGIES: None.

MEDICATIONS:

1. Nadolol.
2. Maxalt.
3. Multivitamins.
4. Aspirin.
5. Hydrocodone p.r.n.

FAMILY MEDICAL HISTORY: None.

SOCIAL HISTORY: He is married. He is now back to work as a sales manager. He does not smoke, occasional alcohol, no recreational drug use.

REVIEW OF SYSTEMS: Thirteen-points checked and incorporated in the chart. No constitutional symptoms, weight loss, weight gain, night sweats. He does complain of moderate headaches.

PHYSICAL EXAMINATION:

GENERAL: Pleasant demeanor, in no acute distress. He walks in with the crutches due to his right knee surgery.

HEENT EXAMINATION: Cranial nerves II-XII grossly intact. Range of motion of cervical spine is full, but he complains of discomfort with right lateral bends, rotation and extension of the spine. There is tenderness in the midcervical segment to the trapezius to palpation but mainly seems to be correlating to the C4-5 region.

RIGHT SHOULDER: There is a well-healed surgical scar. Range of motion is reasonable full to elevation and posterior reach. No dislocations. Structurally sound. Good strength in the upper extremities. Good hand grip. Deep tendon reflexes are intact.

BACK: Nonfocal.

KNEE EXAMINATION: Arthroscopic scars on the right. Moderate swelling. Range of motion is somewhat

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(Continued)

Pain Management Consult(.)

ADICKES, BARRY S - 0003461092

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diminished to flexion and extension. Otherwise, no acute findings.

IMPRESSION:

1. Cervicogenic pain, right C4-5 facet arthropathy.

PLAN: Schedule him for a diagnostic right C4-C5 facet joint injections. We will consider 2 injections 3 weeks apart and if he has greater than 50% reduction in pain, but the relief is not long lasting, we may consider radiofrequency ablation of these joints for long-term relief.

D: 07/30/2013 12:58PM RICHARD I. PARK, MD

T: 07/30/2013 14:30PM NTS

Job # 8771177/Conf # 322089

cc:

Signature Line

Electronically Signed By: PARK, RICHARD I MD

07/31/2013 08:07 AM

Completed Action List:

- * Perform by PARK , RICHARD I MD on 30 July 2013 12:58 EDT
- * Transcribe by ESCRIPTION , TRANSCRIPTIONIST on 30 July 2013 14:30 EDT
- * Sign by PARK , RICHARD I MD on 31 July 2013 8:07 EDTRequested on 30 July 2013 14:31 EDT
- * VERIFY by PARK , RICHARD I MD on 31 July 2013 8:07 EDT

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(End of Report)

Name: Barry Adicks
 DOB: [REDACTED] 1961
 Date: 12/12/12

CHIEF COMPLAINT: IME right shoulder.

HPI: Barry is an active healthy 51-year old patient who unfortunately was injured in March of 2011. He was working for a medical company, Phillips returning from his work when he rolled off an embankment on the Blue Ridge Parkway. He rolled and fell approximately 100 feet landing on two boulders. He was twisting clockwise off the hill with his right shoulder on the steering wheel. He recalls that his right upper extremity was being twisted in the wheel. When he landed he did hit the left side of his head on the windshield and sustained a direct blow to his left shoulder. There may have been a period of unconsciousness. At some point however he became somewhat alert and aware of his condition and called the emergency services and 5 hours later he was retrieved and taken to the ER.

He was noted in the ER to have a Grade II to III concussion with a Grade I AC separation as well as multiple abrasions and contusions. I may not have the ER sheet but according to his history he is complaining of right shoulder pain in addition to headaches, multiple abrasions, contusions and left shoulder pain from the contusion.

Following this injury he was seen by Dr. Rentz in Rock Hill. He apparently evaluated his left shoulder and right shoulder. He had left shoulder surgery 5 years prior to this accident. The left AC sprain apparently improved and for the most part has resolved. Unfortunately he continued to have right shoulder pain, which persisted. During this time he may have received a MRI but there was concern about impingement and a SLAP tear. It should be noted that he was also complaining of some neck pain with pain radiating from the right side of his neck to his right shoulder as well as referred pain from the shoulder to his neck.

He was eventually taken to the operating room on 10/21/11 where he was noted to have a Type 4 SLAP tear with a bucket handle tear of the biceps attachment. He required arthroscopy with a biceps tenotomy, labral debridement and open biceps tenodesis.

He did receive some therapy. The right shoulder apparently was not accepted as worker's comp initially. He has not been rated. He was last seen by Dr. Rentz in June of 2012 at which time he was given a Cortisone shot. Mr. Adicks unfortunately continues to have significant pain in the shoulder. He feels as though he is impinging and is concerned about persistent pathology.

He apparently has been seen by Dr. Welshofer for his brain injury and has been given an impairment rating for that injury. He has returned to work but once again is concerned about his neck and persistent right shoulder pain.

Dr. [Signature]

Name: Barry Adicks

DOB: [REDACTED] 1961

Date: 12/12/12

Page 2

PHYSICAL EXAM:

VITALS: Stable.

GENERAL APPEARANCE: Healthy.

CARDIOVASCULAR: Radial pulses intact.

MUSCULOSKELETAL: Patient is in no acute distress. He has pain with impingement right shoulder. There is some crepitus with active range of motion. Biceps tenodesis appears intact but there is some mild deformity and weakness of the biceps. Minimal AC pain is noted on the right. He does have pain with impingement. There is pain with instability testing and with O'Brien's. Rotator cuff appears intact but he has mild pain with resisted cuff strength testing. He does have pain that radiates to the base of his right neck.

Neck exam reveals some mild decrease in range of motion. I can not reproduce any obvious true radicular symptoms but he does have some referred pain to his right shoulder anterior and posterior shoulder with cervical compression. Left shoulder is not examined.

Chart review is completed.

SKIN: Clear, no visible abnormalities.

NECK: No visible masses or abnormalities.

EYES: Clear, focused, and no visible abnormalities.

NEUROLOGICAL: Sensation intact.

PSYCHOLOGICAL: Patient is alert and oriented to time, place, and person.

ASSESSMENT: Status post motor vehicle accident with head injury, right shoulder injury, possible neck injury with persistent neck and right shoulder pain, status post right shoulder procedure.

PLAN: It is my opinion based upon all the facts made available to me that he did sustain an acute injury to his head, neck and bilateral shoulders. While the main focus of the initial ER visit apparently was on the head and left shoulder by the patient's history he did have significant injury to his right shoulder and did require eventual evaluation and

Name: Barry Adicks

DOB: [REDACTED] 1961

Date: 12/12/12

Page 3

surgical treatment of that shoulder. He denies any prior right shoulder problems before the accident. In my opinion the right shoulder is a work related injury. He did sustain a significant closed head injury with a direct blow to his head. Once again based upon all these facts I think he did sustain an injury to his cervical spine as well as to his left shoulder. While the left shoulder injury appears to have resolved he continues to have neck symptoms. He unfortunately has not responded to surgical treatment on his right shoulder.

My recommendation is that he proceed with MRI arthrogram of the right shoulder. I would want that to be performed in Charlotte through the Charlotte Radiology Group. I also recommend that he have a MRI of his cervical spine. Based upon his history of injury including significant blow to his head I will be happy to see the patient for follow up once the studies have been completed. He has not been rated with regards to the right shoulder. At some point and time he will require rating of both shoulders and possibly his cervical spine. I may ask for a second opinion with regards to the cervical spine from Dr. Welshofer and Carolina at Neurosurgical Group.

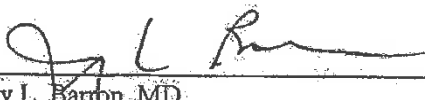
This note was dictated by Jerry L. Barron, M.D.

This note was electronically signed by Jerry L. Barron, M.D.

RE: Barry Adickes
DOB: [REDACTED]
Date: 1/14/15

I previously evaluated this patient on December 12, 2012. At that time I opined that he had suffered an acute injury to this head, neck, and bilateral shoulders. He had undergone surgery to his right shoulder but continued to experience difficulty. I recommended an MRI arthrogram.

Today I reviewed the updated report of Dr. James Rentz dated September 16, 2014 and the MRI performed on October 10, 2014. It is my opinion within a reasonable degree of medical certainty that Mr. Adickes has sustained permanent impairment of 15% to the right shoulder and 0% to the left shoulder. It is further my opinion that he will most probably eventually require additional surgery to the right shoulder based on the MRI findings as well as ongoing symptoms. It is reasonable for Mr. Adickes to try to avoid surgery as long as possible. It is further my opinion that Mr. Adickes condition was caused by his on the job automobile accident of March 22, 2011. These opinions are stated to a reasonable degree of medical certainty.



Jerry L. Barron, MD

Dated: 1/14/15

CAROLINA
NeuroSurgery & Spine
ASSOCIATES

14135 Ballantyne Corporate Place
Suite 100
Charlotte, NC 282773383
Phone: (704)831-4338

Chart Update

PATIENT NAME: Barry Adickes
PATIENT ID: 000000--390241
DATE OF BIRTH: [REDACTED] 1961
PROVIDER: John A. Welshofer MD
DATE OF VISIT: September 26, 2013

I received a medical questionnaire regarding the patient and I can make the following statements, that the patient likely has an underlying cervical degenerative condition/spondylosis that was made materially worse by the motor vehicle accident on March 22, 2011. The mechanism of injury was consistent with the bone scan which showed facet uptake that I think was more likely than not the result of that accident and the patient was likely more likely to have such an injury due to the pre-existing underlying spondylosis.

John A. Welshofer MD 09/26/2013 7:39 AM

Dictation edited by: Jean Helms

cc:
Nicholas Tuttle, MD
Rock Hill Family Practice
1435 Ebenezer Road
Rock Hill, SC 29732

Richard Park, MD
Southeast Anesthesiology Consultants
PO Box 36351
Charlotte, NC 28236

Electronically signed by John A. Welshofer MD on 09/26/2013 07:44 AM

Dr. Welshofer

Barry Adickes
Date of Birth: [REDACTED]
1 of 1

 CAROLINA
NeuroSurgery & Spine
 ASSOCIATES

14135 Ballantyne Corporate Place
 Suite 100
 Charlotte, NC 282773383
 Phone: (704)831-4338

Office Visit- New

PATIENT NAME: Barry Adickes
PATIENT ID: 000000-390241
DATE OF BIRTH: 08/12/1961
PROVIDER: John A. Welshofer MD
DATE OF VISIT: June 19, 2013

CHIEF COMPLAINT

migraines intermittent, Neck pain, CT & Bone scan review OV

HISTORY OF PRESENT ILLNESS

The patient is seen today in re-evaluation his bone scan lights up rather significantly at the right C4-5 facet. CT scan shows significant degeneration at that level, but no fracture. Generalized spondylosis is noted.

PAST MEDICAL HISTORY, SURGICAL HISTORY, FAMILY HISTORY, SOCIAL HISTORY AND REVIEW OF SYSTEMS

I have reviewed the patient's past medical, surgical, family and social history as well as the comprehensive review of systems as included on the Carolina NeuroSurgery & Spine Associates history form dated 10/31/2012, which I have signed.

Past Medical / Surgical History

<u>Year</u>	<u>Disease</u>	<u>Surgery/Management</u>	<u>Date</u>	<u>MD</u>	<u>Comments</u>
		right shoulder surgery	2011		
		thyroidectomy	2004		
		right knee surgery	1993		
	headaches				

SOCIAL HISTORY

Reviewed.

MEDICATIONS

Motrin	800 Mg	Y
Cambia	50 Mg	Y
Maxalt	10 Mg	Y
Biotin		Y
Feverfew	500 Mg	Y
Naproxen	500 Mg	Y
Vitamin B Complex		Y
Fish Oil		Y

Y-denotes that the medication was prescribed elsewhere

Barry Adickes
 Date of Birth: 08/12/1961
 1 of 4

 CAROLINA
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 ASSOCIATES

14135 Ballantyne Corporate Place
 Suite 100
 Charlotte, NC 282773383
 Phone: (704)831-4338

ALLERGIES

<u>Name</u>	<u>Allergen</u>	<u>Reaction</u>
	Hydrocortisone	

VITAL SIGNS

<u>Temp F</u>	<u>Pulse</u>	<u>Resp Rate</u>	<u>Bp Systolic</u>	<u>Bp Diastolic</u>	<u>Height Ft</u>	<u>Height In</u>	<u>Weight Lb</u>
	55	18	140	84	5.0	9.00	185.00

PHYSICAL EXAM

General

General Appearance: normal
 Mood/Affect: normal
 Orientation: normal
 Lymphatic: normal
 Pulses/Edema: normal
 Gait/Station: normal
 Coordination: normal

Skin

Cervical Spine: normal
 Thoracic Spine: normal
 Lumbar Spine: normal
 Right Upper Extremity: normal
 Left Upper Extremity: normal
 Right Lower Extremity: normal
 Left Lower Extremity: normal

Inspection/Palpation

	Right	Left
Cervical Spine:	middle, lower	middle, lower
Thoracic Spine:	normal	normal
Lumbar Spine:	normal	normal
Upper Extremity:	normal	normal
Lower Extremity:	normal	normal

Stability

Cervical Spine: motion is with pain
 Thoracic Spine: normal
 Lumbar Spine: normal
 Right Upper Extremity: normal
 Left Upper Extremity: normal
 Right Lower Extremity: normal
 Left Lower Extremity: normal

Barry Adickes
 Date of Birth: 11/11/1961
 2 of 4



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Phone: (704)831-4338

Range of Motion

Cervical Spine: extension: moderate restriction, right lateral bending: moderate restriction
Thoracic Spine: normal
Lumbar Spine: normal
Right Upper Extremity: normal
Left Upper Extremity: normal
Right Lower Extremity: normal
Left Lower Extremity: normal

Motor Strength

Upper and lower extremity motor strength was tested in the clinically pertinent muscles .Any abnormal findings will be noted below.

Sensory

Sensation was tested at C5 to T1 and L2 to S1 . Any abnormal findings will be noted below..

Muscle Stretch Reflexes

Upper and lower extremity reflexes were tested at the clinically pertinent muscles .Any abnormal findings will be noted below.

DIAGNOSTIC RESULTS

Bone scan with SPECT imaging as well as CT scan as above.

IMPRESSION

Postconcussive syndrome.
Facet mediated neck pain.

ASSESSMENT/PLAN

1. Cervical Disc Degeneration (722.4)
2. Postconcussion Syndrome (310.2)
3. Pain/neck (723.1)

Barry Adickes
Date of Birth: 12/19/1961
3 of 4



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Suite 100
Charlotte, NC 282773383
Phone: (704)831-4338

The patient should be seen by Dr. Richard Park for a series of diagnostic and therapeutic facet injections possible radiofrequency treatment. I don't think there is a surgical lesion here or if there was it would be a fusion and he wants to avoid that. I suggested he has a 10% impairment of the spine based upon the AMA guidelines. I will see the patient as necessary I don't think that there is anything else to offer him at this time.

Orders

Timeframe

Referral Evaluate And Treat

Referrals

Timeframe

Referral Evaluate And Treat

John A. Welshofer MD 06/20/2013 1:43 PM

Dictation edited by: Michelle Chacon

cc:
John Welshofer MD, MD
14135 Ballantyne Corporate Pla
Suite 100
Charlotte, NC 282773109

Nicholas Tuttle, MD
Rock Hill Family Practice
1435 Ebenezer Road
Rock Hill, SC 29732

Richard Park, MD
Southeast Anesthesiology Consultants
PO Box 36351
Charlotte, NC 28236

Barry Adickes
Date of Birth: 01/12/1961
4 of 4

CAROLINA
NeuroSurgery & Spine
ASSOCIATES

14135 Ballantyne Corporate Place
 Suite 100
 Charlotte, NC 282773383
 Phone: (704)831-4338

Office Visit- Return

PATIENT NAME: Barry Adickes
PATIENT ID: 000000-390241
DATE OF BIRTH: 1961
PROVIDER: John A. Welshofer MD
DATE OF VISIT: April 08, 2013

CHIEF COMPLAINT

migraines intermittent, Neck pain

HISTORY OF PRESENT ILLNESS

The patient is seen today in re-evaluation. The flexion extension forar MRI shows an anterolisthesis C4-5 and there is definite T2 signal change in the right C4-5 facet, especially the inferior portion of C4 suggesting the possibility of a non-healing fracture versus injury to the facet joint.

PAST MEDICAL HISTORY, SURGICAL HISTORY, FAMILY HISTORY, SOCIAL HISTORY AND REVIEW OF SYSTEMS

I have reviewed the patient's past medical, surgical, family and social history as well as the comprehensive review of systems as included on the Carolina NeuroSurgery & Spine Associates history form dated 10/31/2012, which I have signed.

Past Medical / Surgical History

<u>Year</u>	<u>Disease</u>	<u>Surgery/Management</u>	<u>Date</u>	<u>MD</u>	<u>Comments</u>
		right shoulder surgery	2011		
		thyroidectomy	2004		
		right knee surgery	1993		
	headaches				

SOCIAL HISTORY

Reviewed.

MEDICATIONS

**Established Patients Medications Reviewed

Motrin	800 Mg	Y
Cambia	50 Mg	Y
Maxalt	10 Mg	Y
Biotin		Y
Feverfew	500 Mg	Y
Naproxen	500 Mg	Y
Vitamin B Complex		Y
Fish Oil		Y

Y-denotes that the medication was prescribed elsewhere

ALLERGIES

<u>Name</u>	<u>Allergen</u>	<u>Reaction</u>

Barry Adickes
 Date of Birth: 1961
 1 of 3

CAROLINA
NeuroSurgery & Spine
ASSOCIATES

14135 Ballantyne Corporate Place
Suite 100
Charlotte, NC 282773383
Phone: (704)831-4338

Hydrocortisone

VITAL SIGNS

Temp F	Pulse	Resp Rate	Bp Systolic	Bp Diastolic	Height Ft	Height In	Weight Lb
	49	18	121	77		69.00	185.00

PHYSICAL EXAM

General

General Appearance: normal
Mood/Affect: normal
Orientation: normal
Lymphatic: normal
Pulses/Edema: normal
Gait/Station: normal
Coordination: normal

Skin

Cervical Spine: normal
Thoracic Spine: normal
Lumbar Spine: normal
Right Upper Extremity: normal
Left Upper Extremity: normal

Inspection/Palpation

	Right	Left
Cervical Spine:	middle, lower	middle, lower
Thoracic Spine:	normal	normal
Lumbar Spine:	normal	normal
Upper Extremity:	normal	normal

Stability

Cervical Spine: normal
Thoracic Spine: normal
Lumbar Spine: normal
Right Upper Extremity: normal
Left Upper Extremity: normal

Range of Motion

Cervical Spine: decreased range of motion
Thoracic Spine: normal
Lumbar Spine: normal
Right Upper Extremity: normal
Left Upper Extremity: normal

Motor Strength

Barry Adickes
Date of Birth: 6/10/1961
2 of 3

CAROLINA
NeuroSurgery & Spine
ASSOCIATES

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Suite 100
Charlotte, NC 282773383
Phone: (704)831-4338

Upper extremity motor strength was tested in the clinically pertinent muscles .Any abnormal findings will be noted below..

Sensory

Sensation was tested at C5 to T1 .Any abnormal findings will be noted below..

Muscle Stretch Reflexes

Upper extremity reflexes were tested at the clinically pertinent muscles .Any abnormal findings will be noted below..

IMPRESSION

Possible non-healing C4 facet fracture.

ASSESSMENT/PLAN

1. Postconcussion Syndrome (310.2)
2. Cervical Disc Degeneration (722.4)
3. Pain/neck

The patient needs a cervical bone scan with SPECT imaging plus a bony CT of the cervical spine to evaluate. If the non-healing fracture is noted this may need surgery. If this is more injury to the facet joint the patient may benefit from diagnostic and therapeutic C4-5 medial branch blocks and possible radiofrequency ablation.

Orders

Timeframe

CT C-Spine W/o Contrast
Bone Scan

John A. Welshofer MD 04/11/2013 7:06 AM

Dictation edited by: Jean Helms

cc:
Nicholas Tuttle, MD
Rock Hill, SC 29732

Electronically signed by John A. Welshofer MD on 04/11/2013 07:52 AM

Barry Adickes
Date of Birth: 03/01/1961
3 of 3

If received in error call: 704-446-6161/866-446-6161
of 2

Printed/Faxed: 6/13/2013 9:59

Page 1



Carolina's HealthCare System

CMC-MOREHEAD MEDICAL PLAZA IMAGING

RADIOLOGICAL SERVICES

(704) 446-5200

Patient Name: ADICKES, BARRY

MRN: 0003461092

Accession #: 20972748

Patient Location: CMCT, MMP CT

Patient Type: PRO

Visit #: 1316202818

Exam: 70572, CT SPINE CERVICAL W/O CONTRAST

Completed: 6/13/13 9:50 am

Clinical Information: -CERVICAL DISC DEGEN
-

Requesting Provider: WELSHOFER, JOHN

225 BALDWIN AVENUE, CAROLINA NEUROSURGERY AND SPINE
CHARLOTTE, NC 28204

FINAL REPORT

DATE OF SERVICE: 6/13/2013 09:50:00

EXAM: CT scan of the cervical spine without contrast

Clinical history: Possible nonhealing cervical fracture.

Findings: Comparison is made to the prior CT from comparison is made to the prior MRI from March 28, 2013. There is minimal degenerative subluxation at the C4-5 level as noted on the patient's prior MRI. The alignment of the cervical vertebrae are otherwise within normal limits. There is no evidence of a fracture.

Evaluation of the individual levels demonstrates:

At C2-3, there is no disc bulge or herniation.

At C3-4, there is a small spondylitic ridge minimally deforming the thecal sac. The central canal and neural foramen are adequate.

At C4-5, there is advanced degenerative change of the right facet joint as noted on the prior MRI. There is moderate right-sided neural foraminal stenosis. The left neural foramen and central canal are adequate. There is minimal focal ossification of the posterior longitudinal ligament opposite the C4 C5 vertebrae.

At C5-6, there is no disc bulge or herniation.

At C6-7, there is no disc bulge or herniation.

At C7-T1, there is no disc bulge or herniation.

Impression:

1. Stable minimal degenerative subluxation at C4-5 with advanced degenerative facet arthropathy on the right side at that

CMC-MOREHEAD MEDICAL PLAZA IMAGING 1025 MOREHEAD MEDICAL DRIVE, SUITE 100, CHARLOTTE, NC 28204 (704) 446-5200

Patient Name: ADICKES, BARRY

DOB: 08/12/1961

Age: 51 Y

Sex: M

Page 1 of 2

If received in error call: 704-446-6161/866-446-6161
of 2

Printed/Faxed: 6/13/2013 9:59 Page 2



Carolinas HealthCare System

CMC-MOREHEAD MEDICAL PLAZA IMAGING

RADIOLOGICAL SERVICES

(704) 446-5200

Patient Name: ADICKES, BARRY MRN: 0003461092 Accession #: 20972748
Patient Location: CMCT, MMP CT Patient Type: PRO Visit #: 1316202818
Exam: 70572, CT SPINE CERVICAL W/O CONTRAST Completed: 6/13/13 9:50 am

Clinical Information: -CERVICAL DISC DEGEN
-

level.

2. Moderate right-sided neural foraminal stenosis at C4-5.

3. No evidence of fracture.

4. Minimal focal ossification of the posterior longitudinal ligament opposite the C4 and C5 vertebral bodies.

Report ID: 5859971
D: 6/13/2013 09:36:56 SC: 145
Dictated by: Jonathan Clemente, MD

Transcribed By: SpeechQ
Signed By: JONATHAN CLEMENTE M.D.

Thursday, June 13, 2013 9:59:02AM
Thursday, June 13, 2013 9:59:02AM

CMC-MOREHEAD MEDICAL PLAZA IMAGING 1025 MOREHEAD MEDICAL DRIVE, SUITE 100, CHARLOTTE, NC 28204 (704) 446-5200

Patient Name: ADICKES, BARRY

DOB: 08/12/1961

Age: 51 Y Sex: M Page 2 of 2

Name: Adickes, Barry

DOB: 08/12/1961

- 87 -
ite:

If received in error call: 704-446-6161/866-446-6161
of 2

Printed/Faxed: 6/13/2013 15:54 Page 1



Carolinan HealthCare System

CMC-MOREHEAD MEDICAL PLAZA IMAGING

RADIOLOGICAL SERVICES

(704) 446-5200

Patient Name: ADICKES, BARRY
Patient Location: CMCT, MMP CT
Exam: 8537, NM BONE SCN SPECT PM

MRN: 0003461092 Accession #: 20972746
Patient Type: PRO Visit #: 1316202818
Completed: 6/13/13 2:05 pm

Clinical Information: -CERVICAL DISC DEGEN
-

Requesting Provider: WELSHOFER, JOHN
225 BALDWIN AVENUE, CAROLINA NEUROSURGERY AND SPINE
CHARLOTTE, NC 28204

FINAL REPORT

DATE OF SERVICE: 6/13/2013 14:05:00

EXAM: BONE SCAN WHOLE BODY WITH SPECT

HISTORY: Right shoulder and neck pain. Previous MVC.

COMPARISON STUDIES: CT cervical spine today.

TECHNIQUE: Anterior and posterior planar whole-body images were obtained approximately 3 hours after the intravenous administration of 24.9 mCi of Tc-99m MDP. SPECT images of the cervical spine to include portions of the head and upper chest were obtained after whole body imaging.

FINDINGS: Whole body bone scan images show mildly asymmetric uptake at the AC joints, greater on the left possibly due to mild degenerative change. Increased activity at the medial right knee is probably also degenerative. Left wrist or distal forearm activity may be injection site related.

Dominant focus abnormal activity at the right mid cervical spine was further assessed with SPECT imaging which shows this to represent an isolated cervical spine abnormality. This likely correlates with the advanced facet joint degenerative change on the right at the C4-5 level noted on CT and MRI. No other specific bone scan abnormalities.

IMPRESSIONS: Dominant focus of bone scan abnormality at the mid right cervical spine correlates with advanced facet joint arthropathy at C4-5.

CMC-MOREHEAD MEDICAL PLAZA IMAGING 1025 MOREHEAD MEDICAL DRIVE, SUITE 100, CHARLOTTE, NC 28204 (704) 446-5200

Patient Name: ADICKES, BARRY

DOB: 08/12/1961 Age: 51 Y Sex: M Page 1 of 2

If received in error call: 704-446-6161/866-446-6161
of 2

Printed/Faxed: 6/13/2013 15:54 Page 2



Carolinas HealthCare System

CMC-MOREHEAD MEDICAL PLAZA IMAGING

RADIOLOGICAL SERVICES

(704) 446-5200

Patient Name: ADICKES, BARRY

MRN: 0003461092 Accession #: 20972746

Patient Location: CMCT, MMP CT

Patient Type: PRO Visit #: 1316202818

Exam: 8537, NM BONE SCN SPECT PM

Completed: 6/13/13 2:05 pm

Clinical Information: -CERVICAL DISC DEGEN
-

Report ID: 5862241

D: 6/13/2013 15:42:00 SC:

Dictated by: Andrew J. Beloni, MD

Transcribed By: SpeechQ

Signed By: ANDREW BELONI M.D.

Thursday, June 13, 2013 3:54:21 PM

Thursday, June 13, 2013 3:54:21 PM

CMC-MOREHEAD MEDICAL PLAZA IMAGING 1025 MOREHEAD MEDICAL DRIVE, SUITE 100, CHARLOTTE, NC 28204 (704) 446-5200

Patient Name: ADICKES, BARRY

DOB: 08/12/1961

Age: 51 Y Sex: M Page 2 of 2

Name: Adickes, Barry

DOB: 08/12/1961

- 89 -
ite:

CAROLINA NeuroSurgery & Spine ASSOCIATES

14135 Ballantyne Corporate Place
Suite 100
Charlotte, NC 282773383
Phone: (704)831-4338

Office Visit- Return

PATIENT NAME: Barry Adickes
PATIENT ID: 000000--390241
DATE OF BIRTH: 08/12/1961
PROVIDER: John A. Welshofer MD
DATE OF VISIT: April 08, 2013

CHIEF COMPLAINT

migraines Intermittent, Neck pain

HISTORY OF PRESENT ILLNESS

The patient is seen today in re-evaluation. The flexion extension forar MRI shows an anterolisthesis C4-5 and there is definite T2 signal change in the right C4-5 facet, especially the inferior portion of C4 suggesting the possibility of a non-healing fracture versus injury to the facet joint.

PAST MEDICAL HISTORY, SURGICAL HISTORY, FAMILY HISTORY, SOCIAL HISTORY AND REVIEW OF SYSTEMS

I have reviewed the patient's past medical, surgical, family and social history as well as the comprehensive review of systems as included on the Carolina NeuroSurgery & Spine Associates history form dated 10/31/2012, which I have signed.

Past Medical / Surgical History

Year	Disease	Surgery/Management	Date	MD	Comments
		right shoulder surgery	2011		
		thyroidectomy	2004		
		right knee surgery	1993		
	headaches				

SOCIAL HISTORY

Reviewed.

MEDICATIONS

**Established Patients Medications Reviewed

Motrin	800 Mg	Y
Cambia	50 Mg	Y
Maxalt	10 Mg	Y
Biotin		Y
Feverfew	500 Mg	Y
Naproxen	500 Mg	Y
Vitamin B Complex		Y
Fish Oil		Y

Y-denotes that the medication was prescribed elsewhere

ALLERGIES

Name	Allergen	Reaction
	Hydrocortisone	

Barry Adickes
Date of Birth: 08/12/1961
1 of 3

CAROLINA
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ASSOCIATES

14135 Ballantyne Corporate Place
Suite 100
Charlotte, NC 282773383
Phone: (704)831-4338

VITAL SIGNS

<u>Temp F</u>	<u>Pulse</u>	<u>Resp Rate</u>	<u>Bp Systolic</u>	<u>Bp Diastolic</u>	<u>Height Ft</u>	<u>Height In</u>	<u>Weight Lb</u>
49	18		121	77		69.00	185.00

PHYSICAL EXAM

General

General Appearance: normal
Mood/Affect: normal
Orientation: normal
Lymphatic: normal
Pulses/Edema: normal
Gait/Station: normal
Coordination: normal

Skin

Cervical Spine: normal
Thoracic Spine: normal
Lumbar Spine: normal
Right Upper Extremity: normal
Left Upper Extremity: normal

Inspection/Palpation

	Right	Left
Cervical Spine:	middle, lower	middle, lower
Thoracic Spine:	normal	normal
Lumbar Spine:	normal	normal
Upper Extremity:	normal	normal

Stability

Cervical Spine: normal
Thoracic Spine: normal
Lumbar Spine: normal
Right Upper Extremity: normal
Left Upper Extremity: normal

Range of Motion

Cervical Spine: decreased range of motion
Thoracic Spine: normal
Lumbar Spine: normal
Right Upper Extremity: normal
Left Upper Extremity: normal

Motor Strength

Upper extremity motor strength was tested in the clinically pertinent muscles. Any abnormal findings will be noted below.

Sensory

Barry Adickes
Date of Birth: 6/10/1961
2 of 3

CAROLINA
NeuroSurgery & Spine
ASSOCIATES

14135 Ballantyne Corporate Place
Suite 100
Charlotte, NC 282773383
Phone: (704)831-4338

Sensation was tested at C5 to T1 .Any abnormal findings will be noted below..

Muscle Stretch Reflexes

Upper extremity reflexes were tested at the clinically pertinent muscles .Any abnormal findings will be noted below..

IMPRESSION

Possible non-healing C4 facet fracture.

ASSESSMENT/PLAN

1. Postconcussion Syndrome (310.2)
2. Cervical Disc Degeneration (722.4)
3. Pain/neck

The patient needs a cervical bone scan with SPECT imaging plus a bony CT of the cervical spine to evaluate. If the non-healing fracture is noted this may need surgery. If this is more injury to the facet joint the patient may benefit from diagnostic and therapeutic C4-5 medial branch blocks and possible radiofrequency ablation.

Orders

Timeframe

CT C-Spine W/o Contrast
Bone Scan

John A. Welshofer MD 04/11/2013 7:06 AM

Dictation edited by: Jean Helms

cc:
Nicholas Tuttle, MD
Rock Hill, SC 29732

Electronically signed by John A. Welshofer MD on 04/11/2013 07:52 AM

Barry Adickes
Date of Birth: 08/21/1961
3 of 3

CAROLINA
NeuroSurgery & Spine
ASSOCIATES

14135 Ballantyne Corporate Place
Suite 100
Charlotte, NC 282773383
Phone: (704)831-4338

Comp. Special Exam

PATIENT NAME: Barry Adickes
PATIENT ID: 000000--390241
DATE OF BIRTH: 01-01-1961
PROVIDER: John A. Welshofer MD
DATE OF VISIT: October 31, 2012

CHIEF COMPLAINT
Back pain

HISTORY OF PRESENT ILLNESS
The patient is seen today for a comprehensive special examination for ongoing symptoms as her surroundings and mild traumatic brain injury/concussion.

The patient has been under the care of Dr. Mandell, medical records same are reviewed and summary is the patient was injured in a motor vehicle collision that occurred March 22, 2011. He was driving on a highway and he went around a sharp curve and his vehicle crashed into the trees apparently traveling 100 feet down and the patient suffered loss of consciousness. He had had difficulty with pain in his left shoulder that he apparently popped back into place and has pain also in the right shoulder. The patient ultimately was rescued by EMS was taken to the hospital/emergency room a CAT scan and x-rays were performed showing no evidence of fracture. X-rays were done of the C-spine, shoulder, clavicle and hand. Subsequently the patient was treated extensively with orthopedic evaluations as well as a neurology consult. He was diagnosed with a grade 2-3 concussion and postconcussive syndrome he also ultimately was found to have a rotator cuff/labral tear for which ultimately had surgery on the right shoulder done in October 2011.

The patient states he continues to have daily symptomatology that is related to his head in terms of the postconcussive symptoms. He continues to have headaches as well as neck pain. The patient has been on multiple medications, he has occasional bouts of forgetfulness. His headaches include a varying degree in description well outlined by Dr. Mandell and his medications have included neuroleptics, anti-inflammatories, migraine headaches medicines such as cambia and Maxalt. He denies loss of bowel or bladder symptoms tend to be fluctuating on any given day.

PAST MEDICAL HISTORY, SURGICAL HISTORY, FAMILY HISTORY, SOCIAL HISTORY AND REVIEW OF SYSTEMS
I have reviewed the patient's past medical, surgical, family and social history as well as the comprehensive review of systems as included on the Carolina NeuroSurgery & Spine Associates history form dated 10/31/2012, which I have signed.

Past Medical / Surgical History

Year	Disease	Surgery/Management	Date	MD	Comments
		right shoulder surgery	2011		
		thyroidectomy	2004		
		right knee surgery	1993		
	headaches				

SOCIAL HISTORY
Reviewed.

Barry Adickes
Date of Birth: 01-01-1961
1 of 4

CAROLINA
NeuroSurgery & Spine
 ASSOCIATES

14135 Ballantyne Corporate Place
 Suite 100
 Charlotte, NC 282773383
 Phone: (704)831-4338

MEDICATIONS

Fish Oil		Y
Zonisamide		Y
Motrin	800 Mg	Y
Cambia	50 Mg	Y
Maxalt	10 Mg	Y
Biotin		Y
Feverfew	500 Mg	Y
Naproxen	500 Mg	Y
Vitamin B Complex		Y

Y-denotes that the medication was prescribed elsewhere

ALLERGIES

<u>Name</u>	<u>Allergen</u>	<u>Reaction</u>
	Hydrocortisone	

VITAL SIGNS

<u>Temp F</u>	<u>Pulse</u>	<u>Resp Rate</u>	<u>Bp Systolic</u>	<u>Bp Diastolic</u>	<u>Height Ft</u>	<u>Height In</u>	<u>Weight Lb</u>
	81	16	135	82		69.00	185.00

PHYSICAL EXAM**General**

General Appearance:	normal
Mood/Affect:	normal
Orientation:	normal
Lymphatic:	normal
Pulses/Edema:	normal
Gait/Station:	normal
Coordination:	normal

Skin

Cervical Spine:	normal
Thoracic Spine:	normal
Lumbar Spine:	normal
Right Upper Extremity:	normal
Left Upper Extremity:	normal
Right Lower Extremity:	normal
Left Lower Extremity:	normal

Inspection/Palpation

	Right	Left
Cervical Spine:	normal	normal
Thoracic Spine:	normal	normal
Lumbar Spine:	normal	normal
Upper Extremity:	normal	normal

Barry Adickes

Date of Birth: 01/01/1961

2 of 4

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Charlotte, NC 282773383
Phone: (704)831-4338

Lower Extremity: normal normal

Stability

Cervical Spine: normal
Thoracic Spine: normal
Lumbar Spine: normal
Right Upper Extremity: normal
Left Upper Extremity: normal
Right Lower Extremity: normal
Left Lower Extremity: normal

Range of Motion

Cervical Spine: normal
Thoracic Spine: normal
Lumbar Spine: normal
Right Upper Extremity: positive impingement, restricted shoulder external rotation
Left Upper Extremity: normal
Right Lower Extremity: normal
Left Lower Extremity: normal

Motor Strength

Upper and lower extremity motor strength was tested in the clinically pertinent muscles .Any abnormal findings will be noted below.

Sensory

Sensation was tested at C5 to T1 and L2 to S1 . Any abnormal findings will be noted below..

Muscle Stretch Reflexes

Upper and lower extremity reflexes were tested at the clinically pertinent muscles .Any abnormal findings will be noted below.

DIAGNOSTIC RESULTS

No imaging studies available for review.

IMPRESSION

Postconcussive syndrome.

Status post right shoulder surgery.

Chronic neck pain status post motor vehicle collision.

Barry Adickes
Date of Birth: [REDACTED] 1961
3 of 4

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Phone: (704)831-4338

ASSESSMENT/PLAN

1. Postconcussion Syndrome (310.2)
2. Disorder, shoulder region NEC (726.2)
3. Pain/neck (723.1)

I believe the patient's injury was a SOUTH CAROLINA injury based upon the AMA guidelines. I would grade him at a permanent impairment rating of 15% of the brain for continuous postconcussive symptomatology and headaches.

I do believe the patient may benefit from a flexion-extension fonal MRI of the cervical spine to look for ligamentous instability due to the chronic neck pain.

The patient should continue treating with Dr. Mandell.

John A. Welshofer MD 11/01/2012 10:45 AM

Dictation edited by: Michelle Chacon

cc:
Nicholas Tuttle, MD
Rock Hill Family Practice
1435 Ebenezer Road
Rock Hill, SC 29732

Electronically signed by John A. Welshofer MD on 11/01/2012 05:29 PM

Barry Adickes
Date of Birth: 061
4 of 4



Howard Mandell, MD, FRCPC. • Allan S. Ryder-Cook, MD, PhD.
Mark A. Porter, MD. • Dennis M. Gettelfinger, Emeritus
Michael Leddy, PA-C MMS • Sharon Walter, PA-C
www.metrolinaneurology.com

August 29, 2014

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: [REDACTED] 1961

HISTORY OF PRESENT ILLNESS: I saw Barry in neurology clinic today in followup of his traumatic brain injury and post-traumatic headaches. In general, he has done well, but continues to have difficulties. This is due to his intermittent migraines, as well as difficulty with focus and concentration. He is not sure if this is due to age or the head injury, but it was not there before he was involved in the accident.

He does get a headache maybe every six weeks, but upon reviewing his record, really, it is more frequent than that. He gets a headache probably every two weeks, but he can go up to six weeks without a headache, at his best.

When he gets the headache, he takes Imitrex injection right away, which gives him tightness in the jaw and makes him feel kind of bad. He would lie down, and the headache would drop from maybe an 8/10 to a 2-3/10. He will go on his way, but the headache will linger at a 2-3/10. He will take Frova later that day, and take another one the next day, as the headache usually lingers a day or two.

He knows really of no triggers. He has had radiofrequency ablation to his neck, which really gave him excellent relief from the pain going from his neck to his shoulders, and really has not done much for the headaches.

He notes that he is more forgetful and has more difficulty putting his words together. Often, there are delays when he gives an answer. He is not as sharp as he used to be.

He is less able to formulate thoughts and less able to quickly figure out a complex task, though he still can. It just takes him more time.

GENERAL REVIEW OF SYSTEMS: No headaches, fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, skin problems, vision problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS:

1. Nadolol 40 mg.
2. Imitrex 4 mg subcutaneous injection p.r.n.
3. Frova p.r.n.

SOCIAL HISTORY: He does not smoke or drink.

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7666 Charlotte Hwy
Indian Land, SC 29707
(803) 578-9050

Dr. Mandell

NEUROLOGICAL EXAMINATION:

Mental status testing: On examination, he is very pleasant, awake, alert, and oriented times four. He does delay in answering questions. It takes him more time to gather his thoughts, but otherwise does well.

Language function: No significant aphasia or dysarthria was noted.

CN II: Optic fundi were normal with no papilledema noted.

CN III, IV, VI: The pupils were equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements were full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevated symmetrically and normal gag reflex was noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

CN XII: The tongue protruded in the midline with normal strength and movement.

Carotid Arteries: No bruits heard.

C-Spine: There is normal ROM for age, non-tender, and no muscle spasms.

L-S-Spine: There is normal ROM for age, negative SLR, non-tender, no muscle spasm.

Motor examination: Power is 5/5. Tone and coordination are normal.

Sensory examination: Sensation was intact to pin prick and light touch and vibration sense.

Reflexes: Reflexes are 2/4. Plantar responses are downgoing.

Cerebellar testing: Normal finger to nose, heel/knee/shin, and tandem walk.

Gait testing: The patient walks with a narrow based gait.

IMPRESSION AND PLAN:

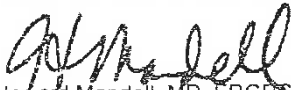
1. Barry is doing well, taking everything into consideration. He still does, however, have leftover migraines. I think he underestimates the frequency of his headaches. When I review his diary, it is more frequent than every six weeks, and more like every two weeks. He was able to knock it out with Imitrex injection, but the headache lingers for a day or two, and he will have to take Frova. He is not incapacitated. He is able to function, but does have a headache wearing him down for a few days.
2. Difficulty with focus and concentration. I suspect that this is related to the brain injury. I would like to give him a trial of Adderall.
3. Migraine prophylaxis on nadolol 40 mg. Heart rate is 62. I suggested that we go from 40 mg to 60 mg.

Barry S. Adickes

Page Three

08/29/2014

We will see how he does on the above mentioned plan.

A handwritten signature in black ink, appearing to read "H. Mandell".

Howard Mandell, MD, FRCPC
HM/arb (08/29) 23436183

cc: Nicholas Tuttle, M.D.

Dictated but not read to expedite mailing.



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MICHAEL LEDDY, PA-C
SC DEA #ML071
NC DEA #ML113

MARK A. PORTER, M.D.
SC DEA#AP188
NC DEA#BP744

SHARON H. WALTER, PA-C
SC DEA#MW263
NC DEA#MW236

FOR Hydrocodone DATE 1/27/08

R

1) Hydrocodone 5mg/5ml - 100ml
#1700

2) Ibuprofen 400mg - 100ml
Repeat in 1 hour #1700

3) Tylenol 325mg - 100ml
Repeat in 1 hour #1700

DISPENSE AS WRITTEN M.D./PAC SUBSTITUTION PERMITTED M.D./PAC

REFILL ZERO 1 2 3 4 5 6 LABEL ALL MEDICINE



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SC DEA#AP188
NC DEA#BP744

SHARON H. WALTER, PA-C
SC DEA#MW263
NC DEA#MW236

FOR Hydrocodone DATE 1/27/08

R

1) Adderall 5mg - 100ml
T-2PM

#6000

(sub)

DISPENSE AS WRITTEN M.D./PAC SUBSTITUTION PERMITTED M.D./PAC

REFILL ZERO 1 2 3 4 5 6 LABEL ALL MEDICINE

Re: Barry Simmons Adickes v. Philips Healthcare
DOB: [REDACTED] 1961 SSN: [REDACTED]
DOI: 3/22/2011

I have been treating Barry Adickes for traumatic brain injury and post-concussive syndrome as a result of the on the job injury. It is my opinion that Mr. Adickes will need the following treatments:

Ongoing care for post traumatic headaches. To include doctor visits 2 or 3 per year, medications for prevention & abortive treatment. Possible missed days at work for occasional headache not aborted by medications

I anticipate that Mr. Adickes will continue to need these treatments for the rest of his life.


Howard S. Mandell, MD

Dated: 2/5/14



Howard Mandell, MD, FRCPC. • Allan S. Ryder-Cook, MD, PhD.
Mark A. Porter, MD. • Dennis M. Gettelfinger, Emeritus
Michael Leddy, PA-C MMS • Sharon Walter, PA-C
www.metrolinaneurology.com

February 5, 2014

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: 1/12/1961

HISTORY OF PRESENT ILLNESS: I saw Barry in the neurology clinic today in followup of his traumatic brain injury and post-traumatic headaches. In general, he has done well. He still, however, has intermittent migraines perhaps once or twice a month. We have come up with the best abortive strategy, which is Imitrex injection at the onset of the headache and Frova the next day if there is leftover headache. On this regimen, he seems to do quite well and is very functional. He found radiofrequency ablation in his neck to be very helpful. The CT scan did not confirm a non-healed fracture, but instead showed edema and what sounds like facet arthropathy. The radiofrequency ablation to the medial nerves gave him instant relief of his neck and arm pain and triggered a headache. His wife wonders whether some of the headaches might be neck related (cervicogenic). He continues to have some minor issues with memory. He is not sure if it is related to being 52 or if it is due to the head trauma, and he is willing to attribute it to age. This is going into a room and then wondering what he went into the room for and had to backtrack his steps in order to figure it out, needing to keep lists and mild short-term memory difficulties, but he is not sure that is any different than any of his other friends. He and his wife are trying to be very honest as to what is related to the head trauma and what is not. On top of everything, he was laid off the company says due to downsizing, but it really does not seem like that was the entire case. Nonetheless, he does have a lot of options available for him.

GENERAL REVIEW OF SYSTEMS: No headaches, fever or chills, earaches, or sinus infections. No chest pain, PND, orthopnea, or ankle swelling. No cough, SOB, sputum production, or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena, or hematochezia. No new joint problems, skin problems, vision problems, ear, nose or throat problems, or allergy problems.

CURRENT MEDICATIONS:

1. Nadolol 40 mg
2. Imitrex injection
3. Frova

NEUROLOGICAL EXAMINATION: He is very pleasant, awake and alert, oriented times four.

CN III, IV, VI: The pupils are equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements are full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

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Barry S. Adickes

Page 2

02/05/2014

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevates symmetrically and normal gag reflex is noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

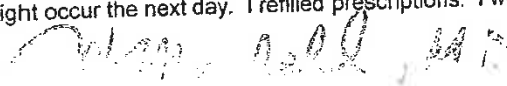
CN XII: The tongue protrudes in the midline with normal strength and movement.

Motor examination: Power is 5/5. Tone and coordination are normal.

Reflexes: Reflexes are symmetrical.

Gait testing: He walks with a narrow-based gait.

IMPRESSION AND PLAN: Barry is doing well. He still has intermittent migraines precipitated by the head injury. Nadolol is a good abortive treatment, and Imitrex injections/Frova are good for the headache that might occur the next day. I refilled prescriptions. I will see him again in six months' time.


Howard Mandell, M.D., FRCPC
HM:loc (02/06) 52509517

cc: Nicholas H. Tuttle, M.D.

Dictated but not read to expedite mailing.



Howard Mandell, MD, FRCPC. • Allan S. Ryder-Cook, MD, PhD.
Mark A. Porter, MD. • Dennis M. Gettelfinger, Emeritus
Michael Leddy, PA-C MMS • Sharon Walter, PA-C
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October 8, 2013

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: [REDACTED] 1961

HISTORY OF PRESENT ILLNESS: I saw Barry in the neurology clinic today in followup of his traumatic brain injury and post-concussion syndrome. He in general has done a lot better though continues to have headaches. He generally gets one headache a month that lasts three days. He will take Maxalt on the first day, which will knock the headache down. He often will have to take another one. The next day the headache will recur. The third day he will have leftovers of where the headache was. He uses Naprosyn for in between headaches maybe a few days a month. Sleep is difficult. He does have an inflamed facet joint in his neck. Apparently, this did not turn out to be an incompletely healed fracture. He finally got his nerve blocks approved.

GENERAL REVIEW OF SYSTEMS: No fever or chills, earaches, or sinus infections. No chest pain, PND, orthopnea, or ankle swelling. No cough, SOB, sputum production, or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena, or hematochezia. No new joint problems, skin problems, vision problems, ear, nose or throat problems, or allergy problems.

CURRENT MEDICATIONS:

1. Nadolol 40 mg
2. Maxalt p.r.n.

SOCIAL HISTORY (MARRIAGE, WORK, SMOKING, ALCOHOL AND DRUGS, SEXUAL ORIENTATION):
He does not smoke or drink.

NEUROLOGICAL EXAMINATION: He is very pleasant, awake and alert, oriented times four. Blood pressure is 130/80. Heart rate is 66. He tells me his heart rates are often in the 58 to 60 range at home and blood pressures 120s/70s.

CN III, IV, VI: The pupils are equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements are full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevates symmetrically and normal gag reflex is noted.

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CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

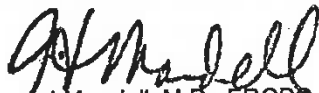
CN XII: The tongue protrudes in the midline with normal strength and movement.

Motor examination: Power is 5/5. Tone and coordination are normal.

Reflexes: Reflexes are symmetrical.

Gait testing: He walks with a narrow-based gait.

IMPRESSION AND PLAN: Barry is doing better than his worst. He still has intermittent migraines precipitated by his concussion. Nadolol has been a good medication for him, though we cannot go up higher because he appears to be quite beta blocked. I have suggested that we change the abortive treatments so that he will inject himself at the onset of the headache which can be repeated again in an hour. For the second day, he can take Frova, a longer acting triptan, in the hope that this will prevent recurrence of his headache on the third day. We will see how he does on the above mentioned plan.


Howard Mandell, M.D., FRCPC
HM:loc (10/09) 52392451

cc: Nicholas H. Tuttle, M.D.

Dictated but not read to expedite mailing.



Howard Mandell, MD, FRCPC. • Allan S. Ryder-Cook, MD, PhD.
Mark A. Porter, MD. • Shankar Perumal, MD. • Dennis M. Gettelfinger, Emeritus
Michael Leddy, PA-C MMS • Sharon Walter, PA-C
www.metrolinaneurology.com

April 9, 2013

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: [REDACTED] 1961

HISTORY OF PRESENT ILLNESS: I saw Barry in the neurology clinic today in followup of his traumatic brain injury and postconcussion syndrome. He in general has had a very good improvement in the headaches though he still does get intermittent headaches. In fact, he had a three-day headache according to his wife who is a much better observer than he is. We have recently reduced and stopped his zonisamide because it seemed to be giving him the difficulties with memory. We place him on nadolol, which he has tolerated quite well, and, in fact, it has helped his blood pressure significantly from 140s/80s range now down to the 110s/60s. He has not had any side effects though on one occasion he was mildly lightheaded, his wife states, but he himself minimizes this. He has noted no side effects, and since being on the nadolol, he has only had one small headache easily knocked out by a triptan. Of course, he has only been on the nadolol now for two weeks.

NEUROLOGICAL REVIEW OF SYSTEMS: No fever or chills, earaches, or sinus infections. No diplopia, dysarthria, dysphagia, or dysphonia. No lateralizing weakness or paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: No fever or chills, earaches, or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production, or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena, or hematochezia. No new joint problems, skin problems, vision problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS:

1. Nadolol 40 mg
2. Maxalt p.r.n.

SOCIAL HISTORY (MARRIAGE, WORK, SMOKING, ALCOHOL AND DRUGS, SEXUAL ORIENTATION):
He does not smoke or drink.

NEUROLOGICAL EXAMINATION: He is a very pleasant gentleman, awake and alert, oriented times four.

CN III, IV, VI: The pupils are equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements are full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

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CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevates symmetrically and normal gag reflex is noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

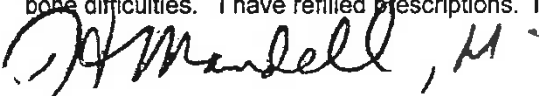
CN XII: The tongue protrudes in the midline with normal strength and movement.

Motor examination: Power is 5/5. Tone and coordination are normal.

Reflexes: Reflexes are symmetrical.

Gait testing: He walks with a narrow-based gait.

IMPRESSION AND PLAN: Barry is doing better. He still has intermittent migraines from his concussion. He is now off the zonisamide, and we will see if his memory gets better. He feels it has. His wife is not certain. He is tolerating the beta blocker quite nicely, though his blood pressure is 108/60, and heart rate is 68 today. He does not appear to be symptomatic so I do not think we are causing hypotension, though we did discuss symptoms of this. He also has his own blood pressure machine which he brought today, but unfortunately the battery is dead so we could not test it today. He will continue to use triptans such as Maxalt for abortive therapy and Cambia for nonmigrainous headaches. He is all in all doing considerably better though still does have intermittent migraines. He has recently been seen by one of the physiatrists finally through Workman's Comp, and they did an MRI of the cervical spine which apparently may show a nonhealing fracture. They are following that up with a CT of the neck, which would be more sensitive for bone difficulties. I have refilled prescriptions. I will see him again in four months' time.



Howard Mandell, M.D., FRCPC
HM:loc (4/10) 52126097

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NC DEA#BR483

SHARON H. WALTER, PA-C
SC DEA#MW263
NC DEA#MW236

MARK A. PORTER, M.D.
SC DEA#AP188
NC DEA#BP744

FOR Barry Adcock DATE 10/6/13
R

① Mitre on S.C. agent
Inject at oral mg
Repeat in 1 hour if needed
#

② T. am to be mild mg
Repeat in 1 hour
M.D./PAC [Signature] M.D./PAC
DISPENSE AS WRITTEN SUBSTITUTION PERMITTED

REFILL ZERO 1 2 (3) 4 5 6 LABEL ALL MEDICINE



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SC DEA#MW263
NC DEA#MW236

MARK A. PORTER, M.D.
SC DEA#AP188
NC DEA#AP744

FOR Barry Adickes DATE 10/8/13

R

① Nubul 40 - 1d

1m

M.D./PAC

M.D./PAC

DISPENSE AS WRITTEN

SUBSTITUTION PERMITTED

REFILL ZERO 1 2 3 4 5 6 LABEL ALL MEDICINE

DATE: 10-8-13

NAME: Barry S. Adickes ACCT: 107888

REFERRING DOCTOR: _____

PROBLEM: KV

Med
Nechel 40

O/T

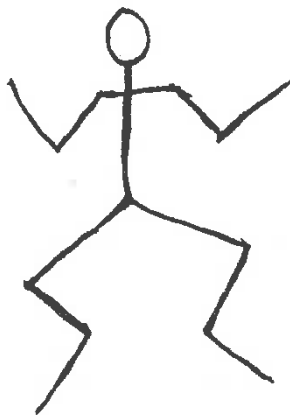
Freq: June 12

Aug 4-6 post knee surgery, fasted 2 d
? triglycerides

Sept 25-28 ? stress

(134/80
66)

Hmc 58-60
122/70



- Good tests 3 days

- naproxen for
inflammation
needs 2-3 mg/n

Sleep: improved but
joint

Finally approved CSI out 21st

→ inject 2 units

TX: mesquite at unit

& log from H

Reduces severity = 50%

after second 2nd one

2 injury next day (3rd)

GOOD PHARMACY OF ROCK HILL, INC

1237 EBENEZER RD
ROCK HILL, SC 29732

PHONE: 803-327-2081 FAX: 803-327-3585

#107888
RHI

August 08, 2013

HOWARD MANDELL
200 S. HERLONG AVE. SUITE H
ROCK HILL, SC 29732
(P) 803-366-6135 (F) 366-3439

DEA: BM3169871

The patient identified below is requesting a refill for the prescription indicated; however, there are no authorized refills remaining. If you would like to authorize additional refills, please complete this form and fax it back to 803-327-3585, or you may contact the pharmacist by calling 803-327-2081.

Sincerely,

HICKLIN, KIA

Patient:	ADICKES, BARRY	Date of Birth:	1961
Address:	1137 HUMPHREY ST ROCK HILL, SC 29732	Phone:	803-000-0000
		Date Written:	05/08/2012
		Last Dispensed:	03/27/2013
Prescription#:	6307168	D/C:	29
Product:	NAPROXEN 500 MG TABLET	For:	NAPROSYN 500 MG TABLET
Quantity:	30 TAB		
Directions:	TAKE 1 TABLET BY MOUTH AS NEEDED		

☒ I authorize this refill plus 3 additional refills.

☐ Do not refill.

☐ Have patient contact my office.

Dr. _____
Dispense as WrittenDr. [Signature]
Substitution Permitted

06307168

Authorized By _____

Date _____

Apt
-111-



☐ Howard Mandell, M.D.
☐ Allan S. Ryder-Cook, M.D.
☐ Mark A. Porter, M.D.

☐ Shankar Perumal, M.D.
☐ Michael Leddy, PA-C
☐ Sharon Walter, PA-C

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(803) 366-6135 • FAX: (803) 366-3439
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(803) 578-9050 Fax: (803) 578-9060

PATIENT #	DATA	SSN	BIRTHDAY	SEX/AGE	NEXT CHARGE DATE	DR.	APPOINTMENT DATE & TIME	NO.
7888BA	NPP	XXX-XX-XXXX	61	M52		3	08/20/13- 4:00p	4792
PATIENT				RETURN VISIT: pfm				
ADICKES, MR. BARRY S. (BA)				Resch - 8/2				
1137 HUMMINGBIRD LANE				BLUE CROSS (XMIT) PAID NSF PHL88579036				
ROCK HILL, SC 29732				COLUMBIA, SC 29202				
(H) 803-328-9561				GALLAGHER BASSETT SERV C000002025				
PREVIOUS BALANCE	DELQ. AGE/AMOUNT	ADATA	REFERRING DOCTOR					
0.00	0.00	WC	100300 COLUMBIA, SC 29202					
LAST PAYMENT DATE			LAST PMT AMOUNT			AMT PD THIS YR		
06/11/13			100.95			181.70		
CNTRL			INSURANCE FILED			CUMULATIVE DEDUCTIBLE		
06/11/13			XC			06/11/13		
EMPLOYER				TUTTLE, NICHOLAS H. B92352				
PHILIPS MEDICAL GRP#:295645 400								
PREV. ICD-9 CODE		DESCRIPTION OF PREVIOUS DIAGNOSIS						
999.99		UNSPECIFIED DIAGNOSIS 08/11						
784.0		HEADACHES OR FACIAL P 04/13						
PATIENT NOTES: Sig: B NPP: 04/06/11-H								

OFFICE SERVICES		CODE	FEE	DIAGNOSIS	
Consultation: Expanded/SF		99242		RETURN VISIT	
Consultation: Detailed/LC		99243		TODAY'S CHARGES	
Consultation: Comprehensive/MC		99244		PAYMENT: CASH	
Consultation: Comprehensive/HC		99245		CHECK #	
Return Visit: Problem Focused/SF		99212		VISA/MC	
Return Visit: Expanded/LC		99213		BALANCE	
Return Visit: Detailed/MC		99214			
Return Visit: Comprehensive/HC		99215			
ELECTRODIAGNOSTIC STUDIES		CODE	FEE	INJECTIONS CONT.	
Needle EMG each extremity-4 or less muscles		95885		Injection of small joint	20600
Needle EMG each extremity-5 or more muscles		95886		Injection of intermediate joint	20605
Needle EMG non-extremity		95887		Injection of major joint	20610
Repetitive Stimulation		95937		Tendon origin/insertion	20551
1-2 NCS		95907		Single or Multiple Trigger Points 1 or 2 Muscle Group(s)	20552
3-4 NCS		95908		Single or Multiple Trigger Points 3 or more Muscle Groups	20553
5-6 NCS		95909		Medication	
7-8 NCS		95910		SPECIAL STUDIES	
9-10 NCS		95911		Visual Evoked Potentials	95930
11-12 NCS		95912		Neurostimulator Programming	95974
13 or more NCS		95913		EEG, greater than 1 hour	95813
INJECTIONS		CODE	FEE	EEG, recording awake and drowsy	95816
Injection, carpal tunnel		64450		EEG, including recording awake and asleep	95819
Injection, femoral cutaneous		64425		Ambulatory EEG	95953
Injection, greater occipital nerve		64405		E-PRESCRIBE	
Injection, tendon sheath, ligament, ganglion sheath		20550		E-Prescribe	G8553

ASSIGNMENT & RELEASE: I authorize my insurance benefits to be paid to Metrolina Neurological Associates, P.A. and I understand that I am financially responsible for services not covered. I authorize the release of any information required to process this claim.

SIGNED:

DATE:

ATTENTION MEDICARE PATIENTS: Your claim will be filed for you by the physician, in accordance with Medicare regulations-keep as a receipt only.
PLEASE RETURN THIS FORM TO THE RECEPTIONIST - PAYMENT OF OFFICE FEES IS REQUIRED AT TIME OF SERVICE - THANK YOU!

112

ALLSCRIP 33-3



☐ Howard Mandell, M.D.
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CL	T# 78888A	PDATA NPP	SSN XXX-XX-XXXX	BIRTHDAY /61	SEX/AGE M52	NEXT CHARGE DATE	DR. 3	APPOINTMENT DATE & TIME 08/21/13-1:15PM	NO. 4830
PATIENT ADICKES, MR. BARRY S. (BA)				INSURANCE BLUE CROSS (XMIT) PAIDNSF PH188579038 P. O. BOX 100300 COLUMBIA, SC 29202 GALLAGHER BASSETT SERV C000002825 PO BOX 23812 TUCSON, AZ 85734					
1337 HUMMINGBIRD LANE ROCK HILL, SC 29732 (H) 803-328-9561				REFERRING DOCTOR NICHOLAS H. B92352					
PREVIOUS BALANCE 0.00		DELQ. AGE/AMOUNT 0.00		LIC ADATA		SEE NOTE			
LAST PAYMENT DATE 06/11/13		LAST PMT AMOUNT 100.95		AMT PD THIS YR 181.70		XFC 06/11/13		COMMENTS/INSTRUCTIONS:	
EMPLOYER PHILIPS MEDICAL		GRP# 295545 400							
PREV CODE 999.99		UNSPECIFIED DIAGNOSIS 08/11							
DESCRIPTION OF PREVIOUS DIAGNOSIS		HEMOCHROMATOSIS OR FACIAL P 04/13							
Rel: Y-		Sig: B		NPP: 04/06/11-H					

PATIENT NOTES

pt did not want to wait
can - will come in Oct when schedule opens

OFFICE SERVICES	CODE	FEE
Consultation: Expanded/SF	99242	
Consultation: Detailed/LC	99243	
Consultation: Comprehensive/MC	99244	
Consultation: Comprehensive/HC	99245	
Return Visit: Problem Focused/SF	99212	
Return Visit: Expanded/LC	99213	
Return Visit: Detailed/MC	99214	
Return Visit: Comprehensive/HC	99215	
New Patient: Expanded/SF (Medicare)	99202	
New Patient: Detailed/LC (Medicare)	99203	
New Patient: Comprehensive/MC (Medicare)	99204	
New Patient: Comprehensive/HC (Medicare)	99205	
ELECTRODIAGNOSTIC STUDIES	CODE	FEE
Needle EMG, each extremity-4 or less muscles	95885	
Needle EMG, each extremity-5 or more muscles	95886	
Needle EMG, non-extremity	95887	
Repetitive Stimulation	95937	
Motor without Fwave	95900	
Motor with Fwave	95903	
Sensory	95904	
H Reflex	95934	
INJECTIONS	CODE	FEE
Injection, carpal tunnel	64450	
Injection, femoral cutaneous	64425	
Injection, greater occipital nerve	64405	
Injection tendon sheath, ligament, ganglion sheath	20550	
Injection of small joint	20600	
Injection of intermediate joint	20605	
DIAGNOSIS		
RETURN VISIT		
TODAY'S CHARGES		
PAYMENT:	CASH CHECK # VISA/MC	
BALANCE		
INJECTIONS CONT.	CODE	
Injection of major joint	20610	
Tendon origin/insertion	20551	
Single or Multiple Trigger Points 1 or 2 Muscle Group(s)	20552	
Single or Multiple Trigger Points 3 or more Muscle Groups	20553	
Medication		
SPECIAL STUDIES	CODE	
Visual Evoked Potentials	95930	
Neurostimulator Programming	95974	
EEG, greater than 1 hour	95813	
EEG, recording awake and drowsy	95816	
EEG, including recording awake and asleep	95819	
E-PRESCRIBE	CODE	
E-Prescribe	G8553	

ASSIGNMENT & RELEASE: I authorize my insurance benefits to be paid to Metrolina Neurological Associates, P.A. and I understand that I am financially responsible for not covered. I authorize the release of any information required to process this claim.

SIGNED:

DATE:

ATTENTION MEDICARE PATIENTS: Your claim will be filed for you by the physician, in accordance with Medicare regulations-keep as a receipt only.
PLEASE RETURN THIS FORM TO THE RECEPTIONIST - PAYMENT OF OFFICE FEES IS REQUIRED AT TIME OF SERVICE - THANK YOU - 113 -

ALLSC

-633



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HOWARD MANDELL, M.D.
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NC DEA#BP744

SHARON H. WALTER, PA-C
SC DEA#MW263
NC DEA#MW236

FOR Barry Decker DATE 4/9/13

R

D Mandell - 3000
migraine. Repeat - 2 more

3mo (30 pills)

(2) Nadolol 40, +1
= 3mo

M.D./PAC

M.D./PAC

DISPENSE AS WRITTEN

SUBSTITUTION PERMITTED

REFILL ZERO 1 2 3 4 5 6 LABEL ALL MEDICINE

DATE: 4-9-13

NAME: Barry S. Adickes ACCT: 107888 - Th

REFERRING DOCTOR: _____

PROBLEM: AV

Nasolab 10, 1/2

B.P. 140/80, 1 year ago 110/60

- Last 1 wk 120/70 on med
off 2 completely now

- 1 small one, HRI C/S

108/60

67





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January 21, 2013

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: [REDACTED] 1961

HISTORY OF PRESENT ILLNESS: I saw Barry in the neurology clinic today in followup of his traumatic brain injury and postconcussion syndrome. When seen last in September, I increased his zonisamide to 200 mg a day. This has had a dramatic improvement in his headaches, only really having two headaches since I saw him last. This however has come with a price, and that is in memory. His wife who accompanies him goes on to give me many examples of his forgetfulness noted not just by himself but also the children as well as him even having some forgetfulness at work such as missing some meetings. It takes him longer to do things. He is just not as quick or as sharp as he use to be. He misplaces things.

NEUROLOGICAL REVIEW OF SYSTEMS: No fever or chills, earaches, or sinus infections. No diplopia, dysarthria, dysphagia, or dysphonia. No lateralizing weakness or paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: No fever or chills, earaches, or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production, or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena, or hematochezia. No new joint problems, skin problems, vision problems, ear, nose or throat problems, allergy problems.

PAST MEDICAL AND SURGICAL HISTORIES, HOSPITALIZATIONS: SLAP surgery for left shoulder, goiter surgery, knee surgery, rotator cuff surgery.

CURRENT MEDICATIONS:

1. Zonisamide taking 200 mg a day
2. Maxalt 10 mg p.r.n.
3. Naprosyn p.r.n.

SOCIAL HISTORY (MARRIAGE, WORK, SMOKING, ALCOHOL AND DRUGS, SEXUAL ORIENTATION):
He does not smoke or drink.

NEUROLOGICAL EXAMINATION: He is very pleasant, awake and alert, oriented times four. He does seem a little slow to respond. He does have some mild short-term memory loss. Speech also has some difficulty with verbal retrieval. Blood pressure is 140/74. Heart rate is 76.

CN III, IV, VI: The pupils are equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements are full with no nystagmus and no ptosis noted.

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CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevates symmetrically and normal gag reflex is noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

CN XII: The tongue protrudes in the midline with normal strength and movement.

Motor examination: Power is 5/5. Tone and coordination are normal.

Reflexes: Reflexes are symmetrical.

Gait testing: He walks with a narrow-based gait.

IMPRESSION AND PLAN: Barry is doing much better regarding his headaches; however, it has come with a price and that is more forgetfulness. This is undoubtedly due to his zonisamide. We have many choices in this situation but today have decided to drop back down to 150 mg and see how his headaches are. I am hopeful that the zonisamide has broken his cycle and maybe he no longer will need prophylaxis. If, however, as we reduce the zonisamide headaches increase, then I would suggest we use a beta blocker. This would be Nadolol 40 mg and titrate up accordingly. He also appears to have occult hypertension. I advised him to keep track of his blood pressures. He does apparently have a home blood pressure machine. He will keep a log of two blood pressures a day and review them with Dr. Tuttle to see if anything needs to be done. If he does prove to have occult hypertension, then beta blocker might be a good way to go and we will just wean him off of the zonisamide regardless. He will keep a good headache diary for me. He will use Maxalt for abortive therapy and Cambia for nonmigrainous headaches. I will see him again in followup.

Howard Mandell, M.D., FRCPC
HM:loc (1/22) 52006781

cc: Nicholas H. Tuttle, M.D. 328-3879

Dictated but not read to expedite mailing.



Howard Mandell, MD, FRCPC. • Allan S. Ryder-Cook, MD, PhD.
Mark A. Porter, MD. • Shankar Perumal, M.D. • Dennis M. Gettelfinger, Emeritus
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September 10, 2012

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: 08/12/1961

HISTORY OF PRESENT ILLNESS: I saw Barry in neurology clinic today in follow-up of his traumatic brain injury and postconcussion syndrome. He continues to have difficulty with headaches. They tend to come in clusters. They will last anywhere from 2 to 7 days. Flying seems to trigger them or at least perpetuate them. Maxalt is helpful for the migraine part but he often has a lingering headache for several days. He also has milder headaches in between.

His wife believes that he is not as cognitively sharp as he used to be. It takes him longer to do things. He is more forgetful. He does not have any real deficits but he is not as quick as he used to be. She goes on to tell me that they expect him to misplace things and gives me many examples of him forgetting, for example going to a football game, forgetting the tickets, and always having to go back to the house to get his sunglasses and many instances of misplacing things.

He also notes he is having a lot of shoulder problems and Workman's Comp is trying to deny that it happened in the accident. There is also a lot of clicking in his neck. He is soon to go to physical therapy.

He is having some stress at work. He has to fly a lot. He does long hours. He does try to get good sleep.

NEUROLOGICAL REVIEW OF SYSTEMS: He does get headaches. No fever or chills, ear ache or sinus infections. No diplopia, dysarthria, dysphagia, dysphonia. No lateralizing weakness, paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: He does get headaches. No fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, skin problems, vision problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS: These are zonisamide 150 mg, 25 mg pills taking six at h.s., Maxalt 10 mg, Naprosyn p.r.n. and Nexium p.r.n.

SOCIAL HISTORY: He does not smoke or drink.

PAST MEDICAL HISTORY: This includes SLAP surgery of his left shoulder, goiter surgery, knee surgery and rotator cuff surgery.

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NEUROLOGICAL EXAMINATION: He is a very pleasant gentleman. He is awake, alert and oriented times four. Speech is fluent without paraphasic error or dysarthria. Fundi show sharp disks. Pupils are equal and reactive to light. Visual fields are full to bedside confrontation. Cranial nerves III to XII are normal. Power is 5/5. Tone and coordination are normal. Reflexes are symmetrical. He walks with a narrow-based gait.

IMPRESSION AND PLAN: Barry continues to struggle with intermittent headaches. In fact, his headaches are more frequent than he wants to admit. His wife is a very good historian and observer and has kept a better diary. There are also cognitive issues which it is unclear whether it is related to ongoing headaches from his brain injury or from zonisamide. We talked about many different choices we have. At this time, we have chosen to titrate the zonisamide up further to 200 mg. If cognitive issues become more of a problem, we will change him over to beta blockers, perhaps nadolol. I advised him to use anti-inflammatories. I have given him some samples and a prescription for Cambia. These are to be used for milder headaches and for the postdrome. He will keep a good diary for me. For purposes of documentation, 45 minutes was spent with the patient and his wife discussing symptoms and strategies.


Howard Mandell, M.D., FRCPC
HM:scs (09/13) 51825452

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328-3874



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Mark A. Porter, MD. • Shankar Perumal, MD. • Dennis M. Gettelfinger, Emeritus
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May 8, 2012

SUMMARY FOR THE CHART

RE: Barry S. Adickes

DOB: [REDACTED] 1961

HISTORY OF PRESENT ILLNESS: I saw Barry in the neurology clinic today in followup of his traumatic brain injury and post-concussion syndrome. He has done very well in most regards. His cognitive issues have resolved but he still continues to have intermittent migraines. He also has relatively frequent headaches. His wife points out that he has never been a headache prone person before. Since Christmas, he has really only had one bad headache but it lasted three days. He had to take four Maxalt that week. There were no obvious triggers as to why that flare would occur. Other than that flare, three days of headaches, he has not had any bad headaches. His wife points out that he does have a headache once a week, which requires naproxen sodium that knocks it out quickly. Sometimes it occurs after being on the computer for a few hours but other times there really is no rhyme or reason or any triggers that are obvious.

NEUROLOGICAL REVIEW OF SYSTEMS: No fever or chills, earache, or sinus infections. No diplopia, dysarthria, dysphagia, or dysphonia. No lateralizing weakness or paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: No fever or chills, earaches, or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production, or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena, or hematochezia. No new joint problems, skin problems, vision problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS:

1. Zonisamide 150 mg (he chooses 25 mg six pills a day as this is more reasonably priced)
2. Maxalt 10 mg
3. Naproxen 500 mg p.r.n.
4. Nexium p.r.n.

SOCIAL HISTORY (MARRIAGE, WORK, SMOKING, ALCOHOL AND DRUGS, SEXUAL ORIENTATION):

He does not smoke or drink.

NEUROLOGICAL EXAMINATION: He is very pleasant, awake and alert, oriented times four. Speech is fluent without paraphasic error or dysarthria. Fundi show sharp disks with good venous pulsations. Pupils are equal and reactive to light. Visual fields are full to bedside confrontation. Cranial nerves III to XII are normal. Power is 5/5. Tone and coordination are normal. Reflexes are symmetrical. He walks with a narrow-based gait.

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Barry S. Adickes

Page 2

05/08/2012

IMPRESSION AND PLAN: Barry is doing very well. He does, however, have leftover migraines, which were triggered by his head injury. Zonisamide has been a very nice medication for him. I am hopeful that this will settle down with time, but this remains to be determined. It is not uncommon for concussion to trigger post-traumatic headaches. He does have a family history of headaches though he himself has never been headache prone. He is here today with his rehab nurse, and I suggest that he has reached maximal medical improvement. I will see him again in followup.

H. Mandell MD

Howard Mandell, M.D., FRCPC
HM:loc (05/09) 51640939

cc: Nicholas Tuttle, M.D. 817, 1735

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Quanwei Zhang, MD. • Michael Leddy, PA-C MMS
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November 1, 2011

SUMMARY FOR THE CHART

RE: Barry S. Adickes

DOB: [REDACTED] 1961

HISTORY OF PRESENT ILLNESS: I saw Mr. Adickes in the neurology clinic today in followup of his dramatic brain injury and post-concussion syndrome. He continues to progress nicely. Headaches have been much better in October though in September he had seven. For most of them, he took Naprosyn. For a few, he took Maxalt. The latter always helps but he tends to delay using the medications per his wife's report. They are not sure of his barometric pressure, though there are other stressors going on as well. He has recently had shoulder surgery, which has gone well, but, of course, this adds to his discomfort and interferes with sleep, though he has done very well in October only having two headaches. He notes that there may be some still minor difficulties multitasking and little difficulty with concentration and focus, but both he and his wife say that it is not very much.

NEUROLOGICAL REVIEW OF SYSTEMS: No fever or chills, earache, or sinus infections. No diplopia, dysarthria, dysphagia, or dysphonia. No lateralizing weakness or paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: No fever or chills, earaches, or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production, or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena, or hematochezia. No new joint problems, skin problems, vision problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS:

1. Zonisamide 150 mg (He chooses the 25 mg as that is more reasonably priced.)
2. Nexium p.r.n.
3. Maxalt 10 mg p.o. p.r.n.
4. Naproxen 500 mg p.r.n.

NEUROLOGICAL EXAMINATION: He is very pleasant, awake and alert, oriented times four. CN III to XII is normal. Power is 5/5. Tone and coordination are normal. Reflexes are symmetrical. He walks with a narrow-based gait.

IMPRESSION AND PLAN: He is doing very well with a nice improvement. He has very little symptoms of his traumatic brain injury left over. He does, however, have migraines which he never had prior. Hopefully, these will melt away with time, though it is certainly not a guarantee. Zonisamide has been a good medication for him.

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Barry S. Adickes

Page 2

11/01/2011

We will continue him on the 150 mg. Maxalt and Naprosyn combination have been good for abortive therapy. We will see him again in followup in six months' time.

Howard Mandell, M.D.

Howard Mandell, M.D., FRCPC
HM:loc (11/02) 51388102

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Quanwei Zhang, MD. • Michael Leddy, PA-C MMS
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July 29, 2011

SUMMARY FOR THE CHART:

RE: Barry S. Adickes
DOB: 08/12/1961

HISTORY OF PRESENT ILLNESS: I saw Barry in neurology clinic today in follow up of his traumatic brain injury and post concussion syndrome. He is continuing to do better. Zonisamide has been helpful and it has dropped his headaches down significantly. They are still frequent, about 10 in a month, though only three required Maxalt, which knocked the headache out immediately. The others, he either toughed out, or took Naprosyn with good results. No debilitating headaches for at least a few weeks now.

He did have another mild head injury where he was picking blueberries and somehow hit his head on a rod. This hit his left parietal/temporal region, just where he had banged his head before, and he saw stars, had a knot and a bruise for about 10 days, but no other sequelae.

He did get his MRI scan and chose to get it at the open MRI scan (at Carowinds, with very weak magnet and extremely limited software), which was normal for what it could show.

He is generally doing better in all regards, and his wife notes that his mood swings are better as well.

NEUROLOGICAL REVIEW OF SYSTEMS: No headache, fever or chills, ear ache or sinus infections. No diplopia, dysarthria, dysphagia, dysphonia. No lateralizing weakness, paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: No headaches, fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, skin problems, vision problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS:

1. Zonisamide 100 mg h.s.
2. Nexium p.r.n.
3. Maxalt p.r.n.
4. Naproxen sodium p.r.n.

NEUROLOGICAL EXAMINATION: This is a pleasant gentleman, awake, alert, and oriented times four, with a normal mental status. Fundi showed sharp disks with good venous pulsations. Pupils are equal and reactive to light. Visual fields are full to bedside confrontation. Cranial nerves III-XII are normal. Power is 5/5. Tone and coordination are normal. Reflexes are symmetrical. He walks with a narrow based gait.

CMC Pineville :
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Rock Hill Medical Park:
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Rock Hill, SC 29732
(803)366-6135

CMC-Carolina Lakes Medical Plaza:
7666 Charlotte Hwy
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(803) 578-9050

Barry S. Adickes

Page Two

07/29/2011

IMPRESSION: Barry is doing well. He is showing significant improvement. I have advised him to continue just as he is. If the headaches continue to improve, we do not need to do anything further. If they should flare, then I would increase the zonisamide further. All in all, he has done well. We will see him again in four months time.


Howard Mandell, MD, FRCP
HM/arb (08/01) 51249599

cc: Nicholas H. Tuttle, M.D. 817-1735

Dictated but not read to expedite mailing.



Howard Mandell, MD, FRCPC. • Allan S. Ryder-Cook, MD, PhD.
Mark A. Porter, MD. • Dennis M. Gettelfinger, Emeritus
Quanwei Zhang, MD. • Michael Leddy, PA-C MMS
www.metrolinaneurology.com

June 17, 2011

SUMMARY FOR THE CHART

RE: Barry S. Adickes

DOB: 08/12/1961

HISTORY OF PRESENT ILLNESS: I saw Mr. Adickes in neurology clinic today in follow-up of his traumatic brain injury and post-concussive syndrome. In general, he is doing better though it has been a slow progress. He has had several "debilitating headaches." His wife states that on June 4 for two days he was in bed. Barry goes on to talk about an intense left parietal and vertex headache, lying down with an ice pack for a few hours, getting better, then having it come back later on in the day. On 05/14/11, he attended a wedding but all of the noise at the wedding was so much that it triggered a severe headache.

He has a headache most days. He will take naproxen sodium 500 mg, which helps, but he generally has to take it b.i.d. His wife notes that he has triggers with noise, heat, and sun. He drinks about 16 ounces of caffeine a day. He sleeps generally quite well. He has a few beers on the weekend. He denies depression. He did have some stressors at work. It turned out that at this time is when his job changed as well, and he has a new boss, who is the type of boss that just gives you things and has you either sink or swim. This is generally okay for Barry, but at this time, it was more of struggle than it would have been. In addition, his boss' personality was one that they did not get along as well as his prior boss though that seems to have been ironed out.

There is no distinct difficulties with balance.

NEUROLOGICAL REVIEW OF SYSTEMS: No headache, fever or chills, ear ache or sinus infections. No diplopia, dysarthria, dysphagia, dysphonia. No lateralizing weakness, paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: No headaches, fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, vision problems, ear, nose or throat problems, allergy problems. No skin problems.

PAST MEDICAL HISTORY: Includes SLAP surgery of his left shoulder, goiter surgery, and knee surgery.

SOCIAL HISTORY: He does not smoke. He drinks rarely. He works for Phillip Cardiac Equipment.

CURRENT MEDICATIONS:

1. Naprosyn twice a day.
2. Nexium.

ALLERGIES: None

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CMC-Carolina Lakes Medical Plaza:
7666 Charlotte Hwy
Indian Land, SC 29707
(803) 578-9050

PHYSICAL EXAMINATION:

Appearance: He is a pleasant gentleman.

Skin: Shows no significant skin lesions or abnormalities, rashes bruises, etc.

Heart: Shows normal rhythms with no significant murmurs detected.

Chest: Suggested normal breath sounds, no rales or rhonchi detected.

Abdomen: Shows the abdomen to be nontender with unremarkable bowel sounds.

NEUROLOGICAL EXAMINATION:

Mental status testing: He is awake and alert, oriented times four, mild difficulties with word retrieval and verbal fluency.

Language function: No significant aphasia or dysarthria was noted.

CN II: Optic fundi were normal with no papilledema noted.

CN III, IV, VI: The pupils were equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements were full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevated symmetrically and normal gag reflex was noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

CN XII: The tongue protruded in the midline with normal strength and movement.

Carotid Arteries: No bruits heard

C-Spine: Normal ROM for age, non-tender, no muscle spasms

L-S-Spine: Normal ROM for age, negative SLR, non-tender, no muscle spasm

Motor examination: The patient had no abnormal spontaneous movements. Tone was normal. There was no atrophy or fasciculations noted. The patient had no drift in the extremities and normal direct muscle testing and fine motor skill movements were normal.

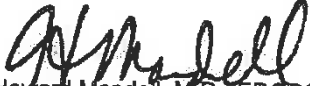
Sensory examination: Sensation was intact to pin prick and light touch and vibration sense

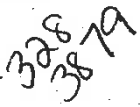
Reflexes: Deep tendon reflexes were normal and symmetrical, grade 2/4 diffusely. No pathological reflexes were noted.

Cerebellar testing: Normal finger to nose, heel/knee/shin, and tandem walk.

Gait testing: Gait testing was normal with normal Romberg testing and no abnormalities such as broad base gait or spasticity.

IMPRESSION AND PLAN: Barry is struggling, better than his worse but continues to have quite significant headaches. He has never been a headache-prone person prior. He also does have some word-finding difficulties and verbal fluency difficulties, mild but present. It would be my suggestion that we get an MRI scan to be sure we are not dealing with any secondary problems such as accumulating subdural or contusions. He does appear to be developing some intermittent migraines, never had a history of this before though he does have a family history of migraine. It is clearly a part of the post-concussion syndrome. We talked about various medications and today have decided to start zonisamide 25 mg and slowly titrate up to 100 mg if tolerated. He will call me after the MRI scan. Further management will depend upon his course.


Howard Mandell, M.D., FRCPC
HM:se (06/22) 51194858

cc: Nicholas H. Tuttle, M.D. 

Dictated but not read to expedite mailing.



Howard Mandell, MD, FRCPC. • Allan S. Ryder-Cook, MD, PhD.
Mark A. Porter, MD. • Dennis M. Gettelfinger, Emeritus
Quanwei Zhang, MD. • Michael Leddy, PA-C MMS
www.metrolinaneurology.com

April 6, 2011

Nicholas H. Tuttle, M.D.
Rock Hill Family Practice
1435 Ebenezer Road
Rock Hill, SC 29732

RE: Barry Adickes
DOB: [REDACTED] 961

Dear Nick:

Thank you for asking me to see Mr. Adickes. He is a 49-year-old left-handed gentleman who was involved in a serious motor vehicle accident on 03/22/2011. As you are well-aware of his course, I will only state it here for my records. The history is obtained from the patient and his wife, as well as reviewing your notes.

HISTORY OF PRESENT ILLNESS: Mr. Adickes is a very good historian and he remembers leaving the training session he was attending on 03/22/2011. He was driving down 181 winding road going about 45 mph. The road curves and turns and changes speeds frequently and he did not realize that the speed was changing to 25 mph and he was going through a very sharp curve. He, as a consequence, did not slow down quickly enough, hit a guard rail on the passenger side and the car was airborne barreling down the hill about 100 feet down into a ravine-area. It flipped the drivers' side down. He estimates he was out about 30 minutes but remembers coming to with the drivers' side down, having hit his head on the left side and all the glass was broken in the car. He was in intense pain with his left shoulder but once "got it back in place" the pain settled down. He realized that he had not broken anything. He had not broken his neck. He could move all four extremities. He then "said a prayer and fell asleep". He was in and out for multiple times throughout the next several hours. He felt calm though and was certain that he would be found and was just grateful that no more serious injury occurred to him as he was sitting in his car flipped over. He was down about five hours. Eventually he was able to get to his cellphone, used the car charger to call 9-1-1 and they came to get him. They got him out of the car. He was able to walk. In fact, he did not even want to go to the local hospital but did go to a hospital close to home. He was evaluated and there were no broken bones. He did have a lot of headache, nausea and vomiting, blurred vision. He saw orthopaedics, Dr. Rentz. He had a CT of the head by you and is now referred here for neurological evaluation.

Over the course of the last two weeks, he has slowly improved. He is no longer having any nausea or vomiting. The blurred vision has resolved but he still has headaches. The headaches occur daily. They wax and wane in intensity. It seems to be a pressure, throbbing pain over the left parietal region where he hit his head and across his forehead. Other times it is all over his head. Generally he rates it 6 to 7 out of 10. Early in the morning when he gets up, he will take an ibuprofen and it will ease it down to about 3 or 4 only to come back again later on. He does have light sensitivity and noise sensitivity.

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He denies any memory difficulties, though his wife thinks he might be a little slower than he was in terms of answering or analyzing things, though he still is doing very well. She gives an example of one of the e-mails he was typing and it took him a lot longer to do that e-mail than it would have normally. It seemed to take a lot more thought. He denies any drop-off of any previously acquired skills.

NEUROLOGICAL REVIEW OF SYSTEMS: No headache, fever or chills, ear ache or sinus infections. No diplopia, dysarthria, dysphagia, dysphonia. No lateralizing weakness, paresthesias. No loss of consciousness, tonic, clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: No headaches, fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, vision problems, ear, nose or throat problems, allergy problems.

He denies any mood or personality changes. His wife corroborates this. He does not have any nightmares. He feels actually quite calm, blessed for escaping this near-death event, but not really upset by it.

PAST MEDICAL/SURGICAL HISTORY: This includes SLAP surgery of his left shoulder, goiter surgery and knee surgery. Otherwise this is completely unremarkable.

SOCIAL HISTORY: He does not smoke. He drinks rarely. He works for Phillips Cardiac Equipment.

MEDICATIONS:

1. Nortriptyline 10 mg at h.s.
2. Motrin perhaps three a day
3. Nexium one a day

ALLERGIES: There are none known.

PHYSICAL EXAMINATION:

Appearance: The patient in general looks their stated age, healthy and fit.

Skin: Shows no significant skin lesions or abnormalities, rashes bruises, etc.

Heart: Shows normal rhythms with no significant murmurs detected.

Chest: Suggested normal breath sounds, no rales or rhonchi detected.

Abdomen: Shows the abdomen to be nontender with unremarkable bowel sounds.

NEUROLOGICAL EXAMINATION:

Mental status testing: Brief mental status testing showed the patient to be alert, oriented times three, able to provide a good history, had general good fund of knowledge, appropriate judgment and insight and no impairment of short term memory.

Language function: No significant aphasia or dysarthria was noted.

CN II: Optic fundi were normal with no papilledema noted.

CN III, IV, VI: The pupils were equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements were full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevated symmetrically and normal gag reflex was noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

CN XII: The tongue protruded in the midline with normal strength and movement.

Carotid Arteries: No bruits heard

C-Spine: Normal ROM for age, non-tender, no muscle spasms

L-S-Spine: Normal ROM for age, negative SLR, non-tender, no muscle spasm

Motor examination: The patient had no abnormal spontaneous movements. Tone was normal. There was no atrophy or fasciculations noted. The patient had no drift in the extremities and normal direct muscle testing and fine motor skill movements were normal.

Sensory examination: Sensation was intact to pin prick and light touch and vibration sense

Reflexes: Deep tendon reflexes were normal and symmetrical, grade 2/4 diffusely. No pathological reflexes were noted.

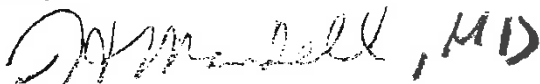
Cerebellar testing: Normal finger to nose, heel/knee/shin, and tandem walk.

Gait testing: Gait testing was normal with normal Romberg testing and no abnormalities such as broad base gait or spasticity.

IMPRESSION AND PLAN: This gentleman's history is incredible and it is absolutely remarkable that he has had no injury as a consequence of this. There truly was someone looking out for him. He has had a concussion and does have postconcussive symptoms as you well note and these are improving quite nicely. We talked in detail today regarding the postconcussion syndrome, the metabolic derangements of the brain associated with this, second impact syndrome and the importance of not overly taxing his brain mentally until full metabolic recovery occurs as well. We talked about the latest studies with MRI scan and MR spectroscopy showing us that in fact the traumatic brain injury of a concussion lasts 30 days even though athletes in this situation often have reported complete recovery sooner but their MRI spectroscopy shows that is not the case. I therefore gave him the statistics and the general prognosis. I believe he will have an excellent and full recovery. We do need to be careful however in this vulnerable period and we discussed this. It is my suggestion therefore that he not work for a total of four weeks and he will comply with this. You have appropriately given him nortriptyline and I think that is one reasonable choice in many. I have suggested we go up further since he is still getting the headaches and poor sleep. I believe some of his headache may be developing rebound from the ibuprofen and I have suggested that he use naproxen sodium instead.

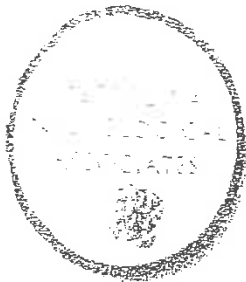
Other choices for prophylaxis could be Zanaflex. Again his wife asked appropriate questions. I am concerned about posttraumatic stress disorder, though he has no evidence for this whatsoever at this time. It is almost uncanny that he is so calm and collect and unnerved by this near-death experience. I am not sure if he is going to go through more of the emotional facets of this experience as time goes on or not. He is quite convinced that he will not, but is certainly open-minded to keeping an eye on this. At this time point in time, I do not feel we need to do anything further. He is having a very nice recovery and I expect a full recovery. I have asked to see him again in two months, but only if symptoms persist. I also advised him if his symptoms should not continue to go in the correct direction that he should contact me and we have many options available if we need to. Thank you very much for referring this very nice gentleman with a remarkable story.

Sincerely,



Howard Mandell, M.D., FRCPC
HM:scs (04/10) 51081432

Dictated but not read to expedite mailing.



Dr. and Mrs. J. H. Porter, MD, FRCPC, Allan S. Ryder-Cook, MD, FRC
Mark A. Porter, MD, Dennis M. Gettelfinger, MD, FRC
Quanwei Zhang, MD, Michael Leddy, PA-C, MMS
www.merckhealthcare.com

Name Barry Adickes

Record Number 107888

Physician _____

Date _____

Labs	Normal	Abnormal	Comments

MR/MRA _____

EEG _____

Other _____

Return Visit: 7-29

- NL, but done in a very weak
MRI scans with poor software
- would not have agreed to
do the study there!

HMM

- ☐ Dennis M. Gettelfinger, M.D.
- ☒ Howard Mandell, M.D.
- ☐ Allan S. Ryder-Cook, M.D.
- ☐ Mark A. Porter, M.D.
- ☐ Quanwei Zhang, M.D.
- ☐ Michael T. Leddy, PA-C

Patient contacted _____

CMC Pineville

Rock Hill Medical Park

Lancaster

EMR 7-29

SOUTH CAROLINA DIAGNOSTIC IMAGING

RH

Fort Mill

271 Carowinds Boulevard, Fort Mill, SC 29708

Phone: 803-547-1133 Fax: 803-547-1137

PATIENT: Adickes, Barry
 DOB: [REDACTED] 1961
 MRN: 781798
 PATIENT PHONE: 803-328-0106
 PHYSICIAN: Howard Mandell, MD
 DATE: 7/14/2011

EXAM: MRI BRAIN WITHOUT AND WITH CONTRAST

HISTORY: Post motor vehicle accident and headaches.

TECHNIQUE: Multiplanar, multisequence imaging through the brain before and after the bolus of 18 cc of Magnevist on a 0.3 Tesla Hitachi AIRIS Elite open system.

FINDINGS: Brain shows normal midline development with a normal corpus callosum. There is no pineal or pituitary region mass. Normal flow voids are present in anterior and posterior circulations at the skull base. Orbits and orbital contents are symmetric and unremarkable.

Intracranially, there is no mass, hemorrhage, or infarction. There is no abnormal parenchymal or extraaxial enhancement. White matter tracts and ventricular calibers are normal.

IMPRESSION: Normal MRI brain.

Thank you for this referral.

Perry Edenfield, MD
 WE / lb

DD: 7/14/2011
 DT: 7/14/2011
 Job: 13135542

This document has been reviewed and electronically signed.

Perry Edenfield MD

*noted to Referral girls
 7/29/11
 Amahaffey
 MA.*

*- For my pts
 I don't want
 the MRI done
 at that facility.
 - Please note me if
 this happens again.
 [initials]*

*Why was MRI
 done there??*

1/4/11

*7/25/11 per note in computer
 per Cindy Hull, "ELLIS, Galloway
 - Bassett" - requested notes to
 be faxed to them for scheduling
 @ facility of their choice.*

*pt wanted
 file to workers comp -
 their chusco uses this
 place for their testing*

Barry S Adickes

9/11/2014 11:45 AM Office Visit

MRN: 52372471

Description: Male DOB: 12/17/1961

Provider: Nicholas Hamner Tuttle, MD

Department: Rhfp Family Medicine

Diagnoses

Postconcussion syndrome - Primary

310.2

Cervical myofascial pain syndrome

729.1

Reason for Visit

Follow-up

Vitals - Last Recorded

Temp(Src)

98.7 °F (37.1 °C) (Oral)

Ht

5' 9" (1.753 m)

Wt

195 lb (88.451 kg)

BMI

28.78 kg/m2

Vitals History Recorded

Progress Notes

Nicholas Hamner Tuttle, MD at 9/12/2014 5:54 PM

Status Signed

Barry Adickes is a 53-year-old male who presents today as a Worker's Compensation case apparently. The patient was seen by me on 03/24/2011 after a severe motor vehicle accident. The patient drove off a mountaintop while driving from Morganton, North Carolina, to another town for medical sales. Patient was seen by me on 03/24/2011 after an ER visit in Morganton, North Carolina. The patient had been seen by Dr. Rentz, orthopedic surgeon, with negative x-rays of his left shoulder, left index finger, and C-spine. CT scan of the head in the ER was negative for any bleed or fracture. My evaluation was consistent with concussion with postconcussive syndrome. He had headaches, left parietal contusion of his scalp, left shoulder contusion. Probably had subluxed while he was trapped in the car and spontaneously reduced by patient. He had multiple abrasions of his forearms and right lower leg. He was seen by me and then referred to Dr. Mandell, neurologist, who evaluated and treated the patient. The patient has been followed by Dr. Mandell since that time and is followed on a regular basis. The patient has had severe neck pain and was referred by Dr. Mandell to the pain clinic for radioactive ablation of his right occipital nerve with some success. The patient has continued intermittent headaches. He is maintained on a regimen of nadolol for prevention of headaches, Frova pills for p.r.n. migraine occurrence, Imitrex subcutaneous injection for migraines p.r.n., Pamelor at night, and Adderall to help with cognitive issues which have developed some since the posttraumatic headache syndrome. The patient also uses occasional ibuprofen for pain.

Past medical, social, and family history per EMR.

Review Of Systems

NEUROLOGIC: Per above. No history of migraine headaches in the past.

PULMONARY: No asthma.

CARDIAC: No hypertension or chest pain.

ORTHOPEDICS: Patient had left rotator cuff surgery in 2007 by Dr. Rentz.

Physical Examination

GENERAL: White male in no acute distress. Mental status appears very stable. No signs of anxiety or depression at this time.

NECK: Supple. There is some mild tenderness with flexion, extension, and lateral movement.

LUNGS: Clear.

HEART: Regular sinus rhythm.

NEUROLOGIC: No focal findings today, but he does admit to intermittent headaches and some mild cognitive issues since the wreck. Followed by Dr. Mandell, neurologist.

N. Tuttle

Impression

1. Postconcussive headache syndrome.

2. Headaches secondary to above.

Plan

Forms completed. Continue followup with specialists as directed.

Revision History

Not recorded

Discontinued Medications

Reason for Discontinue

hydrocodone-homatropine (HYCODAN)
5-1.5 mg/5 mL syrup
esomeprazole (NEXIUM) 40 MG capsule

Level of Service

PR OFFICE OUTPATIENT VISIT 15 MINUTES
[99213]

All Flowsheet Templates (all recorded)

Encounter Vitals Flowsheet
Custom Formula Data Flowsheet
Anthropometrics Flowsheet

Patient Education

Patient Education Report

Referring Provider

Nicholas Hamner Tuttle, MD

All Charges for This Encounter

Code	Description	Service Date	Service Provider	Modifiers	Qty
99213	PR OFFICE OUTPATIENT VISIT 15 MINUTES	9/11/2014	Nicholas Hamner Tuttle, MD		1
3017F	COLORECTAL CA SCREEN DOC REV	9/11/2014	Nicholas Hamner Tuttle, MD		1
G8419	PR CALC BMI OUT NRM PARAM NOF/U	9/11/2014	Nicholas Hamner Tuttle, MD		1
G8427	PR DOC CUR MEDS BY PROV	9/11/2014	Nicholas Hamner Tuttle, MD		1
G8732	PR NO DOC OF PAIN	9/11/2014	Nicholas Hamner Tuttle, MD		1
G8432	PR CLIN DEPRESSION SCREEN NOT D	9/11/2014	Nicholas Hamner Tuttle, MD		1
1036F	TOBACCO NON-USER	9/11/2014	Nicholas Hamner Tuttle, MD		1

Other Encounter Related Information

Allergies & Medications

Problem List

History

Patient-Entered Questionnaires

SmartForms

Diabetes
CHF

Barry S Adickes
2/4/2014 10:15 AM Office Visit
MRN: 52372471

Description: Male DOB: 8/12/1961
Provider: Nicholas Hamner Tuttle, MD
Department: Rhfp Family Medicine

Diagnoses

Bronchitis - Primary
490
Cervical myofascial strain
847.0
Special screening for malignant neoplasm of prostate
V76.44
Health care maintenance
V70.9

Reason for Visit

Labs
PSA and chlorestrol

Vitals - Last Recorded

BP	Pulse	Temp(Src)	Ht	Wt	BMI
121/79	55	98 °F (36.7 °C) (Oral)	5' 9" (1.753 m)	192 lb (87.091 kg)	28.34 kg/m2

Progress Notes

Nicholas Hamner Tuttle, MD at 2/5/2014 5:54 PM

Status: Signed

Patient ID

Barry Adickes is a 52 y.o. year old (DOB 8/12/1961) male.

Chief Complaint

Patient presents with

- Labs
PSA and chlorestrol

History of Present Illness

Patient is in today with a history of coughing for the last week, worse at night, with mucoid sputum production. He denies fever, chills or wheezing. He did receive a flu vaccine this year. He has been sleeping on his couch over the last several nights and has developed right neck pain. There are no radicular symptoms.

Patient Active Problem List

Diagnosis

- GERD (gastroesophageal reflux disease)

History Review

History of traumatic brain injury, 3/2011, followed by Dr. Mandell, neurologist, with history of posttraumatic headache syndrome and post-concussive syndrome. He is now off of his Zonisamide. He takes occasional Imitrex injection and Naprosyn for headaches. He is maintained on Corgard 40 mg daily at this time for migraine prevention. He is status post ablation to his right occipital nerve by the pain clinic just this past month with good success.

History of elevated PSA values in the past. He was seen by me for this condition in 2009. He had elevated PSA for several years, 2006 - 2009. He had a PSA of 4.1 and treated in 11/2007 for one month with antibiotics. He had a repeat PSA of 3.9. PSA in 11/2012 was 2.2. He has been followed by Dr. Ezell for several years. He has had two prostate biopsies both returning negative for prostate CA. He was seen by a urologist at John's Hopkin's in Baltimore in 2007, a prostate CA specialist, who recommended prostate surgery. Patient declined. He denies a significant history of BPH, nocturia, decreased stream, or any erectile

dysfunction. Patient has had no testicular swelling. He also would like to have a PSA, lipid profile and labs today.

Past Medical, Surgical, Family, Social History

Reviewed and updated per encounter.

Allergies

Allergen

- Codeine

Reactions

Unknown

Review of Systems

PULMONARY: Denies asthma or pneumonia.

CARDIAC: No hypertension.

Physical Examination

BP 121/79 | Pulse 55 | Temp(Src) 98 °F (36.7 °C) (Oral) | Ht 5' 9" (1.753 m) | Wt 192 lb (87.091 kg) | BMI 28.34 kg/m²

GENERAL: Patient in no acute distress.

HEENT: Nares show pale mucosa. Pharynx is slightly red. TMs are clear.

NECK: Supple; no bruits, thyromegaly, or adenopathy. He is slightly tender over the right trapezius cervical spine area. He has a negative Spurling's maneuver.

LUNGS: Clear.

HEART: Regular sinus rhythm without murmur, gallop or rub.

GU: Exam is deferred.

Assessment

1. Bronchitis
2. Right cervical myofascial strain with history of some underlying osteoarthritis and recent ablation by pain clinic
3. Elevated PSA in the past with negative prostate biopsy x 2 by Dr. Ezeil, urologist.

Plan

Discussed:

Medications prescribed today.

Check PSA and lipid profile.

Ice to neck.

Follow-up with results.

Patient's Medications

New Prescriptions

AZITHROMYCIN (ZITHROMAX Z-PAK)
250 MG TABLET

Take 2 tablets (500 mg) on Day 1,
followed by 1 tablet (250 mg) once daily
on Days 2 through 5.

HYDROCODONE-HOMATROPINE
(HYCODAN) 5-1.5 MG/5 ML SYRUP

5cc po q hs prn cough

Previous Medications

ESOMEPRAZOLE (NEXIUM) 40 MG
CAPSULE

Take 40 mg by mouth 30 (thirty) minutes
before breakfast.

FROVA 2.5 MG TABLET

IBUPROFEN (ADVIL, MOTRIN) 800 MG
TABLET

Take 800 mg by mouth 3 (three) times a
day as needed.

NADOLOL (CORGARD) 40 MG TABLET
 NAPROXEN (NAPROSYN) 500 MG
 TABLET
 NORTRIPTYLINE (PAMELOR) 10 MG Take 10 mg by mouth at bedtime,
 CAPSULE
 SUMATRIPTAN (IMITREX) 6 MG/0.5ML
 SOLN

Modified Medications

No medications on file

Discontinued Medications

CHERATUSSIN AC 100-10 MG/5ML
 SYRUP

Orders Placed This Encounter

Procedures

- PSA
- Lipid panel

Risks, benefits, and alternatives of the medications and treatment plan prescribed today were discussed, and patient expressed understanding. Follow-up as discussed or as needed if any worsening symptoms or change in condition.

Revision History

Not recorded

Medications Ordered This Encounter

	Disp	Refills	Start	End
azithromycin (ZITHROMAX Z-PAK) 250 MG tablet	6 tablet	0	2/4/2014	2/9/2014
Take 2 tablets (500 mg) on Day 1, followed by 1 tablet (250 mg) once daily on Days 2 through 5.				
hydrocodone-homatropine (HYGODAN) 5-1.5 mg/5 mL syrup (Discontinued)	120 mL	0	2/4/2014	9/11/2014
5cc po q hs prn cough				

Discontinued Medications

Reason for Discontinue

CHERATUSSIN AC 100-10 MG/5ML
 syrup

Orders Placed This Encounter

Lipid panel [LAB18 Custom]
 PSA [LAB116 Custom]

Future Labs/Procedures

Lipid panel [LAB18 Custom]

Expected by: As directed

Expires: 2/4/2015

PSA [LAB116 Custom]

Expected by: As directed

Expires: 2/4/2015

Results are available for this encounter

Level of Service

PR OFFICE OUTPATIENT VISIT 15 MINUTES
[99213]

Follow-up and Disposition

Routing History Recorded

All Flowsheet Templates (all recorded)

Encounter Vitals Flowsheet

Custom Formula Data Flowsheet

Anthropometrics Flowsheet

Vital Signs Flowsheet

Patient Education

Patient Education Report

All Charges for This Encounter

Code	Description	Service Date	Service Provider	Modifiers	Qty
99213	PR OFFICE OUTPATIENT VISIT 15 MINUTES	2/4/2014	Nicholas Hamner Tuttle, MD		1
84153	ASSAY OF PSA TOTAL	2/4/2014	Nicholas Hamner Tuttle, MD		1
80061	LIPID PANEL	2/4/2014	Nicholas Hamner Tuttle, MD		1

Other Encounter Related Information

Allergies & Medications

Problem List

History

Patient-Entered Questionnaires

SmartForms

Diabetes

CHF

Results

PSA (Lab ID/Accession # 03507653360) (Order 88825042)

Department

Name	Address	Phone	Fax
Novant Health Rock Hill Family Medicine	1435 Ebenezer Road Rock Hill SC 29732-2338	803-328-3828	803-328-3879

Provider Information

Ordering User	Authorizing Provider
Nicholas Hamner Tuttle, MD	Nicholas Hamner Tuttle, MD
PCP	Billing Provider
Nicholas Hamner Tuttle, MD	Nicholas Hamner Tuttle, MD

PSA (Lab ID/Accession # 88825042L) (Order 88825042)

PSA

Status: Final result Visible to patient: This result is not viewable by the patient. Next appt: None
Dx: Special screening for malignant neopl...

PSA	Range	7mo ago	1yr ago
	0.0 - 4.0 ng/mL	2.2	2.2 cm

Comments: Roche ECLIA methodology.

According to the American Urological Association, Serum PSA should decrease and remain at undetectable levels after radical prostatectomy. The AUA defines biochemical recurrence as an initial PSA value 0.2 ng/mL or greater followed by a subsequent confirmatory PSA value 0.2 ng/mL or greater.

Values obtained with different assay methods or kits cannot be used interchangeably. Results cannot be interpreted as absolute evidence of the presence or absence of malignant disease.

Resulting Agency	01	LabCorp

Result Narrative

Performed at: 01 - LabCorp Burlington
1447 York Court, Burlington, NC 272153361
Lab Director: William F Hancock MD, Phone: 8007624344

Specimen Collected:	Last Resulted:	Lab Flowsheet Order Details View Encounter Lab
02/04/14 11:00 AM	02/05/14 9:41 AM	and Collection Details Routing Result History

CM=Additional comments

Other Results from 2/4/2014**Lipid panel**

Status: Final result Visible to patient: This result is not viewable by the patient. Next appt: None
Dx: Health care maintenance

	Value	Range
Cholesterol, Total	228 (H)	100 - 199 mg/dL
Triglycerides	235 (H)	0 - 149 mg/dL
HDL	36 (L)	>39 mg/dL

Comments: According to ATP III Guidelines, HDL-C >59 mg/dL is considered a negative risk factor for CHD.

VLDL Cholesterol Cal	47 (H)	5 - 40 mg/dL
LDL Calculated	145 (H)	0 - 99 mg/dL

Resulting Agency	01

Result Narrative

Performed at: 01 - LabCorp Burlington

1447 York Court, Burlington, NC 272153361
Lab Director: William F Hancock MD, Phone: 8007624344

Specimen Collected: 02/04/14 11:00 AM Last Resulted: 02/05/14 9:41 AM [Lab Flowsheet](#) [Order Details](#) [View Encounter](#) [Lab and Collection Details](#) [Routing](#) [Result History](#)

Reviewed by List

Nicholas Hamner Tuttle, MD on 2/6/2014 2:07 PM

Encounter

[View Encounter](#)

Result Information

Status

Final result (2/5/2014 9:41 AM)

Provider Status: Reviewed

Lab Information

LABCORP

Additional Information

Specimen ID	03507653360	Bill Type	Client	Client ID	32807965
Specimen Date Taken	Feb 4, 2014	Specimen Time Taken	11:00 AM	Specimen Received Date	Feb 4, 2014
		Specimen Received Time	8:33 PM	Result Date	Feb 5, 2014
				Result Time	9:41 AM

Patient Information

Patient Name	Adickes, Barry S	Sex	Male	DOB	8/12/1961	SSN	xxx-xx-7784

PSA (Order

88825042)

Lab

Order: 88825042

Released By: Taiwana Gordon

Authorizing: Nicholas Hamner
Tuttle, MD

Date: 2/4/2014

Department: Novant Health Rock Hill
Family Medicine

Order Information

Order Date/Time	02/04/14 10:50 AM	Release Date/Time	02/04/14 11:00 AM	Start Date/Time	2/4/2014	End Date/Time	None

Order Details

Frequency	None	Duration	None	Priority	Routine	Order Class	CB Clinic Collect

Associated Diagnoses

Special screening for malignant neoplasm of prostate

Quest Reprint Requisition

PSA (Order #88825042) on 2/4/14

Solstas Reprint Requisition

PSA (Order #88825042) on 2/4/14

LabCorp Reprint Requisition

PSA (Order #88825042) on 2/4/14

Collection Information

Collected: 2/4/2014 11:00 AM	Resulting Agency: LABCORP

Original Order

Ordered On Tue Feb 4, 2014 10:50 AM	Ordered By Nicholas Hamner Tuttle, MD

ABN Associated with this Order

There is no ABN associated with this order.

Results

Lipid panel (Lab ID/Accession # 03507653360) (Order 88825043)

Department

Name	Address	Phone	Fax
Novant Health Rock Hill Family Medicine	1435 Ebenezer Road Rock Hill SC 29732-2338	803-328-3828	803 328-3879

Provider Information

Ordering User	Authorizing Provider
Nicholas Hamner Tuttle, MD	Nicholas Hamner Tuttle, MD
PCP	Billing Provider
Nicholas Hamner Tuttle, MD	Nicholas Hamner Tuttle, MD



Lipid panel (Lab ID/Accession # 88825042L) (Order 88825043)

Lipid panel

Status: Final result Visible to patient: This result is not viewable by the patient. Next appt: None
Dx: Health care maintenance

	Value	Range
Cholesterol, Total	228 (H)	100 - 199 mg/dL
Triglycerides	235 (H)	0 - 149 mg/dL
HDL	36 (L)	>39 mg/dL
Comments: According to ATP III Guidelines, HDL-C >59 mg/dL is considered a negative risk factor for CHD.		
VLDL Cholesterol Cal	47 (H)	5 - 40 mg/dL
LDL Calculated	146 (H)	0 - 99 mg/dL
Resulting Agency	01	

Result Narrative

Performed at: 01 - LabCorp Burlington
1447 York Court, Burlington, NC 272153361
Lab Director: William F Hancock MD, Phone: 8007624344

Specimen Collected: 02/04/14 11:00 AM Last Resulted: 02/05/14 9:41 AM [Lab Flowsheet](#) [Order Details](#) [View Encounter](#) [Lab and Collection Details](#) [Routing](#) [Result History](#)

Other Results from 2/4/2014**PSA**

Status: Final result Visible to patient: This result is not viewable by the patient. Next appt: None
Dx: Special screening for malignant neopl...

	Range	7mo ago	1yr ago
PSA	0.0 - 4.0 ng/mL	2.2	2.2 cm
Comments: Roche ECLIA methodology. According to the American Urological Association, Serum PSA should decrease and remain at undetectable levels after radical prostatectomy. The AUA defines biochemical recurrence as an initial PSA value 0.2 ng/mL or greater followed by a subsequent confirmatory PSA value 0.2 ng/mL or greater. Values obtained with different assay methods or kits cannot be used interchangeably. Results cannot be interpreted as absolute evidence of the presence or absence of malignant disease.			

Resulting Agency 01 LabCorp
Result Narrative

Performed at 01 LabCorp Burlington
1447 York Court, Burlington, NC 272153361
Lab Director: William F Hancock MD, Phone: 8007624344

Specimen Collected: 02/04/14 11:00 AM Last Resulted: 02/05/14 9:41 AM
CM=Additional comments

[Lab Flowsheet](#) [Order Details](#) [View Encounter](#) [Lab and Collection Details](#) [Routing](#) [Result History](#)

Order Questions

Question	Answer	Comment
Has the patient fasted?	Yes	

Reviewed by List

Nicholas Hamner Tuttle, MD on 2/6/2014 2:07 PM

Encounter

[View Encounter](#)

Result Information

Abnormal

Status: Final result (2/5/2014 9:41 AM)
Provider Status: Reviewed

Lab Information

LABCORP

Additional Information

Specimen ID	03507653360	Bill Type	Client	Client ID	32807965
Specimen Date Taken	Feb 4, 2014	Specimen Time Taken	11:00 AM	Specimen Received Date	Feb 4, 2014
		Specimen Received Time	8:33 PM	Result Date	Feb 5, 2014
				Result Time	9:41 AM

Patient Information

Patient Name	Adickes, Barry S	Sex	Male	DOB	8/12/1961	SSN	xxx-xx-7784

Lipid panel (Order 88825043)

Lab	Released By: Taiwana Gordon	Date: 2/4/2014
Order: 88825043	Authorizing: Nicholas Hamner Tuttle, MD	Department: Novant Health Rock Hill Family Medicine

Order Information

Order Date/Time	Release Date/Time	Start Date/Time	End Date/Time
02/04/14 10:50 AM	02/04/14 11:00 AM	2/4/2014	None

Order Details

Frequency	Duration	Priority	Order Class
None	None	Routine	CB Clinic Collect

Associated Diagnoses

Health care maintenance

Order Questions

Question	Answer	Comment
Has the patient fasted?	Yes	

Quest Reprint Requisition

[LIPID PANEL \(Order #88825043\) on 2/4/14](#)

Solstas Reprint Requisition

LIPID PANEL (Order #88825043) on 2/4/14

LabCorp Reprint Requisition

LIPID PANEL (Order #88825043) on 2/4/14

Collection Information

Collected: 2/4/2014 11:00 AM

Resulting LABCORP
Agency.

Original Order

Ordered On

Tue Feb 4, 2014 10:50 AM

Ordered By

Nicholas Hamner Tuttle, MD

ABN Associated with this Order

There is no ABN associated with this order.

Results

PSA (Lab ID/Accession # 32407653690) (Order 26321676)

DepartmentName
epic conversions**Provider Information**Ordering User
Labcorp Lab Results In InterfaceAuthorizing Provider
Epic Z Conversion

PSA (Lab ID/Accession # 116312) (Order 26321676)

PSA**Status: Final result** **Visible to patient: This result is not viewable by the patient.** **Next appt: None**

	Value	Range
PSA	2.2	0.0 - 4.0 ng/mL

Comments: Roche ECLIA methodology.

According to the American Urological Association, Serum PSA should decrease and remain at undetectable levels after radical prostatectomy. The AUA defines biochemical recurrence as an initial PSA value 0.2 ng/mL or greater followed by a subsequent confirmatory PSA value 0.2 ng/mL or greater.

Values obtained with different assay methods or kits cannot be used interchangeably. Results cannot be interpreted as absolute evidence of the presence or absence of malignant disease.

Resulting Agency LabCorp

Result Narrative

Performed at: 01 - LabCorp Burlington
1447 York Court, Burlington, NC 272153361
Lab Director: William F Hancock MD, Phone: 8007624344

Specimen Collected:
11/19/12 2:48 PMLast Resulted: 11/20/12
5:42 AM[Lab Flowsheet](#) [Order Details](#) [View Encounter Lab](#)
[and Collection Details](#) [Routing](#) [Result History](#)**Encounter**[View Encounter](#)**Result Information**

Status

Final result (11/20/2012 5:42 AM)

Provider Status: Ordered

Lab Information

LABCORP

Additional InformationSpecimen ID
32407653690

Bill Type

Client ID

Specimen Date
Taken
Nov 19, 2012Specimen Time
Taken
2:48 PMSpecimen
Received Date
Nov 19, 2012Specimen
Received Time
7:17 PMResult Date
Nov 20, 2012Result Time
5:42 AM**Patient Information**Patient Name
Adickes, Barry SSex
MaleDOB
8/12/1961SSN
xxx-xx-7784**PSA (Order
26321676)**

Lab

Order: 26321676

Ordering: Labcorp Lab Results In
Interface

Authorizing: Epic Z Conversion

Date: 11/19/2012
Department: epic
conversions

Order Information

Order Date/Time	Release Date/Time	Start Date/Time	End Date/Time
11/19/12 12:00 AM	None	11/19/12 12:00 AM	None

Order Details

Frequency	Duration	Priority	Order Class
None	None	Routine	Normal

Quest Reprint Requisition

PSA (Order #26321676) on 11/19/12

Solstas Reprint Requisition

PSA (Order #26321676) on 11/19/12

LabCorp Reprint Requisition

PSA (Order #26321676) on 11/19/12

Collection Information

Collected: 11/19/2012 2:48 PM	Resulting LABCORP Agency:

Comments

Order ed by N TUTTLE

ABN Associated with this Order

There is no ABN associated with this order.

ROCK HILL FAMILY PRACTICE ASSOCIATES
1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

PatientID: 18283BA
Patient Name: BARRY S ADICKES
Date of Birth: [REDACTED] 1961

Date of service: 11/19/2012

PSA test

He is in today with history of some elevated PSA values in the past. Was last seen by me for this condition in 2009. He had elevated PSA for several years, from 2006 to 2009. He had a PSA of 4.1 treated in 11/2007. He was treated with antibiotics for a month with repeat PSA of 3.9. He has been followed by Dr. Ezell for several years. He had two prostate biopsies with both returning negative for prostate CA. He was seen by a urologist at John's Hopkins in Baltimore who was a prostate CA specialist. He recommended prostate surgery but patient declined. He denies history of BPH, denies nocturia, decreased stream or any erectile dysfunction. He denies problems with testicular swelling at this time. His PSA was 1.9 in 1/2009.

Traumatic brain injury, 3/2011, followed by neurologist, Dr. Mandell, with history of posttraumatic headache syndrome and post-concussive syndrome, stable on Zonisamide daily, Motrin prn for headache, Maxalt prn for headache.

CODEINE DERIVATIVES

MOTRIN ORAL TABLET 800 MG, 1 THREE TIMES DAILY with food
NORTRIPTYLINE HCL ORAL CAPSULE CONVENTIONAL 10 MG, 1 Every Day At Bedtime
ZONISAMIDE ORAL CAPSULE CONVENTIONAL 100 MG, 1 EVERY DAY AT BEDTIME
NEXIUM ORAL CAPSULE DELAYED RELEASE 40 MG, 2 A Day

No smoking.
No significant ETOH use.

ROCK HILL FAMILY PRACTICE ASSOCIATES

1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

PatientID: 18283BA
Patient Name: BARRY S ADICKES
Date of Birth: 07/13/1961

Date of service: 11/19/2012

GENERAL: In no acute distress. VITAL SIGNS: Per above. LUNGS: Clear. HEART: Regular sinus rhythm without murmur, gallop or rub. ABDOMEN: Soft, nontender. GU: Exam is deferred since patient needs PSA today.

1. Elevated PSA in the past with last PSA in 2009 being normal status post two negative prostate biopsies in the past by Dr. Ezell.
2. Traumatic brain injury with posttraumatic headache syndrome and post-concussive syndrome, stable, followed by neurology since 3/2011.

Check PSA. Will follow-up with results.

NHT:bf

First Print Date: 05/01/2013 5:09 pm
Reprint Date: 09/22/2014 9:40 am

ADICKES, BARRY S

137 HUMMINGBIRD LN
ROCK HILL, SC 29732

Ordering NICHOLAS H TUTTLE

Order # 116312

Specimen Collection Date: 11/19/2012 2:48 pm

Order Comments

Tests Ordered Drawing Fee - 996660; J01828 - ROCK HILL FAMILY PRACTICE; Prostate-Specific Ag, Serum - 010322

RHFP
1435 EBENEZER ROAD
ROCK HILL, SC 29732
(803) 328-3828

Patient ID/# 18283BA

SSN xxx-xx-xxxx

Home Phone (803) 370-1673

Work Phone () x

Referring

Order Service Date 11/19/2012 2:43 pm

Order Status: All Results Signed

11/20/2012 11:40 am

DOB [REDACTED] 1961 Age 51 years Gender Male

Fasting No

Copy To

LIS Order Accession # 32407653690

Order Sent To LIS 11/19/2012 2:54 pm

TEST DESCRIPTION	RESULTS	REFERENCE RANGE	UNITS	Result Status: FINAL
Prostate-Specific Ag, Serum - 010322				
Test Ordered Date: 11/19/2012 2:43 pm		Result Date: 11/20/2012 4:57 am		
Performing Lab: 2		Test Status: Complete		
		Test Accession #: 32407653690		
Prostate Specific Ag, Serum - 010334	2.2	0.0 - 4.0	ng/mL	

Roche ECLIA methodology.
According to the American Urological Association, Serum PSA should decrease and remain at undetectable levels after radical prostatectomy. The AUA defines biochemical recurrence as an initial PSA value 0.2 ng/mL or greater followed by a subsequent confirmatory PSA value 0.2 ng/mL or greater.
Values obtained with different assay methods or kits cannot be used interchangeably. Results cannot be interpreted as absolute evidence of the presence or absence of malignant disease.

THE BENEFITS AND RISKS WERE DISCUSSED IN DETAIL THE PATIENT WANTS THE STUDY
FINAL: Electronically signed by Nicholas H. Tuttle, MD on 11/20/2012 11:40 am

Tests Performed At 2 LABCORP

Ph: Lab Director

CLIA:

Page 1 of 1

ROCK HILL FAMILY PRACTICE ASSOCIATES

1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

PatientID: 18283BA
Patient Name: BARRY S ADICKES
Date of Birth: 01/19/1961

Date of service: 04/19/2012

AGE: 50 YRS

VITAL SIGNS:

VS-TEMPERATURE: 98.7°f Oral
VS-BLOOD PRESSURE: 122/80 Left Arm Sitting
VS-HEIGHT: 5ft9in
VS-WEIGHT: 186lbs
BMI: 27.46

Performed By: Takisha M. Burris, CMA, AB

CHIEF COMPLAINT: Complains of blood in the stool.

HISTORY OF PRESENT ILLNESS:

50 year old white male with history of rectal bleeding x 3 episodes associated with a churning sensation in his abdomen. There was no severe pain in his abdomen. He had no nausea or vomiting. He states his stools have been loose and bloody x 3. He denies rectal pain, hemorrhoids. He denies fever, chills. He has not had this in the past. He has had a colonoscopy in the past. He eats fiber and says he has always had normal bowel movements and is very regular. He denies syncope.

PAST MEDICAL HISTORY:

Posttraumatic brain injury last year from motor vehicle accident. History of posttraumatic headache syndrome and post-concussive syndrome. Took Motrin and Naprosyn, as much as 2000 mg. a day for six months. Has not taken any until last week when he took five days worth of ibuprofen for headache. He has not taken ibuprofen in the last five days.

CURRENT ALLERGY LIST:

CODEINE DERIVATIVES

CURRENT MEDICATION LIST:

MOTRIN ORAL TABLET 800 MG, 1 THREE TIMES DAILY with food
NORTRIPTYLINE HCL ORAL CAPSULE CONVENTIONAL 10 MG, 1 Every Day At Bedtime
ZONISAMIDE ORAL CAPSULE CONVENTIONAL 100 MG, 1 EVERY DAY AT BEDTIME

SOCIAL HISTORY:

No smoking.
No significant ETOH use.

1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

Date of service: 04/19/2012

GENERAL: In no acute distress. VITAL SIGNS: Per above. LUNGS: Clear. HEART: Regular sinus rhythm without murmur, gallop or rub. ABDOMEN: Soft, nontender. GU: Anorectal exam shows no fissure, no hemorrhoids. There is some blood tinged stool on my finger which is heme positive.

LOT #: 1109499
Performed By: Takisha M. Burris, CMA, AB

Nexium 40 mg. 2 now and tomorrow, then one a day for 2 weeks, samples given. Refer to GI tomorrow ASAP for further evaluation and treatment.

Electronically Signed by: Nicholas H. Tuttle, MD on Friday, April 20, 2012 at 12:54 pm

ROCK HILL FAMILY PRACTICE ASSOCIATES

1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

PatientID: 18283BA
Patient Name: BARRY S ADICKES
Date of Birth: 03/12/1961

Date of service: 03/30/2011

AGE: 49 YRS

VITAL SIGNS:

VS-TEMPERATURE: 98.9°f Oral
VS-BLOOD PRESSURE: 112/76 Left Arm Sitting
VS-HEIGHT: 5ft9in
VS-WEIGHT: 190lbs
BMI: 28.06
Large cuff.
Performed By: Amyree Yarborough, RN

CHIEF COMPLAINT: Here for follow up evaluation. Concussion w/ continued headache, nausea/ Vision issues have resolved in last couple of days

HISTORY OF PRESENT ILLNESS:

Patient is in for follow-up of his recent motor vehicle accident with a grade II to III concussion. Patient has a history of posttraumatic headaches and post-concussive syndrome. This accident occurred the night of March 22, 2010, see note. Patient is currently using ibuprofen and Lortab at night. Lortab has not been successful in controlling these headaches. He admits to some nausea at this time also. He is taking ibuprofen 800 mg. tid. He admits to some problems with insomnia but is napping some during the day. He denies any significant problems with cognitive issues per his report. He has not driven since the accident. He has been resting at my request.

He has a history of left shoulder contusion with probable grade I AC separation. X-rays from Dr. Rentz were negative for any fracture. He is status post surgery for torn rotator cuff of his left shoulder four years ago. History of various abrasions on his ear, elbows, left biceps and right lower leg which are healing at this time. See extensive note per above.

Patient admits to a hiatal hernia in the past.

CURRENT ALLERGY LIST:

CODEINE DERIVATIVES

CURRENT MEDICATION LIST:

VICODIN ORAL TABLET 5-500 MG, 1 q hs for pain
MOTRIN ORAL TABLET 800 MG, 1 THREE TIMES DAILY with food

IMMUNIZATIONS:

on 03/30/2011, Influenza Vaccine Not Administered because Personal Reason.
on 03/30/2011, Tetanus and Diphtheria Toxoids Vaccine Not Administered because Personal Reason.

ROCK HILL FAMILY PRACTICE ASSOCIATES

1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

PatientID: 18283BA
Patient Name: BARRY S ADICKES
Date of Birth: 01/01/1961

Date of service: 03/30/2011

SOCIAL HISTORY:

TOBACCO USE: Has no smoking history.

ALCOHOL: Does not give any significant history of alcohol usage.

REVIEW OF SYSTEMS:

GU: Denies any problems with urination. PULMONARY: No asthma or chest pain. CARDIAC: Denies chest pain. GI: Per above note. ORTHO: Per above. PSYCH: No history of depression in the past. NEURO: No history of migraine headaches in the past. Has had concussions x 2 in the past before this concussion. He is accompanied by his wife.

PHYSICAL EXAM:

GENERAL: In no acute distress. VITAL SIGNS: Per above. HEENT: EOMI. Nares clear. Pharynx is clear. TMs are clear. Neck is supple, no bruits, thyromegaly or adenopathy. LUNGS: Clear. HEART: Regular sinus rhythm without murmur, gallop or rub. ABDOMEN: Soft, nontender. EXTREMITIES: No edema. SKIN: He has an abrasion to the left ear which is healed and his forearm abrasions have healed. He has a contusion with ecchymosis of his left biceps and shoulder area. NEURO: No focal findings. He is tender over the left parietal aspect of his scalp.

LAB REVIEW:

CT scan of his head was negative for fracture or bleed done at PMC on 3/23/11.

ASSESSMENT/PLAN:

1. Post-concussive syndrome with posttraumatic headache.
2. Nausea secondary to above.
3. History of hiatal hernia. At risk for NSAID gastritis.
4. Left shoulder contusion. Probable AC separation, stable.
5. Multiple abrasions and contusion, resolving.

Recommend Nexium 40 mg. one a day for 2 weeks, sample given. Then start Prilosec OTC when using high-dose Motrin. Continue Motrin 800 mg. tid. May stop Lortab if not successful. Add melatonin 300 mg. one at night to help with sleep. Add Nortriptyline 10 mg. one at night, #30 with 12 refills.

Refer to Dr. Mandell for further evaluation.

Recommend short-term disability for at least one more month.

NHT:bf

Electronically Signed by: Nicholas H. Tuttle, MD on Thursday, April 07, 2011 at 06:16 pm

ROCK HILL FAMILY PRACTICE ASSOCIATES

1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

PatientID: 18283BA
Patient Name: BARRY S ADICKES
Date of Birth: 01/12/1961

Date of service: 03/24/2011

AGE: 49 YRS

VITAL SIGNS:

VS-TEMPERATURE: 100.1°f Oral
VS-BLOOD PRESSURE: 112/80 Left Arm Sitting
VS-HEIGHT: 5ft9in
VS-WEIGHT: 187lbs
BMI: 27.61
Large cuff.
Performed By: Donna S. Bragg, RMA

CHIEF COMPLAINT: Follow up on MVA

HISTORY OF PRESENT ILLNESS:

Patient was involved in a motor vehicle accident on Tuesday night around 8:00 to 8:30. He states he was in Morganton, NC on a work related mission and was apparently driving on highway 181, a mountainous type highway, in a small SUV going approximately 45 mph. He went around a very sharp curve and actually went over the guard-rail with his vehicle which apparently cork-screwed through the trees on a 60 degree embankment. He went approximately 100 feet down into a gully/ravine and was apparently knocked unconscious. When he woke it was dark and felt he suffered an injury to his shoulder. He says he couldn't move his shoulder and felt some stiffness. He popped his shoulder back into place, per his report, lying at an angle in his vehicle. He realized that he was not seriously injured otherwise and fell back asleep. Upon awakening again, it was dark but was able to use some light from his GPS navigator to find his cell phone. He was able to contact 911 and they arrived on the scene within 15 minutes. Initially they were unable to see the vehicle in the gully/ravine. His rescue required repelling and mountain gear to extract him from the scene. He was then transported to the ER via 911. All his vital signs were stable. He had no severe neck pain or back pain, but had some pain in his left shoulder and had multiple abrasions on his arms, forearms, and right leg. No lacerations. There was broken glass everywhere which was removed from his body. He was told in the ER that he needed to be admitted for further observation, for a CT scan and other x-rays. He declined this and signed a waiver. He then went to the Comfort Inn in Morganton waiting for his wife to pick him up. He showered and fell asleep there and she picked him up at approximately 10:00 yesterday morning and drove him back. In driving back to Rock Hill he had a severe headache and vomited x 3. He was then brought home and saw Dr. Rentz, a neighbor, in his orthopaedic office in Rock Hill. He had x-rays of his C-spine, left shoulder, clavicle and left third finger all of which were negative for fractures. Patient was noted to have some bruising in his left biceps area and the abrasions of his arms and right leg as noted above. He also had an abrasion of his left ear.

ROCK HILL FAMILY PRACTICE ASSOCIATES

1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

PatientID: 18283BA

Patient Name: BARRY S ADICKES

Date of Birth: [REDACTED] 1961

Date of service: 03/24/2011

He admits to headache but was able to sleep last night. He has tried ibuprofen for pain relief. He admits to just stiffness in his total body but otherwise denies any severe neck or back pain. He has pain in his left shoulder with some stiffness and bruising to his left biceps area. He denies chest wall pain, abdominal pain, or any pain in his hips or legs of significance. He denies any dizziness or vertigo symptoms at this time. His headache is mostly in the left parietal aspect of his scalp. He was able to extract some glass from his face and ears during his shoulder at the Comfort Inn yesterday morning in Morganton, NC. He denies any hearing loss or visual problems.

PAST MEDICAL HISTORY:

Left rotator cuff shoulder surgery done four years ago.

CURRENT ALLERGY LIST:

CODEINE DERIVATIVES but he can tolerate Vicodin without problems.

CURRENT MEDICATION LIST:

FAMILY HISTORY:

Noncontributory.

SOCIAL HISTORY:

TOBACCO USE: Has no smoking history.

ALCOHOL: Does not give any significant history of alcohol usage.

REVIEW OF SYSTEMS:

GU: Denies any hematuria. PULMONARY: Denies cough or chest wall pain of significance.

CARDIAC: Denies hypertension. ORTHO: Per above. PSYCH: No history of depression. NEURO:

Concussions x 2 in high school. Was briefly knocked unconscious while playing football. This was brief per his report. No history of chronic headaches or migraine headaches.

ROCK HILL FAMILY PRACTICE ASSOCIATES

1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

PatientID: 18283BA
Patient Name: BARRY S ADICKES
Date of Birth: [REDACTED] 1961

Date of service: 03/24/2011

PHYSICAL EXAM:

GENERAL: In no acute distress. **VITAL SIGNS:** Per above. **HEENT:** EOMI. Nares clear. Pharynx is clear. TMs are clear. No glass is seen in the ear canals. He has some abrasions, dried blood, on his left outer ear. There is an abrasion to his left sternoclavicular area from the seatbelt. There is no swelling. He has full range of motion of this area. **LUNGS:** Clear. **CHEST:** Chest wall is nontender. **HEART:** Regular sinus rhythm without murmur, gallop or rub. **ABDOMEN:** Soft, nontender. Pelvic area is nontender on exam. **EXTREMITIES/ MUSCULOSKELETAL:** Hips and knees show full range of motion, nontender. Ankles are nontender. He has a wound to his right lower leg which is not bleeding; no signs of secondary infection. Both forearms show some abrasions but they are not infected or bleeding at this time. Elbows and wrists show full range of motion. Left shoulder shows some tenderness to palpation with some ecchymosis noted around the left biceps medial area but no signs of any torn biceps. He has normal strength. Left shoulder shows mild stiffness with full abduction and some pain with abduction, but there is full abduction noted. Back shows mild tenderness of the C-spine, T-spine and L-spine, but no significant pain. He has full range of motion. **NEURO:** Cranial nerves 2-12 are intact. Motor is 5/5, upper and lower extremities. Reflexes are 2+ and equal. Sensory is intact to light touch. **MENTAL STATUS:** Patient is alert and oriented x 3. He complains of headache. Palpation of the scalp shows tenderness of the left parietal area of his scalp but no crepitus or significant hematoma is noted on my exam.

LAB REVIEW:

CT scan of his head was obtained at my request yesterday at PMC at 6:00. The report is negative for fracture or any intracranial bleeding per the radiologist.

X-rays of the left shoulder, C-spine, and left index finger were negative per Dr. Rentz's office.

ASSESSMENT/PLAN:

Motor vehicle accident with:

1. Concussion, grade II-III.
2. Post-concussive syndrome.
3. Headaches secondary to above.
4. Left parietal contusion of scalp.
5. Left shoulder contusion with probable subluxation that was spontaneously reduced by patient.
6. Multiple abrasions of forearms and right lower legs.

Vicodin 1 at night, #15 with no refill. Take Ibuprofen during the day.

No alcohol. No hard impact exercise. May walk for exercise.

Follow-up with me on Wednesday for further evaluation. Patient will be accompanied by his wife at that time.

NHT:bf

ROCK HILL FAMILY PRACTICE ASSOCIATES

1435 EBENEZER RD.
ROCK HILL, SC 29732
OFFICE PHONE (803) 328-3828
FAX (803) 328-3879

PatientID: 18283BA
Patient Name: BARRY S ADICKES
Date of Birth: [REDACTED] 1961

Date of service: 03/24/2011

Electronically Signed by: Nicholas H. Tuttle, MD on Wednesday, March 30, 2011 at 05:27 pm

OCT-13-2014 12:23 From:

To: Call Care Management P.2/3

Radiology Reports

Page 1 of 2

Metrolina Diagnostic Center
127 Professional Park Dr.
Rock Hill, SC 29732
Phone: (803) 329-8635
Fax:

Name:	BARRY ADICKES	Exam Date:	10/10/2014
Patient ID:	M107888	Exam:	MRI JOINT UPR EXTREM W/O CONTRAST
DOB:	██████-██-██	Reason:	719.91 - JOINT DIS NOS-SHLDER 719.91
Phone:		Referrer:	Matthew Schwartz, M.D.
Acc#:	234238	2nd Referrer:	Diagnostic Center Metrolina
		3rd Referrer:	

Results**MRI OF THE RIGHT SHOULDER WITHOUT CONTRAST**

CLINICAL DATA: Right shoulder pain with history of prior surgery.

TECHNIQUE: Axial gradient echo images, oblique coronal, and oblique sagittal T2 weighted turbo spin echo, oblique coronal STIR, and proton density through the right shoulder. All images were obtained utilizing a 1.5 Tesla Siemens open bore system.

FINDINGS: There is an intrasubstance insertional tear, delamination type, within the mid fibers of the supraspinatus tendon extending into the confluence with the infraspinatus tendon. The infraspinatus tendon is moderately thickened with mild articular surface irregularity. The subscapularis and teres minor tendons are intact. The teres minor muscle belly is completely atrophied. There are moderate to severe AC joint arthritic changes with marrow edema, joint effusion and inferior osteophytosis.

There is a subacromial spur.

There is irregularity of the superior labrum at its articular cartilage interface. The long head of the biceps tendon is retracted distally with evidence of a biceps tenodesis.

There is mild subacromial/subdeltoid bursal fluid accumulation.

IMPRESSION:

1. Supraspinatus and infraspinatus insertional tendinopathy with an intrasubstance delamination tear at their confluence measuring 5 mm in AP dimension, 7 mm in length. This does extend as a delamination tear into the infraspinatus tendon but the tear is quite small.
2. Moderate to severe AC joint arthropathy and inferior osteophytosis as well as small subacromial spur.
3. Biceps tenodesis with mild glenohumeral joint osteoarthritic changes.

D. Kertz

<http://ris.pittsrad.net/Reports/printreport.aspx?acc=234238>

10/13/2014

OCT-13-2014 12:23 From:

Radiology Reports

To: Call Care Management P.3/3

Page 2 of 2

Paul Aitchison, M.D.
Radiologist
PITTS RADIOLOGY
PA:mb

Report Electronically Signed by: Paul Aitchison M.D.
Report Signed on: 10/10/2014 4:40 PM

Pt. Name:	BARRY ADICKES	Exam:	MRI JOINT UPR EXTREM
Patient ID:	M107888	Acc:	W/O CONTRAST
Completed		234238	
Date:	10/10/2014 2:53:00 PM	Interpreting	
Transcribed By:	Mitzi Berry	Rad:	Paul Aitchison M.D.
		Dictated	
Transcribed Date:	10/10/2014 4:18:25 PM	Date:	
		Finalized Date:	10/10/2014 4:40 PM

<http://ris.pittsrad.net/Reports/printreport.aspx?acc=234238>

10/13/2014

ADICKES, BARRY (id #361770, dob: 08/12/1961)

Encounter Summary

Patient

Name	ADICKES, BARRY (53, M) ID# 361770	Appt. Date/Time	09/16/2014 01:20PM
DOB	1961	Service Dept.	FM-FM
Provider	JAMES N. RENTZ, JR		
Insurance	Med Legal: ATTY MCANGUS GOUDELOCK ATTORNEY AT LAW COLUMBIA Insurance #: 251317784 Employer Name : PHILLIPS LIFELINE Case Injury Date : 05/09/2013 Med Worker's Comp: GALLAGHER BASSETT SERVICES Policy/Group # : 002380009116WC01 Employer Name : PHILLIPS LIFELINE Case # : 002380009116wc01 Case Injury Date : 03/22/2011 Prescription: ESI1 - Member is eligible. details		

Patient's Care Team

Other: NICHOLAS TUTTLE MD: 1435 EBENEZER RD, ROCK HILL, SC 29732, Ph (803) 328-3828, Fax (803) 328-3879
Insurance Adjuster (Worker's Comp): SABRINA MARTIN: Ph (704) 405-6733, Fax (866) 654-4646

Patient's Pharmacies

GOOD PHARMACY (ERX): 1237 EBENEZER ROAD, ROCK HILL SC 29732, Ph (803) 327-2081, Fax (803) 327-3585

Chief Complaint

Right Shoulder pain

The patient is here today for a Rate and Release of his right shoulder. DOI was 2011.

Problems

- Reviewed Problems**
- Derangement of knee
 - Knee pain, Right
 - Sprain of knee and leg

Past Medical History

Discussed Past Medical History
 Acid Reflux, GERD: Y - controlled
 Dental, specify: Y - crown
 Fracture, hand: Y - multiple finger fractures, right wrist
 Fracture, lower leg: Y - right tibia, bilateral ankle
 Fracture, shoulder: Y - right clavicle
 Hiatal Hernia: Y
 Migraines: Y - medication as needed
 Sleep, snoring: Y - no study
 Thyroid Problems, Adrenal, Pituitary: Y - thyroid
 Vision, glasses, contacts: Y - reading glasses

Surgical History

- Reviewed Surgical History**
- Orthopaedic, shoulder - left SLAP repair
 - Other - thyroidectomy
 - Orthopaedic, shoulder - 10/2011 - right biceps tenodesis
 - Orthopaedic, knee - 1993 - right knee scope

Family History

Discussed Family History
 Father - Malignant neoplastic disease
 - previously recorded as Cancer

Social History

Discussed Social History
Social History COS
 Smoking Status: Never smoker.
 Tobacco-years of use: 0.

ADICKES, BARRY (id #361770, dob: [REDACTED] 1961)

Education: Post Graduate.
 Occupation: sales manager Phillips Medical.
 Marital status: Married.
 Non-smoker.
 Tobacco, smokeless, snuff, chewing: N.
 Alcohol intake: Occasional.
 Illicit drugs used: N.
 Advance directive: Y.
 Animal exposure?: Y dog.
 Live alone or with others?: with others.
 Have you traveled out of the country in the last six months: N.

Medications

Reviewed Medications

Name	Date
Frova 2.5 mg tablet Take by oral route as needed.	09/16/14 entered
Imitrex STATdose Kit Refill 4 mg/0.5 mL subcutaneous cartridge Inject by subcutaneous route as needed.	09/16/14 entered
Maxalt 10 mg tablet Take 1 tablet(s) as needed by oral route.	07/25/13 entered
nadolol 20 mg tablet Take 1 tablet(s) twice a day by oral route.	07/24/13 entered

Allergies

Reviewed Allergies

CORTISONE: Other (Mild to moderate) - urticaria/perservative in it
 NKDA

Vitals

09/16/2014 01:39 pm

Ht: 5 ft 9 in

Wt: 191 lbs

BMI: 28.2

HPI

Shoulder

Reported by patient.

Hand Dominance: left

Location: right

Quality: sharp; frequent

Severity: moderate

Duration: continuous since onset (2011 w/c)

Timing: recurrent

Context: work injury

Alleviating Factors: ice; PT/OT; cortisone injection

Aggravating Factors: lifting

Associated Symptoms: no weakness; no numbness; no tingling; no swelling; no redness; no warmth; no ecchymosis; no catching/locking; no popping/clicking; no bucking; no grinding; no instability; no radiation down arm; no drainage; no fever; no chills; no weight loss; no change in bowel/bladder habits

Previous Surgery: surgical procedure; date: (October 2011)

Prior Imaging: no recent studies

Previous Injections: helped significantly

Previous PT: helped significantly

Work Related: yes

Working: regular duty

ROS

Patient reports no fever, no significant weight gain, and no significant weight loss. He reports no vision change. He reports no difficulty hearing. He reports no oral abnormalities and no teeth problems. He reports no chest pain, no palpitations, and no known heart murmur. He reports no wheezing and no shortness of breath. He reports normal appetite and no diarrhea. He reports no incontinence and no difficulty urinating. He reports no rashes. He reports no seizures, no dizziness, and no headaches. He reports no depression and no sleep disturbances. He reports no fatigue. He reports no bruising. He reports no itching and no hives.

ADICKES, BARRY (id #361770, dob: [REDACTED] 1961)

Physical Exam

Patient is a 53-year-old male.

Constitutional: General Appearance: healthy-appearing, NAD, and normal body habitus.

Psychiatric: Orientation: oriented to time, place, and person. Mood and Affect: normal mood and affect and active and alert.

C-Spine/Neck: Active Range of Motion: no crepitus or pain elicited on motion and flexion normal, extension normal, rotation normal, and lateral flexion normal. Passive Range of Motion: flexion normal, extension normal, rotation normal, and lateral flexion normal.

Shoulders: Inspection Right: no misalignment, atrophy, erythema, induration, swelling, or warmth and AC prominence normal. Inspection Left: no misalignment, atrophy, erythema, induration, swelling, or warmth and AC prominence normal. Bony Palpation Right: no tenderness of the sternoclavicular joint, the clavicle, the acromioclavicular joint, the acromial, the greater tuberosity, or the bicipital groove. Bony Palpation Left: no tenderness of the sternoclavicular joint, the clavicle, the acromioclavicular joint, the acromial, the greater tuberosity, or the bicipital groove. Soft Tissue Palpation Right: no tenderness of the costochondral junction, the trapezius, the rhomboid, the deltoid, or the lateral cuff insertion. Soft Tissue Palpation Left: no tenderness of the trapezius, the rhomboid, the deltoid, or the lateral cuff insertion. Active Range of Motion Right: external rotation at 0 deg. of abduction normal and 90 deg. of abduction normal; internal rotation normal and at 90 deg. of abduction normal; and normal, forward flexion normal, extension normal, and abduction normal. Active Range of Motion Left: external rotation at 0 deg. of abduction normal and 90 deg. of abduction normal; internal rotation normal and at 90 deg. of abduction normal; and normal, forward flexion normal, extension normal, and abduction normal. Passive Range of Motion Right: external rotation at 0 deg. of abduction normal and 90 deg. of abduction normal; internal rotation normal and at 90 deg. of abduction normal; and normal, forward flexion normal, extension normal, and abduction normal. Passive Range of Motion Left: external rotation at 0 deg. of abduction normal and 90 deg. of abduction normal; internal rotation normal and at 90 deg. of abduction normal; and normal, forward flexion normal, extension normal, and abduction normal. Special Tests Right: Hawkin's test negative, empty can sign negative, and subscapularis strength tests normal. Special Tests Left: Hawkin's test negative, empty can sign negative, and subscapularis strength tests normal. Stability Right: no dislocation or laxity and sulcus sign negative. Stability Left: no dislocation or laxity and sulcus sign negative. Strength Right: external rotation at 0 deg. of abduction 5/5 and 90 deg. of abduction 5/5, adduction 5/5, flexion 5/5, extension 5/5, internal rotation 5/5, and scapular elevation 5/5. Strength Left: external rotation at 0 deg. of abduction 5/5 and 90 deg. of abduction 5/5 and abduction 5/5, adduction 5/5, flexion 5/5, extension 5/5, internal rotation 5/5, and scapular elevation 5/5.

Skin: Right Upper Extremity: normal. Left Upper Extremity: normal.

Neurological System: Biceps Reflex Right: normal (2). Biceps Reflex Left: normal (2). Brachioradialis Reflex Right: normal (2). Brachioradialis Reflex Left: normal (2). Triceps Reflex Right: normal (2). Triceps Reflex Left: normal (2). Sensation on the Right: C5 normal, C6 normal, C7 normal, C8 normal, T1 normal, and T2 normal. Sensation on the Left: C5 normal, C6 normal, C7 normal, C8 normal, T1 normal, and T2 normal.

he has full range of motion of the right shoulder with pain reaching overhead and behind his back. He has some popping in the subacromial region with motion. Strength is good. He has normal appearance of the biceps despite having a previous tenotomy with tenodesis in the proximal humerus. He has good strength with elbow flexion. Good strength with internal and external rotation with the arm at the side.

Assessment / Plan

1. Impingement syndrome of shoulder region

719.91: Unspecified disorder of joint, shoulder region

• MRI, SHOULDER

Side: RIGHT

Contrast (MRI): Without

Height (ft.): 5 ft 9 in

Weight (lbs): 191

Pacemaker or defibrillator?: N Metal in body?: N

Possibility of Pregnancy?: N Patient claustrophobic?: N

Discussion

Discussion Notes

continued pain of the right shoulder after a previous arthroscopy with labral debridement and biceps tenotomy followed by open tenodesis to the proximal humerus for grade 4 SLAP tear. He has continued to have pain with overhead activities and states that it wants to pop and catch. We will set up an MRI for the right shoulder and I will see him back after that. No work restrictions at this time.

Return to Office

None recorded.

Encounter Sign-Off

Encounter signed-off by James N. Rentz Jr, 09/16/2014.

COSA ~~Orthopaedic~~ Orthopaedic Surgery Associates - 1690 W Hwy 160, Fort Mill SC 29708 8024

ADICKES, BARRY (id #361770, dob: [REDACTED] 1961)

Encounter performed and documented by James N. Rentz Jr

Encounter reviewed & signed by James N. Rentz Jr on 09/16/2014 at 3:21pm

Barry Simmons Adickes
DOB: [REDACTED] 1961
My Chart No: 104301-BA

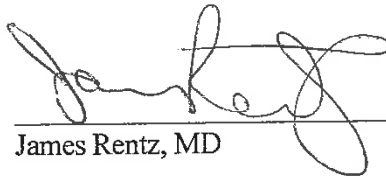
SSN: [REDACTED]

I have been treating Barry Adickes since October 5, 2011. Mr. Adickes gave me a history of suffering an injury in an on the job car accident. I understand that the right shoulder has been denied by the insurance company. It is my opinion within a reasonable degree of medical certainty that Mr. Adickes right shoulder problems were most probably caused by that accident. I performed arthroscopic surgery on the right shoulder including a debridement of a grade four SLAP tear and an anterior labrum, biceps tenotomy, and open biceps tenodesis to the proximal humerus. It is my opinion that these problems were most probably caused by his on the job car accident.



I agree with the above statement.

I do not agree with the above statement.


James Rentz, MD

Dated: 11/21/12

BARRY S ADICKES
06/25/2012
Patient #: 104301-BA
DOB: [REDACTED] 1961

History of Present Illness

The patient is a 50 year old male who presents for a recheck of RIGHT SHOULDER PAIN.

Subjective Transcription

He returns for his right shoulder. He is doing a lot better. Motion is essentially back to full. He still has some occasional catching and was just concerned that he was getting some impingement again or maybe the spur was coming back from his acromioplasty.

Objective Transcription

He has excellent ROM. No instability. Good strength. No pain to palpation.

X: We did an AP and outlet and the acromion looks flat and looks good.

Assessments Transcription

IMPINGEMENT RIGHT SHOULDER WHICH I THINK IS JUST SOME RESIDUAL AFTER EVERYTHING ELSE THAT HE HAS HAD.

Plan Transcription

He would like to try another injection. He has several injections and has had no problems. For his last injection he had some hives but unsure if this is truly from the injection. He would like to go ahead with the injection. We did have a Benadryl and gave him that. We injected the subacromial space with 1 cc of Depo-Medrol 40 mg/mL and Marcaine under alcohol prep. He will let me know how this does. I will see him back p.r.n.

James N. Rentz, Jr., M.D. /jw 238916

c: Nicholas Tuttle, M.D., Rock Hill Family Practice, 1435 Ebenezer Road, Rock Hill, SC 29732
[fax:8171735]

James .Rentz

Electronically signed by James .Rentz

ADICKES, BARRY

Page 2 / 2



134 Professional Park Drive
Rock Hill, SC 29732
Phone: 803-329-3130
Fax: 803-329-2611

BARRY S ADICKES
01/25/2012
Patient #: 104301-BA
DOB: [REDACTED] 961

History of Present Illness

Assessment & Plan Unspecified Diagnosis

Current Plans:

- Lortab 10-500MG, 1 Tablet every eight hours with food, as needed for pain, #30, 01/25/2012, No Refill. Active.

Electronically signed by James .Rentz

ADICKES, BARRY

Page 1 / 1

BARRY S ADICKES
01/05/2012
Patient #: 104301-BA
DOB: [REDACTED] 1961

History of Present Illness

Assessment & Plan
Unspecified Diagnosis

Current Plans:

- Lortab 10-500MG, 1 Tablet every eight hours with food, as needed for pain, #30, 01/05/2012, No Refill. Active.



Electronically signed by James .Rentz

BARRY S ADICKES
12/12/2011
Patient #: 104301-BA
DOB: [REDACTED] 961

History of Present Illness

The patient is a 50 year old male who presents for a recheck of RIGHT SHOULDER PAIN.

Subjective Transcription

He returns for his arthroscopy of the right shoulder and biceps tenodesis. Everything is doing well.

Objective Transcription

He is a little stiff in the shoulder with some adhesive capsulitis but therapy is working on that.

Assessment & Plan

Unspecified Diagnosis

Current Plans:

- Lortab 5-500MG, 1 Tablet every eight hours, as needed for pain, #40, 12/12/2011, No Refill.
Active.

Plan Transcription

He can start some dumbbell exercises up to about five pounds. Nothing more than that for two weeks. Then after two weeks if doing well he can progress up to about 10 pounds. Nothing more than 10 pounds until 12 weeks post-op. He is about seven weeks now. I gave him another prescription for Lortab to help with pain at night. We will follow up with him in about a month.
James N. Rentz, Jr., M.D. /jw 235269

c: Nicholas Tuttle, M.D., Rock Hill Family Practice, 1435 Ebenezer Road, Rock Hill, SC 29732
[fax:8171735]

James .Rentz

Electronically signed by James .Rentz

ADICKES, BARRY

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- 172 -



134 Professional Park Drive
Rock Hill, SC 29732
Phone: (803) 329-3130
Fax: (803) 329-2611

BARRY S ADICKES
11/17/2011
Patient #: 104301-BA
DOB: [REDACTED] 961

History of Present Illness

The patient is a 50 year old male who presents for a recheck of RIGHT SHOULDER PAIN.

Subjective Transcription

He returns for his arthroscopy of the right shoulder and biceps tenotomy followed by open tenodesis. He is doing well. He has full extension back.

Plan Transcription

I told him still no lifting or pulling with the arm until I see him back in three weeks.

James N. Rentz, Jr., MD/ ss 234899

Electronically signed by James .Rentz

ADICKES, BARRY

Page 1 / 1

-173-

BARRY S ADICKES

10/28/2011

Patient #: 104301-BA

DOB: [REDACTED] 1961

History of Present Illness

The patient is a 50 year old male who presents for a recheck of POST OP. Note for "POST OP":
right shoulder

Subjective Transcription

He returns post-op for his right shoulder scope and biceps tenotomy followed by open biceps tenodesis of the proximal humerus. He is doing well.

Objective Transcription

Everything looks good. He is a little stiff as expected.

Assessment & Plan

Unspecified Diagnosis

Current Plans:

- Lortab 5-500MG, 1 Tablet every eight hours, as needed for pain, #30, 10/28/2011, No Refill.
Active.

Shoulder Pain (719.41)

Current Plans:

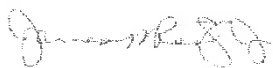
- PT - EVAL AND TREAT (97001); Routine (eval/bx 2 to 3 X wk for 3 to 4 wks ---s/p right shoulder scope with open biceps tenodesis --ROM)

Plan Transcription

We are going to start working with his motion. He wants to go to therapy to help with the shoulder so we are going to set that up. I gave him some Lortab to help with pain at night and with therapy. We will see him back in about a month.

James N. Rentz, Jr., M.D. /jw 234491

c: Nicholas Tuttle, M.D., Rock Hill Family Practice, 1435 Ebenezer Road, Rock Hill, SC 29732
[fax:8171735]



Electronically signed by James .Rentz

ADICKES, BARRY

Page 2 / 2

BARRY S ADICKES

10/21/2011

Patient #: 104301-BA

DOB: [REDACTED] 1961

History of Present Illness

The patient is a 50 year old male seen today for SURGERY. Note for "SURGERY - COS": Pt here for right shoulder arthroscopy by Dr. Rentz

Allergies

CORTISONE: Urticaria; AFTER RIGHT SHOULDER INJECTION

Past Medical History

Patient Denies History of Cardiac Problems

Patient Denies History of Breathing Problems

Patient Denies any History of Digestive / Metabolic problems

Patient Denies any History of Liver / Kidney Problems

Concussion: POST CONCUSSION SYNDROME FROM MVA IN MARCH 2011

Patient Denies any History of Circulatory problems

Patient Denies any History of Dental problems

Fracture Of Finger; MULTIPLE FX OF VARIOUS FINGER

Fracture Of Lower Leg; RIGHT

Fracture Of Clavicle; RIGHT

Vision Problems; readers

Fracture Of Ankle; BILATERAL

General Anesthesia

PSEUDOCHELINESTERASE DEFICIENCY; NONE

MALIGNANT HYPERTHERMIA; NONE

Family History

Cancer: Father

Social History

Non Smoker/No Tobacco Use

Alcohol Use: Occasional alcohol use

Living Situation: Lives with spouse; children

Current Work/Study Status: Full-time

Medication History

TKES A SEIZURE MEDICATION AT NIGHT FOR HEADACHES D/T THE CONCUSSION CANT REMEMBER THE

NAME (AT BEDTIME) Active.

Naproxen (250MG Tablet 1 Oral twice daily) Active.

Multivitamins (1 Oral daily) Active.

Other Problems

Shoulder Pain (719.41)

Past Surgical

knee surgery: Right

Shoulder Surgery: Left

Thyroidectomy; partial

Review of Systems

General: Not Present- Fever, Weight Gain and Weight Loss.

Skin: Not Present- New Lesions and Ulcer.

HEENT: Not Present- Visual Loss, Hearing Loss, Sleep Apnea, Hoarseness, Sore Throat and Voice Changes.

Respiratory: Not Present- Cough, Difficulty Breathing, Hemoptysis and Wheezing.

Cardiovascular: Not Present- Chest Pain, Edema, Elevated Blood Pressure and Palpitations.

Gastrointestinal: Not Present- Abdominal Pain, Change in Bowel Habits, Difficulty Swallowing and Heartburn.

Neurological: Not Present- Difficulty Speaking and Visual Changes.

Psychiatric: Not Present- Change in Sleep Pattern and Mood changes.

Endocrine: Not Present- Appetite Changes, Cold Intolerance, Excessive Thirst, Excessive Urination and Hair Changes.

Hematology: Not Present- Abnormal Bleeding and Easy Bruising.

10/21/2011 07:08 AM

Weight: 182 lb **Height:** 69 in

Body Surface Area: 2 m² **Body Mass Index:** 26.88 kg/m²

Temp.: 97.9 °F **Pulse:** 68 (Regular) **Resp.:** 20 (Unlabored) **P. OX:** 99% (Room air)

BP: 118/83 Manual (Sitting, Left Arm, Large)

Assessment & Plan

Unspecified Diagnosis

Current Plans:

- A-118 PREOPERATIVE NURSING PROCEDURES; Routine

Vicki Simmons

Electronically signed by Vicki Simmons, RN

BARRY S ADICKES
10/21/2011
Patient #: 104301-BA
DOB: [REDACTED] 1961

History of Present Illness

The patient is a 50 year old male seen today for SURGERY.

OPERATIVE REPORT

10/21/11

PRIMARY SURGEON: James N. Rentz, Jr., M.D.

ASSISTANT SURGEON: N/A

PREOPERATIVE DIAGNOSIS: Pain right shoulder with possible impingement versus possible rotator cuff tear versus proximal SLAP tear.

POSTOPERATIVE DIAGNOSIS: 1) Grade IV SLAP tear right shoulder.
2) Bucket handle tear of the biceps attachment, labral fraying and anterior labral fraying right shoulder.

OPERATION PERFORMED: 1) Arthroscopy right shoulder with debridement of grade IV SLAP tear and anterior labrum.

- 2) Biceps tenotomy right shoulder.
- 3) Open biceps tenodesis to the proximal humerus.

ANESTHESIA: General along with a right scalene block/Dr. Menkhaus.

BLOOD LOSS: Minimal.

COMPLICATIONS: None.

INDICATIONS FOR PROCEDURE: Pain of the right shoulder failing conservative management.

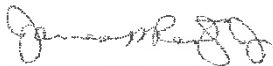
DESCRIPTION OF PROCEDURE: The patient was brought to the operating room after a scalene block was administered on the right by Dr. Menkhaus. He was placed in supine position and a gram of Ancef was given. General anesthesia was administered. He was placed in modified beach chair position. The right shoulder and arm were prepped and draped in sterile fashion. After appropriate

ADICKES, BARRY

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timeout we made a posterior portal starting with a spinal needle into the joint, injected and got good backflow. We made a small skin incision and then placed our cannula for the scope and inflow. On inspection there was a large amount of fraying of the anterior labrum and superior labrum and some fraying of the attachment of the biceps tendon. We made an anterior portal from outside in and on further inspection there was a large bucket handle component of the insertion of the biceps tendon on the labrum and therefore it was felt that this would need to have a biceps tenotomy with biceps tenodesis. We then inserted the shaver and arthroscopy scissors and did a biceps tenotomy. We then debrided the labrum anteriorly and superiorly. On inspection of the undersurface of the rotator cuff there was also some fraying of the undersurface of the rotator cuff that was debrided with the shaver. We then stopped the arthroscopy and all instruments were removed. We made an incision anteriorly over the area of the biceps tendon over the proximal humerus and dissected through the soft tissues and exposed the biceps tendon in the bicipital groove. We placed a 5.5 Arthrex suture anchor into the proximal humerus. The fiberwire was then passed through the biceps tendon and this was secured against the proximal humerus. The remaining proximal portion of the biceps was then pulled into the wound, cut and removed. Sutures were then cut. We closed this incision with 2-0 Monocryl subcutaneous tissues and 4-0 Monocryl subcuticular stitch for the skin. The other portal sites were closed with 4-0 Monocryl subcuticular stitches. Everything was cleaned. Dressings were placed. Sling was placed. He was then awoken and taken to the recovery room in stable condition. No immediate complications.

235046
10/21/11 16:20



Electronically signed by James .Rentz

BARRY S ADICKES
10/10/2011
Patient #: 104301-BA
DOB: [REDACTED] 1961

History of Present Illness

The patient is a 50 year old male who presents for a pre-op visit. Note for "PRE-OP VISIT":
PRESENTS TODAY FOR CLEARANCE FOR DR RENTZ FOR A RIGHT SHOULDER
ARTHROSCOPY WITH SAD AND POSS. OPEN RCR

Allergies

CORTISONE; AFTER RIGHT SHOULDER INJECTION

Past Medical History

Patient Denies History of Cardiac Problems
Patient Denies History of Breathing Problems
Patient Denies any History of Digestive / Metabolic problems
Patient Denies any History of Liver / Kidney Problems
Concussion; POST CONCUSSION SYMDROME FROM MVA IN MARCH 2011
Patient Denies any History of Circulatory problems
Patient Denies any History of Dental problems
Fracture Of Ankle; BILATERAL
Fracture Of Finger; MULTIPLE FX OF VARIOUS FINGER
Fracture Of Lower Leg; RIGHT
Fracture Of Clavicle; RIGHT
General Anesthesia
PSEUDOCHELINESTERASE DEFICIENCY; NONE
MALIGNANT HYPERTHERMIA; NONE

Family History

Cancer

Social History

Living Situation; children
Current Work/Study Status
Non Smoker/No Tobacco Use
Alcohol Use

Medication History

Naproxen (250MG Tablet 1 Oral twice daily) Active - Hx Entry.
Multivitamins (1 Oral daily) Active - Hx Entry.
TKES A SEIZURE MEDICATION AT NIGHT FOR HEADACHES D/T THE CONCUSSION CANT REMEMBER THE NAME (AT BEDTIME) Active - Hx Entry.

Past Surgical

Thyroidectomy; partial
knee surgery
Shoulder Surgery

Review of Systems

General: Not Present- Fever, Weight Gain and Weight Loss.

Skin: Not Present- New Lesions and Ulcer.

HEENT: Not Present- Visual Loss, Hearing Loss, Sleep Apnea, Hoarseness, Sore Throat and Voice Changes.

Respiratory: Not Present- Cough, Difficulty Breathing, Hemoptysis and Wheezing.

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Neurological: Not Present- Difficulty Speaking and Visual Changes.

Psychiatric: Not Present- Change in Sleep Pattern and Mood changes.

Endocrine: Not Present- Appetite Changes, Cold Intolerance, Excessive Thirst, Excessive Urination and Hair Changes.

Hematology: Not Present- Abnormal Bleeding and Easy Bruising.

10/10/2011 09:35 AM

Weight: 182 lb **Height:** 60 in

Body Surface Area: 1.87 m² **Body Mass Index:** 35.54 kg/m²

Pain level: 3/10

Pulse: 61 (Regular) **Resp.:** 20 (Unlabored) **P. OX:** 99% (Room air)

BP: 118/85 Manual (Sitting, Right Arm, Large)

PAIN IN RIGHT SHOULDER WITH MOVEMENT

Renee Biggerstaff

Electronically signed by Renee Biggerstaff, RN

BARRY S ADICKES

10/05/2011

Patient #: 104301-BA

DOB: [REDACTED] 961

History of Present Illness

The patient is a 50 year old male who presents with a complaint of RIGHT SHOULDER PAIN. The onset of the pain has been acute and has been occurring in an intermittent pattern for 6 months. The course has been constant. The pain is described as moderate. The pain is relieved by The symptoms are relieved by : over-the-counter medication. The pain The symptoms occur occur both day and night. There has been associated pain. Note for "RIGHT SHOULDER PAIN": .

CHIEF COMPLAINT: RIGHT SHOULDER PAIN

REFERRED BY:SELF

ACCOMPANIED BY: ALONE

PCP:DR. TUTTLE

SEND COPY TO PCP?YES

Patient states he had mva on 03/22/11 causing injury to his right shoulder. He is here for evaluation and no recent xrays have been taken.

Allergies
CORTISONE

Past Medical History

Pain in joint, shoulder (719.41) (11/20/2006)

Pain in joint, ankle/foot (719.47) (02/27/2008)

No reported breathing problems

Cardiac - None

Thyroid Problem

None - Liver/Kidney

None - Neurologic

None - Blood

None - Dental

Vision Problems; readers

Fracture Of Ankle

Fracture Of Arm

Fracture Of Clavicle

Fracture Of Finger

General Anesthesia

Family History

Cancer

Social History
Non Smoker/No Tobacco Use
Alcohol Use
Living Situation; children
Current Work/Study Status

Medication History
Naproxen (250MG Tablet 1 Oral twice daily) Active - Hx Entry.
Multivitamins (1 Oral daily) Active - Hx Entry.

Past Surgical
Shoulder Surgery
knee surgery
Thyroidectomy; partial

Review of Systems

General: Not Present- Fever, Weight Gain and Weight Loss.
Skin: Not Present- New Lesions and Ulcer.
HEENT: Not Present- Visual Loss, Hearing Loss, Sleep Apnea, Hoarseness, Sore Throat and Voice Changes.
Respiratory: Not Present- Cough, Difficulty Breathing, Hemoptysis and Wheezing.
Cardiovascular: Not Present- Chest Pain, Edema, Elevated Blood Pressure and Palpitations.
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Neurological: Not Present- Difficulty Speaking and Visual Changes.
Psychiatric: Not Present- Change in Sleep Pattern and Mood changes.
Endocrine: Not Present- Appetite Changes, Cold Intolerance, Excessive Thirst, Excessive Urination and Hair Changes.
Hematology: Not Present- Abnormal Bleeding and Easy Bruising.

10/05/2011 10:15 AM

Weight: 185 lb **Height:** 69 in
Body Surface Area: 2.02 m² **Body Mass Index:** 27.32 kg/m²
Pulse: 65 (Regular) **P. OX:** 95% (Room air)

Objective Transcription

Exam shows an average-size white male, alert and oriented, pleasant and cooperative, in no acute distress. He has full motion for the right shoulder overhead and behind his back. He has mild pain with impingement testing. He has a catch when we go from external to internal rotation with the arm abducted 90 degrees and that hurts. Once he is past that he can fully internally rotate. Good strength to internal and external rotation with the arm at the side. No point tenderness to palpation around the AC joint or the rest of the shoulder. The arm and hand are neurovascularly intact for both. No abnormalities for the left shoulder. He had surgery on the left and this is doing well.

X: He has x-rays several months here after a car wreck for the right shoulder which showed a grade II/III acromion. No other abnormalities. It has just continued to hurt.

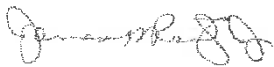
Assessments Transcription

IMPINGEMENT/BURSITIS RIGHT SHOULDER.

Plan Transcription

I have discussed this with him. We discussed options of therapy. He has had an injection previously which did not help. He did well with surgery on the left shoulder and would rather not do an MRI. He would rather go ahead with an arthroscopy and just address whatever is going on with the hope that it is just impingement and can be improved with a subacromial decompression and acromioplasty. We discussed possible rotator cuff repair, possible SLAP repair. He understands all that. He wants to go ahead and set this up so we will work on that. We will see him back sometime around surgery.
James N. Rentz, Jr., M.D. /jw 234026

c: Nicholas Tuttle, M.D., Rock Hill Family Practice, 1435 Ebenezer Road, Rock Hill, SC 29732
[fax:8171735]



Electronically signed by James .Rentz



134 Professional Park Drive
Rock Hill, SC 29732
Phone: 803-329-3130
Fax: 803-329-2611

BARRY S ADICKES

08/25/2011

Patient #: 104301-BA

DOB [REDACTED] 96)

History of Present Illness

This is a neighbor of mine who was having some shoulder trouble on the right. We had seen him previously for this after a car wreck several months ago. He was still having pain so I took some Depo-Medrol 40 mg/mL 1 cc with Marcaine to inject his shoulder in the subacromial space and did this at home. About five minutes after the injection he developed some hives and itching, and therefore I would state that he may have a possible allergy to the Depo-Medrol. He has had Methylprednisolone in the past with no issues, so I think there is a possibility that Depo-Medrol may be something that he should not take in the future.
James N. Rentz, Jr., M.D. /jw 233228

A handwritten signature in cursive script, appearing to read "James N. Rentz, Jr.", is written over a horizontal line.

Electronically signed by James .Rentz

ADICKES, BARRY

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1102937

BARRY ADICKES	)	
	)	
CLAIMANT,	)	
	)	SC WORKERS' COMPENSATION COMMISSION
VS.	)	
	)	FULL BOARD HEARING OF
PHILIPS HEALTHCARE	)	
	)	BARRY ADICKES
EMPLOYER,	)	
AND	)	VS
	)	
FIDELITY & GUARANTY	)	PHILIPS HEALTHCARE
	)	
CARRIER.	)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Barry Adickes versus Philips Healthcare, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:6 P.M., Monday, December 14, 2015, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

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REPORTED

BY

GLORIA DAVIS

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APPEARANCES

FOR THE APPELLANT:

Brooke A. Payne, Esquire
Ryan D. Oxford, Esquire
Lueder, Larkin & Hunter, LLC
503 Wando Park Boulevard, Suite 205
Mount Pleasant, SC 29464

FOR THE RESPONDENT:

William L. Smith, II, Esquire
Chappell, Smith & Arden
1510 Calhoun Street
P.O. Box 12330
Columbia, SC 29211

COMMISSIONERS PRESENT:

Avery Wilkerson, Chair
T. Scott Beck
Aisha Taylor

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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STIPULATIONS

Commissioner Wilkerson: Madame Court
Reporter if you'll call -- call the case.
Thank you.

Court Reporter: Today is December 14th,
2015. This is South Carolina Workers'
Compensation case number 1102937. This is
the case of Barry -- somebody help me with
the name --

Mr. Smith: Adickes.

Court Reporter: -- Adickes -- thank you
-- the Claimant versus Philips Healthcare,
Employer and Fidelity and Guaranty is the
Carrier. The Appellant is the Defendant,
represented by Brooke A. Payne. The
Respondent is represented by William L.
Smith. Each side is allowed ten (10) minutes
for oral argument and the Appellant three (3)
minutes in reply. You are requested to argue
the grounds of exception and stay within the
record. The Single Hearing Commissioner was
Commissioner McCaskill.

Commissioner Wilkerson: Ms. Payne.

Ms. Payne: Good afternoon,
Commissioners.

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1 Commissioner Wilkerson: Good afternoon.

2 Ms. Payne: May it please the Court.

3 Commissioner Wilkerson: Please.

4 ARGUMENT FOR THE APPELLANT

5 By Ms. Payne:

6 My name is Brooke Payne. I'm here on behalf of
7 the Defendants. Just to briefly recap the facts in
8 this claim, the Claimant was an employee of Philips
9 Healthcare; he was working in medical device sales when
10 he was injured in a car accident in March of 2011. He
11 sustained injuries to his head, neck and bilateral
12 shoulders. He returned to work within two (2) months
13 after the accident in his regular position and he
14 continued to work for our employer for two and a half
15 (2 ½) years earning similar wages. He was terminated
16 from Philips as a result of a reduction in force, which
17 had nothing to do with his performance. He
18 subsequently obtained a job with BRI, wherein he earned
19 fifty-five thousand dollars (\$55,000.00) a year, which
20 was a significant reduction from the wages he was
21 earning with our employer. The Claimant is seeking
22 wage loss benefits. As the Appellants we argue that
23 wage loss benefits are premature because the Claimant
24 is not at MMI for all of his compensable injuries,
25 specifically his right shoulder. However, if the

1 Commission finds that he is at MMI, we argue that he is
2 not entitled to wage loss benefits because he is unable
3 to meet his burden in that regard and that the
4 calculation of wage loss benefits in the award is
5 incorrect. With regard to our first argument, the
6 Claimant is not at MMI; as the Full Commission is aware
7 MMI is a medical term used to indicate that a Claimant
8 has plateaued and that there is no additional medical
9 treatment or care that will lessen the degree of
10 impairment. In South Carolina many Courts have
11 analyzed what type of future medical care or treatment
12 amounts to care that will lessen the period of
13 impairment. Claimant argues that our position is
14 unsupported by case law but we have brought about quite
15 a few cases in support of our argument, which is mainly
16 because the Commissioner found that the Claimant was at
17 MMI based on a questionnaire response from an IME
18 physician, whereas he assigned him a PPD rating of
19 fifteen percent (15%) to the right shoulder but also
20 indicated that he is in need of future surgery to his
21 right shoulder. I'll -- I'll just briefly recap a few
22 of the cases. In the Gadson claim the Claimant had
23 been recommended for future injections, medications and
24 physical therapy; which the Court found was just for
25 further maintenance and the ATP specifically in that

1 case said that no further surgery or invasive treatment
2 was required. So, they found that the Claimant was at
3 MMI because the only treatment that was required was
4 for further maintenance and care, as opposed to
5 something invasive, like surgery. Hall versus Reynolds
6 is the same sort of idea; the ATP rated and released
7 him and then the Claimant, because of additional pain,
8 sought further treatment with an IME physician who
9 subsequently performed surgery. So, the Court looked
10 back and said that he actually was not at MMI before
11 the surgery since it reduced his pain effectively.
12 Here, the Claimant's authorized treating physician is
13 Dr. Rentz; he performed a right shoulder surgery in
14 October of 2011. And the last time the Claimant
15 returned to Dr. Rentz was in September of 2014, and Dr.
16 Rentz noted at that time that the Claimant continued to
17 have pain, was complaining of it popping and catching
18 and at that time we had sent him there for a rating and
19 release but Dr. Rentz stated that he -- that it wasn't
20 time for a rating and release and rather than assigning
21 same, he sent the Claimant for an MMI of his shoulder
22 because of his complaints. Dr. Barron, the IME
23 physician that I had spoke of earlier, had evaluated
24 the Claimant back in December of 2012. At that --
25 during that evaluation he found that the Claimant

1 continued to complain of his -- complain of pain in his
2 right shoulder and he noted that he, quote/unquote "Had
3 unfortunately not responded to right shoulder surgical
4 treatment." It was the same physician that in January
5 of 2014, opined -- or assigned a rating of fifteen
6 percent (15%) to the shoulder but also continued to
7 recommend the surgery and it's our contention that
8 since the -- Dr. Barron is recommending a surgery, the
9 Claimant is not at MMI and a finding of wage loss
10 benefits is premature at this time. And -- however,
11 alternative -- alternatively, if the Commission is to
12 find the Claimant is at MMI, it's our argument that he
13 is unable to meet his burden of proving a wage loss.
14 The -- per the Statute, this must be predicated upon
15 his showing of loss of earnings resulting from the work
16 injury. Here the Claimant focuses on the -- Dr. Wade's
17 neuropsychological report and argues that he has
18 suffered an extensive disability with regard to his
19 cognitive function. I urge Your Honors to please read
20 the report from Dr. Wade; it's -- it's about nine (9)
21 pages long. Claimant's counsel and I have a -- we --
22 we disagree about a -- I guess, the -- the summary and
23 the analysis of Dr. Wade's findings. He performed
24 about twenty-four (24) different tests on the Claimant.
25 Claimant's counsel focuses on three (3) sentences,

1 which are contained on the last page and argues that
2 Dr. Wade opined that the Claimant experiences ongoing
3 problems with focus, attention, executive aspects of
4 immediate learning, extensive -- I'm sorry -- executive
5 dysfunction and forgetfulness. But if you read the
6 report you'll notice that with regard to focus and
7 attention Dr. Wade noted that although the Claimant
8 reported a decreased capacity for sustaining attention,
9 he was assessed as well-oriented, alert and able to
10 register information. I must say that I -- I've read
11 many of Dr. Wade's reports and I was -- I was pretty
12 shocked to see this Defense friendly report coming from
13 a Claimant IME. In summary, with regard to his focus
14 and attention, Dr. Wade noted that the Claimant did
15 demonstrate variability in his capacity to sustain
16 attention, otherwise his performance was suggestive of
17 intact brain behavior and functioning. When it came to
18 his executive abilities of higher reasoning, he
19 performed, again, I think eleven (11) tests in that
20 regard, most of which the Claimant demonstrated a
21 superior range, high average or average range in
22 relation to others of his age and education. Dr. Wade
23 found that Mr. Adickes was generally able to meet the
24 demands of higher reasoning and problem solving tests
25 and found that the evaluation revealed him to be

1 functioning in the high average range of intellectual
2 abilities. With regard to forgetfulness, the Claimant
3 points to one sentence in the summary section that
4 notes that the Claimant continues to complain of
5 forgetfulness; however, the sentence right behind that
6 sentence states, yet, an assessment of anterior great
7 memory generally revealed intact immediate learning
8 memory, as well as an efficient ability to retain and
9 recall information. And the last line of Dr. Wade's
10 report states that this neuropsych evaluation generally
11 provided favorable results. So, it's our opinion that
12 he does not have any cognitive dysfunction; even if he
13 did there is no indication that he has had any loss of
14 earning capacity resulting from it. Claimant proffered
15 a vocational report from Dr. Joel Leonard, which we
16 argue should be granted no persuasive weight for many
17 reasons, one of which is that he placed the Claimant in
18 profile B, which is what he found assumed the Claimant
19 -- or he -- I'm sorry -- he came to that determination
20 because he assumed the Claimant's termination was
21 performance based and that his current employment
22 represents a reduction in earning capacity. And he
23 further noted that those were assumptions based only on
24 the Claimant's own statements to him and he was the one
25 that actually recommended that a neuropsych evaluation

1 be completed. So, once we were provided with a
2 neuropsych evaluation from Dr. Wade, as well as we
3 obtained a lot of other documents from the employer,
4 which proved that the Claimant's termination was a
5 result of a reduction in force, which was -- which
6 resulted in the termination of a hundred and fifty
7 (150) employees nationwide of Philips on that same
8 date, we provided all these personnel documents to Mr.
9 Leonard, we also provided him testimony from the
10 Claimant's supervisor, which unequivocally showed that
11 the termination wasn't performance related and that
12 even if it was the Claimant had the -- had performance
13 issues dating back to before the date of accident; so,
14 there was no indication that that would have been a
15 reason for terminating him afterwards. We also
16 provided him with the neuropsych eval from Dr. Wade.
17 And during the deposition, after reviewing the
18 documents, Mr. Leonard actually agree that the Claimant
19 had documented performance issues before his work
20 injury, which he did not inform Mr. Leonard about. He
21 agreed that he had no evidence that Mr. Adickes had
22 difficulties securing a job due to his work injury and
23 he also agreed that Dr. Wade provided a favorable
24 neuropsych report. Having agreed to all that, he still
25 stuck to his opinion that even though the additional

1 information gave him greater contemplation, and there
2 was certainly a possibility that the Claimant could
3 have fallen into profile A, which attributed his lower
4 wages to the labor market, he was going to maintain his
5 opinion. Aside from those, you -- you know, the -- the
6 49 -- oh, I'm sorry -- 42-9-20 analysis leans on the
7 decreased -- decrease in wages stemming from the work
8 injury and the preponderance of evidence in the record
9 just tends to indicate that there was no decrease in
10 earnings resulting from the work injury. You know, the
11 best evidence of the ability to earn post-injury wages
12 is earning those wages and if you continue to work for
13 an employer for two and a half (2 ½) years earning
14 similar, if not more, wages than he was working -- I'm
15 sorry -- earning pre-injury. Again, his position was
16 eliminated as a part of reduction in force; it had
17 nothing to do with his work injury. There was a short
18 period of time where he was unemployed between being
19 terminated with Philips and beginning to work at BRI;
20 he only applied at four (4) jobs in between that period
21 of time. When he applied to those jobs he submitted
22 resumes where he portrayed himself as a capable
23 individual, an impactful speaker, expertly organized --

24 Commissioner Wilkerson: Go ahead and
25 finish your thought and then you'll have

1 three (3) minutes in reply.

2 Ms. Payne: -- in focus and comfortable with
3 issues and ease of delivery in the sales force.

4 Commissioner Wilkerson: Okay. Thank
5 you. You'll have three (3) minutes in reply.

6 Ms. Payne: I'll pick up later.

7 Commissioner Wilkerson: Sure. Mr.
8 Smith.

9 Mr. Smith: May it please the
10 Commission.

11 ARGUMENT FOR THE RESPONDENT

12 By Mr. Smith:

13 I'm going to, as always, give you all
14 some handouts. I apologize. If I may
15 approach?

16 Commissioner Wilkerson: Please.

17 Mr. Smith: There's three (3) sets of --

18 Commissioner Wilkerson: Okay. Just
19 pass them around.

20 Mr. Smith: -- what we're going to
21 discuss.

22 Commissioner Wilkerson: There we go.
23 Thank you.

24 Commissioner Taylor: Thank you.

25 Mr. Smith: I represent Barry Adickes. Barry is a

1 fifty-three (53) year old -- he's a pretty smart
2 fellow; he's a college graduate. He worked for
3 twenty-two (22) years with Philips Healthcare and their
4 predecessor company. He was -- he made a lot of money.
5 He was in medical sales. He earned about a hundred and
6 twenty-four thousand dollars (\$124,000.00) a year and
7 that, in fact, was his earnings for the year prior to this
8 injury. In March of 2011, he suffered a terrible
9 injury where he -- he went too fast on a curvy road,
10 went off a mountain, while he was on the job, and
11 careened down the mountain about a hundred (100) feet
12 and had to be extricated. He had a brain injury, he
13 had bilateral shoulder injuries and he had a cervical
14 spine injury. As you can tell, when you review this
15 record, Commissioner McCaskill did a very detailed,
16 very insightful order in this case, I'd like to take
17 credit for it but he did it; those findings of fact are
18 his findings of fact. This case was tried for about a
19 whole day, the record on it is something like this
20 (demonstrating); it is enormous and he went through
21 every bit of it. Their first argument is, is that the
22 Claimant is not at MMI; I've never heard that argument
23 from the Defense before but that's the argument. The
24 Curiel test is a test for maximum medical improvement
25 and that test is -- MMI means no further medical care

1 will lessen the period of impairment. This gentleman
2 has been treated for four (4) years. He's had a
3 shoulder surgery. They -- they don't contest MMI with
4 regard to the brain and with regard to the neck, only
5 with regard to the right shoulder. There is a
6 recommendation that he will eventually have to have
7 another surgery on his right shoulder; Dr. Barron
8 testified it is very -- it's certainly reasonable for
9 him to put that off as long as he can. If you take
10 their argument to -- to what they're saying here, that
11 means anytime you've got somebody with arthritis and
12 they're going to have to have a total knee, they're not
13 at MMI until they have that total knee somewhere down
14 the line. The other thing about that is his shoulder
15 is not what is causing his permanent wage loss; his
16 brain injury is what's causing his permanent wage loss,
17 along with his neck. It does not matter -- so -- so,
18 further medical care is not going to tend to lessen his
19 impairment because his impairment is not caused by his
20 shoulder. He has permanent impairment to his shoulder
21 but it's not causing his wage loss. So, we think
22 clearly he is at maximum medical improvement. With
23 regard to the loss of earning capacity, as I told you
24 he made a lot of money and he's actually -- and he is
25 -- and he -- and was a smart fellow. He was out of

1 work for a period of time; then he returned to work.
2 He had difficulties once he returned to work. He was
3 -- he was terminated in January of 2014, they say
4 because of a RIF; my client says that they -- that,
5 yes, it was part of a RIF but they told me it was part
6 performance related. Frankly -- and we fought about
7 that for hours during this hearing but the truth of the
8 matter is, it does not matter. He has -- he is gone
9 from that job; they will not take him back and he
10 cannot obtain employment like that any further because
11 of his injury. With regard to -- to why he was fired
12 and all that -- just so I get to do it very quickly --
13 he had glowing performance reviews prior to this
14 hearing. They put up a witness that had been his
15 supervisor eleven (11) weeks prior to this injury, and
16 then for the two (2) years after his injury; he was
17 eviscerated on cross. His reviews of him after the
18 injury read like Dr. Wade's report and Dr. Mandell's
19 deposition testimony about his lack of focus and
20 inability to concentrate and focus; if you read those
21 reviews they -- they sound like you're reading Dr.
22 Wade's report. Now, let me briefly go through this
23 evidence with you. The first one here, page 96, that's
24 Dr. Welshofer. Dr. Mandell was the treating
25 Neurologist but Dr. Mandell does not rate; so, they

1 sent him to Dr. Welshofer for a rating. Dr. Welshofer
2 rates him as having a fifteen percent (15%) impairment
3 to the brain. So, no question, he's got a brain
4 injury; their authorized treating physician finds that.
5 I put them out of order, I -- I apologize. Let me
6 start with the -- the second set here and this is Dr.
7 Wade's evaluation; this is -- the last two (2) pages
8 because it's a long report. Mr. Adickes did
9 demonstrate variability in his capacity to sustain
10 attention and concentration. It appears the compromise
11 from the intentional executive aspects of immediate
12 learning are causal for complaints of forgetfulness in
13 day-to-day pursuits. Mild executive dysfunction
14 appears to be present potentially affecting both
15 cognitive and emotional domains. Certainly in
16 day-to-day pursuits he likely experiences episodic
17 forgetfulness due to the interfering effects of
18 attention executive difficulties and headaches. Now,
19 that's good but they never once mention the report or
20 -- or the deposition of Dr. Mandell in their brief.
21 Dr. Mandell is the treating Neurologist that treated
22 him from the -- right after his injury all the way up.
23 Dr. Mandell's deposition is amating. "You talked
24 earlier about Mr. Adickes being -- and I don't remember
25 exactly how you phrased it, but a highly functional --

1 functioning individual prior to the injury? Yes. When
2 a highly functioning individual suffers a brain injury
3 are there different consequences for those that are for
4 someone who is maybe not as intelligent? They are,
5 because upon the job he has to do he's got much a much
6 more sophisticated job that requires a much more amount
7 of executive functioning and higher cortical
8 functioning than anybody -- than somebody whose just,
9 not in offense, but let's say bricklaying or something
10 like that. That verbal fluency, concentration and
11 focus probably wouldn't affect a bricklayer because
12 they don't have to use those skills but if you have a
13 higher level of functioning then those skills are very,
14 very important for something at that level." All
15 right. Then I asked him about the -- the neuropsych
16 eval. "Is this neuropsych eval, is it consistent with
17 what you've seen? It basically says exactly what I've
18 been saying word-for-word, practically, yes." And then
19 he goes on, "He did very well in most things, in fact,
20 he was in the superior range on many things; however,
21 what he did have difficulties with were concentration,
22 executive function, capacity to sustain attention with
23 concentration difficulty with intentional executive
24 aspects of immediate learning are thought to be the
25 complaints for forgetfulness on daily pursuits, mild

1 dysfunction -- excuse me -- mild executive dysfunction,
2 shorter fuse, easier frustration." He goes on to talk
3 about how that's the CEO of the brain. "Do these
4 problems limit his performance in employment
5 opportunities? I think they could depending on which
6 type of employment but, yes, at a high level of
7 employment" -- which he did -- "With high skills it
8 would limit." He goes on to talk about that, "Limits
9 his ability to multitask. The headaches cause him to
10 miss days from work. People with -- with high
11 intellect actually mask some of the problems on
12 testing. His medication usage is a barrier to
13 employment." Then the -- "Was there any point during
14 your treatment of Mr. Adickes where you felt like he
15 was trying to pull the wool over your eyes? Exactly
16 the opposite, in my opinion; he is the type of guy who
17 would minimize and try to rationalize what's
18 happening." That's the authorized treating physician.
19 Then Joel Leonard was deposed. Joel testified -- Joel
20 first did his report and -- and found that he had
21 sustained wage loss and the wage loss he thought was --
22 what he -- when he went back and he found a job making
23 fifty-five thousand dollars (\$55,000.00) a year, he
24 thought that was about right what he could do, based on
25 his testing of him. We went into this thing about,

1 okay, what -- whether he was terminated for cause or
2 not for cause and all that but when he issued his
3 report, he didn't have Dr. Mandell's deposition and Dr.
4 Wade's findings. So, he went back and said, based on
5 all that, absolutely, I think that that is exactly my
6 opinion in this case. In -- in their brief they accuse
7 Joel of intentionally misrepresenting Dr. Wade's
8 report. They accuse Commission McCaskill of not
9 reading Dr. Mandell's deposition. This is just a --
10 they didn't go get any evidence in this case. They
11 didn't get a voc eval, they didn't get a neuropsych
12 eval and now they don't like what that evidence says
13 and they're filing an appeal on that. And by the way,
14 he -- he did do his own job -- job search; he tried --
15 he went all over the place looking for jobs. He
16 applied for over fifteen (15) jobs. The fifty-five
17 thousand dollar (\$55,000.00) job was the only job he
18 could find and unfortunately he lost it right before
19 the time of this hearing. With regard to the 42-9-20
20 argument, they're arguing that you can only get
21 temporary -- excuse me -- permanent wage loss benefits
22 for the three hundred and forty (340) weeks
23 post-injury. Well, they forget the second sentence of
24 that Statute that says if there's -- if there's been
25 temporary total paid that doesn't apply. Secondly,

1 what they're asking you to do here -- and by the way,
2 the Bass versus Kenco case says that. What they're
3 asking you to do here is to part from the way wage loss
4 awards have been done in South Carolina since 1935. As
5 far as I know, I've been doing this thirty-one (31)
6 years now and I've gotten plenty of wage loss awards
7 and I've never seen a wage loss award limited from
8 three hundred and forty weeks (340) from date of
9 injury. There's -- there's -- the only case on that
10 point that I'm aware of is the Bass v. Kenco case and
11 it says if there's temporary total paid you -- it
12 doesn't matter. So, I think the evidence is clear
13 here. There was absolutely -- that he is at MMI, the
14 wage loss was proved --

15 Commissioner Wilkerson: Finish your
16 thought.

17 Mr. Smith: -- and the -- the award as found by
18 Commissioner McCaskill was proper. Thank you.

19 Commissioner Wilkerson: Three (3)
20 minutes in reply, Ms. Payne.

21 Ms. Payne: Okay. To reply quickly.

22 RESPONSE FOR THE APPELLANT

23 By Ms. Payne:

24 Just to go back to the loss of earning capacity.

25 When he applied for the subsequent job at BRI, he noted

1 on his -- on his application that he -- the base salary
2 he was requesting -- the desired base salary was
3 fifty-five thousand dollars (\$55,000.00). He also
4 testified that soon after his termination from Philips
5 he already had a job offer from BRI but he didn't
6 accept it for a few months later, for whatever reason.
7 I'm surprised at the -- the continued discussion about
8 how he applied for over fifteen (15) jobs because,
9 again, he -- he had only testified that he applied for
10 four (4) and didn't bring a single application or
11 anything -- any other witnesses -- to the hearing.
12 More importantly, with regard to the award of wage loss
13 benefits, it -- the Statute -- this isn't a statutory
14 interpretation issue; this is a plain language of the
15 Statute issue. 49 -- 42-9-20 is clear wherein it
16 states, in no case shall the period of such
17 compensation be greater than three hundred and forty
18 (340) weeks from the date of accident; in no case
19 shall, that's mandatory language. I -- I don't
20 understand the argument about if TT is paid beforehand
21 that extends the weeks. I -- I think that the language
22 actually states that if the partial disability occurs
23 after a period of temporary -- I'm sorry -- of total
24 disability that's paid, then there's -- there's no
25 offset in that regard; I think that is supported by the

1 case law but I -- I've yet to read a case that says
2 that receipt of total disability benefits means that
3 there -- there is no maximum weeks that can be awarded
4 with regard to wage loss benefits. You know, based on
5 if -- if the award of wage loss benefits stands, we
6 argue that it -- those shouldn't commence until the
7 date of MMI, which is questionable regarding the facts
8 of this case since permanency -- permanent benefits,
9 you know, they -- they occur on a -- or benefits occur
10 on a continuum and permanency ones come after MMI. So,
11 it would be from the date of MMI until three hundred
12 and forty (340) weeks from the date of accident; in
13 that case three hundred and forty (340) weeks from the
14 date of accident is September 16th, 2017. So, it's our
15 argument that -- first of all that -- that the Claimant
16 is not at MMI, so permanency -- a permanency award is
17 premature at this time. If Your Honors do find the
18 Claimant at MMI, that he is not able to meet his burden
19 of loss of wages resulting from the work injury. If
20 Your Honors find that he is at MMI and is entitled to
21 wage loss benefits, that the award should only run from
22 the date of MMI until the date that is three hundred
23 and forty (340) weeks from the date of accident based
24 on the plain language of the Statute. Thank you.

25 Commissioner Wilkerson: Thank you all.

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1 Commissioner Beck: Thank you.

2 Commissioner Wilkerson: This concludes
3 the hearing. Thank you.

4 (THERE BEING NO FURTHER DISCUSSION, THE HEARING CONCLUDED

5 AT 2:42 P.M.)

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Full Board Hearing of Barry Adickes, vs. Philips Healthcare;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 24 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 18th Day of March, 2016.

 Gloria G. Davis
 Notary Public for South Carolina
 My Commission Expires 12/21/21

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1102937

EMPLOYEE/CLAIMANT: BARRY ADICKES

EMPLOYER: PHILIPS HEALTHCARE

INSURER: FIDELITY AND GUARANTY INSURANCE

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 9TH DAY OF
OCTOBER, 2018, COMMENCING AT THE HOUR OF 11:40 A.M., IN
ROCK HILL, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN S. BARDEN,
ATTENDED BY COUNSEL AS FOLLOWS:

**KIRA L. FERGUSON
VERBATIM REPORTER**

**JAN L. WHITWORTH
WHITWORTH COURT REPORTING
POST OFFICE BOX 551
ROEBUCK, S.C. 29376
(864) 494-2705**

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I N D E X

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CERTIFICATE OF NOTARY PUBLIC..... 38

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN ROCK HILL,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * * *

6 **BY COMMISSIONER BARDEN:**

7 Today's date is October 9th, 2018. This is
8 South Carolina Workers' Compensation Commission file
9 number 1102937. This is the case of the Claimant
10 Mr. Barry Adickes who is in the building today; he's
11 not in the hearing room, but he is represented by
12 Attorney Bill Smith who is in fact here today. The
13 employer is Philips Healthcare and its carrier
14 Fidelity and Guaranty, both of which are represented
15 by Attorney Brooke Payne. The purpose of today's
16 hearing is to determine issues pursuant to a remand
17 from the Court of Appeals to the Full Commission,
18 which in turn assigned this to me to be heard or to
19 be adjudicated according to the dictates of the --
20 or the edict from the Court of Appeals. The date of
21 this accident was March 22nd, 2011.

22 Are there any objections to APAs, jurisdiction,
23 venue, or any other items? I don't know that y'all
24 have APAs, per se, and y'all probably have not had
25 time to prepare your legal memorandum, or maybe you

1 did.

2 **BY MR. SMITH:**

3 No objection. I'm assuming that everything
4 that was ---

5 **BY COMMISSIONER BARDEN:**

6 It's in the file.

7 **BY MR. SMITH:**

8 --- before Commissioner McCaskill is before you
9 today.

10 **BY COMMISSIONER BARDEN:**

11 Okay. So, this was Commissioner McCaskill's
12 claim. I guess I remembered it from the Full
13 Commission. I was thinking that somehow ---

14 **BY MS. PAYNE:**

15 You weren't on the Full Commission either.
16 That's why it was able to come back to you.

17 **BY COMMISSIONER BARDEN:**

18 It must be another -- I'm sorry, let's go off
19 the record.

20 **(OFF THE RECORD)**

21 **BY COMMISSIONER BARDEN:**

22 All right. We are back on the record, and I
23 have not had any involvement with this case before.
24 I'm advised that this was Commissioner McCaskill's
25 case and then -- nor did I sit on the Full

1 Commissioner panel, which I was mistaken about, so
2 thank you attorneys for correcting me on that.

3 I understand there are no objections to APAs,
4 is that correct? Ms. Payne, do you have any?

5 **BY MS. PAYNE:**

6 We don't have any. We're just ---

7 **BY COMMISSIONER BARDEN:**

8 You're relying ---

9 **BY MS. PAYNE:**

10 --- relying on the record as it is.

11 **BY COMMISSIONER BARDEN:**

12 And the Commission file is a part of the
13 record. Mr. Smith, you don't have any objections?

14 **BY MR. SMITH:**

15 No. We rely on the entire record.

16 **BY COMMISSIONER BARDEN:**

17 And both parties did submit addenda to their
18 Form 58s. So -- go ahead.

19 **BY MR. SMITH:**

20 And I was just going to say, I just submitted
21 an addendum as to what I thought the amount of the
22 benefit owed was, not a legal memorandum, but I can
23 do that if you'd like at the conclusion of this.

24 **BY COMMISSIONER BARDEN:**

25 Okay. We'll talk about that at the conclusion

1 of the hearing. All right. Who would like to
2 begin? It's fine with me.

3 **BY MR. SMITH:**

4 It doesn't matter.

5 **BY COMMISSIONER BARDEN:**

6 Would you like to?

7 **BY MR. SMITH:**

8 Sure.

9 **BY COMMISSIONER BARDEN:**

10 Certainly.

11 **BY MR. SMITH:**

12 I'd be happy to. Commissioner, this was a --
13 Mr. Adickes suffered a very significant injury when
14 his car plunged off a mountain on the job in March
15 of 2011. He had a traumatic brain injury, a neck
16 injury and bilateral shoulder injuries. The case
17 was tried before Commissioner McCaskill, and
18 Commissioner McCaskill found that he had sustained a
19 significant wage loss and awarded the case under 42-
20 9-20.

21 **BY COMMISSIONER BARDEN:**

22 Okay.

23 **BY MR. SMITH:**

24 The case was -- that was affirmed by the
25 appellate panel, and the case then went to the Court

1 of Appeals on appeal. There were several issues on
2 appeal at the Court of Appeals. The Court of
3 Appeals affirmed that he was at maximum medical
4 improvement. They affirmed the -- that he had
5 sustained significant wage loss, but they reversed
6 and remanded on the issue of the calculation of the
7 benefit.

8 **BY COMMISSIONER BARDEN:**

9 Such that on -- the 340 weeks is from the date
10 of the injury; is that how I understand the ruling?

11 **BY MR. SMITH:**

12 Yes, ma'am.

13 **BY COMMISSIONER BARDEN:**

14 And you -- and that -- so, essentially they do
15 get credit for temporary benefits.

16 **BY MR. SMITH:**

17 And what happened -- this is a little bit
18 unusual in that Mr. Adickes only received about
19 seven weeks and five days of temporary total
20 benefits ---

21 **BY COMMISSIONER BARDEN:**

22 Oh, okay.

23 **BY MR. SMITH:**

24 --- in essentially a two year -- two-and-a-half
25 year period. He had returned to work with them.

1 That was a big dispute in the case, his trouble
2 working. He ultimately was terminated and
3 Commissioner McCaskill and the appellate panel
4 awarded the 340 weeks beginning with the date of his
5 termination forward. The Court of Appeals reversed
6 that ---

7 **BY COMMISSIONER BARDEN:**

8 Oh, okay.

9 **BY MR. SMITH:**

10 --- finding that the 340 weeks would have to
11 commence as of ---

12 **BY COMMISSIONER BARDEN:**

13 The date of the injury.

14 **BY MR. SMITH:**

15 --- the date of the injury. Which I disagree
16 with that, but ---

17 **BY COMMISSIONER BARDEN:**

18 Yeah, okay.

19 **BY MR. SMITH:**

20 --- that's the law of this case. We did not
21 take it onto the Supreme Court in this one.

22 **BY COMMISSIONER BARDEN:**

23 Okay.

24 **BY MR. SMITH:**

25 In any event, it was remanded to you for a

1 determination of what the remaining wage loss
2 benefit is. So, basically in the addendum to my
3 prehearing brief, what we set forth to you is that
4 147 weeks had elapsed between date of injury and
5 when the wage loss began. So, essentially 147 weeks
6 comes off the 340 weeks. The defendants, did as
7 they were supposed to do, and that is they began
8 making payments -- weekly payments of the award when
9 it was on appeal to the Court of Appeals. So, they
10 began making payments on May 15, 2016. So, in the
11 addendum, I calculated it for you through September
12 11, 2018.

13 **BY COMMISSIONER BARDEN:**

14 Okay.

15 **BY MR. SMITH:**

16 I've actually done it further than that for you
17 today.

18 **BY COMMISSIONER BARDEN:**

19 Okay.

20 **BY MR. SMITH:**

21 Assume -- if I can find my note on that.
22 Assuming that they have paid, or will have paid
23 through the end of this week through October 11th,
24 they will have paid 125 weeks of benefits. So, the
25 125 plus the 147 that came off the award because

1 from date of injury to when it began, that means
2 that would leave 71 weeks of benefits to be paid.
3 We are already past the 340 weeks, so those weeks
4 would be accrued. There would be no computation of
5 those benefits because they would already be due.
6 So, that would be an award of \$50,049.32.

7 He was paid temporary total, as I pointed out
8 to you earlier, from March 23, 2011, through May 5,
9 2011, and March 9, 2016, through March 22, 2016.

10 That's seven weeks and five days worth of benefits.

11 **BY COMMISSIONER BARDEN:**

12 Okay.

13 **BY MR. SMITH:**

14 That would be a total of \$5,347.94. The court
15 remanded for a ruling under the plain language of
16 42-9-20, and the last sentence of 42-9-20 says, "in
17 case the partial disability begins after a period of
18 total disability, the latter period shall not be
19 deducted from a maximum period allowed in this
20 section for partial disability." So, my position
21 is, is that they do not get credit for the temporary
22 total disability that was paid during those first
23 one-hundred and whatever it was weeks, so that would
24 increase the amount of the award \$5,347.94 and that
25 would mean that \$55,397.26 would be owed to the

1 claimant as of October 12th, again, assuming they
2 would have paid through October 11th. So, that's my
3 position on what's owed.

4 I know that Ms. Payne has a different argument
5 on that. I can either go ahead and make those
6 arguments or I can respond.

7 **BY COMMISSIONER BARDEN:**

8 Whatever -- I'll let you respond, and she can
9 respond to you as well ---

10 **BY MR. SMITH:**

11 Okay.

12 **BY COMMISSIONER BARDEN:**

13 --- to your response.

14 **BY MR. SMITH:**

15 Okay.

16 **BY COMMISSIONER BARDEN:**

17 So, I'm going to let y'all go back and forth
18 several times. Okay?

19 **BY MR. SMITH:**

20 Okay. So, do you want me to keep going or do
21 you ---

22 **BY COMMISSIONER BARDEN:**

23 It's up to you, sir.

24 **BY MR. SMITH:**

25 It doesn't matter.

1 **BY COMMISSIONER BARDEN:**

2 If you would like to respond to her, you're
3 welcome to.

4 **BY MR. SMITH:**

5 Okay, that's fine.

6 **BY COMMISSIONER BARDEN:**

7 Okay.

8 **BY MR. SMITH:**

9 Well, the -- my arguments with this are that
10 the Order to the Court of Appeals did not reverse
11 the findings of when wage loss began.

12 **BY COMMISSIONER BARDEN:**

13 Right.

14 **BY MR. SMITH:**

15 They simply said it was limited by the 340
16 weeks from the date of injury. That wasn't
17 overturned; that's the law of the case. I think on
18 remand, respectfully, I don't think you really have
19 a choice but to do simply that. So, that's the law
20 of the case.

21 And not only that, in the Court of Appeals
22 order, they essentially expressly found that -- they
23 said, "compensation under the Act is not awarded for
24 the physical injury as such but for disability
25 produced by such injury. The disability is to be

1 measured by the employee's capacity or incapacity to
2 earn the wages which he was receiving at the time of
3 his injury." And then they go on to say, "the
4 record is clear, Adickes did not suffer a wage loss
5 until he was terminated from employer." So I think
6 they have explicitly affirmed that; they certainly
7 didn't overturn it. So, I think that ---

8 **BY COMMISSIONER BARDEN:**

9 So you believe it should be from the date of
10 the termination?

11 **BY MR. SMITH:**

12 Yes, ma'am. And which is what Commissioner
13 McCaskill had found and which was not overturned by
14 the Court of Appeals.

15 **BY COMMISSIONER BARDEN:**

16 Okay. And you know, I have read the case, but
17 do you have a copy that I could take with me today?

18 **BY MR. SMITH:**

19 Yes, ma'am.

20 **BY COMMISSIONER BARDEN:**

21 If you do.

22 **BY MR. SMITH:**

23 Sure, I do.

24 **BY COMMISSIONER BARDEN:**

25 I don't want to take your only copy.

1 **BY MR. SMITH:**

2 No, I've got several.

3 **BY COMMISSIONER BARDEN:**

4 Okay. And I can look it up too. I just
5 thought if you had one handy ---

6 **BY MR. SMITH:**

7 I do, I just have to find it for you. I
8 apologize.

9 **BY COMMISSIONER BARDEN:**

10 That's not a problem.

11 **BY MS. PAYNE:**

12 I just don't have a clean copy.

13 **BY MR. SMITH:**

14 Yeah.

15 **BY MS. PAYNE:**

16 I've got writing all over mine.

17 **BY MR. SMITH:**

18 I've got writing on mine too.

19 **BY COMMISSIONER BARDEN:**

20 I don't care. Thank you so much. I want to
21 make sure you didn't leave any valuable notes in
22 here that you might need.

23 **BY MR. SMITH:**

24 I don't think I made any notes on that.

25 **BY COMMISSIONER BARDEN:**

1 I don't think -- there's a little bit of
2 highlighting, but that's all right. Okay. All
3 right.

4 **BY MR. SMITH:**

5 All right.

6 **BY COMMISSIONER BARDEN:**

7 Thank you.

8 **BY MR. SMITH:**

9 The -- in their pre-hearing brief, the defense
10 argues based on the Curiel case that you cannot
11 award wage loss benefits until maximum medical
12 improvement. So, essentially what they're trying to
13 do is limit the award on the front-end and then
14 limit the award on the back-end as well. To me,
15 that's kind of an nonsensical reading of the
16 statute, and it really amounts to the fact that
17 there will be no remedy at all, which would be a
18 violation of due process if that were the case. But
19 beyond that, the -- if you look at 42-9-20, which I
20 handed you a minute ago.

21 **BY COMMISSIONER BARDEN:**

22 I have it.

23 **BY MR. SMITH:**

24 The words "temporary" or "permanent" do not
25 appear in this general disability statute. Rather,

1 it looks at disability, which is defined under 42-1-
2 120, and I'll give you that as well. Disability
3 under -- is defined as -- it means, "the incapacity
4 because of injury to earn the wages which the
5 employee was receiving at the time of the injury in
6 the same or any other employment." Again, there's
7 no distinction in the statute between temporary and
8 permanent, only whether the definition of disability
9 is met. The Commission found that it was, and the
10 Court affirmed that. Going further back to *Outlaw*
11 *versus Johnson Services*, "loss of earning capacity
12 alone is the criterion for compensation and medical
13 opinion as to the extent of any physical disability,
14 has no probative value against actual earnings."
15 So, what you have to look at in a 42-9-20 case is
16 the definition of disability. There's no
17 distinction between whether that's temporary;
18 there's no distinction whether that's permanent. If
19 he meets the definition of disability, which the
20 Commission and Court expressly found that he did, he
21 is entitled to compensation.

22 Going further with this MMI argument, they
23 presume the date of MMI in this Order. They argued
24 that he had actually not reached maximum medical
25 improvement with regard to his shoulder. The Order

1 finds that he reached maximum medical improvement.

2 **BY COMMISSIONER BARDEN:**

3 Uh-huh.

4 **BY MR. SMITH:**

5 There is no date of maximum medical improvement
6 in this Order. Neither Commissioner McCaskill ---

7 **BY COMMISSIONER BARDEN:**

8 Not the Full Commission?

9 **BY MR. SMITH:**

10 --- or the appellate panel found a date of
11 maximum medical improvement, and the reason for that
12 is that MMI is irrelevant in a 42-9-20 case. It's
13 only relevant to the issue of medical care, whether
14 that medical care is wide open medical care or
15 whether it's going to be limited in scope pursuant
16 to an Order, but there is no date in this Order
17 finding maximum medical improvement. It just says
18 that he did find maximum medical improvement.

19 Now -- so for you to come back now on this
20 remand ---

21 **BY COMMISSIONER BARDEN:**

22 But how would I know what the date is if you're
23 telling me that there's ---

24 **BY MR. SMITH:**

25 Exactly.

1 **BY MS. PAYNE:**

2 There's ---

3 **BY MR. SMITH:**

4 Because ---

5 **BY COMMISSIONER BARDEN:**

6 I'm going to let -- Ms. Payne has an answer for
7 that.

8 **BY MR. SMITH:**

9 Because it's irrelevant, okay.

10 **BY COMMISSIONER BARDEN:**

11 Yeah, but I'm just saying -- yeah.

12 **BY MR. SMITH:**

13 And not only that ---

14 **BY COMMISSIONER BARDEN:**

15 If I was going to calculate anything from an
16 MMI date, then I would have to know what the MMI
17 date was.

18 **BY MR. SMITH:**

19 Exactly. And the -- in doing that, if you did
20 -- you would have to find a date of maximum medical
21 improvement, which would be beyond the scope of the
22 remand from the Court of Appeals. The Court of
23 Appeals affirmed maximum medical improvement. They
24 did not remand it to the Commission for a date of
25 maximum medical improvement. And again, the reason

1 for that is under 42-9-20, it's irrelevant.

2 The -- and another interesting -- but let me --
3 let's -- taking that argument one step further.
4 Let's say that we decide we do have to go down that
5 rabbit hole, which I don't think we can, but let's
6 just decide -- let's say that we do, and you have to
7 figure out a date of maximum medical improvement.
8 They argued that maximum medical improvement in this
9 case had not been reached, but they conceded in
10 their brief that he had reached maximum medical
11 improvement with regard to the brain and with regard
12 to his neck. They challenged maximum medical
13 improvement on ---

14 **BY COMMISSIONER BARDEN:**

15 On the shoulder.

16 **BY MR. SMITH:**

17 --- on the shoulder. Okay. If you look at the
18 single Commissioner's Order in this case that was
19 affirmed by the appellate panel, findings of fact 44
20 through 48, and I'll just read them to you real
21 quickly.

22 **BY COMMISSIONER BARDEN:**

23 Okay.

24 **BY MR. SMITH:**

25 "When we consider all of those opinions and the

1 evidence as a whole, the claimant has suffered a
2 cognitive deficiency as a result of his work-related
3 accident on March 22, 2011. The impact of that
4 deficiency is limited to his executive functioning.
5 That being said, it's that executive functioning
6 that is determinative of the claimant's ability to
7 hold employment similar to his employment for
8 Philips Healthcare. While the employer -- while the
9 claimant did continue to work for the employer for
10 2.5 years after the work-related accident, he no
11 longer works there, and the cogent question is now,
12 can he find like employment at a similar wage and if
13 not, is the inability to find such employment the
14 result of his diminished executive function. It's
15 reasonable to conclude that if the claimant could
16 find employment at a wage comparable to what he
17 earned for the employer, he would. There is no
18 evidence in the record that the claimant would
19 choose to self-limit his earning potential. We find
20 the claimant has suffered wage loss as a result of
21 the 3-22-11 work-related accident. Based on the
22 evidence as a whole, the claimant is clearly not as
23 he was before the work injury."

24 Commissioner McCaskill and the appellate panel
25 found that the reason he has wage loss is because of

1 his traumatic brain injury and his loss of cognitive
2 function as it relates to executive function. They
3 conceded that he was at maximum medical improvement
4 with regard to his brain long before his shoulder.
5 In fact, he was rated on November 1, 2012, for his
6 brain, APA page 96, that was Dr. Welshofer. Dr.
7 Mandell concurred with that at his depo on page 42.
8 So, even -- so I don't even think you get to all
9 that, okay? But if we're going to go way down that
10 road, they conceded maximum medical improvement with
11 regard to his brain. He reached maximum medical
12 improvement with regard to his brain in November
13 2012, so none of that would even matter.

14 So -- and this issue was raised before the
15 Court of Appeals, and they didn't buy it. They
16 didn't remand on it. They didn't -- they didn't do
17 anything with that. So, I -- again, my real
18 argument in this case -- or, all these are real
19 arguments, but the -- I think, simply, the Court of
20 Appeals found -- they agreed with the fact that his
21 -- when his wage loss began. They agreed with the
22 fact that he had substantial wage loss. They simply
23 said, you can't get it except from 340 weeks from
24 date of injury. So, for that period of time that he
25 continued to work, as unfair as that is, he's

1 penalized, and he does not get that.

2 So, the amount of benefits under the law that
3 Mr. Adickes is entitled to is the fifty ---

4 **BY COMMISSIONER BARDEN:**

5 Forty-nine dollars and thirty-two cents?

6 **BY MR. SMITH:**

7 \$55,397.26.

8 **BY COMMISSIONER BARDEN:**

9 Could you say that figure again? Fifty-five --
10 -

11 **BY MR. SMITH:**

12 Yes, ma'am. \$55,397.26.

13 **BY COMMISSIONER BARDEN:**

14 Okay. All right. Okay. And you'll have a
15 chance to respond.

16 **BY MR. SMITH:**

17 Thank you.

18 **BY COMMISSIONER BARDEN:**

19 All right. Ms. Payne?

20 **BY MS. PAYNE:**

21 I disagree, first of all, that the Court of
22 Appeals agreed with the date that they should
23 commence being the date that he was terminated. The
24 remand sentence specifically says, "we reverse the
25 appellate panel's award of 340 weeks compensation

1 commencing January 17th, 2014, and remand for a new
2 calculation of benefits consistent with the plain
3 language of 42-9-20." If ---

4 **BY COMMISSIONER BARDEN:**

5 And January 17th, 2014, is ---

6 **BY MS. PAYNE:**

7 Was when he was terminated.

8 **BY COMMISSIONER BARDEN:**

9 Okay.

10 **BY MS. PAYNE:**

11 Due to a reduction in force.

12 **BY COMMISSIONER BARDEN:**

13 You're saying they specifically rejected that?

14 **BY MS. PAYNE:**

15 That is -- I just read the sentence into the
16 record.

17 **BY COMMISSIONER BARDEN:**

18 Okay.

19 **BY MS. PAYNE:**

20 "Accordingly, we reverse the appellate panel's
21 award of 340 weeks compensation commencing January
22 17th, 2014, and remand for a new calculation of
23 benefits consistent with the plain language of 42-9-
24 20." If they agreed with the benefits commencing
25 January 17th, and they knew that 340 weeks from the

1 date of accident is "X" date, that would have been
2 an easy calculation for them to make, and it
3 wouldn't have been remanded. So, for that reason,
4 we argue that the benefits should be calculated from
5 the date of MMI through the date of 340 weeks from
6 the date of injury, and that's because these are
7 permanent benefits.

8 **BY COMMISSIONER BARDEN:**

9 And what do you find to be the date of MMI?

10 **BY MS. PAYNE:**

11 The date of MMI is when he was found to be at
12 MMI for all of his injuries, which is January 14th,
13 2015. That date comes from -- to back up, right
14 after we tried this case, Commissioner McCaskill had
15 a conference call with us and, you know, just said,
16 "I don't -- guys, I don't know if he's at MMI. Tell
17 me what your thoughts are." Blah, blah, blah, and
18 so it was argued that the questionnaire from his IME
19 physician, Dr. Barron, which was dated January 14th,
20 2015, shows that he's at MMI for all of his
21 injuries, and Commissioner McCaskill specifically
22 put that in the award that, "the claimant contends
23 that the questionnaire from Dr. Barron provides a
24 determination of MMI. I've reviewed the
25 questionnaire and must agree as to a determination

1 of MMI. Dr. Barron opines to a reasonable degree of
2 medical certainty that the claimant has sustained
3 permanent impairment of fifteen-percent to the right
4 shoulder, zero-percent to the left shoulder. While
5 the ratings are necessary to determine disability to
6 the shoulders, if any of the language is also
7 determinative as to MMI." So that was ---

8 **BY COMMISSIONER BARDEN:**

9 So you believe that they did speak to that?

10 **BY MS. PAYNE:**

11 Yes.

12 **BY COMMISSIONER BARDEN:**

13 Okay.

14 **BY MS. PAYNE:**

15 That's how he found that the claimant was at
16 MMI ---

17 **BY COMMISSIONER BARDEN:**

18 And so, he ---

19 **BY MS. PAYNE:**

20 --- for all of his injuries.

21 **BY COMMISSIONER BARDEN:**

22 Okay.

23 **BY MS. PAYNE:**

24 So it's -- he doesn't say the date of the
25 questionnaire is "X," but, I mean, that's very

1 clear. And I agree that using the way that the
2 statute had been interpreted until we tried this
3 case, or brought it up to the Court of Appeals, the
4 date of MMI didn't matter ---

5 **BY COMMISSIONER BARDEN:**

6 Okay.

7 **BY MS. PAYNE:**

8 --- because it was just a lump sum award of 340
9 weeks.

10 **BY COMMISSIONER BARDEN:**

11 Right.

12 **BY MS. PAYNE:**

13 It didn't matter ---

14 **BY COMMISSIONER BARDEN:**

15 Right.

16 **BY MS. PAYNE:**

17 --- when MMI was.

18 **BY COMMISSIONER BARDEN:**

19 Right.

20 **BY MS. PAYNE:**

21 But having said that, this is a permanent
22 award, and I also agree that there's no distinction
23 between temporary and permanent when it comes to the
24 disability statute. I completely agree, but the
25 claimant wasn't seeking any temporary wage loss

1 benefits. His 50 specifically says permanent --
2 it's ripe for permanency determination. He's only
3 seeking a permanent award of wage loss benefits, and
4 for that reason, I mean, I -- it's very well
5 established within South Carolina that comp benefits
6 run on a timeline. That temporary total benefits
7 are available from the date of injury through the
8 date of MMI, and that's -- post-MMI benefits are
9 awarded as perm-total or partial disability. I
10 mean, that's in almost every case if you search, you
11 know, determination of MMI as it relates to
12 permanent and temporary benefits, and I think that
13 the record is clear that that was the date that
14 Commissioner McCaskill used, and I think that the
15 Court of Appeals did overturn the date of
16 commencement. I mean, that's the last -- that's in
17 the remand sentence, the last sentence of the Court
18 of Appeals order directives back down here. And I
19 think, you know, like I said, they're -- he wasn't
20 seeking any temporary benefits -- temporary loss. I
21 agree that that statute applies to both, but, you
22 know, any benefits prior to MMI would have been
23 temporary benefits, and he didn't seek any temporary
24 benefits. He just sought wage loss benefits,
25 permanent wage loss benefits.

1 And so, MMI date being January 14th, 2015. To
2 back up -- to correct one thing that Bill said, we
3 commenced benefits in -- on March 10th, 2016. That
4 was the date that we filed the notice of appeal,
5 rather than May. So as of today, when it comes to
6 the benefits commenced for purposes of this appeal,
7 we've paid 135 weeks.

8 **BY MS. PAYNE (addresses Mr. Smith):**

9 Here's the payment ledger that I -- I sent it
10 over to you last night.

11 **BY MS. PAYNE:**

12 So, those are the dates. So, we've paid 135
13 weeks and if you calculate the date of MMI through
14 340 weeks from the date of accident -- so, 340 weeks
15 from the date of accident is September 24th, 2017.
16 So, if you look -- if you calculate the amount of
17 weeks between MMI date, based on Commissioner
18 McCaskill's determinations, through 340 weeks from
19 the date of accident that amounts to 141 weeks. So
20 right now, we've paid 135.

21 So, we argue that if -- well, first we would
22 like to argue that it -- since, you know, generally
23 that award is encompassed in a lump sum, but we just
24 paid it weekly in order to commence the appeal that
25 we should be able to commute the value of that,

1 which amounts to 137.69 weeks, but if not, then
2 we'll go with six weeks remaining, which amounts to
3 \$4,229.52.

4 And onto Mr. -- onto Bill's second argument
5 about the last sentence in the statute where it
6 says, "in case the partial disability begins after a
7 period of total disability, the latter period shall
8 not be deducted from a maximum period allowed in
9 this section." So what that is saying, which is
10 what happened here, partial disability commenced
11 after a period of total disability because we paid
12 him, like, six or seven weeks of total disability.
13 So what it's saying is, we can't say "oh, well, we
14 already paid you seven weeks of total disability, so
15 now we're only going to go out to 333 weeks from the
16 date of accident." We can't deduct it on that end,
17 which we haven't tried to do. We've never argued
18 that. So, we are looking at the full 340 weeks from
19 the date of accident. We're not deducted it based
20 on any TTD that's owed, and I don't even know how a
21 reading of that could stand for the proposition that
22 it should be added onto the award, but having said
23 that, we aren't trying to deduct it. We think that
24 it should go out to the full 340 weeks based on the
25 language of the statute.

1 Let me see if I touched on everything that you
2 argued. And ---

3 **BY COMMISSIONER BARDEN:**

4 So, Mr. Smith's total figure, he believes is
5 \$55,397.26; is that correct, Mr. Smith?

6 **BY MR. SMITH:**

7 Yes, ma'am.

8 **BY COMMISSIONER BARDEN:**

9 I think that's what you said, but I just want
10 to verify that, \$55,397.26?

11 **BY MR. SMITH:**

12 Correct.

13 **BY COMMISSIONER BARDEN:**

14 And you believe that figure would be?

15 **BY MS. PAYNE:**

16 \$4,229.52, which represents six more weeks of
17 wage loss benefits being owed.

18 **BY COMMISSIONER BARDEN:**

19 Okay.

20 **BY MS. PAYNE:**

21 And the argument about there being no remedy at
22 all if there's a situation wherein -- we argued this
23 up at the Court of Appeals as well. If there's a
24 situation where a claimant reaches MMI, but beyond
25 the 340 weeks, there's still the scheduled member --

1 there's still potential remedies of law for getting
2 compensated for permanent benefits. I mean, he
3 would have been compensated for having three
4 compensable injuries and scheduled member benefits
5 under each. It's not preventing him from being able
6 to receive a permanent award; it's just changing --
7 it would just be, you know, changing the vehicle for
8 it. So, there is always a remedy. This isn't
9 preventing anyone from being able to obtain a
10 permanent award. It would just change how they
11 would go about doing it.

12 So that's why we argue that the benefits should
13 be commenced, since he's seeking permanent wage loss
14 benefits, the date of MMI and pursuant to the Court
15 of Appeals award, they should be limited to 340
16 weeks from the date of accident, which is September
17 24th, 2017.

18 **BY COMMISSIONER BARDEN:**

19 Okay.

20 **BY MR. SMITH:**

21 Commissioner McCaskill agreed he was at maximum
22 medical improvement, but he did not find a date of
23 maximum medical improvement. With regard to the
24 remedy itself, to -- if you take their argument to
25 its logical conclusion, it simply negates 42-9-20

1 for someone who takes a long time to get to maximum
2 medical improvement. It is a -- it essentially
3 makes the statute worthless and would be a violation
4 of due process.

5 In this case, we sought wage loss benefits. It
6 does not matter if those wage loss benefits are
7 temporary or they're permanent because the statute
8 does not speak to temporary or permanent. It speaks
9 to what is the definition of disability as defined.
10 Clearly, the evidence in this case showed that his
11 wage loss began with his termination; that was fully
12 explained by the medical doctors, by the vocational
13 expert, and we believe, fully affirmed by the Court
14 of Appeals. They certainly found that the wage loss
15 existed. They found -- they said in there that the
16 wage loss began with his date of termination and
17 they -- and again, I don't think they remanded this
18 case for a different decision in terms of when the
19 wage loss began. They simply said that you can't
20 get wage loss beyond 340 weeks from date of injury,
21 and that's what the calculation that was envisioned
22 by the Court of Appeals was remanded.

23 To the argument that the Court of Appeals would
24 have simply gotten out their pen and paper and
25 figured out the award, that's not what the Court of

1 Appeals ever does. They always -- they make their
2 decision. They don't come up with the dollar
3 amount.

4 **BY COMMISSIONER BARDEN:**

5 Right.

6 **BY MR. SMITH:**

7 They remand that to the agency for that to
8 happen. So, I certainly disagree with that.

9 **BY COMMISSIONER BARDEN:**

10 Okay.

11 **BY MR. SMITH:**

12 Oh, one other thing, with regard to when
13 benefits were started, this was emailed to me last
14 night. I don't know if it's right or wrong; I do
15 know it differs with the Form 18.

16 **BY COMMISSIONER BARDEN:**

17 Okay. Well, maybe that's something that y'all
18 can square away or tie down after the -- after we
19 speak here today.

20 **BY MR. SMITH:**

21 Okay.

22 **BY COMMISSIONER BARDEN:**

23 Anything else, Ms. Payne, that you would like
24 to argue? You don't have to. I'm just offering it
25 up to you.

1 **BY MS. PAYNE:**

2 I guess I'm confused as to how that -- those
3 dates don't add up because we had to commence the
4 date that we ---

5 **BY COMMISSIONER BARDEN:**

6 Well, go ahead if you'd ---

7 **BY MS. PAYNE:**

8 --- pursued the appeal.

9 **BY COMMISSIONER BARDEN:**

10 --- like to address that on the record.

11 **BY MR. SMITH:**

12 Well, I know the number that I'm using is based
13 on that Form 18 you sent me. So -- and I had that
14 based on benefits commencing ---

15 **BY MS. PAYNE:**

16 You said May.

17 **BY MR. SMITH:**

18 Yeah, sorry.

19 **BY COMMISSIONER BARDEN:**

20 I think you said May 15th, 2016; is that right?

21 **BY MS. PAYNE:**

22 I just assumed that if we hadn't commenced them
23 two months after we started the appeal process
24 through the Court of Appeals you probably would have
25 filed something requesting they be commenced

1 pursuant to the statute.

2 **BY MR. SMITH:**

3 The only thing that I -- sorry, I didn't know
4 that was going to be an issue.

5 **BY COMMISSIONER BARDEN:**

6 Take your time.

7 **BY MR. SMITH:**

8 I would have rechecked that.

9 **BY COMMISSIONER BARDEN:**

10 Take your time.

11 **BY MR. SMITH:**

12 I don't know that I have the 18 with me. We
13 can check it, Your Honor.

14 **BY COMMISSIONER BARDEN:**

15 Okay.

16 **BY MR. SMITH:**

17 I don't ---

18 **BY COMMISSIONER BARDEN:**

19 Okay.

20 **BY MR. SMITH:**

21 I don't think I have that Form 18 with me, but
22 I think -- I'm almost positive I based that on what
23 the Form 18 said.

24 **BY COMMISSIONER BARDEN:**

25 Okay. All right. Anything else before we

1 close? All right. That concludes this proceeding.
2 **(THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS**
3 **CONCLUDED AT THE HOUR OF 12:12 P.M.)**

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1102937

EMPLOYEE/CLAIMANT: BARRY ADICKES

EMPLOYER: PHILIPS HEALTHCARE

INSURER: FIDELITY AND GUARANTY INSURANCE

I, KIRA L. FERGUSON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **37** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **BARRY ADICKES** TAKEN ON THE 9TH DAY OF OCTOBER, 2018.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 12TH DAY OF OCTOBER, 2018.

KIRA L. FERGUSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-25-2027

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1102937

EMPLOYEE/CLAIMANT: BARRY ADICKES

EMPLOYER: PHILIPS HEALTHCARE

CARRIER: FIDELITY & GUARANTY INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 19TH DAY
OF APRIL, 2019, COMMENCING AT THE HOUR OF 12:26 P.M.,
IN COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE
MELODY JAMES, ATTENDED BY COUNSEL AS FOLLOWS:

**TIMMI A. PARRISH
VERBATIM REPORTER**

ORIGINAL

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

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POST OFFICE BOX 2449
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ATTORNEY FOR THE EMPLOYER/CARRIER.

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * *

6 **BY COMMISSIONER JAMES:**

7 TODAY IS APRIL THE 19TH, 2019. WE ARE HERE ON
8 THE MATTER OF BARRY ADICKES VERSUS PHILIPS
9 CORPORATION. THIS IS SOUTH CAROLINA WORKERS'
10 COMPENSATION FILE NUMBER 1102937. MR. SMITH IS
11 PRESENT WITH REGARDS TO THE CLAIMANT, AND MS. BROOKE
12 PAYNE IS PRESENT WITH REGARDS TO THE DEFENDANTS.

13 THERE IS LONG PROCEDURAL HISTORY WITH REGARDS
14 TO THIS FILE, WHICH WE ARE NOT DIRECTLY HERE ON
15 TODAY. WE ARE HERE ON A FORM 50, WHICH I HAVE BEEN
16 ADVISED IN PRETRIAL. I'LL LET BOTH PARTIES SPEAK TO
17 IT. INVOLVES TWO ISSUES OF WHETHER THERE IS A
18 VIOLATION OF CURRENT ORDERS, AND I'M JUST GOING TO
19 LET BOTH PARTIES SPEAK TO THOSE AS TO -- MR. SMITH,
20 AS TO THE RELIEF YOU'RE REQUESTING AND WHAT YOU
21 BELIEVE THE VIOLATION IS, AND, MS. PAYNE, YOUR
22 POSITION WITH REGARDS TO WHY YOU BELIEVE THERE IS NO
23 VIOLATION OF THE ORDERS AS THEY STAND CURRENTLY.

24 SO, LET ME SAY THAT WE NEED TO ADDRESS THE APAs

1 FIRST, AS WHETHER THERE'S ANY OBJECTION TO ANY OF
2 THE APAs, JURISDICTION, VENUE, OR ANY OTHER
3 OBJECTIONS ON BEHALF OF THE MOVING PARTY, THE
4 CLAIMANT.

5 **BY MR. SMITH:**

6 NONE FROM THE CLAIMANT, YOUR HONOR.

7 **BY THE COMMISSIONER:**

8 THE DEFENDANT.

9 **BY MS. PAYNE:**

10 THE ONLY OBJECTION WOULD BE THAT WE STILL
11 MAINTAIN OUR POSITION THAT THE -- WHETHER WE ARE IN
12 VIOLATION OF AN ORDER FOR SUSPENSION OF BENEFITS, WE
13 DON'T THINK THAT IT'S PROPER TO BE HEARD AT THIS
14 LEVEL. WE STILL THINK THAT SINCE THAT IS PENDING
15 BEFORE THE COURT OF -- OR BEFORE THE FULL
16 COMMISSION, THAT IT'S AN ISSUE THAT SHOULD BE
17 DECIDED AFTER THE FULL COMMISSION AWARD.

18 **BY THE COMMISSIONER:**

19 OKAY. AND SO, WITH REGARDS TO -- THERE ARE NO
20 OBJECTIONS WITH REGARDS TO THE STANDARD AS THE APAs?
21 THERE'S THE LEGAL ARGUMENT AS TO ---

22 **BY MS. PAYNE:**

23 RIGHT.

24 **BY THE COMMISSIONER:**

25 --- AS TO WHETHER THERE'S A VIOLATION OR NOT A

1 VIOLATION AND WHAT YOUR POSITION IS? SO, I WILL GO
2 AHEAD. THE APAs ARE ADMITTED INTO EVIDENCE, THEN.
3 THAT IS CLAIMANT'S ONE THROUGH ONE TWENTY-SEVEN AND
4 DEFENDANTS' ONE THROUGH SIX.

5 **BY MR. SMITH:**

6 THERE WAS A SUPPLEMENTAL APA SEVEN, YOUR HONOR.
7 IT'S ACTUALLY CLAIMANT'S ONE THROUGH ONE FORTY-
8 THREE.

9 **BY THE COMMISSIONER:**

10 AND I SEE THAT. THANK YOU FOR THAT CORRECTION.
11 SO THOSE ARE ADMITTED INTO EVIDENCE. ALL RIGHT.
12 MR. SMITH?

13 **BY MR. SMITH:**

14 THANK YOU, YOUR HONOR. WE'RE HERE OVER TWO
15 ISSUES TODAY INVOLVING PENALTIES AND FINES. THE
16 FIRST ONE IS THAT DEFENDANTS HAVE BEEN UNDER ORDER
17 TO PROVIDE MEDICATIONS AS PRESCRIBED BY DR. MANDELL
18 SINCE THE SINGLE COMMISSIONER ORDER OF AUGUST 27,
19 2015. THAT ORDER WAS APPEALED, BUT THOSE ISSUES
20 WERE NOT APPEALED, AND THAT IS THE LAW OF THE CASE.
21 DURING THE SUMMER AND FALL OF 2018, THERE WERE
22 REPEATED ISSUES WITH AUTHORIZATION OF MEDICATIONS.
23 IN PARTICULAR, WE ARE LOOKING AT THE PERIODS OF JULY
24 9, 2018, THROUGH JULY 12; AUGUST 31 THROUGH
25 SEPTEMBER 6; SEPTEMBER 17 THROUGH SEPTEMBER 25; AND

1 OCTOBER 16 THROUGH NOVEMBER 12. THAT IS A TOTAL OF
2 44 DAYS, AND WE ARE SEEKING PENALTIES UNDER SECTION
3 42-3-175 (A) (1) .

4 SECONDLY, YOUR HONOR, THE DEFENDANTS HAVE BEEN
5 PAYING -- THIS CASE WENT TO THE COURT OF APPEALS AND
6 WAS REMANDED BACK TO THE WORKERS' COMPENSATION
7 COMMISSION. DEFENDANTS HAVE BEEN PAYING ON THE
8 AWARD DURING THE PENDENCY OF THE APPEAL. TWICE THEY
9 SOUGHT ORDERS TO STOP PAYING, AND THOSE ORDERS WERE
10 DENIED. BUT ON OR ABOUT JULY 5, 2019 (SIC), THEY
11 STOPPED PAYING THOSE WEEKLY BENEFITS WITHOUT AN
12 ORDER, AND WE BELIEVE THAT THEY ARE STILL UNDER
13 ORDER AND ARE SUBJECT TO PENALTY FOR THAT. SO I'M
14 ASKING FOR AN ORDER REQUIRING THEM TO BRING MY
15 CLIENT CURRENT ON BENEFITS, AS WELL AS PENALTIES FOR
16 ILLEGAL TERMINATION OF THOSE BENEFITS.

17 THE -- AND I FORGOT TO MENTION THIS EARLIER,
18 YOUR HONOR, BUT UNDER SECTION 42-3-175, FINES AND
19 PENALTIES CAN BE ASSESSED BOTH FOR MEDICAL AND
20 COMPENSATION, AND THEY'RE IN VIOLATION OF ORDERS ON
21 BOTH. I AM ALSO SEEKING OUR COST OF REQUESTING THIS
22 HEARING HERE TODAY. THANK YOU.

23 **BY THE COMMISSIONER:**

24 MS. PAYNE?

25 **BY MS. PAYNE:**

1 WITH REGARD TO THE FIRST ISSUE, THE
2 EMPLOYER/INSURER CONCEDE THAT THERE WERE DELAYS IN
3 AUTHORIZATIONS OF CERTAIN PRESCRIPTIONS DURING THE
4 PERIOD THAT MR. SMITH DETAILED, AND WE WERE IN
5 CONSTANT COMMUNICATION WITH HIS OFFICE TRYING TO
6 CURE THAT ISSUE THROUGHOUT THE ENTIRE PERIOD. BUT
7 HAVING SAID THAT, WE ARGUE THAT -- THAT THERE WAS --
8 ANY SORT OF DELAY WAS NOT WILLFUL. AND THE FULL
9 COMMISSION HAS DEFINED WILLFUL CONTEMPT OF AN ORDER
10 AS, WILLFUL CONTEMPT IS AN ACT WITH THE SPECIFIC
11 INTENT TO DO SOMETHING THE LAW FORBIDS OR WITH THE
12 SPECIFIC INTENT TO FAIL TO DO SOMETHING THAT THE LAW
13 REQUIRES, THAT IS TO SAY WITH A BAD PURPOSE EITHER
14 TO DISOBEY OR DISREGARD THE LAW. WHILE THERE
15 DEFINITELY WERE DELAYS, THERE WAS ABSOLUTELY NO BAD
16 PURPOSE ON BEHALF OF MY CLIENTS TO DISREGARD THE
17 LAW.

18 AND, SECONDLY, WITH REGARD TO THE SUSPENSION OF
19 BENEFITS, IT IS OUR CONTENTION THAT WE ARE NOT ON
20 ANY -- WE ARE NOT UNDER ANY ORDER TO CONTINUE TO PAY
21 WEEKLY WAGE LOSS BENEFITS. IN FACT, THE ONLY ORDER
22 THAT WE ARE UNDER IS THE COURT OF APPEALS ORDER IN
23 THAT REGARD THAT SAYS THAT WE ARE UNDER NO
24 OBLIGATION TO PAY WEEKLY WAGE LOSS BENEFITS BEYOND
25 340 WEEKS FROM THE DATE OF ACCIDENT. SO, WE CONTEND

1 THAT WE HAVEN'T VIOLATED ANY ORDER, THAT WE
2 COMMENCED BENEFITS UNDER 42-17-60 TO BRING THE CASE
3 UP ON APPEAL, AND ONCE THAT -- AND ACCORDING TO THAT
4 STATUTE, THAT THOSE PAYMENTS CAN CEASE ONCE THE
5 QUESTION AT ISSUE HAS BEEN FULLY DETERMINED, WHICH
6 THE ISSUE OF WHETHER WAGE LOSS BENEFITS ARE LIMITED
7 TO 340 WEEKS FROM THE DATE OF ACCIDENT, WELL, IT HAS
8 BEEN FULLY DETERMINED. THERE'S NO QUESTION THERE.
9 SO FOR THAT REASON, WE SUSPENDED, AND WE DON'T THINK
10 THAT WE ARE IN VIOLATION OF ANY ORDER IN DOING SO.

11 **BY THE COMMISSIONER:**

12 I'M SORRY. LET ME -- LET ME BACK UP AND MAKE
13 SURE I HEARD YOU CORRECTLY. THE LAST PART WHERE YOU
14 WERE SAYING THE FULL DETERMINATION, IS IT YOUR
15 POSITION THAT THE ISSUE HAS BEEN FULLY DETERMINED OR
16 NOT FULLY DETERMINED?

17 **BY MS. PAYNE:**

18 IT HAS BEEN FULLY DETERMINED. THE ISSUE OF
19 WHETHER THE EMPLOYER/INSURER -- OR WHETHER A
20 CLAIMANT IS ENTITLED TO WEEKLY WAGE LOSS BENEFITS
21 BEYOND THE 340TH WEEK FROM HIS DATE OF ACCIDENT HAS
22 BEEN FULLY DETERMINED BY THE COMMISSION, AND THE
23 CASES THAT EXAMINE 42-17-60 INDICATE THAT THERE'S NO
24 NEED FOR A FINAL ORDER FOR THE WHOLE CASE. IT'S
25 JUST THE QUESTIONS OF LAW THAT GO UP ON APPEAL.

1 IT'S THOSE QUESTIONS OF LAW THAT GO UP ON APPEAL
2 THAT REQUIRE US TO COMMENCE WEEKLY BENEFITS DURING
3 THE APPEAL PROCESS. SO ONCE THE PARTICULAR QUESTION
4 OF LAW UP ON APPEAL WITH REGARD TO WEEKLY BENEFITS
5 HAS BEEN FULLY DETERMINED, OUR OBLIGATION TO
6 CONTINUE MAKING THOSE WEEKLY PAYMENTS CEASES.

7 **BY THE COMMISSIONER:**

8 ANYTHING FURTHER FROM THE CLAIMANT?

9 **BY MR. SMITH:**

10 WE WOULD JUST BRIEFLY RESPOND, YOUR HONOR. THE
11 -- IT'S OUR -- CERTAINLY OUR POSITION THAT THIS
12 ISSUE HAS NOT BEEN FULLY DETERMINED. WE'RE PENDING
13 APPEAL RIGHT NOW. THERE'S NO ORDER THAT ALLOWS THEM
14 TO STOP PAYMENT OF BENEFITS, EVEN THOUGH THEY TWICE
15 SOUGHT ORDERS TO STOP PAYMENT. SO WE THINK THEY'RE
16 CLEARLY IN VIOLATION OF THE ORDER.

17 **BY THE COMMISSIONER:**

18 ALL RIGHT. THAT CONCLUDES THIS MATTER.

19 **(THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS**
20 **CONCLUDED AT THE HOUR OF 12:35 P.M.)**

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1102937

EMPLOYEE/CLAIMANT: BARRY ADICKES

EMPLOYER: PHILIPS HEALTHCARE

CARRIER: FIDELITY & GUARANTY INSURANCE COMPANY

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 9 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **BARRY ADICKES**, TAKEN ON THE 19TH DAY OF APRIL, 2019.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 27TH DAY OF JULY, 2019.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5/29/2028

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Barry Adickes,

CLAIMANT,

vs.

Philips Healthcare,

Employer,

and

Fidelity and Guarantee Insurance Company,

Carrier

DEFENDANTS.

WCC FILE NO: 1102937

Appellate Panel Review held in Columbia, South Carolina on

December 14, 2015,

Appellate Panel Decision and Order filed on February 8, 2016

Appearances: Claimant represented by William L. Smith II, Esquire
Defendants represented by Brooke A. Payne, Esquire

STATEMENT OF THE CASE

This case came before the Single Commissioner pursuant to a Form 50 filed by the Claimant, Barry Adickes, and a Form 51 filed by Defendants. Claimant contended that he suffered an admittedly compensable accident on March 22, 2011 when he accidentally drove his company car off the side of a mountain on a winding road. Claimant suffered a closed head injury (brain), bilateral shoulder injuries, and cervical spine injury. Claimant alleged entitlement to a significant wage loss award pursuant to §42-9-20 commencing from January 17, 2014 when his employment with Phillips Healthcare ended. Claimant further alleged he had reached maximum medical improvement but would require ongoing Dodge medical care for his shoulder, neck, and post traumatic headaches as outlined by his physicians.

Defendants denied that Claimant had sustained a permanent loss of wage earning capacity and alleged that any reduction in earnings was not caused by his injury. Defendants also argued that if the case was awarded as a wage loss claim, the 340 weeks would commence as of the date of injury. Further, Defendants contended Claimant had not reached maximum medical improvement.

The hearing was held before the Single Commissioner on January 21, 2015, in Lancaster, South Carolina pursuant to timely and properly notice served on all interested parties. No objection was raised by either party regarding jurisdiction or venue.

On August 27, 2015, the Single Commissioner issued his Decision and Order, making the following Findings of Fact:

1. The Claimant suffered injuries to his head/brain, bilateral shoulders and cervical spine in a work-related automobile accident on March 22, 2011.
2. This is an admitted accident, and the Defendants have provided medical care and treatment.

3. It is the Defendants' position that this claim is not ripe for a determination of permanency. They contend that the Claimant is not at MMI as to the shoulders.
4. The Claimant contends that the questionnaire from Dr. Jerry L. Barron provides a determination of MMI.
5. I have reviewed the questionnaire of Dr. Barron and must agree with Claimant's counsel as to a determination of MMI.
6. Dr. Barron opines to a reasonable degree of medical certainty that the Claimant, "...has sustained permanent impairment of 15% to the right shoulder and 0% to the left shoulder." (Claimant's APAs, page 77a).
7. While the ratings are necessary to determine disability to the shoulders if any, the language is also determinative as to MMI. Assigning "permanent impairment" to the shoulders attests to Dr. Barron's opinion that the shoulders are not going to get any better than they are now. In other words, they are in a condition of "permanent" – plain meaning of the word – impairment. Given that fact, I find that the Claimant has reached maximum medical improvement for the shoulders.
8. That being the case, I have reviewed this case in its entirety.
9. It is clear that the Claimant has had extensive treatment with a number of providers as well as evaluations as to his cognitive function.
10. Medical care and treatment has been provided by Burke County EMS, Piedmont Medical Center, Dr. James Rentz, Dr. Nicholas Tuttle, Dr. Howard Mandell, Dr. John Welshofer, and Dr. Richard Park.
11. The Claimant has seen Dr. Jerry L. Barron for an IME.
12. The Claimant has also seen L. Randolph Waid, Ph.D. for a neuropsychological evaluation.
13. A vocational evaluation was conducted by Joel Leonard, M.Ed., CRC, CVE.
14. The Defendants' position is this is a scheduled member case pursuant to §42-9-30.
15. The Claimant contends that this is a wage loss case pursuant to § 42-9-20.
16. Dr. Welshofer opines as to the spine, "...he has a 10% impairment of the spine based upon the AMA guidelines. I will see the patient as necessary I don't think that there is anything else to offer him at this time." (Claimant's APAs, page 82).

17. As to his brain injury, Dr. Welshofer opines, "I believe the patient's injury was a SOUTH CAROLINA injury based upon the AMA guidelines. I would grade him at a permanent impairment rating of 15% of the brain for continuous post concussive (sic) symptomatology and headaches." (Claimant's APAs, page 96).
18. Dr. Barron's ratings as to both shoulders are cited above in Finding of Fact #6.
19. In his neuropsychological evaluation of the Claimant, Dr. Waid opines after extensive testing, "The current evaluation revealed Mr. Barry Adickes to be functioning in the high average range of intellectual abilities. Neuropsychological evaluation generally provided favorable results. Mr. Adickes did demonstrate variability in his capacity to sustain attention/concentration. Otherwise, his performance was suggestive of intact brain behavior functioning. It appears that compromise in the attentional/executive aspects of immediate learning are causal for complaints of forgetfulness in day to day pursuits... Mild executive dysfunction appears to be present potentially affecting both cognitive and emotional domains." (Claimant's APAs, page 8).
20. Dr. Mandell, who is the treating neurologist in this case, testified via deposition. I have read that deposition in its entirety.
21. Commenting on his review of the neuropsychological evaluation of the Claimant conducted by Dr. Waid, Dr. Mandell testified, "Then you see the summary, this is what they mean. What those mean is that he did very well on most things. However, what he did have difficulties with were concentration, executive function, capacity to sustain attention and concentration, difficulty with attentional executive aspects of immediate learning, or thought to be the complaints for forgetfulness on daily pursuits, mild executive dysfunction, shorter fuse, easier frustration... So basically, it says exactly what I'm saying, executive functioning is kind of like the CEO of the brain. What it does is, starts off with an idea, and then it gets a plan, and then it takes it all the way down to the deadline. So you need to have planning skills. You need to have memory skills. You need to have time management. You need to have mental flexibility. That's executive functioning... So the executive functioning, so that – that's what they're saying here. He did very well on everything else, which is what my examination would say as well. But those areas of concentration, focus, and things that he showed his weakness in." (Deposition of Howard Mandell, MD, page 35, lines 12-25 and page 36, lines 1-18).
22. Dr. Mandell's deposition continues, "Q. Are the problems that you have just outlined from this report caused by his traumatic brain injury and post-concussive syndrome from his on-the-job injury? A. Yes Q. Do those problems limit his performance and employment opportunities? A. . I think they could, depending upon which type of employment; but, yes, at a high level of employment with high skills, it would limit." (Deposition of Howard Mandell, MD, page 36, lines 19-25 and page 37, lines 1-2).
23. In addition to providing medical care and treatment, the Defendants provided the Claimant with two months of TTD while he was recovering.

24. The Claimant returned to work for the Employer and continued working for them for 2.5 years until his job was eliminated as part of a reduction in force.
25. The Defendants contend that the Claimant lost his job solely because of the RIF and that it had nothing to do with his work injury.
26. The Claimant testified that he worked for the Employer for over twenty years and that employment ended on 01/17/14.
27. The Claimant alleges that he was told that it was performance related.
28. The Claimant testified that after his termination he reached out to over 15 potential employers.
29. He took a job that paid \$55,000; but that employment has now ended.
30. It is the Claimant's position that he indicated to that employer that the salary listed was the salary he was seeking because that was the amount the position paid.
31. The Claimant underwent a vocational evaluation with Joel Leonard who is a vocational expert.
32. Mr. Leonard was also deposed. I have read that deposition in its entirety.
33. This evaluation was conducted on 08/25/14. The neuropsychological evaluation conducted by Dr. Waid was on 10/07/14.
34. While Mr. Leonard had to rely on the subjective complaints of the Claimant in the absence of a neuropsychological evaluation, those complaints are, for the most part, congruent with the findings of the neuropsychological evaluation.
35. Further affirmation of candid cooperation of the Claimant is the results of the neuropsychological testing conducted by Dr. Waid. In many of those measurements, the Claimant scored quite high, while others indicated deficits which tract with the opinions of both Dr. Waid and Dr. Mandell. It would take a neuropsychological expert to skew the results to the objective testing performed by Dr. Waid to match the presentation of the Claimant. That being said, I find that the Claimant was cooperative and candid in both his presentation to the experts in this case as well as in his testimony. The Claimant is reliable.
36. Mr. Leonard presents three possible profiles as to future earnings potential of the Claimant. It is Mr. Leonard's expert opinion that Profile B best represents the likely outcome with respect to the Claimant's residual employability and prospective earning capacity subsequent to the 03/22/11 accident.

37. The profile reads in part, "Within the parameters of Profile B, Mr. Adickes' current weekly wage (estimated at \$1,057.69) would be considered a reasonable and proper representation of his likely earning capacity subsequent to the March 2011 accident. While he would be capable of performing other occupations in addition to his position with VRI, such work would not be expected to pay wages that significantly exceed his current compensation." (Claimant's APAs, page 45).
38. It is clear from the record that the Claimant experienced significant injuries in his work-related accident of 03/22/11.
39. Where an injury is confined to a scheduled body member and there is no injury or affect to another body member, the recovery is limited to the medical model of §42-9-30. (Singleton and Colonna). However, the Claimant has impairment to more than one body member. He is therefore entitled to his requested analysis under the economic model of §42-9-20.
40. There are expert opinions in this case from Dr. Waid, Dr. Mandell and Mr. Leonard.
41. The vocational evaluation from Mr. Leonard is the only vocational evaluation in the record. There is no competing vocational opinion.
42. The neuropsychological evaluation from Dr. Waid is the only neuropsychological evaluation in the evidence. There is no competing neuropsychological evaluation.
43. The opinion of Dr. Mandell is given in his deposition under oath.
44. When I consider all of those opinions and the evidence as a whole, the Claimant has suffered a cognitive deficiency as the result of his work-related accident on 03/22/11.
45. The impact of that deficiency is limited to his executive functioning. That being said, it is that executive functioning that is determinative of the Claimant's ability to hold employment similar to his employment for Philips Healthcare.
46. While the Claimant did continue to work for the Employer for 2.5 years after the work-related accident, he no longer works there and the cogent question is now can he find like employment at similar wage: and, if not, is the inability to find such employment the result of his diminished executive function?
47. It is reasonable to conclude that if the Claimant could find employment at a wage comparable to what he earned for the Employer, he would. There is no evidence in the record that the Claimant would choose to self-limit as to his earning potential.

48. I find that the Claimant has suffered wage loss as the result of his 03/22/11 work-related accident. Based on a review of the evidence as a whole, the Claimant is clearly not as he was before this work-related accident.
49. I find that the Claimant has a post-accident average weekly wage of \$1,057.69.
50. The Claimant now has a residual earning capacity of \$1,057.69. The difference in the average weekly wage prior to the injury and after the injury is \$1,550.83 (\$2,608.52 - \$1,057.69). This computes to a compensation rate of \$1,033.94 (\$1,550.83 x .667). However, the maximum compensation rate for 2011 is \$704.92. Therefore, the Claimant is awarded \$704.92 a week for 340 weeks.
51. As to future medical care and treatment, Claimant is entitled to future medical care and treatment which would tend to lessen his period of disability to his right shoulder. Dr. Barron's medical opinion found at Claimant's APAs, page 77a. Dr. Barron writes, "It is my further opinion that he will most probably eventually require additional surgery to the right shoulder based on the MRI findings as well as ongoing symptoms. It is reasonable for Mr. Adickes to try to avoid surgery as long as possible. It is further my opinion that Mr. Adickes' condition was caused by his on the job automobile accident of March 22, 2011. These opinions are stated to a reasonable degree of medical certainty."
52. The Claimant is entitled to future medical care and treatment to the right shoulder as noted above.
53. The Claimant is entitled to medical care and treatment to include prescription medications and follow-up visits with Dr. Mandell for his post-traumatic headaches.
54. The Claimant is also entitled to ongoing radiofrequency ablations for the neck with Dr. Park.

The Single Commissioner further made the following Conclusions of Law:

1. Pursuant to Section 42-1-160, claimant suffered a compensable injury by accident arising out of and in the course of his employment.
2. Pursuant to Section 42-9-20, claimant has sustained a permanent loss of wage earning capacity. The claimant now has a residual earning capacity of \$1,057.69. The difference in the average weekly wage prior to the injury and after the injury is \$1,550.83. This computes to a compensation rate of \$1,033.94. However, the maximum compensation rate for 2011 is \$704.92. Therefore, the claimant is awarded \$704.92 a week for three hundred forty (340) weeks commencing January 17, 2014, the date that claimant's wage loss began. Claimant had previously received temporary total disability while he was out of work so the period of partial disability began after a period of total disability.

3. Pursuant to Section 42-15-60, claimant is entitled to ongoing care for his neck including injections, ablations, and medications as directed by Dr. Park; continuing medications and doctor visits for his post concussive syndrome as outlined by Dr. Mandell; and future surgery to his right shoulder as outlined by Dr. Barron.

The Single Commissioner then ordered the Defendants shall make the following payments:

1. \$704.92 per week for 340 weeks commencing January 17, 2014;
2. Payment of future medical care for the right shoulder to include surgery as recommended by Dr. Barron;
3. Payment for medical care and treatment to include prescription medications and follow-up visits with Dr. Mandell for post concussive headaches;
4. Payment for ongoing radio frequency ablations for the neck with Dr. Park.

Within the statutory period, the Defendants timely filed an application for review and Form 30 in the case setting forth their numerous grounds for review, copies of which were furnished to all interested parties. The Appellant asserted the Single Commissioner erred:

1. Whether the Single Commissioner erred in finding (Finding of Fact Nos. 5 and 7) that the questionnaire of Dr. Barron provides a determination of MMI, the error being that the preponderance of the evidence in record does not support this finding, Finding of Fact Nos. 5 and 7 also constitute an error of law.
2. Whether the Single Commissioner erred in finding (Finding of Fact No. 44) that the Claimant suffered a cognitive deficiency as a result of the work-related accident, the error being that the preponderance of the evidence in the record does not support this finding. Finding of Fact No. 44 also constitutes an error of law.
3. Whether the Single Commissioner erred in concluding (Finding of Fact No. 48 and Conclusion of Law No. 2) that the Claimant suffered permanent loss of wage earning capacity as a result of his work-related accident, the error being that the preponderance of

- the evidence in record does not support this finding. Finding of Fact No. 48 and the supporting Conclusion of Law also constitute an error of law.
4. Whether the Single Commissioner erred in concluding (Finding of Fact No. 49 and Conclusion of Law No. 2) the Claimant's residual earning capacity to be \$1,057.69, the error being that the preponderance of the evidence in the record does not support this finding. Finding of Fact No. 49 and the supporting Conclusion of Law No. 2 constitutes an error of law.
 5. Whether the Single Commissioner erred in finding (Conclusion of Law No. 2) that the Claimant is entitled to wage loss benefits commencing on January 17, 2014, a date prior to MMI. Conclusion of Law No. 2 constitutes an error of law.
 6. Whether the Single Commissioner erred in finding (Finding of Fact No. 50 and Conclusion of Law No. 2) that the Claimant is entitled to three hundred and forty (340) weeks of wage loss benefits, when Section 42-9-20 states "[i]n no case shall the period covered by such compensation be greater than three hundred forty weeks from the date of injury," the error being that this finding is not in accordance with the plain language of the statute, constituting an error of law.
 7. Whether the Single Commissioner erred in finding (Finding of Fact Nos. 51 and 52 and Conclusion of Law No. 3) that the Claimant is entitled to future medical care with Dr. Barron, to include right shoulder surgery, the error being that the preponderance of the evidence in the record does not support this finding. Finding of Fact Nos. 51 and 52 and the supporting Conclusion of Law also constitute an error of law.

Briefs were submitted prior to oral arguments, which were presented before the Appellate Panel on December 14, 2015. All proffered testimony has been taken. Such together with all documentary evidence has been delivered by oral argument to individual members of the Appellate Panel and has since been under study and consideration. In an appellate review, the Appellate Panel shall, pursuant to SC Code and Section 42-17-50 (1976 as amended), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own finding of fact and reach its own conclusions of law consistent with or inconsistent with those of the hearing commissioner. Counsel for the Claimant and for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties.

A review of the record in its entirety shows that the evidence supports the Single Commissioner's findings and rulings. The reports and depositions of Dr. Mandell, Dr. Waid, and Joel Leonard establish that Claimant has cognitive difficulties affecting his executive function of his brain and those difficulties have resulted in a permanent loss of wage earning capacity that began at the time of Claimant's termination. The evidence further established Claimant had reached maximum medical improvement although he would need continuing maintenance care.

Having heard oral arguments on behalf of the parties, considered the briefs, and viewed the record as a whole, the Appellate Panel affirms the hearing commissioner's order in full and makes the following finding of fact and conclusions of law:

FINDINGS OF FACT

1. The Claimant suffered injuries to his head/brain, bilateral shoulders and cervical spine in a work-related automobile accident on March 22, 2011.
2. This is an admitted accident, and the Defendants have provided medical care and treatment.

3. It is the Defendants' position that this claim is not ripe for a determination of permanency. They contend that the Claimant is not at MMI as to the shoulders.
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28. The Claimant testified that after his termination he reached out to over 15 potential employers.
29. He took a job that paid \$55,000; but that employment has now ended.
30. It is the Claimant's position that he indicated to that employer that the salary listed was the salary he was seeking because that was the amount the position paid.
31. The Claimant underwent a vocational evaluation with Joel Leonard who is a vocational expert.
32. Mr. Leonard was also deposed. We have read that deposition in its entirety.
33. This evaluation was conducted on 08/25/14. The neuropsychological evaluation conducted by Dr. Waid was on 10/07/14.
34. While Mr. Leonard had to rely on the subjective complaints of the Claimant in the absence of a neuropsychological evaluation, those complaints are, for the most part, congruent with the findings of the neuropsychological evaluation.
35. Further affirmation of candid cooperation of the Claimant is the results of the neuropsychological testing conducted by Dr. Waid. In many of those measurements, the Claimant scored quite high, while others indicated deficits which tract with the opinions of both Dr. Waid and Dr. Mandell. It would take a neuropsychological expert to skew the results to the objective testing performed by Dr. Waid to match the presentation of the Claimant. That being said, I find that the Claimant was cooperative and candid in both his presentation to the experts in this case as well as in his testimony. The Claimant is reliable.
36. Mr. Leonard presents three possible profiles as to future earnings potential of the Claimant. It is Mr. Leonard's expert opinion that Profile B best represents the likely outcome with respect to the Claimant's residual employability and prospective earning capacity subsequent to the 03/22/11 accident.

37. The profile reads in part, "Within the parameters of Profile B, Mr. Adickes' current weekly wage (estimated at \$1,057.69) would be considered a reasonable and proper representation of his likely earning capacity subsequent to the March 2011 accident. While he would be capable of performing other occupations in addition to his position with VRI, such work would not be expected to pay wages that significantly exceed his current compensation." (Claimant's APAs, page 45).
38. It is clear from the record that the Claimant experienced significant injuries in his work-related accident of 03/22/11.
39. Where an injury is confined to a scheduled body member and there is no injury or affect to another body member, the recovery is limited to the medical model of §42-9-30. (Singleton and Colonna). However, the Claimant has impairment to more than one body member. He is therefore entitled to his requested analysis under the economic model of §42-9-20.
40. There are expert opinions in this case from Dr. Waid, Dr. Mandell and Mr. Leonard.
41. The vocational evaluation from Mr. Leonard is the only vocational evaluation in the record. There is no competing vocational opinion.
42. The neuropsychological evaluation from Dr. Waid is the only neuropsychological evaluation in the evidence. There is no competing neuropsychological evaluation.
43. The opinion of Dr. Mandell is given in his deposition under oath.
44. When we consider all of those opinions and the evidence as a whole, the Claimant has suffered a cognitive deficiency as the result of his work-related accident on 03/22/11.
45. The impact of that deficiency is limited to his executive functioning. That being said, it is that executive functioning that is determinative of the Claimant's ability to hold employment similar to his employment for Philips Healthcare.
46. While the Claimant did continue to work for the Employer for 2.5 years after the work-related accident, he no longer works there and the cogent question is now can he find like employment at similar wage: and, if not, is the inability to find such employment the result of his diminished executive function?
47. It is reasonable to conclude that if the Claimant could find employment at a wage comparable to what he earned for the Employer, he would. There is no evidence in the record that the Claimant would choose to self-limit as to his earning potential.
48. We find that the Claimant has suffered wage loss as the result of his 03/22/11 work-related accident. Based on a review of the evidence as a whole, the Claimant is clearly not as he was before this work-related accident.

49. We find that the Claimant has a post-accident average weekly wage of \$1,057.69.
50. The Claimant now has a residual earning capacity of \$1,057.69. The difference in the average weekly wage prior to the injury and after the injury is \$1,550.83 (\$2,608.52 - \$1,057.69). This computes to a compensation rate of \$1,033.94 (\$1,550.83 x .667). However, the maximum compensation rate for 2011 is \$704.92. Therefore, the Claimant is awarded \$704.92 a week for 340 weeks.
51. As to future medical care and treatment, Claimant is entitled to future medical care and treatment which would tend to lessen his period of disability to his right shoulder. Dr. Barron's medical opinion found at Claimant's APAs, page 77a. Dr. Barron writes, "It is my further opinion that he will most probably eventually require additional surgery to the right shoulder based on the MRI findings as well as ongoing symptoms. It is reasonable for Mr. Adickes to try to avoid surgery as long as possible. It is further my opinion that Mr. Adickes' condition was caused by his on the job automobile accident of March 22, 2011. These opinions are stated to a reasonable degree of medical certainty."
52. The Claimant is entitled to future medical care and treatment to the right shoulder as noted above.
53. The Claimant is entitled to medical care and treatment to include prescription medications and follow-up visits with Dr. Mandell for his post-traumatic headaches.
54. The Claimant is also entitled to ongoing radiofrequency ablations for the neck with Dr. Park.

CONCLUSIONS OF LAW

1. Pursuant to Section 42-1-160, claimant suffered a compensable injury by accident arising out of and in the course of his employment.
2. Pursuant to Section 42-9-20, claimant has sustained a permanent loss of wage earning capacity. The claimant now has a residual earning capacity of \$1,057.69. The difference in the average weekly wage prior to the injury and after the injury is \$1,550.83. This computes to a compensation rate of \$1,033.94. However, the maximum compensation rate for 2011 is \$704.92. Therefore, the claimant is awarded \$704.92 a week for three hundred forty (340) weeks commencing January 17, 2014, the date that claimant's wage loss began. Claimant had previously received temporary total disability while he was out of work so the period of partial disability began after a period of total disability.
3. Pursuant to Section 42-15-60, claimant is entitled to ongoing care for his neck including injections, ablations, and medications as directed by Dr. Park; continuing medications and doctor visits for his post concussive syndrome as outlined by Dr. Mandell; and future surgery to his right shoulder as outlined by Dr. Barron.

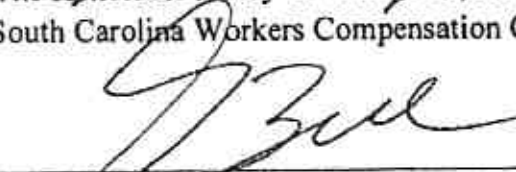
ORDER

IT IS THEREFORE ORDERED: The Decision and Order of the single commissioner filed in the above entitled matter on August 17, 2015 is hereby affirmed by the Appellate Panel of the South Carolina Workers' Compensation Commission. We Order Defendants to make the following payments:

1. \$704.92 per week for three hundred forty (340) weeks commencing January 17, 2014.
2. Payment of future medical care for the right shoulder to include surgery as recommended by Dr. Barron.
3. Payment for medical care and treatment to include prescription medications, and follow-up visits with Dr. Mandell for post concussive headaches;
4. Payment for ongoing radio frequency ablations for the neck with Dr. Park.

AND IT IS SO ORDERED!


The Honorable Avery B. Wilkerson, Jr.
South Carolina Workers Compensation Commission


The Honorable T. Scott Beck
Commissioner for the Appellate Panel


The Honorable Aisha Taylor
Commissioner for the Appellate Panel

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 Eugenia Hollmon on February 8, 2016

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1102937

Barry Adickes

Claimant,
vs.

Philips Healthcare and Fidelity &
Guaranty Ins. Co. c/o
Gallagher Bassett Services, Inc.

Defendants,

MOTION ORDER

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

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

The following disposition has been made: ☐ Granted ☒ Denied

Hearing is already scheduled for October 9, 2018.


Susan S. Barden

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 Barbara Skarbek on October 2, 2018

1/29/2019 04:51 PM

Page 1 of 4

Case Note - Page 298 of 390

Date: 07/12/2018 02:53 PM Staff: CEB

Topic: E-Mail

Case Status ☐

From: Chris Black
To: Tanya Fuller
CC:
Subject: RE: Barry Adickes
Date Sent: 7/12/2018 2:53:37 PM

Wonderful. Thanks so very much.

Chris Black
Chappell, Smith & Arden
Phone No: 803.509.5824

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From: Tanya Fuller [mailto:TFuller@luederlaw.com]
Sent: Thursday, July 12, 2018 2:42 PM
To: Chris Black <cblack@csa-law.com>
Subject: RE: Barry Adickes

Chris,

Sorry for the delay. The adjuster did some research and the medications have been approved.

Thanks,
Tanya

<<http://www.luederlaw.com/>>
Tanya Fuller
Paralegal

Lueder, Larkin & Hunter, LLC
503 Wando Park Boulevard
Suite 205
Mt. Pleasant, South Carolina 29464

Telephone: 843-647-7292
Facsimile: 843-647-7292
Email: tfuller@luederlaw.com <<mailto:tfuller@luederlaw.com>>
Website: www.luederlaw.com <<http://www.luederlaw.com/>>

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-0695-

From: Chris Black <cblack@csa-law.com <<mailto:cblack@csa-law.com>> >
Sent: Tuesday, July 10, 2018 1:51 PM

1/29/2019 04:51 PM

Page 2 of 4

Case Note - Page 298 of 390

Sent: Tuesday, July 10, 2018 1:01 PM

To: Tanya Fuller <TFuller@luederlaw.com <mailto:TFuller@luederlaw.com> >

Subject: RE: Barry Adickes

Walgreens on Cranium Drive in Rock Hill.

Chris Black
Chappell, Smith & Arden
Phone No: 803.509.5824

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From: Tanya Fuller [mailto:TFuller@luederlaw.com <mailto:TFuller@luederlaw.com>]

Sent: Tuesday, July 10, 2018 12:08 PM

To: Chris Black <cblack@csa-law.com <mailto:cblack@csa-law.com> >

Subject: RE: Barry Adickes

Chris,

Do you have the name and number of the pharmacy where he tried to get them filled?

Thanks,
Tanya

<<http://www.luederlaw.com/>>

Tanya Fuller
Paralegal

Lueder, Larkin & Hunter, LLC
503 Wando Park Boulevard
Suite 205
Mt. Pleasant, South Carolina 29464

Telephone: 843-647-7292
Facsimile: 843-647-7292
Email: tfuller@luederlaw.com <mailto:tfuller@luederlaw.com>
Website: www.luederlaw.com <<http://www.luederlaw.com/>>

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From: Chris Black <cblack@csa-law.com <mailto:cblack@csa-law.com> >

Sent: Tuesday, July 10, 2018 11:36 AM

To: Tanya Fuller <TFuller@luederlaw.com <mailto:TFuller@luederlaw.com> >

Subject: RE: Barry Adickes

Thanks so very much.

Chris Black
Chappell, Smith & Arden

1/29/2019 04:51 PM

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Phone No: 803.509.5824

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From: Tanya Fuller [mailto:TFuller@luederlaw.com <mailto:TFuller@luederlaw.com>]
Sent: Tuesday, July 10, 2018 10:20 AM
To: Chris Black <cblack@csa-law.com <mailto:cblack@csa-law.com> >
Subject: FW: Barry Adickes

Chris,

I have contacted our adjuster and will let you know when we receive a response.

Thanks,
Tanya

<<http://www.luederlaw.com/>>
Tanya Fuller
Paralegal

Lueder, Larkin & Hunter, LLC
503 Wando Park Boulevard
Suite 205
Mt. Pleasant, South Carolina 29464

Telephone: 843-647-7292
Facsimile: 843-647-7292
Email: tfuller@luederlaw.com <<mailto:tfuller@luederlaw.com>>
Website: www.luederlaw.com <<http://www.luederlaw.com/>>

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From: Chris Black <cblack@csa-law.com <mailto:cblack@csa-law.com> >
Sent: Monday, July 9, 2018 9:52 AM
To: Brooke Payne <BPayne@luederlaw.com <mailto:BPayne@luederlaw.com> >
Cc: Jenna McClain <jmccclain@luederlaw.com <mailto:jmccclain@luederlaw.com> >
Subject: Barry Adickes

Folks,

Mr. Adickes went to refill prescriptions has been taking for years now and for some reason the carrier is not approving them. The medications are nadolol and rizatriptan benzoate. Can you please check on this? Perhaps this is just a miscommunication.

Thanks for your help in this matter.

Christine E. Black
Paralegal to William L. Smith II & Andrew W. Fajardo
cblack@csa-law.com <<mailto:cblack@csa-law.com>>

Adickes, Mr. Barry Simmons
Case #: 207141 ()

Case Type: WC
Class: APP

DOI: 3/22/2011
Assigned: CEB

LIM Date: 3/20/2013
Date Opened: 8/9/2012

1/29/2019 04:51 PM

Page 4 of 4

Case Note - Page 298 of 390

cdtrack@csa-law.com <<mailto:cdtrack@csa-law.com>>

Chappell, Smith & Arden

Direct Dial: #803.509.5824

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Adickes, Mr. Barry Simmons
Case #: 207141 ()

Case Type: WC
Class: APP

DOI: 3/22/2011
Assigned: CEB

LIM Date: 3/20/2013
Date Opened: 8/9/2012

1/29/2019 04:52 PM

Page 1 of 3

Case Note - Page 343 of 390

Date: 09/04/2018 09:14 AM Staff: CEB

Topic: E-Mail

Case Status ☐

From: Tanya Fuller

To: Chris Black

CC:

Subject: FW: Barry Adickes

Date Received: 9/4/2018 9:06:53 AM

Chris,

The adjuster has approved the medications.

Thanks,

Tanya

<<http://www.luederlaw.com/>>

Tanya Fuller
Paralegal

Lueder, Larkin & Hunter, LLC
503 Wando Park Boulevard
Suite 205
Mt. Pleasant, South Carolina 29464

Telephone: 843-647-7292

Facsimile: 843-647-7292

Email: tfuller@luederlaw.com <<mailto:tfuller@luederlaw.com>>

Website: www.luederlaw.com <<http://www.luederlaw.com/>>

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From: Tanya Fuller

Sent: Friday, August 31, 2018 10:18 AM

To: 'Chris Black' <cblack@csa-law.com>

Subject: RE: Barry Adickes

1/29/2019 04:52 PM

Page 2 of 3

Case Note - Page 343 of 390

The adjuster is out of the office until Tuesday for the holiday weekend. I'm checking to see if I can get information from someone else, but I wanted to let you know in case there is a delay due to the long weekend.

Tanya

<<http://www.luederlaw.com/>>
Tanya Fuller
Paralegal

Lueder, Larkin & Hunter, LLC
503 Wando Park Boulevard
Suite 205
Mt. Pleasant, South Carolina 29464

Telephone: 843-647-7292
Facsimile: 843-647-7292
Email: tfuller@luederlaw.com <<mailto:tfuller@luederlaw.com>>
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From: Chris Black <cblack@csa-law.com <<mailto:cblack@csa-law.com>> >
Sent: Friday, August 31, 2018 9:51 AM
To: Tanya Fuller <TFuller@luederlaw.com <<mailto:TFuller@luederlaw.com>> >
Subject: Barry Adickes

Tanya,

Mr. Adickes pharmacy is:

Walgreens

325-2792

1645 Cranium Drive

1/29/2019 04:52 PM

Page 3 of 3

Case Note - Page 343 of 390

RH, SC 29732

The prescription is for nadalol. He get this every month.

Thanks so much.

Christine E. Black

Paralegal to William L. Smith II & Andrew W. Fajardo

cblack@csa-law.com <mailto:cblack@csa-law.com>

Chappell, Smith & Arden

Direct Dial: #803.509.5824

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1/29/2019 04:52 PM

Page 1 of 1

Case Note - Page 345 of 390

Date: 09/06/2018 08:56 AM Staff: CEB

Topic: E-Mail

Case Status ☐

From: Chris Black
To: Tanya Fuller
CC:
Subject: Barry Adickes
Date Sent: 9/6/2018 8:56:48 AM

Ms. Fuller,

As of last night, Mr. Adickes could not fill his prescription. He is using Walgreens, phone number 803-325-2792. Perhaps you could get the adjuster to give them a call.

Thanks for your help in this matter.

Christine E. Black
Paralegal to William L. Smith II & Andrew W. Fajardo
cblack@csa-law.com <mailto:cblack@csa-law.com>
Chappell, Smith & Arden
Direct Dial: #803.509.5824
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1/29/2019 04:53 PM

Page 1 of 2

Case Note - Page 347 of 390

Date: 09/06/2018 11:04 AM Staff: CEB

Topic: E-Mail

Case Status ☐

From: Chris Black
To: Lori Wittel
CC:
Subject: RE: Barry Adickes
Date Sent: 9/6/2018 11:04:21 AM

Lori,

Dr. Mandell put Mr. Adickes on this prescription six years ago and he continues to use every day. For the most part it is never really a problem to get filled.

Thanks so much.

Chris Black
Chappell, Smith & Arden
Phone No: 803.509.5824

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From: Lori Wittel [mailto:lwittel@payneLG.com]
Sent: Thursday, September 06, 2018 10:25 AM
To: Chris Black <cblack@csa-law.com>
Subject: Re: Barry Adickes

Hi Christine,

Can you confirm which prescription, and the prescribing doctor that you need confirmation on?

Please add me to your contacts as the paralegal on this file, thanks!

Lori Wittel
Practice Manager
P: 843.732.6280 F: 843.420.1440
www.PayneLG.com <http://www.PayneLG.com>

From: Chris Black <cblack@csa-law.com <mailto:cblack@csa-law.com> >
Date: Thursday, September 6, 2018 at 10:17 AM
To: Brooke Payne <bpayne@payneLG.com <mailto:bpayne@payneLG.com> >
Subject: Barry Adickes

Brooke,

For some reason Mr. Adickes prescription is still not going through. Can you please have the adjuster call Walgreens at 803-325-2792.

Thanks so much.

-0703-

Christine E. Black
Paralegal to William I. Smith II & Andrew M. Esaiarín

Adickes, Mr. Barry Simmons
Case #: 207141 ()

Case Type: WC
Class: APP

DOI: 3/22/2011
Assigned: CEB

LIM Date: 3/20/2013
Date Opened: 8/9/2012

1/29/2019 04:53 PM

Page 2 of 2

Case Note - Page 347 of 390

For more information, contact Chappell, Smith & Arden, P.C.
cblack@csa-law.com <mailto:cblack@csa-law.com>

Chappell, Smith & Arden

Direct Dial: #803.509.5824

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1/29/2019 04:54 PM

Page 1 of 4

Case Note - Page 363 of 390

Date: 09/25/2018 11:00 AM Staff: CEB

Topic: E-Mail

Case Status ☐

From: Lori Wittel

To: Chris Black

CC:

Subject: Re: Barry Adickes

Date Received: 9/25/2018 10:29:10 AM

Chris,

I just heard back from the newest adjuster who found that the nadolol had already been approved and she went through and approved the other 2 prescriptions as well. Everything should be good for Mr. Adickes to get his meds.

Please confirm that the Form 50 will be withdrawn.

Thanks, and apologies for the delay.

Lori Wittel

Practice Manager

P: 843.732.6280 F:843.420.1440

www.PayneLG.com

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From: Chris Black <cblack@csa-law.com>
Date: Tuesday, September 25, 2018 at 8:07 AM
To: Lori Wittel <lwittel@payneLG.com>
Subject: RE: Barry Adickes

Are things still pending with Mr. Adickes medication?

Chris Black

Chappell, Smith & Arden

Phone No: 803.509.5824

1/29/2019 04:54 PM

Page 2 of 4

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From: Lori Wittel [mailto:lwittel@payneLG.com]
Sent: Thursday, September 20, 2018 12:00 PM
To: Chris Black <cblack@csa-law.com>
Subject: Re: Barry Adickes

Chris,

I called the adjuster yesterday and left a message. I still haven't heard back. I'll ask Brooke to email her and cc the corporate rep.

Lori Wittel

Practice Manager

P: 843.732.6280 F: 843.420.1440

www.PayneLG.com <<http://www.PayneLG.com>>

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From: Chris Black <cblack@csa-law.com <mailto:cblack@csa-law.com> >
Date: Tuesday, September 18, 2018 at 9:45 AM
To: Lori Wittel <lwittel@payneLG.com <mailto:lwittel@payneLG.com> >
Subject: RE: Barry Adickes

1/29/2019 04:54 PM

Page 3 of 4

Case Note - Page 363 of 390

Chris Black

Chappell, Smith & Arden

Phone No: 803.509.5824

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From: Lori Wittel [mailto:lwittel@payneLG.com <mailto:lwittel@payneLG.com>]
Sent: Monday, September 17, 2018 12:27 PM
To: Chris Black <cblack@csa-law.com <mailto:cblack@csa-law.com> >
Subject: Re: Barry Adickes

Chris,

Is this in addition to the nadolol that was previously requested, or has that prescription been fulfilled?
Are these also with Dr. Mandell?

Lori Wittel

Practice Manager

P: 843.732.6280 F: 843.420.1440

www.PayneLG.com <<http://www.PayneLG.com>>

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1/29/2019 04:54 PM

Page 4 of 4

Case Note - Page 363 of 390

From: Chris Black <cblack@csa-law.com <mailto:cblack@csa-law.com> >
Date: Monday, September 17, 2018 at 12:20 PM
To: Brooke Payne <bpayne@payneLG.com <mailto:bpayne@payneLG.com> >
Cc: Lori Wittel <lwittel@payneLG.com <mailto:lwittel@payneLG.com> >
Subject: Barry Adickes

Brooke,

Mr. Adickes has two routine prescriptions that not going through. They are - tizanidine and onzetra. Could you please check with the carrier about getting these approved.

Thank you for your help in this matter.

Christine E. Black

Paralegal to William L. Smith II & Andrew W. Fajardo

cblack@csa-law.com <mailto:cblack@csa-law.com>

Chappell, Smith & Arden

Direct Dial: #803.509.5824

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Attachments: image001.png image002.png image003.png image004.png image005.png
image006.gif image007.png

100



 Activity



Brooke.

His nadolol has been denied again since Saturday. Also an RFA authorization request has been waiting since late September from Dr Park. Please contact the adjuster. Thanks.

William L. Smith II

Post Office Box 12330
Columbia, SC 29211
803-509-5839

Chappell Smith and Arden is a litigation firm, and we are happy to assist other lawyers in trying cases. If you or your firm would like to generate revenue on cases in the workers compensation or personal injury fields that are complex or outside the scope of your practice, please contact us to join the CSA-LAW Co-Counsel Network. We'll be happy to send you information on fee splits dependent on your level of desired participation.

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Attachments: image001.jpg image002.jpg image003.jpg image004.jpg image005.png image006.png image007.png image008.png image009.png image010.jpg image011.jpg image012.jpg image013.jpg image014.png

Posted by Bill Smith on 10/16/2018 at 5:15 AM

Adickes, Mr. Barry Simmons
Case #: 207141 ()

Case Type: WC
Class: APP

DOI: 3/22/2011
Assigned: CEB

LIM Date: 3/20/2013
Date Opened: 8/9/2012

1/29/2019 04:56 PM

Page 1 of 1

Case Note - Page 388 of 390

Date: 10/18/2018 04:52 PM Staff: WLS

Topic: E-Mail

Case Status ☐

From: Bill Smith
To: bpayne@paynelg.com
CC:
Subject: Adickes
Date Sent: 10/18/2018 4:52:24 PM

Brooke,

Barry's medication still has not been authorized. The RFA is still denied as well. He needs the meds asap. Any news?

William L. Smith II
<<http://www.csa-law.com/>>

Post Office Box 12330
Columbia, SC 29211
803-509-5839
<<http://www.wilg.org/>> <<http://www.cwclawyers.org/>>
<<http://www.injuredworkersadvocates.com/>> <<http://www.scaj.com/>>
<<http://www.richbar.org/>>

<<https://www.martindale.com/columbia/south-carolina/william-l-smith-ii-1583919-a/csa-dc01/UserShare>>
<<http://www.sctbar.org/>> <<http://www.kidschancesc.org/>>

<<https://www.bestlawyers.com/>> <<https://bestlawfirms.usnews.com/>>

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<<http://www.csa-law.com/>>

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Attachments: image001.jpg image002.jpg image003.jpg image004.jpg image005.png
image006.png image007.png image008.png image009.png image010.jpg image011.jpg
image012.jpg image013.jpg image014.png

Printed from  **FILEVINE****Barry Adickes** **Activity****RE: Barry Adickes**

From: Chris Black cblack@csa-law.com (mailto:cblack@csa-law.com?
 cc=BarryAdickesZ3345446@projects.filevine.com)
 To: lwittel@payneLG.com (mailto:lwittel@payneLG.com?
 cc=BarryAdickesZ3345446@projects.filevine.com) Lori Wittel
 Cc: bsmith@csa-law.com (mailto:bsmith@csa-law.com?cc=BarryAdickesZ3345446@projects.filevine.com)
 Bill Smith

Lori,

Mr. Adickes is checking with his pharmacy to make sure they are sending it through Coventry.

Did the adjuster say anything about getting RFA approved yet?

Chris Black
 Chappell, Smith & Arden
 Phone No: 803.509.5824

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From: Lori Wittel (lwittel@payneLG.com (mailto:lwittel@payneLG.com?
 cc=BarryAdickesZ3345446@projects.filevine.com))
 Sent: Monday, October 22, 2018 3:29 PM
 To: Chris Black
 Subject: Re: Barry Adickes

Chris,

I just heard from my client. On their end all of the prescriptions are showing as approved within the Coventry system. Can you make sure that he/the pharmacy is using Coventry? Perhaps that is the issue on this one. Let me know.

Lori Wittel
 Practice Manager
 P: 843.732.6280 F: 843.420.1440

www.PayneLG.com

[signature_63352127]

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From: Chris Black >

Date: Monday, October 22, 2018 at 8:10 AM

To: Lori Wittel >

Subject: Barry Adickes

[cid:image001.gif@01D469DF.09C361D0]

Lori,

Here we go again. Mr. Adickes is having trouble getting his monthly medication filled. Additionally, he is having trouble getting the RFA approved as recommended by Dr. Park from last September. Could you please check on these and let me know something today.

Thanks so very much.

Christine E. Black

Paralegal to William L. Smith II & Andrew W. Fajardo

cblack@csa-law.com

Chappell, Smith & Arden

Direct Dial:  509.5824

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Posted by you on 10/22/2018 at 4:35 PM.

Printed from  **FILEVINE****Barry Adickes** **Activity****Barry Adickes**

From: Chris Black cblack@csa-law.com (mailto:cblack@csa-law.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com
 To: lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com
 Cc: BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)
 BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com),
 BarrySAdickes@gmail.com (mailto:BarrySAdickes@gmail.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com 'BarrySAdickes@gmail.com'

Lori,

Attached please find a letter of denial which Mr. Adickes pharmacy is receiving when they try to run through this nadalol. Mr. Adickes has been getting this for quite some time and we are entirely sure why these kept getting denied. Please, ma'am check with the adjuster and see what she can do to get this problem resolved.

Chris Black
 Chappell, Smith & Arden
 Phone No: 803.509.5824

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Posted by you on 10/30/2018 at 8:05 AM.

 [Nadalol denial.pdf](#)

** INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY **

TIME RECEIVED
October 24, 2018 5:50:13 PM CDT

REMOTE CSID
MVMPAP06

DURATION
96

PAGES
3

STATUS
Received

MVMPAP06 10/24/2018 6:48:40 PM PAGE 1/003 Fax Server

252831801WC



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To: WALGREENS #15274
Fax Number: 8033252798
From: GB- First Script
Voice Number:
Date: Wednesday, October 24, 2018 6:48:14 PM
Pages (including this page): 03

Memo:

Subject: FAX - <<TOPIC_ID:167728672>> <<LTR_ID>>:15855065
From Fax: 8554262636
From Company: Coventry Healthcare, Inc.

Note: If you do not receive all referenced pages or if you received this transmission in error, please notify us immediately.

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**** INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY ****

TIME RECEIVED October 24, 2018 5:50:13 PM CDT	REMOTE CSID MVMPAP06	DURATION 96	PAGES 3	STATUS Received
MVMPAP06	10/24/2018 8:48:40 PM	PAGE 3/003	Fax Server	

252831801WC

firstscript

Prior Authorization Response

To: Pharmacist

From: Medication Authorization Team

Company: WALGREENS #15274

Company: First Script

Phone: (803) 325-2792

Phone: (866) 445-7344

Fax: (803) 325-2798

Fax: (855) 426-2636

Date: 10/24/18

Re: BARRY ADICKES 1000658214

First Script has received responses on the following Rx#:

Rx#	Status:
292152	DENIED - COMPLETED

If you have any questions regarding this Authorization, please call First Script.

Any questions regarding denials should be directed to the Injured Workers Adjuster or Case Manager.

Thank You!

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Phone (888) 333-6741 Fax (888) 891-3991

LtrId: 15855065

Printed from  **FILEVINE****Barry Adickes** **Activity****RE: Barry Adickes**

From: Chris Black cblack@csa-law.com (mailto:cblack@csa-law.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com)
 To: lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com) Lori Wittel
 Cc: BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)
 BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)

Thanks so very much.

Chris Black
 Chappell, Smith & Arden
 Phone No: 803.509.5824

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From: Lori Wittel (lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com))
 Sent: Wednesday, October 31, 2018 11:29 AM
 To: Chris Black
 Subject: Re: Barry Adickes

Chris,

I never heard back from the adjuster nor adjuster supervisor yesterday, so I've resent my request and included the corporate rep. I'm still working on it...

Lori Wittel
 Practice Manager
 P: 843.732.6280 F:843.420.1440
 www.PayneLG.com
 [signature_358952401]

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electronic transmission in error, please notify the sender immediately by using the e-mail address of the sender or by telephone at 843-732-6280.

From: Chris Black >

Date: Tuesday, October 30, 2018 at 8:05 AM

To: Lori Wittel >

Cc: "BarryAdickesZ3345446@projects.filevine.com" >, "BarrySAdickes@gmail.com" >

Subject: Barry Adickes

Lori,

Attached please find a letter of denial which Mr. Adickes pharmacy is receiving when they try to run through this nadalol. Mr. Adickes has been getting this for quite some time and we are entirely sure why these kept getting denied. Please, ma'am check with the adjuster and see what she can do to get this problem resolved.

Chris Black

Chappell, Smith & Arden

Phone No: 803.509.5824

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Posted by you on 10/31/2018 at 3:12 PM.

Printed from  **FILEVINE****Barry Adickes** **Activity****Adickes**

From: Bill Smith bsmith@csa-law.com (mailto:bsmith@csa-law.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com)
 To: bpayne@paynelg.com (mailto:bpayne@paynelg.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com) bpayne@paynelg.com (mailto:bpayne@paynelg.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com)
 Cc: BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)
 BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)

Brooke,

Barry has been out of his medications and waiting on approval for an RFA for weeks. I've already requested a hearing over this. I have no choice at this point but to pursue the fines and penalties. If you can get them to do anything, please let me know. Thanks.

William L. Smith II
 [CSA_Logo New 102616 med]

Post Office Box 12330
 Columbia, SC 29211
 803-509-5839
 [wilg] [wc resize] [lwa] [sca] resize] [rich bar small]

[MHubbell] [schar-logo resize] [kids chance resize]

[best lawyers resize] [best-law-firms-badge-for-post-1-740x450 resize]

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[partof_csanetwork_logogrey resize]

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Posted by Bill Smith on 11/1/2018 at 3:41 PM.

Printed from  **FILEVINE****Barry Adickes** **Activity****RE: Barry Adickes**

From: Chris Black cblack@csa-law.com (mailto:cblack@csa-law.com?cc=BarryAdickesZ3345446@projects.filevine.com)
To: lwittel@payneLG.com (mailto:lwittel@payneLG.com?cc=BarryAdickesZ3345446@projects.filevine.com) Lori Wittel
Cc: BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com) BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com), bsmith@csa-law.com (mailto:bsmith@csa-law.com?cc=BarryAdickesZ3345446@projects.filevine.com) Bill Smith

Lori,

Anything new on Barry Adickes?

Thanks.

Chris Black
Chappell, Smith & Arden
Phone No: 803.509.5824

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[Picture1]

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From: Lori Wittel (lwittel@payneLG.com (mailto:lwittel@payneLG.com?cc=BarryAdickesZ3345446@projects.filevine.com))
Sent: Monday, October 22, 2018 9:10 AM
To: Chris Black
Subject: Re: Barry Adickes

Hi Chris,

I will certainly work on this. Brooke and I have both attempted contact with the assigned adjuster and we are moving up the chain to determine how we can get this promptly resolved. I'll let you know as soon as I hear anything.

Thank you,

Lori Wittel
Practice Manager
P: 843.732.6280 F:843.420.1440
www.PayneLG.com
[signature_1610545123]

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From: Chris Black >
Date: Monday, October 22, 2018 at 8:10 AM
To: Lori Wittel >
Subject: Barry Adickes

[cid:image001.gif@01D469DF.09C361D0]
Lori,

Here we go again. Mr. Adickes is having trouble getting his monthly medication filled. Additionally, he is having trouble getting the RFA approved as recommended by Dr. Park from last September. Could you please check on these and let me know something today.

Thanks so very much.

Christine E. Black
Paralegal to William L. Smith II & Andrew W. Fajardo
cblack@csa-law.com
Chappell, Smith & Arden
Direct Dial: (803) 509.5824
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Posted by you on 11/2/2018 at 8:02 AM.

Printed from  **FILEVINE****Barry Adickes** **Activity****RE: Barry Adickes**

From: Chris Black cblack@csa-law.com (mailto:cblack@csa-law.com?)
cc=BarryAdickesZ3345446@projects.filevine.com)
To: lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
cc=BarryAdickesZ3345446@projects.filevine.com) Lori Wittel
Cc: BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)
BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com),
bsmith@csa-law.com (mailto:bsmith@csa-law.com?cc=BarryAdickesZ3345446@projects.filevine.com) Bill
Smith

Wow, that is amazing. My poor client is taking the hit for all their disorganization.

Chris Black
Chappell, Smith & Arden
Phone No: 803.509.5824

P THINK GREEN I don't print this email unless absolutely necessary
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From: Lori Wittel (lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
cc=BarryAdickesZ3345446@projects.filevine.com))
Sent: Friday, November 02, 2018 8:04 AM
To: Chris Black
Subject: Re: Barry Adickes

Hi Chris,

We've let the corporate rep know that you are pursuing fines and penalties and he said that he will call the local office again and try to get resolution. It seem that this office isn't answering anyone, not even their own client....

Lori Wittel
Practice Manager
P: 843.732.6280 F:843.420.1440
www.PayneLG.com
[signature_798407553]

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From: Chris Black >

Date: Friday, November 2, 2018 at 8:02 AM

To: Lori Wittel >

Cc: "BarryAdickesZ3345446@projects.filevine.com" >, Bill Smith >

Subject: RE: Barry Adickes

Lori,

Anything new on Barry Adickes?

Thanks,

Chris Black

Chappell, Smith & Arden

Phone No: 803.509.5824

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From: Lori Wittel [mailto:lwittel@payneLG.com]

Sent: Monday, October 22, 2018 9:10 AM

To: Chris Black >

Subject: Re: Barry Adickes

Hi Chris,

I will certainly work on this. Brooke and I have both attempted contact with the assigned adjuster and we are moving up the chain to determine how we can get this promptly resolved. I'll let you know as soon as I hear anything.

Thank you,

Lori Wittel

Practice Manager

P: 843.732.6280 F:843.420.1440

www.PayneLG.com

[signature_1610545123]

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From: Chris Black >

Date: Monday, October 22, 2018 at 8:10 / -0722-

To: Lori Wittel >
Subject: Barry Adickes

[cid:image001.gif@01D469DF.09C361D0]
Lori,

Here we go again. Mr. Adickes is having trouble getting his monthly medication filled. Additionally, he is having trouble getting the RFA approved as recommended by Dr. Park from last September. Could you please check on these and let me know something today.

Thanks so very much.

Christine E. Black
Paralegal to William L. Smith II & Andrew W. Fajardo
cblack@csa-law.com
Chappell, Smith & Arden
Direct Dial: (800) 509.5824
P. THINK GREEN I don't print this email unless absolutely necessary
[Picture1]

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Posted by you on 11/2/2018 at 8:15 AM.

Printed from  **FILEVINE****Barry Adickes** **Activity****Barry Adickes**

From: Chris Black cblack@csa-law.com (mailto:cblack@csa-law.com?)
cc=BarryAdickesZ3345446@projects.filevine.com)
To: lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
cc=BarryAdickesZ3345446@projects.filevine.com) lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
cc=BarryAdickesZ3345446@projects.filevine.com)
Cc: BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)
BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)

Lori,

Have you been able to get anyone at the insurance carrier yet to get Mr. Adickes' prescription approved?

Thanks.

Christine E. Black

Paralegal to William L. Smith II & Andrew W. Fajardo

cblack@csa-law.com

Chappell, Smith & Arden

Direct Dial:  509.5824

P THINK GREEN I don't print this email unless absolutely necessary

[Picture1]

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Posted by you on 11/6/2018 at 1:59 PM

Printed from  **FILEVINE****Barry Adickes** **Activity****Barry Adickes**

From: Bill Smith bsmith@csa-law.com (mailto:bsmith@csa-law.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com)
 To: bpayne@payneLG.com (mailto:bpayne@payneLG.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com) Brooke Payne
 Cc: BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)
 BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)

Brooke,

My client still does not have his medication and he is beside himself. These meds are extremely important to prevent his debilitating migraines. I filed a 50 about this on September 20 so this has been going on now for two months. The Commission can award a \$500 per day penalty. Please let me know if your client can get this authorized asap so the potential fines don't continue to build. Barry simply doesn't have the money to get the Rx and is suffering. Thank you.

William L. Smith II
 [CSA_Logo New 102616 med]

Post Office Box 12330
 Columbia, SC 29211
 803-509-5839
 [wilg] [wc resize] [lwa] [sca] resize] [rich bar small]

[MHubbell] [schar-logo resize] [kids chance resize]

[best lawyers resize] [best-law-firms-badge-for-post-1-740x450 resize]

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[partof_csanetwork_logogrey resize]

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Posted by Bill Smith on 11/9/2018 at 9:28 AM.

Printed from  **FILEVINE****Barry Adickes** **Activity****RE: Barry Adickes**

From: Chris Black cblack@csa-law.com (mailto:cblack@csa-law.com?)
cc=BarryAdickesZ3345446@projects.filevine.com
To: lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
cc=BarryAdickesZ3345446@projects.filevine.com) Lori Wittel
Cc: BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)
BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)

Ooops, fingers too fast. That is really wonderful news.

Chris Black
Chappell, Smith & Arden
Phone No: 803.509.5824

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From: Chris Black
Sent: Monday, November 12, 2018 11:22 AM
To: 'Lori Wittel'
Cc: 'BarryAdickesZ3345446@projects.filevine.com'
Subject: RE: Barry Adickes

Chris Black
Chappell, Smith & Arden
Phone No: 803.509.5824

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2/26/2019

Filevine - Barry Adickes

From: Lori Wittel (lwittel@payneLG.com (mailto:lwittel@payneLG.com?
cc=BarryAdickesZ3345446@projects.filevine.com)))
Sent: Monday, November 12, 2018 11:01 AM
To: Chris Black >
Subject: Re: Barry Adickes

Hi Chris,

Please note that we have been in direct communication with the insurer regarding the Nadolol prescription this morning, advising them to approve. The Adjuster has also let me know that she has left a message with Dr. Parks' office to approve the RFA.

Lori Wittel
Practice Manager
P: 843.732.6280 F: 843.420.1440
www.PayneLG.com
[signature_1871016845]

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From: Chris Black >
Date: Monday, November 12, 2018 at 8:04 AM
To: Lori Wittel >, Bill Smith >
Cc: "BarryAdickesZ3345446@projects.filevine.com" >
Subject: RE: Barry Adickes

The Nadolol is a prescription which Dr. Mandell has been prescribing for Mr. Adickes for a long time to help him control his migraines. Frequently, there is cross use of this kind of medication to help control medications. If in doubt, perhaps the adjuster needs to get in touch with the prescribing doctor for further explanation before denying medication.

I will let Mr. Adickes know about the Onzetra prescription.

Chris Black
Chappell, Smith & Arden
Phone No: 803.509.5824

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[Picture1]

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From: Lori Wittel (lwittel@payneLG.com)
Sent: Friday, November 09, 2018 8:28 PM
To: Bill Smith >
Cc: Chris Black >
Subject: Re: Barry Adickes

I finally heard back from the adjuster who ⁻⁰⁷²⁷⁻into the prescription. The denied prescription is nadolol, which is a cardiovascular medication and ...; didn't clear on why they are paying for that. The Onzetra

prescription for migraine was refilled on 10/23. Can you please advise?

Lori Wittel
Practice Manager
P: 843.732.6280 F:843.420.1440
www.PayneLG.com
[signature_1137925282]

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From: William Smith >
Date: Friday, November 9, 2018 at 9:28 AM
To: Brooke Payne >
Cc: "BarryAdickesZ3345446@projects.filevine.com" >
Subject: Barry Adickes

Brooke,

My client still does not have his medication and he is beside himself. These meds are extremely important to prevent his debilitating migraines. I filed a 50 about this on September 20 so this has been going on now for two months. The Commission can award a \$500 per day penalty. Please let me know if your client can get this authorized asap so the potential fines don't continue to build. Barry simply doesn't have the money to get the Rx and is suffering. Thank you.

William L. Smith II
[CSA_Logo New 102616 med]

Post Office Box 12330
Columbia, SC 29211
803-509-5839
[wilg] [wc resize] [iwa] [scaj resize] [rich bar small]

[MHubbell] [schar-logo resize] [kids chance resize]

[best lawyers resize] [best-law-firms-badge-for-post-1-740x450 resize]

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Posted by you on 11/12/2018 at 11:29 AM.

Printed from  **FILEVINE****Barry Adickes** **Activity****RE: Barry Adickes**

From: Bill Smith bsmith@csa-law.com (mailto:bsmith@csa-law.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com)
 To: lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com) Lori Wittel
 Cc: cblack@csa-law.com (mailto:cblack@csa-law.com?cc=BarryAdickesZ3345446@projects.filevine.com)
 Chris Black, bpayne@paynelg.com (mailto:bpayne@paynelg.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com) bpayne@paynelg.com (mailto:bpayne@paynelg.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com), BarryAdickesZ3345446@projects.filevine.com
 (mailto:BarryAdickesZ3345446@projects.filevine.com) BarryAdickesZ3345446@projects.filevine.com
 (mailto:BarryAdickesZ3345446@projects.filevine.com)

Ms Wittel,

Dr Mandell's deposition was taken in December 2014 and he had Mr Adickes on Nadolol then and testified as to how it is a preventative medication for the migraines. He has been on the medication for at least four years and probably longer. Attached is the relevant testimony. The carrier has paid for this medication throughout and the order requires them to pay for treatment recommended by Dr Mandell. Since they won't authorize, I will attempt to get his medications filled through IWP and let them deal with the carrier until we get to the hearing over this. Thanks for the update.

William L. Smith II
 [CSA_Logo New 102616 med]

Post Office Box 12330
 Columbia, SC 29211
 803-509-5839
 [wilg] [wc resize] [iwa] [scaj resize] [rich bar small]

[MHubbell] [scbar-logo resize] [kids chance resize]

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-0729-

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From: Lori Wittel (lwittel@payneLG.com (mailto:lwittel@payneLG.com?cc=BarryAdickesZ3345446@projects.filevine.com))
 Sent: Friday, November 09, 2018 8:28 PM
 To: Bill Smith
 Cc: Chris Black
 Subject: Re: Barry Adickes

I finally heard back from the adjuster who looked into the prescription. The denied prescription is nadolol, which is a cardiovascular medication and they aren't clear on why they are paying for that. The Onzetra prescription for migraine was refilled on 10/23. Can you please advise?

Lori Wittel
 Practice Manager
 P: 843.732.6280 F:843.420.1440
 www.PayneLG.com
 [signature_1137925282]

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From: William Smith >
 Date: Friday, November 9, 2018 at 9:28 AM
 To: Brooke Payne >
 Cc: "BarryAdickesZ3345446@projects.filevine.com" >
 Subject: Barry Adickes

Brooke,

My client still does not have his medication and he is beside himself. These meds are extremely important to prevent his debilitating migraines. I filed a 50 about this on September 20 so this has been going on now for two months. The Commission can award a \$500 per day penalty. Please let me know if your client can get this authorized asap so the potential fines don't continue to build. Barry simply doesn't have the money to get the Rx and is suffering. Thank you.

William L. Smith II
 [CSA_Logo New 102616 med]

Post Office Box 12330
 Columbia, SC 29211
 803-509-5839
 [wilg] [wc resize] [iwa] [scaj resize] [rich bar small]

[MHubbell] [scbar-logo resize] [kids chance resize]

[best lawyers resize] [best-law-firms-badge-for-post-1-740x450 resize]
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 [partof_csanetwork_logogrey resize]

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Posted by you on 11/12/2018 at 8:47 AM.

 doc20181112084312.pdf

Printed from  **FILEVINE****Barry Adickes** **Activity****Re: Barry Adickes**

From: Brooke Payne bpayne@payneLG.com (mailto:bpayne@payneLG.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com)
 To: bsmith@csa-law.com (mailto:bsmith@csa-law.com?cc=BarryAdickesZ3345446@projects.filevine.com)
 Bill Smith, lwittel@payneLG.com (mailto:lwittel@payneLG.com?)
 cc=BarryAdickesZ3345446@projects.filevine.com) Lori Wittel
 Cc: cblack@csa-law.com (mailto:cblack@csa-law.com?cc=BarryAdickesZ3345446@projects.filevine.com)
 Chris Black, BarryAdickesZ3345446@projects.filevine.com
 (mailto:BarryAdickesZ3345446@projects.filevine.com) BarryAdickesZ3345446@projects.filevine.com
 (mailto:BarryAdickesZ3345446@projects.filevine.com)

?Bill,

Sorry about the confusion here – I've informed the adjuster that we need to provide authorization for this Rx and that she needs to do so asap. I should hear back very soon.

Brooke A. Payne

Partner

P: 843.810.8955 F:843.420.1440

www.PayneLG.com

[signature_271357181]

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From: William Smith

Date: Monday, November 12, 2018 at 8:47 AM

To: Lori Wittel

Cc: Chris Black , Brooke Payne , "BarryAdickesZ3345446@projects.filevine.com"

Subject: RE: Barry Adickes

Ms Wittel,

Dr Mandell's deposition was taken in December 2014 and he had Mr Adickes on Nadolol then and testified as to how it is a preventative medication for the migraines. He has been on the medication for at least four years and probably longer. Attached is the relevant testimony. The carrier has paid for this medication throughout and the order requires them to pay for treatment recommended by Dr Mandell. Since they won't authorize, I will attempt to get his medications filled through IWP and let them deal with the carrier until we get to the hearing over this. Thanks for the update.

-0732-

William L. Smith II
[CSA_Logo New 102616 med]

Post Office Box 12330
Columbia, SC 29211
803-509-5839

[wilg] [wc resize] [lwa] [sca] resize] [rich bar small]

[MHubbell] [schar-logo resize] [kids chance resize]

[best lawyers resize] [best-law-firms-badge-for-post-1-740x450 resize]

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From: Lori Wittel (lwittel@payneLG.com (mailto:lwittel@payneLG.com?cc=BarryAdickesZ3345446@projects.filevine.com))
Sent: Friday, November 09, 2018 8:28 PM
To: Bill Smith
Cc: Chris Black
Subject: Re: Barry Adickes

I finally heard back from the adjuster who looked into the prescription. The denied prescription is nadolol, which is a cardiovascular medication and they aren't clear on why they are paying for that. The Onzetra prescription for migraine was refilled on 10/23. Can you please advise?

Lori Wittel
Practice Manager
P: 843.732.6280 F:843.420.1440
www.PayneLG.com
[signature_1137925282]

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From: William Smith >
Date: Friday, November 9, 2018 at 9:28 AM
To: Brooke Payne >
Cc: "BarryAdickesZ3345446@projects.filevine.com" >
Subject: Barry Adickes

Brooke,

My client still does not have his medication and he is beside himself. These meds are extremely important to prevent his debilitating migraines. I filed a FOIA about this on September 20 so this has been going on now for two months. The Commission can at -0733-\$500 per day penalty. Please let me know if your client can

get this authorized asap so the potential fines don't continue to build. Barry simply doesn't have the money to get the Rx and is suffering. Thank you.

William L. Smith II
[CSA_Logo New 102616 med]

Post Office Box 12330
Columbia, SC 29211
803-509-5839
[wilg] [wc resize] [iwa] [scaj resize] [rich bar small]

[MHubbell] [schar-logo resize] [kids chance resize]

[best lawyers resize] [best-law-firms-badge-for-post-1-740x450 resize]
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[partof_csanetwork_logogrey resize]

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Posted by Filevine System on 11/12/2018 at 9:18 AM

Printed from  **FILEVINE****Barry Adickes** **Activity****FW: Barry Adickes**

From: Bill Smith bsmith@csa-law.com (mailto:bsmith@csa-law.com?)

cc=BarryAdickesZ3345446@projects.filevine.com)

To: BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)

BarryAdickesZ3345446@projects.filevine.com (mailto:BarryAdickesZ3345446@projects.filevine.com)

William L. Smith II

[CSA_Logo New 102616 med]

Post Office Box 12330

Columbia, SC 29211

803-509-5839

[wilg] [wc resize] [iwa] [scaj resize] [rich bar small]

[MHubbell] [schar-logo resize] [kids chance resize]

[best lawyers resize] [best-law-firms-badge-for-post-1-740x450 resize]

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From: Lori Wittel (lwittel@payneLG.com (mailto:lwittel@payneLG.com?))

cc=BarryAdickesZ3345446@projects.filevine.com))

Sent: Tuesday, November 13, 2018 10:12 AM

To: Bill Smith ; Chris Black

Cc: Brooke Payne

Subject: Barry Adickes

Bill,

I have confirmed with the adjuster that the Nadolol prescription has been approved and was filled yesterday. She also spoke with Lillian at the Pain Center and the RFA is approved. They have the contact information for the adjuster and will be in ~~0735-~~ directly if any further signatures or approvals are needed.

I apologize for these delays, and certainly hope that things will now be back on track.

Thank you,

Lori Wittel

Practice Manager

P: 843.732.6280 F: 843.420.1440

www.PayneLG.com

[signature_797043608]

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Posted by you on 11/13/2018 at 11:37 AM.

TIME RECEIVED

October 24, 2018 5:50:13 PM CDT

REMOTE CSID

MVMPAP06

DURATION

96

PAGES

3

STATUS

Received

MVMPAP06

10/24/2018 6:48:40 PM PAGE

3/003

Fax Server

252831801WC

firstscript

Prior Authorization Response

To: Pharmacist

From: Medication Authorization Team

Company: WALGREENS #15274

Company: First Script

Phone: (803) 325-2792

Phone: (866) 445-7344

Fax: (803) 325-2798

Fax: (855) 426-2636

Date: 10/24/18

Re: BARRY ADICKES 1000658214

First Script has received responses on the following Rx#:

Rx#	Status:
292152	DENIED - COMPLETED

If you have any questions regarding this Authorization, please call First Script.

Any questions regarding denials should be directed to the Injured Workers Adjuster or Case Manager.

Thank You!

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3535 E. Valencia Rd., Tucson AZ 85706
Phone (888) 333-6741 Fax (888) 691-3991

LtrId: 15855065



Howard Mandell, MD, FRCPC. • Allan S. Ryder-Cook, MD, PhD.
Mark A. Porter, MD, • Ebinehita Arhebamen, MD • Curtis Deloney, MD
Michael Leddy, PA-C MMS
www.metrolinaneurology.com

October 5, 2016

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: 08/12/1961

HISTORY OF PRESENT ILLNESS: I saw Barry in neurology clinic today in follow-up of his traumatic brain injury, posttraumatic headaches. In general, he has done very well but gets the occasional severe headache. I saw him last in February and he did very well until June when he had a severe headache that lasted several days. He did well from June and then on October 3rd he had another severe headache. This began with a dull headache on Monday. He took a Maxalt. As the day went on it seemed to interfere with his function. He took another Maxalt at 9:30 p.m. and then an injection followed by a second injection at 11 a.m. the next day and a third one at 3 a.m. On Tuesday he took a Frova and caffeine. On Wednesday he took Maxalt and another injection and now he feels just kind of hung over, drained but not much of a headache. There really was no specific trigger other than he did run out of his nadolol. For some reason his Workman's Comp did not want to cover the nadolol for a period of five days. It was also quite a stressful few days for him. He was very busy doing a lot of things.

NEUROLOGICAL REVIEW OF SYSTEMS: Patient does get headaches. There is no fever or chills, ear ache or sinus infections. No diplopia, dysarthria, dysphagia, dysphonia. No lateralizing weakness, paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: Patient does get headaches. There is no fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, vision problems, skin problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS: Nadolol 40 mg; aspirin 81; Imitrex 6 mg injection at onset of headache and repeat in one hour; Maxalt p.r.n.; Frova p.r.n.

NEUROLOGICAL EXAMINATION: He is a very pleasant gentleman.

Vital signs: BP: 120/70. HR: 60. RESP: 10.

Mental status testing: Brief mental status testing showed the patient to be alert, oriented times three, able to provide a good history, and had general good fund of knowledge, appropriate judgment and insight and no impairment of short term memory.

Language function: No significant aphasia or dysarthria was noted.

CMC Pineville :
10620 Park Rd, Ste 230
Charlotte, NC 28210
(704)542-6698

Rock Hill Medical Park:
200 S. Herlong Ave, Ste H
Rock Hill, SC 29732
(803)366-6135

CMC-Carolina Lakes Medical Plaza:
7666 Charlotte Hwy, Suite 220
Indian Land, SC 29707
(803) 578-9050

CN II: Optic fundi were normal with no papilledema noted.

CN III, IV, VI: The pupils were equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements were full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevated symmetrically and normal gag reflex was noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

CN XII: The tongue protruded in the midline with normal strength and movement.

Carotid Arteries: No bruits heard.

C-Spine: There is normal ROM for age, non-tender, and no muscle spasms.

L-S-Spine: There is normal ROM for age, negative SLR, non-tender, no muscle spasm.

Motor examination: The patient had no abnormal spontaneous movements. Tone was normal. There was no atrophy or fasciculations noted. The patient had no drift in the extremities and normal direct muscle testing and fine motor skill movements were normal.

Sensory examination: Sensation was intact to pin prick and light touch and vibration sense.

Reflexes: Deep tendon reflexes were normal and symmetrical, grade 2/4 diffusely. No pathological reflexes were noted.

Cerebellar testing: Normal finger to nose, heel/knee/shin, and tandem walk.

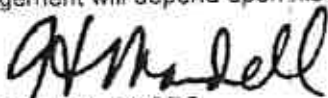
Gait testing: Gait testing was normal with normal Romberg testing and no abnormalities such as broad base gait or spasticity.

IMPRESSION AND PLAN:

1. Barry in general is doing extremely well. Intermittently however he does have a very severe headache and likely they have not been under control with abortive therapy unfortunately. I suggested he no longer use the oral medications but go straight to the injection as soon as the headache comes on, repeat the injection in an hour and take up to 3 on that day and use Medrol Dosepak and Phenergan suppository for rescue.

2. ADD doing better on the Adderall. I refilled his Adderall 5 mg taking 2 q.a.m. and 1 at second dose with last refill date of 12/28/2016.

Further management will depend upon his course.



Howard Mandell, M.D., FRCPC

HM:src (10/08) 52760641

cc: Nicholas H. Tuttle, M.D.

Dictated but not read to expedite mailing.

3283879
817-1735



Howard Mandell, MD, FRCPC. • Mark A. Porter, M.D.
Curtis Deloney, MD • Christy Petit, MSN, FNP-C
www.metrolinaneurology.com

167888

March 3, 2017

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: 08/12/1961

HISTORY OF PRESENT ILLNESS: I saw Barry in neurology clinic today in follow-up of his traumatic brain injury, posttraumatic headaches. In general he has done well but in February he did have two bad headaches, each one lasted two days. He took the Imitrex injection at onset which always helps him but then it came back again later on that day and on occasion the next day as well. Prior to that he only had intermittent migraines easily knocked out by Imitrex injection. On the slower onset headaches he uses Maxalt. There are no triggers to this headache.

NEUROLOGICAL REVIEW OF SYSTEMS: Patient does get headaches. There is no fever or chills, ear ache or sinus infections. No diplopia, dysarthria, dysphagia, dysphonia. No lateralizing weakness, paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: Patient does get headaches. There is no fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, vision problems, skin problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS: Nadolol 40 mg; aspirin 81; Imitrex 6 mg injection at onset of headache and repeat in one hour; Maxalt p.r.n.; Frova p.r.n.

NEUROLOGICAL EXAMINATION: He is very pleasant.

Mental status: He is awake, alert and oriented times four.

CN III, IV, VI: The pupils were equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements were full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevated symmetrically and normal gag reflex was noted.

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Indian Land: 7666 Charlotte Hwy, Indian Land, SC 29707 • (803) 578-9050

817-1735
9/6

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

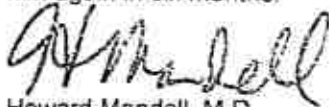
CN XII: The tongue protruded in the midline with normal strength and movement.

Motor examination: Power is 5/5. Tone and coordination are normal.

Reflexes: His reflexes are symmetrical.

Gait: He walks a narrow-based gait.

IMPRESSION AND PLAN: Barry is generally doing very well. Intermittently however he does get the severe headaches and Imitrex injection has been very helpful. Sometimes the headache will recur however. He also does get triptan effects from the injection and I suggested we try Onzetra to see if this might be better tolerated and hopefully give him as good a response. At this time, I do not think we need to increase prophylaxis. I think he is doing as well as we can expect. I refilled prescriptions. I will see him again in six months.



Howard Mandell, M.D.
HM:src (03/06) 52915346

cc: Nicholas H. Tuttle, M.D.

Dictated but not read to expedite mailing.



Howard Mandell, MD, FRCPC. • Mark A. Porter, M.D.
H. Dean Reeves, II, M.D. • David Buckland, D.O. • Christy Petit, MSN, FNP-C

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October 6, 2017

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: 08/12/1961

HISTORY OF PRESENT ILLNESS: I saw Barry in neurology clinic today in followup of his traumatic brain injury and post-traumatic headaches. In general, he has done well. He has found Onzetra to be very helpful, used it on 3 occasions. He does not get any of the triptan effects and it works just as well as the injection. For a slow onset headache, he will use Maxalt. He notes that barometric pressure may be a trigger for him.

NEUROLOGICAL REVIEW OF SYSTEMS: Patient does get headaches. No fever or chills, ear ache or sinus infections. No diplopia, dysarthria, dysphagia, dysphonia. No lateralizing weakness, paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. No neck or back pain.

GENERAL REVIEW OF SYSTEMS: Patient does get headaches. No fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, vision problems, skin problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS: Nadolol 40 mg, aspirin 81, Onzetra, Maxalt p.r.n.

NEUROLOGICAL EXAMINATION:

Mental Status: He is a very pleasant gentleman, awake and alert, and oriented x4.

CN III, IV, VI: The pupils were equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements were full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevated symmetrically and normal gag reflex was noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

CN XII: The tongue protruded in the midline with normal strength and movement.

Motor examination: Power is 5/5. Tone and coordination are normal.

Reflexes: Reflexes are symmetrical.

Gait: He walks with a narrow based gait.

IMPRESSION AND PLAN:

1. Barry is doing very well. He has intermittent migraines. Onzetra has been a very nice medication for him. I refilled prescriptions. I will see him again in 6 months' time.
2. ADD, improving on the Adderall. I refilled his Adderall 10 mg in the morning and 5 mg at 2:00 p.m. with a last refill date of 1/4/18.

Howard Mandell, MD

Howard Mandell, MD, FRCPC
HM:ap (10/09) 53121284

cc: Nicholas H. Tuttle, MD

Dictated but not read to expedite mailing.



Howard Mandell, MD, FRCPC. • Mark A. Porter, M.D.
H. Dean Reeves, II, M.D. • David Buckland, D.O. • Christy Petit, MSN, FNP-C

www.metrolinaneurology.com

May 3, 2018

SUMMARY FOR THE CHART

RE: Barry S. Adickes

DOB: 08/12/1961

HISTORY OF PRESENT ILLNESS: I saw Barry in neurology clinic today in follow-up of his traumatic brain injury, posttraumatic headaches. He continues to struggle. He is in and out of court with finances really stretched thin, now with his eighth radiofrequency ablation which does help pain going from his neck to his right shoulder for maybe seven or eight months. Shoulder surgery is pending. Headache occurs maybe a bad one every six or eight weeks. He uses Onzetra which has been helpful. He does do exercises daily and has frequent massages which help significantly to keep the pain down. The whole process with Workman's Comp has really worn him down and his family down, trying to keep things together financially, though they have very strong faith with has been extremely helpful.

NEUROLOGICAL REVIEW OF SYSTEMS: Patient does get headaches. There is no fever or chills, earache or sinus infections. No diplopia, dysarthria, dysphagia, dysphonia. No lateralizing weakness, paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. He has neck and back pain.

GENERAL REVIEW OF SYSTEMS: Patient does get headaches. There is no fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, vision problems, skin problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS: Nadolol 40 mg; aspirin 81; Onzetra p.r.n.; Maxalt p.r.n.

SOCIAL HISTORY: He does not smoke or drink.

NEUROLOGICAL EXAMINATION:

Appearance: He is a very pleasant gentleman.

Mental status: He is awake, alert and oriented times four. He is tearful today and trying to keep his spirits up and trying to weather the system which seems to just wear him down. He is finally going to have some shoulder surgery he thinks. It is never a sure thing with Workman's Comp.

CN III, IV, VI: The pupils were equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements were full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

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CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevated symmetrically and normal gag reflex was noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

CN XII: The tongue protruded in the midline with normal strength and movement.

Motor examination: Power is 5/5. Tone and coordination are normal.

Reflexes: His reflexes are 2/4. Plantar responses are downgoing.

Gait: He walks with a narrow-based gait.

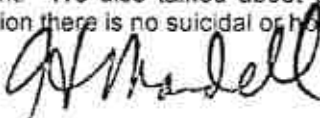
IMPRESSION AND PLAN:

1. Barry is struggling in terms of the efforts and trials and tribulations due to the entire process of in and out of court, Workman's Comp delaying necessary medical procedures, finances becoming less and less. He and his wife have had to go into a lot of savings in order to keep the household going and also to support two children going through college. It does not appear that any settlement he may get will anywhere nearly compensate him for the lost wages and difficult time he has had. Perhaps it will help pay off the bills that have accumulated but not more than that. With regards to his migraines, they are improved. Onzetra has been a very nice, supportive medication. Nadolol has been a good prophylaxis. He still gets a severe headache every six or eight weeks but has them under control.

2. Chronic neck pain, shoulder pain, back pain, headaches and underlying depression because of all of the above mentioned circumstances. I think he might do well with Cymbalta. I would like to start him on 30 mg and titrate to 60. Hopefully this will help with his neck pain and shoulder pain and also promote better sleep.

3. ADD. He does well on the Adderall. It has been very helpful for him. He takes 5 mg pill, 2 in the morning and 1 at 2 p.m. for a total of 15 mg daily.

I will see him again in follow-up. For the purpose of documentation, 45 minutes was spent with the patient. We also talked about therapy and he is going to arrange this with his pastor. I should also mention there is no suicidal or homicidal ideation.



Howard Mandell, M.D.

HM:src (05/07) 26597730

Dictated but not read to expedite mailing.



Howard Mandell, MD, FRCPC • Mark A. Porter, M.D.
H. Dean Reeves, II, M.D. • David Buckland, D.O. • Christy Petit, MSN, FNP-C

www.metrolinaneurology.com

August 3, 2018

SUMMARY FOR THE CHART

RE: Barry S. Adickes
DOB: 08/12/1961

HISTORY OF PRESENT ILLNESS: I saw Barry in neurology clinic today in follow-up of his traumatic brain injury and posttraumatic headaches. He in general is doing a lot better but continues to struggle. Workman's Comp is dragging him in and out of court, finances have been stretched very thin now with his eighth radiofrequency ablation which does help pain along his neck to his right shoulder for seven or eight months. Shoulder surgery is pending.

Headaches come and go, perhaps having a bad one every six or eight weeks. He uses Onzetra which has been helpful. He does do exercise daily and has had frequent massages which helps significantly to keep the pain down.

The whole process with Workman's Comp has really worn him down and his family down. He is trying to keep things together and it is fortunate he has a very strong faith which has been extremely helpful to him.

NEUROLOGICAL REVIEW OF SYSTEMS: Patient does get headaches. There is no fever or chills, earache or sinus infections. No diplopia, dysarthria, dysphagia, dysphonia. No lateralizing weakness, paresthesias. No loss of consciousness, tonic-clonic or myoclonic movements. No tongue biting or urinary incontinence. He gets neck and back pain.

GENERAL REVIEW OF SYSTEMS: Patient does get headaches. There is no fever or chills, ear aches or sinus infections. No chest pain, PND, orthopnea or ankle swelling. No cough, SOB, sputum production or hemoptysis. No abdominal pain, nausea, vomiting, hematemesis, melena or hematochezia. No new joint problems, vision problems, skin problems, ear, nose or throat problems, allergy problems.

CURRENT MEDICATIONS: Nadolol 40 mg; aspirin 81; Onzetra p.r.n.; Maxalt p.r.n.; Adderall 5 mg taking 10 in the morning and 1 at 2 p.m.

SOCIAL HISTORY: He does not smoke or drink.

NEUROLOGICAL EXAMINATION:

Appearance: He is a very pleasant gentleman.

Mental status: He is awake, alert and oriented times four.

CN III, IV, VI: The pupils were equal and round and reactive to light symmetrically and to accommodation. Extraocular eye movements were full with no nystagmus and no ptosis noted.

CN V: Shows normal sensation and jaw opens symmetrically.

CN VII: Shows normal facial movement symmetrically, upper and lower bilaterally.

CN VIII: Shows no significant hearing loss on examination in the office.

CN IX, X: The palate elevated symmetrically and normal gag reflex was noted.

CN XI: Normal strength in the sternocleidomastoid muscles and symmetrical shoulder shrugging.

CN XII: The tongue protruded in the midline with normal strength and movement.

Motor examination: Power is 5/5. Tone and coordination are normal.

Reflexes: His reflexes are symmetrical.

Gait: He walks with a narrow-based gait.

C-spine: He has reduced range of motion of his neck and tender trigger points.

IMPRESSION AND PLAN:

1. Barry is struggling in terms of the efforts and trials and tribulations due to the entire process of Workman's Comp. He is in and out of court denying necessary medical procedures, not paying for things and finances are becoming thinner and thinner. There has been a major toll on the family but they have strong faith and a good marriage and great children and are pushing through this.
2. With regards to his migraines, they have improved. He still gets a bad one every six or eight weeks. Onzetra has been very helpful. Nadolol has been useful for prophylaxis.
3. Chronic neck pain, shoulder pain, back pain. I discussed with him the use of Cymbalta but he really does not want to go on any antidepressants.
4. ADD. He does well on Adderall. I have refilled prescriptions.

I will see him again in six months.


Howard Mandell, MD
HM:src (08/06) 26778758

cc: Nicholas H. Tuttle, M.D.

Dictated but not read to expedite mailing.

Claim Number 002380009116WC01
Claimant Name ADICKES, BARRY
First Script Enrollment # 1000658214
Claim Status C
Created 2/13/19 11:40 AM

Date Filled	Drug	NDC	Drug Class	Prescriber
2/7/19	DEXTROAMPHETAMINE-AMPH	555097102	Stimulant Agents	MANDELL, HOWARD
2/6/19	RIZATRIPTAN TAB 10MG	33342008841	Migraine Medications	MANDELL, HOWARD
2/6/19	TIZANIDINE TAB 4MG	55111018010	Muscle Relaxants	MANDELL, HOWARD
2/6/19	NADOLOL TAB 40MG	69238112409	Cardiovascular, Antihypertensive	MANDELL, HOWARD
1/23/19	ONZETRA XSAI MIS 11MG	64597031108	Migraine Medications	MANDELL, HOWARD
1/7/19	NADOLOL TAB 40MG	69097086807	Cardiovascular, Antihypertensive	MANDELL, HOWARD
1/7/19	AMPHET/DEXTR TAB 5MG	555097102	Stimulant Agents	MANDELL, HOWARD
1/2/26/18	ONZETRA XSAI MIS 11MG	64597031108	Migraine Medications	MANDELL, HOWARD
12/21/18	TIZANIDINE TAB 4MG	55111018015	Muscle Relaxants	MANDELL, HOWARD
12/12/18	NADOLOL TAB 40MG	69097086807	Cardiovascular, Antihypertensive	MANDELL, HOWARD
12/4/18	NAPROXEN TAB 500MG	68462019005	NSAIDs	MANDELL, HOWARD
12/2/18	AMPHET/DEXTR TAB 5MG	555097102	Stimulant Agents	MANDELL, HOWARD
11/26/18	TIZANIDINE TAB 4MG	55111018015	Muscle Relaxants	MANDELL, HOWARD
11/26/18	ONZETRA XSAI MIS 11MG	33342008850	Migraine Medications	MANDELL, HOWARD
11/13/18	RIZATRIPTAN TAB 10MG	69097086807	Cardiovascular, Antihypertensive	MANDELL, HOWARD
11/12/18	NADOLOL TAB 40MG	55111018010	Muscle Relaxants	MANDELL, HOWARD
11/12/18	TIZANIDINE TAB 4MG	69097086865	Migraine Medications	MANDELL, HOWARD
11/12/18	RIZATRIPTAN TAB 10MG	555097102	Stimulant Agents	MANDELL, HOWARD
11/1/18	AMPHET/DEXTR TAB 5MG	55111018015	Muscle Relaxants	MANDELL, HOWARD
10/24/18	TIZANIDINE TAB 4MG	64597031108	Migraine Medications	MANDELL, HOWARD
10/23/18	ONZETRA XSAI MIS 11MG	555097102	Stimulant Agents	MANDELL, HOWARD
10/1/18	AMPHET/DEXTR TAB 5MG	64597031108	Migraine Medications	MANDELL, HOWARD
9/25/18	ONZETRA XSAI MIS 11MG	55111018015	Muscle Relaxants	MANDELL, HOWARD
9/25/18	TIZANIDINE TAB 4MG	68462019005	NSAIDs	MANDELL, HOWARD
9/20/18	NAPROXEN TAB 500MG	33342008850	Migraine Medications	MANDELL, HOWARD
9/7/18	RIZATRIPTAN TAB 10MG	69097086807	Cardiovascular, Antihypertensive	MANDELL, HOWARD
9/5/18	NADOLOL TAB 40MG	555097102	Stimulant Agents	MANDELL, HOWARD
9/1/18	AMPHET/DEXTR TAB 5MG	64597031108	Migraine Medications	MANDELL, HOWARD
8/16/18	ONZETRA XSAI MIS 11MG	55111018015	Muscle Relaxants	MANDELL, HOWARD
8/10/18	TIZANIDINE TAB 4MG	64597031108	Migraine Medications	MANDELL, HOWARD
7/16/18	ONZETRA XSAI MIS 11MG	69097086807	Cardiovascular, Antihypertensive	MANDELL, HOWARD
7/11/18	NADOLOL TAB 40MG	33342008850	Migraine Medications	MANDELL, HOWARD
7/10/18	RIZATRIPTAN TAB 10MG	555097102	Stimulant Agents	MANDELL, HOWARD
7/2/18	AMPHET/DEXTR TAB 5MG	68462019005	NSAIDs	MANDELL, HOWARD
6/28/18	NAPROXEN TAB 500MG	68462069497	Migraine Medications	MANDELL, HOWARD
6/27/18	FROVATRIPTAN TAB 2.5MG	55111018015	Muscle Relaxants	MANDELL, HOWARD
6/25/18	TIZANIDINE TAB 4MG	93201312	Migraine Medications	MANDELL, HOWARD
6/6/18	SUMATRIPTAN INJ 4MG/0.5	64597031108	Migraine Medications	MANDELL, HOWARD
6/4/18	ONZETRA XSAI MIS 11MG	555097102	Stimulant Agents	MANDELL, HOWARD
5/29/18	AMPHET/DEXTR TAB 5MG	60505025203	Muscle Relaxants	MANDELL, HOWARD
5/23/18	TIZANIDINE TAB 4MG	69097086807	Cardiovascular, Antihypertensive	MANDELL, HOWARD
5/16/18	NADOLOL TAB 40MG	43547038003	Antidepressant Medications, Non-TCA	MANDELL, HOWARD
5/3/18	DULOJETINE CAP 30MG	555097102	Stimulant Agents	MANDELL, HOWARD
4/28/18	AMPHET/DEXTR TAB 5MG	64597031108	Migraine Medications	MANDELL, HOWARD
4/16/18	ONZETRA XSAI MIS 11MG	69097086807	Cardiovascular, Antihypertensive	MANDELL, HOWARD
4/12/18	NADOLOL TAB 40MG			MANDELL, HOWARD



January 21, 2019

VIA US MAIL

SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202

Re: Barry Adickes v. Phillips Healthcare c/o Gallagher Bassett Services

D/A:	03/22/2011
SCWCC #:	1102937
Clt. Clm#:	002380-009116-WC-01
SC Court of Appeals #:	2016-00514

Dear Sir/Madam:

As the Commission is aware, our law firm represents the Employer Self-Insurer in this workers' compensation claim. Enclosed for filing, please find one original and three copies of a **Form 30 Request for Commission Review and Addendum**, three copies of the Order under review and our filing fee in the amount of \$150.00.

By copy of this letter to Bill Smith, Claimant's attorney, we are notifying him of this submission, and serving a copy of same upon him via email. If you have any questions, or if you need further assistance from us, please do not hesitate to call.

Sincerely,

A handwritten signature in blue ink that reads "brooke payne". The signature is written in a cursive, lowercase style.

Brooke A. Payne

BAP/lw

cc: Peggy Coleman (via email)
James Durchak (via email)

Encl: As state

PO Box 2449, Mt. Pleasant, SC 29465 ♦ Telephone: 843-732-6280 ♦ Fax: 843-420-1440

www.PayneLG.com

-0749-

002



Claimant's Name: Barry Adickes SSN: 251 - 31 - 7784 Employer's Name: Phillips Healthcare (Appellant)
Address: 1137 Hummingbird Lane Address: 3000 Minuteman Road
City: Rock Hill State: SC Zip: 29732 City: Andover State: MA Zip: 0181086
Home Phone: (864) 328 - 0150 Work Phone: () - Insurance Carrier: Gallagher Bassett Services (Appellant)
Preparer's Name: Brooke Payne Law Firm: Payne Law Group, LLC Preparer's Phone #: (843) 732 - 6280

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: 3/22/2011

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 Addendum for questions presented.

(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 William L. Smith
address PO Box 12330, Columbia, SC 29211 on the 21st day of January 2019, by X first class postage certified mail personal
service.

Brooke Payne
Preparer's Signature

Attorney for Appellants
Title

bpayne@paynelq.com
Email

1/18/2019
Date

Check this box if you are not represented by an attorney ☐

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.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1102937

BARRY ADICKES,

Respondent,

vs.

PHILIPS HEALTHCARE and FIDELITY
& GUARANTY INS. CO. C/O
GALLAGHER BASSETT
SERVICES, INC.,

Appellants.

**FORM 30 ADDENDUM:
QUESTIONS PRESENTED**

Form 30 Questions Presented:

- (1) Whether the Single Commissioner erred in ruling (Rulings of Law 2) that the Court of Appeals did not reverse the date wage loss began, the error being that the preponderance of the evidence in the record does not support this ruling. The supporting Order directive (§ 2) also constitutes an error of law.
- (2) Whether the Single Commissioner erred in ruling (Rulings of Law 3) that the Court of Appeals did not reverse or remand with regard to whether wage loss benefits commence as of the date of MMI, the error being that the preponderance of the evidence in the record does not support this ruling. The supporting Order directive (§ 2) also constitutes an error of law.
- (3) Whether the Single Commissioner erred in ruling (Rulings of Law 4) that the issue of MMI is immaterial in a wage loss claim, as this ruling constitutes an error of law. The supporting Order directive (§ 2) also constitutes an error of law.
- (4) Whether the Single Commissioner erred in ruling (Rulings of Law 5) that determining the date of MMI is beyond the scope of the remand from the Court of Appeals, the error being that the preponderance of the evidence in the record does not support this ruling. This ruling also constitutes an error of law. The supporting Order directive (§ 2) also constitutes an error of law.
- (5) Whether the Single Commissioner erred in ruling (Rulings of Law 6) that the proper application of § 42-9-20 allows for the Claimant to receive credit for TTD benefits received in the form of an additional 7 weeks and 5 days of wage loss benefits beyond the 340 week limitation period, as this ruling constitutes an error of law. The supporting Order directive (§ 3) also constitutes an error of law.
- (6) Whether the Single Commissioner erred in ordering the Defendants to commence his wage

loss benefits on January 17, 2014, a date prior to a designation of MMI, as this Order directive (§ 2) constitutes an error of law as it is in direct contradiction to existing case law.

- (7) Whether the Single Commissioner erred in ordering the Defendants to pay interest on the benefits owed from January 17, 2014 through the date that Defendants commenced benefits, as this Order directive (§ 7) constitutes an error of law.

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1102937

Barry Adickes,)
)
Claimant,)
)
v.)
)
Philips Healthcare,)
)
Employer,)
)
and)
)
Fidelity & Guaranty,)
)
Carrier/Defendants.)
-----)

FULL COMMISSION HEARING

Tuesday, April 30, 2019
10:53 a.m. - 11:18 a.m.

COPY

The Full Commission Hearing was heard before Commissioners R. Michael Campbell, II, Avery B. Wilkerson, and T. Scott Beck, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 30th day of April 2019, before Cortney N. Glover, Court Reporter and Notary Public in and for the State of South Carolina.



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Also present:

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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.



CALL TO ORDER:

COURT REPORTER: Today is April 30th, 2019. This is South Carolina Workers' Compensation Case Number 1102937. This is the case of Barry Adickes, claimant, versus Philips Healthcare, employer, and Fidelity & Guaranty, carrier. This is a cross appeal. The first appellant is the defendant, represented by Brooke Payne. The second appellant is the claimant, represented by William H. Smith, III [sic]. Each side is allowed ten minutes for oral argument and each side three minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER BECK: Ms. Payne?

DEFENDANT'S POSITION BY MS. PAYNE:

MS. PAYNE: Good morning, your Honors. May it please the Court. My name is Brooke Payne. I'm here on behalf of Philips Electric, the defendants in the case. And we are before you for a case that has already been at this level and has gone up to the Board of Appeals, the issue being the claimant's entitlement to wage loss benefits. And so we took it up to Court of Appeals, and



1 it was sent back down with directives to
2 calculate the wage loss award. The one main
3 directive from the Court of Appeals' opinion is
4 that wage loss awards are limited to 340 weeks
5 from the date of accident. So there can be no
6 weekly wage loss benefits paid beyond that
7 date. The question is when it comes to
8 calculation of the award, when do those
9 benefits start?

10 So we have argued since day one that wage loss
11 awards commence at MMI and run into -- run
12 through the -- or up to the 340 weeks from the
13 date of accident, which in this case, 340 weeks
14 from the date of accident was September 24th,
15 2017.

16 So we are here because the remand sent it back
17 to Commissioner Barden, and Commissioner Barden
18 ruled that the claimant was entitled to wage
19 loss benefits from the date of his termination
20 from the employer, which was in January of 2014
21 through 340 weeks, but then she also added on
22 an initial eight weeks beyond that. So we are
23 here to appeal that award and request that you
24 guys overturn it.

25 The first argument is when do wage loss



1 benefits commence. I guess that we are of the
2 opinion that it's well established that
3 permanent benefits commence at MMI. And since
4 day one in all of the pleadings the request has
5 been for a permanency determination. And,
6 again, Commissioner Barden found that the wage
7 loss began when his wages -- when his loss of
8 earnings began, which was the date that he
9 was -- lost his job from Philips, which was the
10 year before he was placed at MMI.

11 I -- the date of commencement, one argument
12 that the claimant makes is that the date of
13 commencement of MM -- I'm sorry -- of wage loss
14 benefits wasn't reversed but, I mean, it was.
15 The Court of Appeals specifically said we
16 reverse the PPD award, remand it back for the
17 calculation -- or the proper calculation of
18 benefits.

19 So it was reversed. We also didn't waive the
20 argument, you know, as claimant conceded in his
21 brief. We've brought it up at every level,
22 including the Court of Appeals. We've never
23 waived that argument. We still maintain that
24 wage loss -- permanent wage loss benefits began
25 at the date of MMI. We also think that the



1 record is clear that the claimant was placed at
2 MMI from Commissioner McCaskill and that there
3 is a -- an MMI date within the record, which is
4 the date of Dr. Baron's questionnaire response.
5 'Cause there were some issues when we were --
6 when we initially tried this case of whether
7 Commissioner McCaskill questioned whether he
8 could even grant a permanency award because of
9 the MMI question. And so for that reason, the
10 claimant argued that this questionnaire
11 response from the IME physician -- the IME
12 doctor had seen him in 2012 and then completed
13 the questionnaire right before we tried the
14 case in 2015. And in 2012 he specifically said
15 that he wasn't at MMI on that date, so it
16 wouldn't be retroactive application back to the
17 MMI -- or to the IME date.

18 The -- within that questionnaire Dr. Baron
19 assigned permanent -- a permanent impairment
20 rating, and it was that rating and the language
21 within that rating that the permanency is what
22 Commissioner McCaskill ---

23 **COMMISSIONER BECK:** Let me take you back, Ms. Payne,
24 to your assertion that the Court of Appeals
25 reversed the wage loss. Isn't that what you



1 sold me? They reversed the finding of the 340
2 weeks of wage loss?

3 **MS. PAYNE:** They reversed the award, the lump sum of
4 340 weeks wage loss.

5 **COMMISSIONER BECK:** Well, actually what they reversed
6 is the calculation part of it. It says, we
7 reversed the appellate panel's award of 340
8 weeks compensation commencing the 17th of
9 January and remand for a new calculation
10 consistent with 42-9-20.

11 **MS. PAYNE:** Correct. And they also found that they
12 disagreed with the appellate panel's
13 interpretation of the award in that the statute
14 explicitly mandates that in no case will PPD
15 benefits be available beyond the term of 340
16 weeks. So that -- what they reversed was when
17 they commenced. Does that make sense?

18 **COMMISSIONER BECK:** Yes.

19 **COMMISSIONER WILKERSON:** I agree with that ---

20 **MS. PAYNE:** Okay. So 340 weeks from the date of
21 accident is -- well, they have reversed that.
22 Because the full commission had awarded a lump
23 sum of 340 weeks. So they disagreed with
24 regard to the lump sum, and they determined
25 that it can't go beyond 340 weeks but then ---



1 COMMISSIONER BECK: But they didn't reverse the fact
2 that it was a wage loss case?

3 MS. PAYNE: No, no. And I'm sorry if I gave you
4 that impression. They never -- they, by all
5 means, upheld the wage loss award. It's just
6 the calculation of that award ---

7 COMMISSIONER BECK: Okay. All right. We're on the
8 same page.

9 MS. PAYNE: --- that's on remand. Yeah. So it's
10 just the calculation. And so we have argued
11 that they should commence as of the date of MMI
12 just based on the well-established rule that's
13 set out in Curiel [ph] and all the other cases
14 that permanency benefits -- or that benefits
15 accrue along a continuum, and permanency
16 benefits begin as of the date of MMI.
17 And then we also are here to argue that
18 Commissioner Barden erred by extending the wage
19 loss award beyond the 340-week limit that was
20 directly set out by the Court of Appeals that
21 in -- like I just read, in no case will PPD
22 benefits be available beyond the term of 340
23 weeks.

24 So Commissioner Barden looked to the last
25 sentence of the statute and interpreted that to



1 mean that not only are the employer/insurer not
2 entitled to a credit, which we never have
3 argued we're entitled to a credit of the TTD
4 benefits that have been paid, but she
5 interpreted that sentence to mean that, for
6 whatever reason, the claimant then gets another
7 period of benefits beyond 340 weeks to make up
8 for the initial period of temporary benefits.
9 I have no idea where that interpretation came
10 from, but what I do know is that that amounts
11 to a dollar recovery for that period of time,
12 which certainly couldn't have been the
13 legislature's intent.

14 The last sentence specifically says, in case
15 the partial disability begins after a period of
16 total disability, the latter part shall not be
17 deducted from a maximum period allowed in this
18 section.

19 So just like what happened in this case, there
20 was an initial period of almost eight weeks of
21 TTD benefits paid right after the date of
22 accident. So now we are commencing partial
23 disability benefits. So this partial
24 disability is coming after the period of total
25 disability. So all that means is that we can't



1 say, okay, since he already got eight weeks,
2 we're gonna just entitle him to 340 minus eight
3 weeks. We've never tried to do that. We --
4 we've always argued that the benefits extend to
5 the 340-week period. And that sentence, the
6 whole reason behind that sentence is to
7 differentiate the wage loss awards from, like,
8 PTD awards with regard to when temporary
9 benefits have been paid. Because PTD awards
10 are granted, you know, 500 total weeks. So
11 with that instance, if you're looking at total
12 weeks, sure, you would count how many weeks
13 they'd been paid, and that would be subtracted
14 from 500.

15 But here we're not -- the calculation isn't the
16 amount of weeks total with regard to receipt of
17 benefits. It's just a concrete date that
18 doesn't change in any case. There's a 340-week
19 date mark and that's it. And so I'm not sure
20 how it's been interpreted to extend it. What
21 I know is that Commissioner Barden's
22 interpretation or misinterpretation in that
23 respect is completely in contravention to the
24 directives laid out in the Court of Appeals'
25 award that say that no case can benefits be



1 paid beyond 340 weeks.

2 So yeah. So it's our argument that the 340
3 weeks was September 24th, 2017. We commence
4 TTD to take this up on appeal, so we commenced
5 it in March of 2016. So it was our argument
6 when we were before Commissioner Barden that he
7 was entitled to 141 weeks total wage loss
8 award. And at that time, I think we had paid
9 a little over 141. So for that reason, we
10 request that the Commission overturn
11 Commissioner Barden's award and grant or end --
12 issue an award that's in compliance with the
13 Court of Appeals' directives with regard to not
14 allowing the benefits to go beyond 340 but also
15 in compliance with all the well-established
16 case law that says permanent benefits begin at
17 MMI. Thank you.

18 **COMMISSIONER BECK:** Thank you very much.

19 **MS. PAYNE:** Can I reserve any additional time for
20 rebuttal?

21 **COMMISSIONER CAMPBELL:** You'll get three minutes in
22 reply.

23 **COMMISSIONER BECK:** You'll get a three-minute reply.

24 **MS. PAYNE:** Okay.

25 **COMMISSIONER BECK:** Mr. Smith?



CLAIMANT'S POSITION BY MR. SMITH:

MR. SMITH: Mate it please the Commission. I'll hand up something to refer to, if I may approach.

COMMISSIONER BECK: Yes, sir.

MR. SMITH: Barry Adickes suffered a severe injury back in March of 2011 when he was involved in a car wreck on the job. He injured his brain; he injured his neck; and he injured his shoulder. By far, the most disabling and the basis of this wage loss award is his brain. There are -- this case has appealed on up. This award of wage loss is appealed. The Court of Appeals affirmed, reversed, remanded. They reversed 340 weeks saying you couldn't get 340 weeks at the end of the award -- and by the way, this is non-published opinion -- but 340 weeks from date of injury is the max that you could get. They did not reverse the date that the award commenced on, that what they did was they simply said -- they went through all this -- and this is an unusual situation. Mr. Adickes worked two and a half years post-accident. This is not your typical wage loss claim where



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1 somebody's on temporary total and then they get
2 340 of wage loss, which is what that last
3 sentence of 42-9-20 allows you to do. The
4 problem in this case is is that he worked for
5 two and a half years post-accident.

6 The first document I handed up to you is the
7 Court of Appeals' opinion. And in that opinion
8 they state, compensation of the accident is not
9 awarded for the physical injury as such but for
10 disability produced by such injury, the
11 disability to be measured by the employee's
12 capacity or incapacity to earn the wages which
13 he was receiving at the time of his injury.
14 The record is clear Adickes did not suffer a
15 wage loss until he was terminated from
16 employer. Commissioner McCaskill found that
17 that's when his wage loss started; the
18 appellate panel found that's when his wage loss
19 started; and the Court of Appeals explicitly
20 states it here that that's when his wage loss
21 began. They did not remand this case for some
22 issue regarding maximum medical improvement.
23 I'm getting a little bit ahead of myself.
24 The -- there's eight reasons that Commissioner
25 Barden's order is correct in that case. And



1 that's the first one, that it is the law of the
2 case.

3 Secondly, the defendants made this argument
4 that wage loss doesn't begin until MMI. They
5 made that argument to the Court of Appeals.
6 Nowhere in this opinion does the Court of
7 Appeals mention that. Nowhere in this remand
8 do they say, tell me when MMI is and that's
9 when the award begins. They don't do that.
10 It's the law of the case. If they wanted to
11 bring this argument up again, they had to
12 petition for referat. They had to petition for
13 cert. They did neither of those things, and
14 the Court of Appeals did not remand it for that
15 issue. They remanded a math problem back.
16 Basically it was you can't get more than 340
17 weeks from date of injury, but he worked two
18 and a half years, so deduct that period.
19 That's what the remand is all about.
20 Going further with this MMI thing, there is no
21 date of MMI in any order in this case. There's
22 no date from Commissioner McCaskill; there no
23 date from the appellate panel; and obviously,
24 there's no date from the Court of Appeals. In
25 order for you to accept their argument, you



1 have to find a date of MMI. There's not one.
2 And the Court of Appeals did not remand it for
3 a date of MMI to be determined in this case.
4 So that's the third reason.

5 But there's a reason for that. Any date of MMI
6 is irrelevant. The only thing that MMI
7 signifies in a wage loss claim is what further
8 medical care. Are they -- is it wide-open
9 medical care, or is there gon' be some
10 limitation on medical care? That's what the
11 MMI thing matters about. What matters here is
12 that you meet the definition of "disability."
13 And that's stated in 42-11-20 and quoted in the
14 Court of Appeals' opinion. And that is the
15 incapacity to earn your pre-injury wages.
16 That's what the full test is.

17 They cite Curiel. Curiel is a credit for
18 temporary total case. That's what it is. It
19 is a 42-9-30 case. Every case that they cite
20 is a 42-9-30 case. It's the difference between
21 the economic model and the medical model.
22 42-9-20, 42-9-10 are economic models. You
23 don't have to have a date of MMI. You don't
24 have to reach MMI -- and I'm gonna give you
25 case law on that in just a second. Obviously,



1 the 42-9-30 case, the body part has to be
2 completely healed as it's going to be healed
3 before you can determine what the extent of
4 disability of that body part is. Not so in
5 42-9-10 or 42-9-20 where you're not looking at
6 that; you're looking at what the wage loss is.
7 I've handed up a couple of cases to you. The
8 first one is McMahon versus Department of
9 Education. In that case, it couldn't be
10 clearer what they say in this case. It says --
11 sorry -- as an initial matter, we disagree that
12 the positive question for purposes of the
13 estate's entitlement to compensation under
14 42-9-280 is whether McMahon was at MMI prior to
15 his death. Although the parties, the single
16 commissioner, and the appellate panel focused
17 on MMI as the lynchpin of the estate's ability
18 to recover benefits pursuant to 42-9-280, we
19 find this focus is misplaced.

20 Now, this is a case where the guy died, but he
21 was found to be totally disabled under 42-9-10
22 and they were seeking the unpaid balance of
23 compensation. The Court goes on in that case
24 on -- excuse me -- our conclusion, it talks
25 about Ruthie [ph] Clark Layman that MMI and



1 disability are not all always inextricably
2 intertwined. MMI is a distinctly different
3 concept from disability. An individual can
4 also be permanently disabled and still yet to
5 achieve MMI. They go through this whole
6 analysis. The Court never held an individual
7 was precluded from a permanent disability award
8 without a finding of MMI.

9 They talk about it -- they essentially
10 criticize whatever that appellate panel was for
11 misstating in the order that you had to be at
12 MMI prior to a disability award. They said
13 that that's not the case.

14 They cite Bass v. Kinko. I've also handed up
15 to you -- and by the way, McMahon is a 2016
16 case. They reaffirmed Bass v. Kinko, which is
17 a 2005 case. In that case, the Court found in
18 Bass that he was at MMI for his arm but not at
19 MMI for his psyche and said it was appropriate
20 under that circumstance to go ahead and make a
21 wage loss award, and they made a 340-week wage
22 loss award.

23 So I don't even think you ever have to get into
24 any of this MMI stuff because it's not on
25 remand to you. But if you did have to get into



1 it, the case law is clear that you do not have
2 to be at MMI for a 42-9-20 award. So whatever
3 date they want to talk about is not in an
4 order, is not on remand. But it didn't -- it
5 doesn't matter anyway. It's just not relevant.
6 I'll go down this road just a little bit
7 further. Commissioner McCaskill, the appellate
8 panel, and the Court of Appeals found that it
9 was his brain injury that caused the wage loss.
10 His shoulder has absolutely nothing to do with
11 his wage loss. No arguing about MMI on his
12 shoulder. The -- he was rated for his brain.
13 This is APA page 96 by Dr. Welshofer in 2012.
14 Dr. Baron, when he issued that statement, had
15 not seen him since 2012. He'd not had any
16 treatment for his shoulder in forever. It's
17 just -- it doesn't matter.

18 Let me quickly speak to this -- the seven and
19 five-sevenths weeks that Commissioner Barden
20 awarded. The second sentence of 42-9-20
21 basically says that you don't -- that if you're
22 on TTD then you reach the wage loss award, that
23 TTD is not deducted from your 340 weeks. Now,
24 they say that statute says something different.
25 Well, there's one case that interprets that



1 statute in that regard. And, again, it's Bass
2 v. Kinko. And that's exactly what the Court
3 approved in Bass v. Kinko. It says -- they
4 quote the commissioner's order. It says, I
5 further find that the claimant's partial
6 disability began after a period of total
7 disability and therefore pursuant to this
8 section, the amounts paid for temporary total
9 disability shall not be deducted from the
10 maximum of 340 weeks allowed for permanent
11 partial disability.

12 They go on to say, accordingly the commissioner
13 correctly applied the section and declined to
14 give Kinko a credit for temporary total
15 benefits paid. In that case, he received
16 temporary total for a long period of time. He
17 then gets an award for 340 weeks at the end of
18 that. The 340 weeks is not reduced by the
19 period of time temporary total was paid. In
20 this case, it's only seven weeks and five days,
21 but Commissioner Barden correctly applied that
22 and found ---

23 (Timer signals.)

24 COMMISSIONER BECK: Finish your thought.

25 MR. SMITH: --- that didn't reduce to 340 weeks.



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1 Thank you.

2 COMMISSIONER BECK: Ms. Payne, you have three
3 minutes in reply.

4 DEFENDANT'S REBUTTAL STATEMENT BY MS. PAYNE:

5 MS. PAYNE: In response to those arguments, claimant
6 continuously argues that the date of
7 commencement of the wage loss benefits was not
8 reversed. I mean, the Court of Appeals -- the
9 language is accordingly. We reversed the
10 appellate panel's award of 340 weeks'
11 compensation commencing January 17th, 2014.
12 And it couldn't be more clear than that. It's
13 definitely -- that has been reversed. That is
14 on repeal and proper for the remand decision.
15 And with regard to the cases that were cited,
16 with Bass, I agree. That -- Bass, they -- the
17 Court of Appeals did not give the employer
18 credit. We're not asking for a credit. We
19 just don't think that the claimant -- that
20 should just be added on to the end. Again, I
21 don't know where that interpretation comes
22 from, but I think Bass did it right. They
23 didn't give the employer credit. We're not
24 asking for a credit. We're not asking to
25 reduce the 340-week date in any regard.



1 Bass also stands for the proposition that a
2 declaration of MMI is irrelevant to the award
3 of permanent partial disability, but the Bass
4 report ends that statement with "in the case."
5 And that's because in the Bass case there is a
6 physical injury and a mental injury, and the
7 Court found that since the mental injury will
8 continue during the duration of the physical
9 injury and the physical injury has been deemed
10 permanent, then therefore the mental injury is
11 also permanent.

12 So they're not saying MMI is irrelevant;
13 they're saying they look more towards is it
14 permanent. Like, you know, rather than
15 focusing on whether MMI amounts to permanency,
16 they look at whether the injury is permanent,
17 which is the same thing they did with McMahon.
18 And for that reason -- I mean, we don't have a
19 mental injury here. We have the shoulder
20 injury. And I'm not just arguing that the
21 shoulder was at MMI. It was -- that was the
22 last injury that hadn't been placed at MMI. My
23 argument is that permanency awards can't be
24 granted until all of the injuries have been
25 placed at MMI, which is why we focused on the



1 right shoulder, which is for that reason, why
2 he put the questionnaire response in from
3 Dr. Baron because they argued that that
4 questionnaire indicated he was at MMI and that
5 was the date of it. Granted those arguments
6 have shifted now since there won't be a lump
7 sum award based on the Court of Appeals'
8 decision.

9 But back to Bass, it's just like it was here.
10 In Dr. Baron's questionnaire response, he never
11 said MMI, but McCaskill said -- he used the
12 word "permanent," and so I'm gonna find that
13 that amounts to permanency. So he's been at
14 MMI, and that's why he granted the permanent
15 award. So I don't think that Bass is any
16 different than what we have here. He's been
17 deemed to be permanent as of that date, and
18 that's when the wage loss award should
19 commence.

20 **COMMISSIONER BECK:** Thank you. Mr. Smith, anything
21 further?

22 **CLAIMANT'S REBUTTAL STATEMENT BY MR. SMITH:**

23 **MR. SMITH:** Very quickly. As it relates to this
24 Curriel argument, it couldn't be clearer in the
25 McMahon case. They go through this discussion



1 of the Smith case, which is what Curiel was
2 based on. And basically what they say is is
3 that in Smith they're looking at an issue of
4 the cessation of payment of temporary total
5 benefits and its relation to maximum medical
6 improvement, same thing as Curiel. They never
7 say you cannot make an award prior to MMI. In
8 fact, they say absolutely the opposite of that
9 in these two cases. They say in a wage loss or
10 total disability case, you absolutely can do
11 that.

12 The statement from -- just for a second, the
13 statement from Dr. Baron, the reason the
14 statement from Dr. Baron was important was --
15 is saying that he was gonna need future surgery
16 at some point in time. And, you know, that's
17 the importance of that statement.

18 Finally, I also filed an appeal just to keep an
19 issue alive. And that is a due process
20 argument. What the defendants attempt to do
21 here is gut 42-9-20 on the front end and then
22 gut 42-9-20 on the back end so that there is
23 essentially no remedy in this case. Courts
24 across the country have reduced or have found
25 workers' compensation statutes to be



1 unconstitutional when they do not provide a
2 remedy. If the interpretation were accepted,
3 that they say is necessary here or is mandated
4 here, it would essentially make 42-9-20
5 meaningless and will leave Mr. Adickes without
6 a remedy. So I would ask you to affirm
7 Commissioner Barden's order on all the other
8 findings in the case as well as the issue of
9 due process. Thank you.

10 **COMMISSIONER BECK:** Thank you, sir. That will
11 conclude this proceeding.

12 (There being nothing further, the full commission
13 hearing concluded at 11:18 a.m.)
14
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CERTIFICATE

This is to certify that the within hearing consisting of twenty four (24) 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 Stenomask 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 August 1, 2019.


Cortney N. Glover
Court Reporter

Notary Public for South Carolina
My Commission Expires: December 1, 2025



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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1102937

Barry Adickes,)
)
Claimant,)
)
v.)
)
Phillips Healthcare,)
)
Employer,)
)
and)
)
Fidelity & Guaranty Insurance,)
)
Carrier/Defendants.)
-----)

FULL COMMISSION HEARING

Monday, September 16, 2019
2:58 p.m. - 3:17 p.m.

The Full Commission Hearing was heard before Commissioners, T. Scott Beck, R. Michael Campbell, II, and Aisha Taylor, Chair, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 16th day of September, 2019, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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-0779-

APPEARANCES

William L. Smith, Esquire

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EXHIBITS

(No Exhibits were marked at this 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.



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-0780-

CALL TO ORDER:

COURT REPORTER: Today is September 16th, 2019.

This is South Carolina Workers' Compensation Case Number 1102937. This is the case of Barry Adickes versus Phillips Healthcare and Fidelity & Guaranty Insurance. The Appellant is the Defendant, represented by Brooke Payne. The Respondent is represented by William L. Smith. Each side is allowed 10 minutes for oral argument and the Appellant two minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER TAYLOR: Ms. Payne.

DEFENDANT'S/APPELLANT'S POSITION:

MS. PAYNE: Good afternoon, Commissioners. My name is Brooke Payne and I'm here on behalf of the Defendant's, Phillips Electronics. By way of brief background, this case was heard before the Commission years ago. Then it went up to the Court of Appeals on the issue of whether the Claimant was entitled to a permanent wage loss award and if so, what that award was. And the Court of Appeals issued an opinion in January of 2018, wherein they held that Mr. Adickes was entitled to a wage loss award,



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-0781-

1 however, based on the language of the Statute
2 that ward -- that award was not to exceed 340
3 weeks past his date of accident until it was
4 remanded back to the Commission for a
5 determination of when the wage loss award would
6 commence. So, it was sent back down, came back
7 to the Appellant Division and was remanded to
8 Commissioner Barden and then there were some
9 more confusion about what single Commissioner
10 should rule on it. But it finally got back an
11 award - Barden issued an award and after that
12 award it'd been, I think a hundred fifty
13 something weeks of permanent benefits that we
14 have paid. And we were -- our argument is that
15 we are only entitled -- or that he is only
16 entitled to a wage loss award of a hundred and
17 forty one weeks of benefits. So, we went ahead
18 and suspended his benefits while awaiting the
19 final award in the case. The reason for doing
20 that was because we commenced his benefits
21 while taking the award up on appeals. So we
22 commenced it -- we commenced them pursuant to
23 42-17-60, the Non-Supersede of Statute. And
24 since the award on appeal at that time was
25 awarding him weekly PPD benefits throughout or



1 through some time in 2020. So, since we were
2 under an award that awarded weekly benefits, we
3 had to commence them to take it up on appeal,
4 which we did. And then the Court of Appeals
5 issued their decision and they found explicitly
6 that -- they stated explicitly, that wage loss
7 awards were not to exceed 340 weeks from the
8 date of acc -- from the date of accident. So,
9 that date in our -- in this case that date was
10 in Jan- -- I'm sorry, September 24th, 2017.
11 Which was actually four months before the Court
12 of Appeals issued their award. So, at the time
13 of their award they -- they explicitly said
14 that we were not obligated to continue paying
15 weekly benefits to the Claimant because the 340
16 week date had already passed. So, it was
17 remanded for the purpose of figuring out when
18 the wage loss award would commence. So,
19 Commissioner James held that we illegally
20 stopped payment of weekly benefits because
21 there was no order allowing us to do so, but
22 it's our contention that there was no order, it
23 was the Court of Appeals decision. We did not
24 terminate the benefits following the Court of
25 Appeals decision because we were under the



1 impression that it was going to come right back
2 down to the Appellant Division, pursuant to the
3 directives, and that a calculation would be
4 made and that they -- we would have an award in
5 a short period of time because those were the
6 directives. We did not foresee that it would
7 take -- I think it's been over a year since it
8 was remanded back down. So, we just continued
9 to pay knowing that we were going to offset the
10 final award in the case, not because we were
11 under any obligation to do so. And, in the --
12 the only issue on remand was when the award was
13 to commence and, so that in itself, that period
14 comes before the date of the Full Commission
15 opinion, because that's when we commence
16 benefits. So, we're looking at -- you know
17 Bill argues that -- that it should commence as
18 of the date that he was terminated from his
19 job. And I argue that permanent benefits
20 commence at the date of MMI. So that's what
21 was before Commissioner Barden. So the -- the
22 issue, you know, whether we have violated the
23 statute by stopping benefits was analyzed
24 thoroughly in the case. The *Hermitage* case,
25 which discussed the benefits that are to be



1 paid by employer while the case is on appeal,
2 and that case contemplated, you know, well,
3 employers don't want to pay the whole award
4 because what if that award is overturned, then
5 they don't have an ability to recoup this
6 benefit. At the same time Claimants deserve to
7 have some financial assistance during the
8 appeal. So that's it, the case verse *Hermitage*
9 case. The holding is that -- that the most
10 reasonable resolution of those two issues is to
11 only make the employer responsible for paying
12 the benefits that accrue from the date of the
13 Full Commission decision through the appeal.
14 So, that's why we commence benefits at that
15 time. So, right now, the only benefits period
16 that's left to be determined has occurred
17 before the Full Commission decision because
18 that's when we commence. So it's -- it's, you
19 know, it's a determination of when they -- they
20 commence. Regardless, we continued to pay.
21 And, we paid for 70 weeks after the Court of
22 Appeals decision. And, during -- during that
23 time, you know, we -- we weren't sure how the
24 Court would view us just stopping benefits,
25 even though we think we had the right to do so,



1 so we filed a Motion seeking to suspend with
2 all of the Courts once the case headed. So, we
3 -- we -- while the case was waiting to be sent
4 back down to the Commission, we filed a Motion
5 with the Court of Appeals and they said we've
6 already issued a remittitur, so not in our
7 jurisdiction. So once it was before the Full
8 Commission we were told it's going -- it's on
9 remand to another Commissioner, we aren't gonna
10 rule on it. It was before Commissioner Barden
11 and she, you know, checked the box on the
12 Motion form denying it just because there was
13 a hearing set before her. So, none of the
14 Commissioners or the Court of Appeals, nobody
15 ruled substantively on the merits of the
16 Motion. But, having said that, we found
17 ourselves in the position that the case, the
18 *Hermitage* case contemplated, where we were
19 continuing to pay benefits knowing that -- that
20 we, based on the law, that we had paid more
21 than we would be -- that the final award would
22 be. So, that's why we eventually suspended
23 benefits in February of 2019. And there -- I
24 mean, there's no statute saying that we're
25 precluded from continuing voluntary payment of



1 weekly benefits knowing that it's gonna offset
2 a final award. There's certainly no statute
3 saying that if we do so we get penalized by
4 having to then continue to pay until a Court of
5 Appeals award. So, it's our contention that
6 there is an award saying that we can suspend.
7 It was after the Court of Appeals decision. We
8 -- we fulfilled all the obligations that we had
9 to fulfill and were to take it up on appeal
10 under 42-17-60. We paid all the benefits that
11 had accrued beyond the Full Commission
12 decision, as well as many, many more. So,
13 we're no longer obligated under that and based
14 on the Court of Appeals decision, that --
15 that's the law of the case, that we, that Mr.
16 Adickes is not entitled to any benefits, weekly
17 benefits, beyond September 24th, 2017. So
18 since there aren't ongoing weekly benefits at
19 issue, we are no longer under an obligation to
20 continue paying under 42-17-60. As evidence of
21 that, this case is now back in the Court of
22 Appeals 'cause it came back down. Barden
23 issued a ruling, Full Commission affirmed,
24 backed-up in the Court of Appeals. We've
25 already -- we filed our initial briefing. I'm



1 not sure when Bill's is due, but we are
2 commencing benefits this time around because we
3 aren't under a running award on weekly
4 benefits. Not that any Motion to compel found
5 either. So, with regard to that issue I think
6 that the procedure -- the posture where our
7 case is right now in the Court of Appeals and
8 the fact that we aren't in an obligation to
9 continue paying weekly benefits serves as proof
10 that we did not illegally terminate under
11 42-17-60. So, that's the first issue. I'll
12 hit the second issue. Unless you guys have any
13 questions on the first issue?

14 **COMMISSION TAYLOR:** No questions.

15 **CLAIMANT'S/RESPONDENT'S POSITION:**

16 **MR. SMITH:** May it please the Commission. I
17 represent Barry Adickes in this claim that has
18 a tortured procedural history -- history,
19 excuse me, I can't speak. If I may approach,
20 I have some handouts for you. Thank you. As
21 Ms. Payne told you, this case was tried a long
22 time ago, 2015 before Commissioner McCaskill.
23 It was affirmed by the Appellant Panel. It
24 went to the Court of Appeals. The Court of
25 Appeals reversed in part -- excuse me, affirmed



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1 in part, reversed in part, and remanded. The
2 only issue on the remand was that they said the
3 award was limited to 340 weeks from date of
4 injury. I'm not gonna get into all that, but
5 there was no issue as to when the award
6 started. However, they appealed that. During
7 the time that they appealed the Court of
8 Appeals, under 42-17-60, they started making
9 payment. The Court of Appeals issued their
10 decision and they -- and they filed a Motion
11 before the Court of Appeals, which is the
12 second handout that you have there. The Court
13 of Appeals ruled that this was a matter before
14 the Workers' Compensation Commission. They
15 issued an Order that did not allow them to stop
16 making payments. That Order was issued on May
17 11, 2018. Thereafter, the Defendants filed
18 another Motion to be allowed to stop paying
19 compensation, that's the third handout in your
20 package, and that's the Order Commissioner
21 Barden issued on October, 2018 that did not
22 allow them to stop payment of weekly
23 compensation. We then tried the case before
24 Commissioner Barden on the remand and
25 Commissioner Barden issued an Order finding



1 that they had to make a lot more payments than
2 Ms. Payne indicates to you that they should
3 have to make. She -- she ruled that they had
4 to have made 200 more weeks of payments. Now,
5 they got credit for some of that, for the 70
6 weeks they'd paid, but there was still a
7 hundred and thirty weeks remaining to be paid.
8 I have -- I -- the third -- excuse me, the
9 fourth handout is Commissioner Barden's Order.
10 If you look at page 10 of that Order, it says
11 Defendants began making weekly payment of the
12 award under 42-17-60 when the Order of
13 Commission's Appellant Panel was filed and
14 continued to make those payments. She never
15 issued an order allowing them to stop making
16 payments. In fact, she ordered them to make
17 additional payments. It should've been paid in
18 a lump sum because those -- all of those weeks
19 had already accrued. However, they didn't stop
20 there. They appealed it again to the Appellant
21 Panel and the Appellant Panel affirmed that
22 decision. They then filed a new appeal to the
23 Court of Appeals and they still haven't started
24 making payments. This came, so we filed our
25 petition, actually that happened after -- the



1 and -- that new appeal to the Court of Appeals
2 was after that Order from Commissioner James.
3 We tried the case before Commissioner James and
4 she said, look, you've tried this twice
5 already. Nobody -- or three times already --
6 nobody has given you permission to stop making
7 payments. So she ordered them to recommence
8 the payment and ordered them to pay a ten
9 percent penalty. Now, the first handout I gave
10 you was 42-17-60, and that clearly says, in
11 case of appeal from decision of the Commission
12 on questions of law, the appeal does not
13 operate as a supersedeas and then it goes on to
14 say until the questions -- and they're required
15 to continue to make weekly payment of
16 compensation until the questions at issue have
17 been fully determined in accordance with
18 provisions of this title. Well, they would've
19 been fully determined at the time of
20 Commissioner Barden's Order had there not been
21 a further appeal. But, this order appealed to
22 the Court of Appeals now, it still hasn't been
23 fully determined and they have stopped making
24 payments to Mr. Adickes. They -- they twice,
25 three times asked for permission. They've



1 never been given permission. They're under
2 order to make those payments. Commissioner
3 James, in my opinion, did them a favor by
4 instituting a ten percent penalty. They're
5 under order, under 42-3-175, frankly they
6 should have been fined 500 dollars per day for
7 the 77 days that have eclipsed between the
8 time that they stopped payment and the time of
9 the hearing. Let's take it a little bit
10 further. The next argument that's gonna come
11 up ---

12 **COMMISSION BECK:** She did fine them under 175.

13 **MR. SMITH:** On the medical issue, not on the
14 temporary total --

15 **COMMISSION BECK:** Right.

16 **MR. SMITH:** --- excuse me, on the weekly payment
17 issue.

18 **COMMISSION BECK:** Right. Okay.

19 **MR. SMITH:** So, around the same -- well, before they
20 stopped payment of benefits, all of the sudden
21 Mr. Adickes can't get his medications. They've
22 been under order since 2015 to provide the
23 medications that Dr. Mandell prescribes for
24 him. He can't get his medications. We put in
25 the order, we put in the deposition of Dr.



1 Mandell, we put in the record to Dr. Mandell,
2 we put in the pharmacy records that show
3 they're not paying 'em, we put in the letter
4 from the carrier denying em' and we put in all
5 the emails between my office and Ms. Payne's
6 office. There is a period of -- it was, it
7 was, four different times that they weren't
8 paying em'. What Commissioner James did was
9 she fined them 200 dollars a day for the last
10 period, which was 27 days. There were a lot
11 more days than that, and again, they should've
12 been paying -- been fined 500 dollars a day.
13 They got off easy on this thing. I -- you
14 know, it's crazy. So, they argue that there's
15 no willful conduct. Well, if going through all
16 of that is not willful conduct, I don't know
17 what is. We put in all that evidence. We
18 showed the prima facie case. When that happens
19 the burden shifts to them to show that there's
20 some impossibility for them to comply with the
21 order. They didn't show anything. They showed
22 absolutely nothing other than said, oops, we
23 messed up. That doesn't cut it. What they
24 have done here is they have shown disdain for
25 my client's medical condition and they have



1 shown disdain for the orders of the Workers'
2 Compensation Commission. And I would ask you
3 to affirm this decision, give this man his
4 weekly payments, or increase the fines. Thank
5 you.

6 **COMMISSION TAYLOR:** Ms. Payne gets 3 minutes on the
7 rebuttal.

8 **REPLY:**

9 **MS. PAYNE:** In response to the argument that we are
10 under an order to make these payments, my
11 response is what order? There is no order
12 right now that says that we're entitled -- that
13 he is entitled to ongoing weekly benefits. The
14 Court of Appeals decision specifically said
15 he's not entitled to weekly benefits beyond
16 September 24th, 2017. Even Commissioner Barden
17 extended that period, which is why it's back in
18 the Court of Appeals, one of the reasons, to 8
19 weeks beyond September 24th, 2017. We've paid
20 all of those benefits. We continuing paying
21 for 70 weeks. So there -- there is no order
22 that says that he is entitled to ongoing
23 benefits.

24 **COMMISSION TAYLOR:** Ms. Payne, but I think the
25 wording you used, and I just want to double



1 check to make sure you meant to use it, but the
2 -- it's my understanding that the Court of
3 Appeals Order references the permanent
4 benefits, the permanent wage loss weekly
5 benefits. It's not necessarily referring to
6 temporary benefits, which are separate in our
7 system.

8 **MS. PAYNE:** Correct, but he only sought permanent
9 wage loss benefits, which is why whether he was
10 at MMI was an issue for all of his injuries
11 from the first hearing. So there's -- there's
12 never been anything other than permanent wage
13 loss benefits sought until the remand.

14 **COMMISSION TAYLOR:** So, it's your position that the
15 benefits that you commence during the pendency
16 of that first appeal, those were actually
17 permanent benefits that you're ---

18 **MS. PAYNE:** Those were -- that's what -- that's what
19 the award was. McCaskill had ordered permanent
20 wage loss benefits and since that was the award
21 that -- that we're taking up on appeal, that's
22 what we commence, was PPD. Yes. And in
23 response to the second issue of the
24 authorization of meds, I -- Bill's office and
25 I -- we communicated very, very often during



1 those periods of delays because I was having
2 issues that were adjuster changes and all kinds
3 of -- and I've never -- I've always
4 acknowledged that, yes, those -- those were
5 delays that were one hundred percent my
6 client's fault. The question is for these
7 penalties to be and fines to be owed, there has
8 to show willful contempt and ---

9 **COMMISSION BECK:** How many times do they have to
10 mess it up before it becomes willful?

11 **MS. PAYNE:** Mess it up. I don't think that was ever
12 messed up.

13 **COMMISSION BECK:** You said there were numerous times
14 ---

15 **MS. PAYNE:** There were times when he was -- had gone
16 to the pharmacy and for whatever reason ---

17 **COMMISSION BECK:** It wouldn't -- it wouldn't had
18 been his fault.

19 **MS. PAYNE:** I -- I'm not saying it was his fault.

20 **COMMISSION BECK:** How many times does your client ---

21 **MS. PAYNE:** To show that -- well, I mean -- the
22 definition of willful Contempt, which this
23 Commissioner James has ruled on in the past and
24 the Full Commission upheld was, willful
25 Contempt is an act with the specific intent to



1 do something the law forbids or to fail do
2 something that the law requires to be done.
3 That's to say with bad purpose, either to
4 disobey or disregard the law. I mean, there's
5 no proof that my clients did anything because
6 they were -- we never said we're no longer
7 authorizing this medication ---

8 **COMMISSION BECK:** No, they just failed to do it.

9 **MS. PAYNE:** Well, correct. They -- they -- they --
10 because for whatever reasons it was dropping
11 through the cracks with, you know, changes in
12 adjusters and -- and things like that. But
13 there's no proof that -- that it was done with
14 a bad purpose or to harm Mr. Adickes personally
15 by any means. So, for that reason we request
16 that your Honors overturn that decision as
17 well.

18 **COMMISSION TAYLOR:** Thank you.

19 **(There being nothing further, the full commission**
20 **hearing concluded at 3:17 p.m.)**



Subject: Re: Full Commission Order - WCC#:1102937 - ADICKES
Date: Friday, July 20, 2018 at 12:46:04 PM Eastern Daylight Time
From: Brooke Payne
To: WCC Appeals,
CC: Bill Smith

Thanks for your help!

Brooke A. Payne
Lueder, Larkin & Hunter, LLC

On Jul 20, 2018, at 12:33 PM, WCC Appeals, <appeals@wcc.sc.gov> wrote:

You are correct. I will get this corrected.

Thank you.
Genia

Eugenia Hollmon
SC Workers' Compensation Commission
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

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

From: Brooke Payne [<mailto:BPayne@luederlaw.com>]
Sent: Wednesday, July 18, 2018 4:59 PM
To: WCC Appeals, <appeals@wcc.sc.gov>
Cc: 'Bill Smith' <bsmith@csa-law.com>
Subject: RE: Full Commission Order - WCC#:1102937 - ADICKES

Commissioner McCaskill heard it at the lower level, not Commissioner Barden.

Brooke Payne
Lueder, Larkin & Hunter, LLC
503 Wando Park Boulevard, Suite 205
Mt. Pleasant South Carolina 29464

Telephone: 843-353-0796
Facsimile: 843-353-0796
Website: <http://www.luederlaw.com>

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

From: WCC Appeals, <appeals@wcc.sc.gov>
Sent: Wednesday, July 18, 2018 4:58 PM
To: Brooke Payne <BPayne@luederlaw.com>; WCC Appeals, <appeals@wcc.sc.gov>
Cc: 'Bill Smith' <bsmith@csa-law.com>
Subject: RE: Full Commission Order - WCC#:1102937 - ADICKES

The Panel felt the Single Commissioner that heard the case would be better to do that so, they remanded it to him/her.

Genia

Eugenia Hollmon
SC Workers' Compensation Commission
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

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

From: Brooke Payne [<mailto:BPayne@luederlaw.com>]
Sent: Wednesday, July 18, 2018 3:04 PM
To: WCC Appeals, <appeals@wcc.sc.gov>
Cc: 'Bill Smith' <bsmith@csa-law.com>
Subject: RE: Full Commission Order - WCC#:1102937 - ADICKES

OK, I'm just confused because the Court directed the Appellate Panel to make the calculation, not a Single Commissioner.

Thanks,

Brooke Payne
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Mt. Pleasant South Carolina 29464

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

From: WCC Appeals, <appeals@wcc.sc.gov>
Sent: Wednesday, July 18, 2018 3:01 PM
To: Brooke Payne <BPayne@luederlaw.com>; WCC Appeals, <appeals@wcc.sc.gov>
Cc: 'Bill Smith' <bsmith@csa-law.com>
Subject: RE: Full Commission Order - WCC#:1102937 - ADICKES

Yes, the order is that because it tells who the Panel has assigned to handle the remand based on the Courts directives.

Genia

Eugenia Hollmon
SC Workers' Compensation Commission
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

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

From: Brooke Payne [<mailto:BPayne@luederlaw.com>]
Sent: Wednesday, July 18, 2018 1:08 PM
To: WCC Appeals, <appeals@wcc.sc.gov>
Cc: 'Bill Smith' <bsmith@csa-law.com>
Subject: RE: Full Commission Order - WCC#:1102937 - ADICKES

Quick question - is the Order just this Remittitur Routing Sheet? I'm asking because the hearing notice indicates that it's a "remand on issues set forth by a Full Commission Order," so I want to make sure that I'm not missing anything.

Thanks!

Brooke Payne
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Mt. Pleasant South Carolina 29464

Telephone: 843-353-0796
Facsimile: 843-353-0796
Website: <http://www.luederlaw.com>

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

From: appeals@wcc.sc.gov <appeals@wcc.sc.gov>

Sent: Monday, July 16, 2018 1:15 PM

To: Brooke Payne <BPayne@luederlaw.com>; BSMITH@CSA-LAW.COM; CBLACK@CSA-LAW.COM; KLOLLIS@CSA-LAW.COM; Ryan D. Oxford <ROxford@luederlaw.com>; Jenna McClain <jmcclain@luederlaw.com>; APPEALS@WCC.SC.GOV

Subject: Full Commission Order - WCC#:1102937 - ADICKES

Attached is the Full Commission Order for WCC#: 1102937

R08 ORD - Judicial Conference Order - 7/16/2018 - ORDER#: 75536 - WCC #: 1102937

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

From: Skarbek, Barbara <BSkarbek@wcc.sc.gov>

Sent: Monday, August 6, 2018 3:24 PM

To: Brooke Payne <BPayne@luederlaw.com>; Bill Smith <bsmith@csa-law.com>; Chris Black <cblack@csa-law.com>; Jenna McClain <jmcclain@luederlaw.com>; Kari Lollis <KLollis@csa-law.com>; Ryan D. Oxford <ROxford@luederlaw.com>

Cc: Lindler, Kellie <klindler@wcc.sc.gov>

Subject: RE: Hearing Notice - WCC# 1102937: Adickes

Good Afternoon,

The matter is scheduled as a Remand on issues as set forth by Full Commission, the details of which are not before Commissioner Barden yet.

Thank you,

Barbara Skarbek

Administrative Assistant to Commissioner Susan Barden,
SC Workers' Compensation Commission

(803) 737-5660 | bskarbek@wcc.sc.gov | www.wcc.sc.gov |
1333 Main St. Suite 500 Columbia, SC 29201

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

From: Brooke Payne [<mailto:BPayne@luederlaw.com>]

Sent: Friday, August 03, 2018 11:13 AM

To: Skarbek, Barbara <BSkarbek@wcc.sc.gov>; Bill Smith <bsmith@csa-law.com>; Chris Black <cblack@csa-law.com>; Jenna McClain <jmcclain@luederlaw.com>; Kari Lollis <KLollis@csa-law.com>; Ryan D. Oxford <ROxford@luederlaw.com>

Cc: Lindler, Kellie <klindler@wcc.sc.gov>

Subject: RE: Hearing Notice - WCC# 1102937: Adickes

Is she just performing the calculation as directed in the Order, or planning on having another hearing?

Brooke Payne

Page 1 of

Subject: RE: Hearing Notice - WCC# 1102937: Adickes

Date: Friday, August 3, 2018 at 11:12:39 AM Eastern Daylight Time

From: Brooke Payne

To: 'Skarbek, Barbara', Bill Smith, Chris Black, Jenna McClain, Kari Lollis, Ryan D. Oxford

CC: Lindler, Kellie

Is she just performing the calculation as directed in the Order, or planning on having another hearing?

Brooke Payne
Lueder, Larkin & Hunter, LLC
503 Wando Park Boulevard, Suite 205
Mt. Pleasant South Carolina 29464

Telephone: 843-353-0796
Facsimile: 843-353-0796
Website: <http://www.luederlaw.com>

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

From: Skarbek, Barbara <BSkarbek@wcc.sc.gov>

Sent: Friday, August 3, 2018 10:46 AM

To: Bill Smith <bsmith@csa-law.com>; Brooke Payne <BPayne@luederlaw.com>; Chris Black <cblack@csa-law.com>;
Jenna McClain <jmcclain@luederlaw.com>; Kari Lollis <KLollis@csa-law.com>; Ryan D. Oxford
<ROxford@luederlaw.com>

Cc: Lindler, Kellie <klindler@wcc.sc.gov>

Subject: RE: Hearing Notice - WCC# 1102937: Adickes

Good Morning,

The policy is to set the matter before the jurisdictional commissioner, not the hearing commissioner.

Thank you,

Barbara Skarbek
Administrative Assistant to Commissioner Susan Barden,
SC Workers' Compensation Commission

(803) 737-5660 | bskarbek@wcc.sc.gov | www.wcc.sc.gov |
1333 Main St. Suite 500 Columbia, SC 29201

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

From: Bill Smith [<mailto:bsmith@csa-law.com>]

Sent: Thursday, August 02, 2018 2:23 PM

To: Skarbek, Barbara <BSkarbek@wcc.sc.gov>; BPAYNE@LUEDERLAW.COM; Chris Black <cblack@csa-law.com>;
JMCCLAINE@LUEDERLAW.COM; Kari Lollis <KLollis@csa-law.com>; ROXFORD@LUEDERLAW.COM

Cc: Lindler, Kellie <klindler@wcc.sc.gov>

Subject: RE: Hearing Notice - WCC# 1102937: Adickes

Ms Skarbek,

I'm confused. This case was set for September 4 before Commissioner Barden but was cancelled because the Full Commission had remanded it to the previous hearing commissioner which was Commissioner McCaskill. My understanding was that it was being reset before Commissioner McCaskill. We were emailing with Kellie yesterday and I thought she was setting it. I assume this was reset before Commissioner Barden in error. Correct? I'm copying Kellie Lindler on this as well. Thanks.

William L. Smith II

Post Office Box 12330
Columbia, SC 29211
803-509-5839

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

From: bskarbek@wcc.sc.gov [mailto:bskarbek@wcc.sc.gov]

Sent: Thursday, August 02, 2018 1:25 PM

To: BSKARBK@WCC.SC.GOV; BPAYNE@LUEDERLAW.COM; Bill Smith <bsmith@csa-law.com>; Chris Black <cblack@csa-law.com>; JMCCLAIN@LUEDERLAW.COM; Kari Lollis <KLollis@csa-law.com>; ROXFORD@LUEDERLAW.COM

Subject: Hearing Notice - WCC# 1102937: Adickes

Attached please find Notice of Hearing before the SC Workers' Compensation Commission in the above referenced matter.

For hearings only, please submit briefs and evidence documents through the new upload function in eCase. Pre-hearing brief with Notice of Witness documents should be uploaded before the hearing. Evidence documents should be physically presented to the Commissioner at hearing and uploaded afterward. Please note: these are the only documents accepted through Upload at this time.

To access the new Upload feature:

1. Go to the Commission's website www.wcc.sc.gov.
2. Click on the "eCase Login" tab at the top of the page
3. Login to eCase
4. Enter Search Criteria for the WCC case in question.
5. Results will display if link to case exists.
6. Click WCC# Hyperlink to display expanded Status History to show entire history of SCWCC's case file.
7. Click the Upload File button and follow the on-screen instructions. Click the User Guide and Document Type Help buttons for more detailed instructions if needed.

Subject: RE: Barry Adickes WCC 1102937
Date: Wednesday, August 1, 2018 at 3:53:52 PM Eastern Daylight Time
From: Brooke Payne
To: Lindler, Kellie, Bill Smith
Attachments: image013.jpg, image014.jpg, image015.jpg, image016.png, image017.png, image018.png, image019.png, image020.png, image021.jpg, image022.jpg, image023.jpg, image024.jpg, image025.png

The Court of Appeals didn't send it back for any additional findings of fact, so it shouldn't be set for a hearing. Per the Court of Appeals order, Commissioner McCaskill is just supposed to perform the calculation of the award.



Brooke Payne
Partner

LUEDER, LARKIN & HUNTER, LLC
503 Wando Park Boulevard, Suite 205
Mt. Pleasant, South Carolina 29464

Telephone: 843-353-0796
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From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Wednesday, August 1, 2018 3:50 PM
To: Bill Smith <bsmith@csa-law.com>
Cc: Brooke Payne <BPayne@luederlaw.com>
Subject: RE: Barry Adickes WCC 1102937

Commissioner McCaskill is in Anderson, Newberry and Aiken in August and will be in Richland September and October. Which location do the parties prefer?

From: Bill Smith [<mailto:bsmith@csa-law.com>]
Sent: Wednesday, August 01, 2018 3:35 PM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Cc: Brooke Payne (BPayne@luederlaw.com) <BPayne@luederlaw.com>
Subject: Barry Adickes WCC 1102937

Kellie,

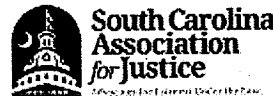
This case was remanded from the Court of Appeals and the Full Commission then sent it back to the original

hearing Commissioner which was Commissioner McCaskill. It was mistakenly set before Commissioner Barden on September 4. However, Brooke realized the error and notified judicial. I assume it got sent to you for the pull. I haven't received a notice yet but was hoping it would be set sometime around the time it had been set with Commissioner Barden. I just wanted to bring this to your attention that it would be set quickly. Thank you.

William L. Smith II



**Post Office Box 12330
Columbia, SC 29211
803-509-5839**



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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John Bass, Jr.,

Employee,

vs.

Kenco Logistics Services,

Employer,

And

Gallagher Bassett Services,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 0100748

04-CP-40-0009

EMPLOYER/CARRIER BRIEF

FILED
04 SEP 14 PM 3:00
BARBARA A. SCOTT
C.C.C. & G.S.

STATEMENT OF THE CASE

This workers' compensation matter is before the court on appeal from the Decision and Order of the Workers' Compensation Commission dated December 3, 2003, the original hearing was held on March 20, 2003. On July 15, 2002, the claimant filed a Form 50 with the South Carolina Workers' Compensation Commission contending that he was entitled to permanent benefits pursuant to S.C. Code § 42-9-20, for injury to his left upper extremity and mental and emotional injuries. The employer/carrier duly filed a Form 51 denying the claim. The original hearing was held on January 22, 2003 and the hearing Commissioner issued his order on March 20, 2003. The employer/carrier appealed to the Full Commission.

The appeal hearing was held before the Full Commission on October 29, 2003. At the hearing the claimant asserted that he was entitled to benefits pursuant to § 42-9-20 for loss of earning capacity and additional medical treatment. The employer/carrier asserted that the

claimant was entitled to permanent benefits under § 42-9-30 for his shoulder. The Full Commission issued its Order on December 3, 2003.

Pursuant to the South Carolina Workers' Compensation Act, that the claimant sustained an accidental injury to his left shoulder, left arm, elbow, fingers, neck and left leg. The Commission also found the following:

As a direct consequence of the physical injuries sustained on those dates, the claimant has suffered several psychological and psychiatric impairments which are ongoing in nature and which require continuing medical treatment and medications owed by the defendants until further order of the Commission.

The Commission further found the following:

- 1) John Bass, Jr. sustained permanent partial disability which has permanently altered his earning capacity from a pre-accident average weekly wage of \$1,211.52 to a current weekly expectation of \$280.00, which results in a weekly wage loss of \$931.52. Multiplying this figure by .667 equals \$621.32, so the claimant is entitled to the maximum compensation rate of \$532.77 for an accident occurring in 2001.
- 2) The claimant has suffered this wage loss for a maximum period of 340 weeks for permanent partial disability pursuant to S.C. Code Ann. § 42-9-20.
- 3) That the claimant's partial disability began after a period of total disability and therefore pursuant to said section the amounts paid for temporary total disability shall not be deducted from the maximum of 340 weeks allowed for permanent partial disability.
- 4) The defendants are responsible for the cost of past services rendered by Dr. A. Sale Estefano and Patricia Feigley for treatment of the claimant's psychiatric and psychological complications and the medications heretofore prescribed by Dr. Estefano in connection therewith, and the defendants shall hereafter be responsible for any continuing causally related treatment and medications for those conditions, under the direction of Dr. Estefano, which tend to lessen the claimant's period of disability resulting from his accident-related psychiatric or psychological conditions. *Dodge v. Brucoli, Clark, Layman, Inc.*, 514 S.E.2d 593 (Ct. App. 1999).

STATEMENT OF THE FACTS

The claimant is a 37 year old truck driver who suffered a work-related injury on January 24, 2001. The injury to his left shoulder was accepted and the claimant received medical and temporary benefits. He was treated by Drs. William Kirkley, David B. Fulton and Matthew Midcap.

The claimant was released to return to work after a period of temporary total benefits with light duty restrictions. The claimant did not have any surgery to his left shoulder. On June 19, 2001, Dr. Midcap released the claimant and gave him a 10% permanent impairment to the left upper extremity. The employer/carrier provided a temporary job for the claimant as a dispatcher. The claimant worked as a dispatcher from January, 2001 until January 22, 2002. The claimant worked in that capacity for over a year until he suffered a diabetic seizure at home in January 2002. After the diabetic seizure the claimant never returned to work at Kenco. The claimant was subsequently treated for depression and emotional problems. The claimant alleges that his shoulder injury and mental problems are all work related. The employer/carrier admits that the shoulder injury is compensable, but deny the emotional problems are related to the work injury.

ISSUES PRESENTED

- I. Did the Commission err as a matter of fact and/or law in its Finding of Fact and Conclusion of Law, wherein the Commission found and concluded that the claimant did not knowingly and willfully make a false representation as to his physical condition; said error being that such Finding of Fact and Conclusion of Law is not supported by the greater weight of the credible evidence nor is it supported by existing South Carolina statutory or case law.
- II. Did the Commission err as a matter of fact and/or law in its Finding of Facts and Conclusion of Law, wherein the Commission found and concluded that claimant suffers from post-traumatic syndrome disorder, panic disorder and adjustment disorder with depressed mood, all of which were directly induced by the injuries sustained in this

accident; said error being that such Finding of Fact and Conclusion of Law is not supported by the greater weight of credible evidence nor existing South Carolina statutory or case law.

- III. Did the Commission err as a matter of fact and/or law in its Finding of Facts and Conclusion of Law, wherein the Commission found and concluded that the claimant has suffered severe psychological and psychiatric impairment which are ongoing in nature and which require continuing medical treatment and medications; said error being that such Finding of Fact and Conclusion of Law is not supported by the greater weight of the credible evidence nor is it supported by existing South Carolina statutory or case law.
- IV. Did the Commission err as a matter of fact and/or law in its Finding of Fact and Conclusion of Law, wherein the Commission that the claimant sustained permanent partial disability which has permanently altered his earning capacity from a pre-accident average weekly wage of \$1,211.52 to a currently weekly expectation of \$280.00 which results in a weekly wage loss of \$931.52; said error being that such Finding of Fact and Conclusion of Law is not supported by the greater weight of the credible evidence nor is it supported by existing South Carolina statutory or case law.
- V. Did the Commission err as a matter of fact and/or law in its Finding of Fact and Conclusion of Law, wherein the Commission that the claimant has suffered wage loss for the maximum period of 340 weeks for permanent partial disability pursuant to S.C. Code Ann. § 42-9-20; said error being that such Finding of Fact and Conclusion of Law is not supported by the greater weight of the credible evidence nor is it supported by existing South Carolina statutory or case law.
- VI. Did the Commission err as a matter of fact and/or law in its Finding of Fact and Conclusion of Law, wherein the Commission that the claimant's partial disability began after a period of total disability and therefore pursuant to said section, the amounts paid for temporary total disability shall not be deducted from the maximum of 340 weeks allowed for permanent partial disability; said error being that such Finding of Fact and Conclusion of Law is not supported by the greater weight of the credible evidence nor is it supported by existing South Carolina statutory or case law.
- VII. Did the Commission err as a matter of fact and/or law in its Finding of Fact and Conclusion of Law, wherein the Commission found that the Defendants are responsible for the cost of past services rendered by Dr. A. Sale Estafano and Patricia Feigley for treatment of the claimant's psychiatric and psychological complications and the medications heretofore prescribed by Dr. Estefano in connection with, and the Defendants shall hereafter be responsible for any continuing causally related treatment and medications for those conditions; said error being that such Finding of Fact and Conclusion of Law is not supported by the greater weight of the credible evidence nor is it supported by existing South Carolina statutory or case law.

- VIII. Did the Commission err as a matter of fact and/or law in its Finding of Fact and Conclusion of Law, wherein the Commission found that the claimant has not reached maximum medical improvement with respect to his psychiatric and psychological complications; said error being that such Finding of Fact and Conclusion of Law is not supported by the greater weight of the credible evidence nor is it supported by existing South Carolina statutory or case law?

ARGUMENT

I. THE COMMISSION ERRED IN AWARDING BENEFITS UNDER THE GENERAL DISABILITY STATUTE S.C. CODE § 42-9-20

The Commission awarded benefits in error based on § 42-9-20 loss of earning capacity, since under the facts of this case the claimant did not suffer a loss of earning capacity.

Section 42-9-20 provides the compensation rate for permanent partial, non-scheduled, injuries. It states:

when the capacity for work resulting from the injury is partial the employer shall pay, ..., to the injured employee during such disability a weekly compensation equal to sixty-six and two thirds percent of the difference between his average weekly wages before the injury and the average weekly wages which he *is able to earn thereafter*, but not more than the average weekly wage in this State for the preceding fiscal year.

Under the Workers' Compensation Act, a claimant may proceed under §42-9-10 or §42-9-20 to prove a general disability; alternatively, he or she may proceed under §42-9-30 to prove a loss of use, a member, organ or part of the body for which specific awards are listed in the statute. An award under the general disability statutes must be predicted upon a showing of loss of earning capacity, whereas an award under the scheduled Commission may award compensation to a claimant under the scheduled loss rather than the general disability statutes so long as there is substantial evidence of support such an award. *Fields v. Owens Corning Fiberglass*, (1990) 301 S.C. 554, S.E.2d 172. In *Keeter v. Clifton Mfg. Co.*, 82 S.E.2d at 522 the Supreme Court stated:

The disability is to be measured by the employee's capacity or incapacity to earn the wages which he was receiving at the time of his injury. Loss of earning capacity is the criterion. There is no recognition of the elements of pain and suffering, or of increased discomfort and difficulty in performing the work, as long as there is no diminution in earning capacity.

To receive benefits under S.C. Code § 42-9-20 there must be a loss of earning capacity.

In this case, the Commission awarded benefits based on the claimant's loss of earnings as a truck driver. However, the facts of this case do not support a loss of earning capacity, since the claimant never was physically fit to drive a truck. The claimant applied for a truck driver's job with Kenco Logistics Services on June 27, 2000. Part of the application process was a physical exam and questionnaire. The claimant misrepresented his physical history on the medical questionnaire. The claimant was asked on the medical questionnaire had he ever had diabetes, the claimant responded no to this question [Exhibit A]. However, not only did the claimant have diabetes he was insulin dependant, the same month he applied for the job with Kenco. As previously stated the claimant applied for the job with Kenco on June 27, 2000. He was receiving insulin shots by prescription on June 7, 9 & 12, 2000 [Exhibit B]. At the time he applied for his job he was still under doctor's care for insulin shots. [Tr. p. 38, l. 22-24]

Under Federal Law, the claimant at the time he applied for a job at Kenco was not physically fit to be a truck driver and should not have been driving for Kenco or any other company. The Federal regulations provide the following:

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no established medical history of clinical diagnosis of diabetes mellitus currently requiring insulin for control.

There is no provision in the Federal Motor Carrier Safety Regulations (FMCSRs) for an exemption from the minimum physical requirement with

respect to the insulin-using diabetic. Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness of orientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semiconsciousness, diabetic coma, or insulin shock).

The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the diabetic problem. Because of these inherent dangers, the FMCSA has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the FMCSRs.

49 C.F.R. § 391.41(b)(3)

Thus, based on these Federal regulations the claimant should not have been driving a truck. The claimant's misrepresentation allowed him to obtain a job and wage which legally he should not have obtained. The claimant clearly knew about this regulation but sought employment despite this obvious violation of federal law. [Exhibit C] [Transcript p. 36, l. 1-21] With truthful information, Kenco would not have hired the claimant per the testimony of John Little, Human Resources and Safety Director. [Transcript p. 58-60]

Mr. Little testified as follows:

Q. At the time that Mr. Bass was hired were you even aware that he had a history of diabetes?

A. No, I was not.

Q. Did you see the form that he completed with regard to the Doctor's Care physical exam?

A. I did see it recently. I can't remember whether I saw it back in 2000 or not.

Q. And on the health history he checked no, are you aware of that?

A. He checked no.

Q. As to being the personnel director, clearly that was not the truth, is that correct?

A. Apparently not.

Q. If he had checked yes for diabetes what would have happened?

A. He would have had to, I'm sure our doctors would have referred him as usual to his personal physician for evaluation. And we would have gotten some kind of records from his physician as to his dependency for insulin or oral. And then made a decision whether he could pass him for a DOT physical. Until that time the doctor would not approve him to drive a commercial motor vehicle and he would not be acceptable. And therefore, I couldn't hire him.

Q. And you heard earlier that Mr. Bass was diagnosed with diabetes and given insulin shots within the same month in which he applied for a job with your company, is that correct?

A. Yes, that's true.

Q. Were you aware of that, did you have any knowledge of that when he applied for a job?

A. No, I did not.

Q. What is the potential liability for your company if you have a driver who is insulin dependent and has an accident?

A. If the driver is insulin dependent and being a diabetic and driving a commercial vehicle he can suffer drowsiness, semi-consciousness, he can go into a coma, go into diabetic attack or shock as he indicated he did have while driving the truck. There could be a terrifically bad accident involving death, injury to the public. And therefore the DOT restricts

them and does not allow them to drive. And therefore we would wind up in a legal issue very, very serious.

Q. And as I think, you heard as being the personnel director you heard that Mr. Bass was prescribed insulin at the time he worked for you? He chose not to take it but he was under doctor's prescription to take insulin?

A. Yes.

Q. With that situation, would you have hired him as a truck driver knowing that the doctors had prescribed it and he decided not to take it?

A. No, I would not have.

[Transcript p. 58-60]

Now to award benefits based on an illegally obtained job continues to reward this claimant for lying. This claimant is not entitled to benefits under § 42-9-20 for a job he obtained illegally. The Commission should not reward deceit. He should be granted benefits under § 42-9-30 for his shoulder injury only.

II. THE COMMISSION ERRED IN NOT AWARDING PERMANENT PARTIAL DISABILITY BENEFITS UNDER THE SCHEDULED MEMBER PROVISIONS OF S.C. CODE ANN. § 42-9-30 (1976).

The Commission should have awarded benefits under S.C. Code § 42-9-30. S.C. Code Ann. §42-9-20 provides that "[e]xcept as otherwise provided in Section 42-9-30," an injured employee may recover the difference between his weekly wages before the injury and the average weekly wages after the injury. S.C. Code Ann. §42-9-20 (1976) (emphasis added). S.C. Code Ann. §42-9-30, in turn, is the scheduled member statute and states that:

"[i]n cases included in the following schedule, the disability in each case shall be deemed to continue for the period specified and the compensation so paid for such injury shall be as specified therein"

S.C. Code Ann. §42-9-30 (1976) (emphasis added). This is clearly a mandatory provision. Injuries sustained to the shoulder and/or upper extremity and any resulting loss of use is included within the scheduled member statute and entitlement to disability shall be compensated for as specified in that statutory section. S.C. Code Ann. §42-9-30(19). Section 42-9-20 allows for recovery of partial incapacity for work "except as otherwise provided in Section 42-9-30." Therefore, where an injury is included within the schedule of §42-9-30, as the upper extremity is, the disability and compensation payable for the injury shall be in accordance with S.C. Code Ann. §42-9-30.

The appellate courts of our State have repeatedly recognized the legislative intent and have interpreted and ruled upon the application of §§42-9-10, 42-9-20, and 42-9-30. The South Carolina Court of Appeals held that:

"[t]he legislature intended to make certain the compensation to be paid to a workman who sustains any one of a number of scheduled injuries set forth in Section 42-9-30. In such cases, the compensation depends upon the character of the injury rather than upon the loss of earnings."

Bixby v. City of Charleston, 300 S.C. 390, 388 S.E. 2d 258 (Ct. App. 1989); *See also: Singleton v. Young Lumber Company*, 236 S.C. 454, 114 S.E.2d 837 (1960) (award under §42-9-10 reversed as improper because claimant's only disabling condition was to a scheduled member compensable under §42-9-30 only). Thus, it is well settled that when a claimant, as in *Singleton* and *Bixby*, sustains an injury to a scheduled member covered by §42-9-30, he cannot recover under §42-9-10 or §42-9-20. *Bixby, supra; Singleton, supra.*

Assuming, without conceding, that the claimant, has presented evidence of future lost wages, such evidence has no effect upon the Commission's use of §42-9-30 as this is the proper statute under which to award compensation for scheduled member injuries, including those to

the back and upper extremity. A claimant in certain cases can proceed alternatively under § 42-9-20 and § 42-9-30 pursuant to *Fields v. Owens Corning Fiberglass*, 301 S.C. 554, 393 S.E.2d 172 (1990). However, in *Fields*, the Court held that the Commission may award under the scheduled loss statute rather than the general disability statute as long as there is substantial evidence to support such award. Clearly, there is substantial evidence to award permanent benefits under § 42-9-30 in this case. The claimant was given a 10% rating to his left upper extremity. Moreover, considering the claimant's misrepresentations, S.C. Code § 42-9-20 is not appropriate. Therefore, the Commission should have awarded benefits pursuant to S.C. Code Ann. § 42-9-30.

III. THE COMMISSION ERRED IN NOT AWARDING THE EMPLOYER/CARRIER A CREDIT FOR ALL TEMPORARY TOTAL BENEFITS PAID AFTER MAXIMUM MEDICAL IMPROVEMENT.

The Commission erred in denying the employer/carrier a credit for temporary total benefits paid after maximum medical improvement. The purpose behind the temporary payments is to pay an employee who is temporarily out of work as a result of a work-related injury. Once that person reaches maximum medical improvement, the case is ripe for a determination of permanency and benefits paid after that date. Any benefits paid after maximum medical improvement must be applied as a credit against permanency. *See Hines v. Hendricks*, 263 S.C. 399, 211 S.E. 2d 220 (1975) (a workman is entitled to received compensation for temporary total disability until he reached maximum medical improvement, at which time he becomes entitled to compensation for permanent disability, if any.)

The employee should not receive a windfall simply because it takes time for a hearing to be scheduled nor should the employer/carrier be penalized for following the regulations. Regulations 67-504 and 67-507 provide that once temporary payments begin the employee is

precluded from reducing, suspending, or terminating such payments except by agreement with employee or Order of the Commission.

In no form or fashion is the claimant injured or prejudiced by the credit given the employer. The claimant receives the same total amount of benefits that he would have received if the employer had terminated temporary benefits on the date of maximum medical improvement, by immediate agreement or order. The claimant is not entitled to a windfall simply because the administrative process takes time, nor should the employer be prejudiced for this reason.

In this case, it is unclear whether there is a credit due since the order finds that the claimant is at maximum medical improvement for the shoulder injury, but does not give a maximum medical improvement date. Failure to set forth a date for maximum medical improvement is also an error. See *Williams v. South Carolina Dept. of Mental Retardation*, 308 S.C. 438, 418 S.E.2d 555 (1992). (finding of MMI must be based on substantial evidence) Equally confusing, the order finds that the claimant is not at maximum medical improvement for mental injuries. Clearly, when and if a credit is due would depend on whether temporary total benefits were paid after the maximum medical improvement date.

IV. THE COMMISSION ERRED IN AWARDING CLAIMANT BENEFITS FOR HIS PSYCHOLOGICAL AND EMOTIONAL PROBLEMS.

Mental injuries are compensable if, the mental injury is induced either by physical injury or by unusual or extraordinary conditions of employment. *Stokes v. First Nat'l Bank*, 298 S.C. 13, 19, 377 S.E.2d 922, 926 (Ct. App. 1988). The Commission in err concluded that the claimant's mental problem were related to the work injury.

In this case the substantial evidence indicates that the claimant's mental problems were a result of his misuse of prescription medications and his diabetic seizure on January 22, 2002. The record reflects that the claimant abused his prescription medications. According to the claimant, he was on so many medications that the medication would sometimes numb his mind. [Transcript p. 34, l. 6-11] There were some days that he was so medicated that he could not come to work. [Transcript p. 34, l. 12-15] From January 2001 until January 22, 2002, the claimant worked in a temporary light duty position at Kenco as a dispatcher. It was only after his diabetic seizure on January 22, 2002 that the claimant's emotional problems increased. After his seizure, the claimant's mental condition became acute. In fact, the claimant never returned to his dispatch position. The misuse of prescription medication and subsequent diabetic seizure caused the claimant's emotional problems.

V. THE COMMISSION ERRED BY FINDING THAT THE CLAIMANT HAD REACHED MMI FOR PSYCHOLOGICAL AND EMOTIONAL PROBLEMS AND/OR ERRED IN AWARDING PERMANENT BENEFITS IF THE CLAIMANT IS NOT AT MMI.

The Commission found that the claimant was not at maximum medical improvement (MMI) for his psychological and/or mental problems and was at MMI regarding his physical condition. Based on the physical condition, the Commission awarded permanent partial disability benefits. The Commission erred by making the above referenced findings.

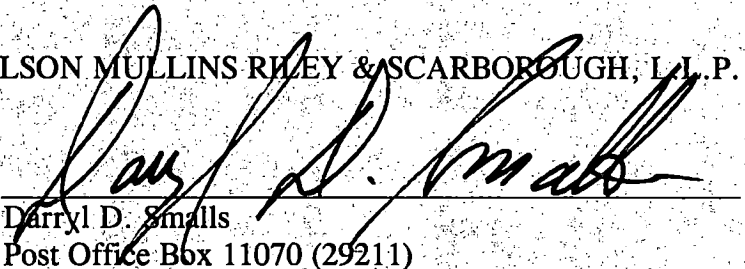
Maximum medical improvement is a term used in workers' compensation proceeding to indicate that a person has reached such plateau that in physician's opinion there is no further medical care or treatment which will lessen degree of impairment. *Smith v. South Carolina Department of Mental Health*, 329 S.C. 485, 494 S.E.2d 630 (1997) Once the claimant is determined to reach MMI, he is entitled to permanent benefits. Prior to reaching MMI, the

claimant is not entitled to permanent benefits. In this case, the Commission finds he is both at MMI and not at MMI in the same order. If he is not at MMI, then he is not entitled to permanent benefits. At a minimum, the Commission should clarify the maximum medical improvement situation in this case.

CONCLUSION

Based on the facts presented at the hearing, the law cited herein, and the foregoing arguments, the employer/carrier respectfully requests that this Court reverse the decision of the Commission.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 

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Columbia, South Carolina

September 13, 2004

2003 WL 22977624 (S.C. Work.Comp.Comm.)

Workers' Compensation Commission

State of South Carolina

JOHN BASS, JR., EMPLOYEE, CLAIMANT

v.

KENCO LOGISTICS SERVICES, EMPLOYER

AND

GALLAGHER BASSETT SERVICES, CARRIER, DEFENDANTS

W.C.C. File No.: 0100748

March 20, 2003

Hearing:

*1 Held in Columbia, South Carolina, on January 22, 2003.

Purpose of Hearing:

To determine issues raised by the Claimant's Form 50 and the Defendants' Form 51: compensability of claim, medical treatment, permanent partial disability (wage loss), average weekly wage, and compensation rate.

Decision and Order By:

The Honorable George N. Funderburk, Commissioner.

Appearances:

Claimant represented by Hyman Rubin, Jr. of McDonald, McKenzie, Rubin, Miller and Lybrand, L.L.P., Post Office Box 58, Columbia, SC 29202.

Defendants represented by Darryl D. Smalls of Nelson, Mullins, Riley & Scarborough, LLP, P.O. Box 11070, Columbia, SC 29211.

STATEMENT OF THE CASE

The Claimant, John Bass, Jr., filed a Form 50 dated July 15, 2002, seeking an award for permanent partial general disability (wage loss) as a result of injuries to his left arm and shoulder, left leg, and mental and emotional injuries; past and future medical examination and treatment for psychological and psychiatric conditions induced by the accident; a determination of average weekly wage and compensation rate; and other appropriate benefits under the Act.

Per their Form 51 dated July 23, 2002, the Defendants denied that the Claimant sustained compensable injuries; denied that the Employer and Employee were subject to the Workers' Compensation Act at the time in question; denied that the relationship of Employer and Employee existed at the time in question; and otherwise denied all aspects of the claim stating that the claim was "under investigation" and setting up "All affirmative and specific defenses ... including but not limited to Section 42-9-60, Section 42-15-20, Section 42-15-40, Section 42-17-90; and fraud in the application for employment; fraud in the inducement to sign Form 15; fraud in the initiation for the claim for benefits; pre-existing disability to alleged injured members; election of remedies; intervening trauma; no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work related."

A hearing was held on January 22, 2003, in Columbia, South Carolina, at which time testimony was given by the Claimant and by two employees of the Employer. The parties' APA submissions were accepted without objection.

STIPULATIONS

At the commencement of the hearing it was stipulated as follows:

1. The purpose of the hearing was to determine the issues raised by the Claimant's Form 50 and the Defendants' Form 51 as set out above.
2. The dates of accident were January 24, 2001, and March 2, 2001.
3. Notice of the hearing was timely and properly served upon all parties.
4. Venue was proper in Richland County pursuant to [S.C. Code Ann. § 42-17-20](#).
- *2 5. The Claimant had an average weekly wage of \$1,211.52 and a compensation rate of \$532.77 (2001 maximum).
6. The Commission file was made part of the record.

MEDICAL EVIDENCE AND OTHER APA SUBMISSIONS

The following documents were submitted into evidence without objection pursuant to the Administrative Procedures Act:

CLAIMANT

Exhibit No.	Description	Page Numbers
APA No. 1	Records from William H. Kirkley, M.D. and David B. Fulton, M.D. February 19, 2001 - July 17, 2001	1-16
APA No. 2	Records from Deborah Stuck, M.D. July 16, 2001 - April 8, 2002	17-29
APA No. 3	Records from Matthew E. Midcap, M.D. and Clay Drummond, M.D. May 3, 2001 - June 26, 2001	30-48
APA No. 4	Records from A. Sale Estefano, M.D. March 18, 2002 - November 18, 2002	49-51
APA No. 5	Records from Patricia Feigley, MSW, LISW, LMFT	52-79

February 12, 2002 - April 29, 2002

APA No. 6	Records from J. Adger Brown, Jr., M.A. CDMS	80-85
	November 12, 2002 - November 19, 2002	

DEFENDANTS

APA No. 1	Report from Deborah Stuck, M.D. February 2, 2002	1
APA No. 2	Records from Matthew Midcap, M.D. May 3, 2001 - July 10, 2001	2-27
APA No. 3	Records from The Moore Orthopaedic Clinic, P.A. February 19, 2001 - July 17, 2001	28-41
APA No. 4	Record from Concentra June 14, 2001 - August 7, 2001	42-59
APA No. 5	Records from Doctor's Care January 30, 2001 - February 7, 2001	60-67
APA No. 6	SC Employment Security Commission File	68-96

FINDINGS OF FACT

Based upon the testimony adduced at the hearing, the documentary evidence submitted by the parties pursuant to the Administrative Procedures Act, and the Commission's entire file relative to this claim, I make the following findings of fact:

1. The Claimant, John Bass, Jr., is 37 years old, married, and has three children, aged 6, 9, and 13. He completed the ninth grade (went to the tenth grade) and received a GED. He worked as a truck driver "pretty much throughout [his] whole life," driving for Sonic, Carolina Freight Company, Atlantic Motor Lines, Air Products and Chemical, National Welders, USF Dugan, and Kenco (the Employer). He commenced his employment with the Employer in July of 2000 and his job responsibilities consisted of driving a truck, delivering appliances, and installing appliances, some weighing as much as 800 pounds. Following a short period of restricted duty with the Employer, the Claimant was taken out of work and has remained unemployed through the date of the hearing.

2. On January 24, 2001, the Claimant sustained an accident on the job when he and a co-employee were attempting to move an 800 pound refrigerator down the ramp of a tractor-trailer. As the co-employee's grip gave way and the refrigerator started

slipping away, the Claimant yanked on it and thereby sustained an injury to his left shoulder. On March 2, 2001, the Claimant was loading a “very heavy” double oven when he re-injured his left shoulder. When he woke up the next morning his pain was substantially exacerbated to the point that he had to “literally lift [his] arm in order to move it because of the pain.” The left shoulder pain thereafter radiated into the left arm, elbow, fingers, and neck. The Claimant also sustained injury to his left leg.

*3 3. The Claimant was initially sent by the Employer to Doctor's Care, where he was given a cortisone shot and prescribed pain medication. He was thereafter referred to The Moore Orthopaedic Clinic, P.A., where he was first treated by Dr. William H. Kirkley and diagnosed with a strained left shoulder and, following an MRI, left shoulder impingement with left upper extremity pain and tingling in the left thumb. He was given additional injections, medications, therapy, and light duty restrictions.

4. The Claimant's care was thereafter taken over by Dr. David B. Fulton of The Moore Orthopaedic Clinic, P.A., who diagnosed left shoulder pain with radiation into the left arm and the neck. Dr. Fulton ordered a [nerve conduction study](#), recommended pain therapy, and put the Claimant on work restrictions of no overhead lifting with the left arm and no lifting greater than 10 pounds. Dr. Fulton determined that the Claimant's care thereafter should be with the Center for Pain Management of Palmetto Health Alliance and concurred in their assessment that the Claimant sustained a 10% permanent impairment to the left upper extremity which required modified permanent light duty status.

5. The Claimant underwent a pain management program for approximately six weeks at Palmetto Health Alliance, where he was noted to be suffering from myofascial pain, shoulder pain, and [ulnar neuropathy](#). His orthopaedic care at that facility was in the hands of Dr. Matthew E. Midcap, who eventually released the Claimant to return to work on a permanent light duty status (office work, but not truck driving). A functional capacity evaluation was completed by Ms. Leila Renfrow, who determined that the Claimant's work capacity was at the light physical capacity level. Dr. Clay Drummond noted, [inter alia](#), that an MRI revealed “a small [tear in the rotator cuff](#) and that it gets inflamed.” He performed a psychological evaluation in which he concluded that as a result of his injuries the Claimant was suffering from moderate depression and that his Multidimensional Pain Inventory profile classification was “[Dysfunctional](#).” He also concluded that the Claimant's chronic pain was interfering with his life more than normal, that he was suffering from affective distress and feeling of diminished control over his life, and that he was evidencing lower overall general activity including social activity, activities away from home, outdoor work, household chores, and a lower repertoire of distracting responses to help him cope with the pain. His recommendation was a full pain management program including treatment for depressive and anxiety symptoms and reduction of chronic stress through stress management procedures. At the time of completion of the pain management Dr. Drummond noted that Mr. Bass rated his pain as “6 on a scale of 0 to 10” and his depression as “severe.” On June 22, 2001, Dr. Midcap performed an [ulnar nerve block](#), and on June 26, 2001, he gave the Claimant a return to work slip stipulating “permanent light duty status-office work-no truck driving.”

*4 6. The Claimant was referred by his primary care physician to Patricia Feigley, MSW, LIS, LMFT, who determined that the Claimant was “experiencing symptom of depression and anxiety ... [which] developed as a result of being injured and unable to work at his previous level.” She concluded that the Claimant would not be ready to return to work until his symptoms of depression subsided. Because of his ongoing depression and anxiety and, in her estimation, his need for medication, Feigley recommended that the Claimant see a psychiatrist.

7. On March 18, 2002, Dr. A. Sale Estefano, the psychiatrist to whom the Claimant was referred, initially diagnosed him with post-traumatic syndrome disorder, [panic disorder](#), and [adjustment disorder with depressed mood](#) and nightmares. Thereafter, on April 23, 2002, Dr. Estefano opined that the Claimant had “developed severe depression and panic attacks” as a result of his work-related injuries and that he would “not be able to return to work for an indefinite amount of time due to his mental and physical condition.” In his note of November 18, 2002, Dr. Estefano recited that the Claimant had developed “severe anxiety, severe depression, and excessive amount of pain in his shoulder due to his injury at work.” He further stated that the Claimant had suffered “emotional and mental distress due to his injury at work, which has limited him severely in being able to support his family.” His recommendation was that “Mr. Bass will need psychotherapy along with medication management for an indefinite amount of time.” As to his prognosis, Dr. Estefano indicated that “as long as Mr. Bass suffers from his work-related injury, he will continue to suffer mentally, emotionally, and financially.” The Claimant is still under Dr. Estefano's care.

8. Dr. Deborah L. Stuck, the Claimant's primary care physician, noted that his physical injuries had caused him to be placed on permanent restrictions, had "changed his work ability and cut his earnings by half" (the Claimant testified that his earnings have been cut by two-thirds), and opined that "I certainly do believe these [stresses] had a tremendous impact on his life and contributed to emotional distress." On another occasion she opined that "I do sincerely believe that the anxiety and stress of his permanent disability and treatment through Workers' Comp. has contributed to his emotional problems he's having now." On another occasion she noted his anxiety along with "[g]eneralized shaking."

9. J. Adger Brown, Jr., MA, CDMS, performed a vocational evaluation based on a clinical interview with the Claimant, a review of the medical records of the treating professionals, and a review of the records from Palmetto Health Alliance containing various medical, psychological, and functional assessments. He noted that although Leila Renfrow stated the Claimant was demonstrating the capacity to do work at light physical capacity level, her measured assessments "indicate that he is actually in the full range of sedentary exertion, but with the additional ability to stand and walk without restriction, as is part of the light requirement but without the lifting component of this classification." Taking into account the Claimant's educational background, his work history, his medical diagnoses, his ongoing accident-related psychological and psychiatric problems, and his own observations, he concluded that "if Mr. Bass is capable of working at all, he can only be at the lowest level of stress and job pressure" and that the job "will also have to be of such minimal physical demand as to not unduly exacerbate his physical problems, which I understand are significantly triggering his psychological problems." His bottom line assessment was that the Claimant "could only handle sedentary, entry level, unskilled work of a routine and repetitive nature requiring little in the way of interaction with the public and co-workers ... and little in the way of decision-making authority as well." He opined that although such jobs do exist, they exist in relatively small numbers in the local area and command salaries of no more than \$5.15 an hour to perhaps \$7.00 an hour. His final observation was that "[t]his wage loss, in and of itself, will be yet another blow to this man's self-esteem. However, based on Dr. Estefano's letter I am really not able to offer a brighter prognosis."

*5 10. Harriet Tokar, the manager of the Employer's Columbia Distribution Center, testified that from her own observation the Claimant "was rather shaky" and that he was "taking a number of medications" when he was returned to light duty. She acknowledged that she had never had any trouble with the Claimant as an employee, that he was an excellent employee both as a truck driver and in his light duty position of dispatcher, that she would be happy to take him back if there were a position available for him and in fact that he "would get first priority," that there was nothing in his background that would keep her from re-hiring him, that she did not think the Claimant committed a fraud in this case, (as alleged in the Form 51) and that she believed the Claimant sustained a job-related injury.

11. John Lewis Little, the Employer's Human Resources and Safety Director, testified that with all he knew about the Claimant he would put him back in the position that his restrictions would allow if he had a job for him and that he would even give him a preference. He corroborated Harriet Tokar's assessment that the Claimant had been an excellent employee in both of the jobs he had performed for the company, and that he did not think that diabetes in any form had anything to do with the Claimant's getting injured on January 24, 2001, and re-injured on March 2, 2001. He acknowledged that he had never looked at what the doctors had to say about the Claimant's condition ("I never read it, no") and that he had never read or asked for any of the medical records related to the cause of the Claimant's psychological and psychiatric problems. Neither he nor Harriet Tokar was involved in the preparation of the Defendants' Form 51 and could not give any factual information to support any of the numerous defenses it raised.

12. Prior to this accident the Claimant was always able to perform his jobs; was never dysfunctional in any job; was never disabled because of any psychiatric, psychological, or sugar problems; had never been discharged from a job because of any physical or emotional problems; and had experienced no difficulties in his normal functions of daily living. Because of the accident and injuries the Claimant has since experienced changes in his daily life including difficulties in playing with his children, playing sports, exercising, cutting firewood, body building, and in general doing anything strenuous with his left arm.

13. Upon questioning by the Defendants' counsel, the Claimant acknowledged that he had denied a problem with [diabetes](#) on the health questionnaire prior to his hiring, but he satisfactorily explained that this answer was given because other than one recent episode resulting from his wife's health scare he had not been having any serious symptoms of [diabetes](#) since childhood, that he was not [insulin](#) dependent, that he had discussed the question and his answer to it with the Employer's then manager (Steve McIntire) and with the doctor who administered the physical, that he knew the required physical exam came up negative for sugar problems, and that at no time during his employment was he driving the Employer's trucks while on insulin. I find as a fact that the Claimant did not knowingly and willfully make a false representation as to his physical condition in this regard, that in any event the Employer did not rely upon his representation (in light of the Claimant's discussion with manager McIntire), and there was certainly no causal connection between the Claimant's answer and the injuries he sustained.

*6 14. The factual findings recited hereinabove are either uncontroverted in the record or supported by a preponderance of the evidence and I therefore adopt them as the factual findings in this case.

15. After reviewing all medical evidence submitted by the parties; observing the Claimant and the other witnesses during the course of the hearing; considering the two separate permanent impairments rated by two different doctors; and considering the uncontradicted vocational conclusions of J. Adger Brown, Jr., I find that the Claimant a) has a 10% permanent impairment to the left upper extremity with associated [ulnar neuropathy](#), myofascial pain, shoulder pain, and tingling in the fingers; b) suffers from post-traumatic syndrome disorder, [panic disorder](#), and [adjustment disorder with depressed mood](#), all of which were directly induced by the injuries sustained in this accident and which require ongoing psychiatric treatment and medication control under the care and direction of the Claimant's psychiatrist, Dr. A. Sale Estefano; c) is under severe permanent physical restrictions and is currently under significant psychiatric restrictions; d) can never return to his former employment as a truck driver or any other employment of the same general nature because of permanent physical limitations; e) has been relegated to work activity in the sedentary, entry level unskilled work category of a nature which requires little in the way of interaction with the public and co-workers and little in the way of decision-making authority in consequence of which the Claimant's earning capacity is a maximum of \$7.00 per hour; and f) has suffered wage loss from a pre-injury average weekly wage of \$1,211.52 to a post-injury level of \$280.00 per week, which represents a weekly loss of income in the amount of \$931.52. I further find that a) the aforesaid physical, psychiatric, and psychological limitations set out hereinabove are consistent with a valid functional capacity evaluation performed at Palmetto Health Alliance, evaluations of the numerous physicians and other professionals, and the uncontroverted testimony adduced at the hearing; b) J. Adger Brown, Jr.'s vocational assessment is credible, accurate, and uncontradicted; and c) the Claimant's physical limitations and his psychiatric and psychological complications are the direct result of the injuries he sustained on the job.

16. Based upon these facts I find that the Claimant has a) reached maximum medical improvement as to his physical injuries; b) has not reached maximum medical improvement with respect to his psychiatric and psychological complications; and c) is in need of ongoing psychiatric and psychological treatment including prescriptions medications under the direction of Dr. Estefano.

CONCLUSIONS OF LAW

In view of the above findings of fact, I conclude as a matter of law:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

*7 2. On January 24, 2001, and again on March 2, 2001, John Bass, Jr., an employee within the meaning of [S.C. Code Ann. § 42-1-130](#), sustained accidental injuries to his shoulder, arm, hand, leg, neck, and face within the meaning of [S.C. Code Ann. § 42-1-160](#) while performing duties arising out of and within the course and scope of his employment with Kenco Logistics Services, an employer within the meaning of [S.C. Code Ann. § 42-1-140](#).

3. As a direct consequence of the physical injuries sustained on those dates the Claimant has suffered severe psychological and psychiatric impairments which are ongoing in nature and which require continuing medical treatment and medications owed by the Defendants until further order of the Commission.

4. Based upon the evidence herein and in light of all relevant factors I conclude that pursuant to [S.C. Code Ann. § 42-9-20](#) John Bass, Jr. has sustained permanent partial disability which has permanently altered his earning capacity from a pre-accident average weekly wage of \$1,211.52 to a current weekly expectation of \$280, which results in a weekly wage loss of \$931.52. Multiplying this figure by .667 equals \$621.32, so the Claimant is entitled to the maximum compensation rate of \$532.77 for an accident occurring in 2001. I conclude that the Claimant has suffered this wage loss for the maximum period of 340 weeks for permanent partial disability pursuant to [S.C. Code Ann. § 42-9-20](#). I further find that the Claimant's partial disability began after a period of total disability and therefore pursuant to said section the amounts paid for temporary total disability shall not be deducted from the maximum of 340 weeks allowed for permanent partial disability.

5. The Defendants are responsible for the cost of past services rendered by Dr. A. Sale Estefano and Patricia Feigley for treatment of the Claimant's psychiatric and psychological complications and the medications heretofore prescribed by Dr. Estefano in connection therewith, and the Defendants shall hereafter be responsible for any continuing causally related treatment and medications for those conditions, under the direction of Dr. Estefano, which tend to lessen the Claimant's period of disability resulting from his accident-related psychiatric or psychological conditions. [Dodge v. Bruccoli, Clark, Layman, Inc., 514 S.E.2d 593 \(Ct.App. 1999\)](#).

AWARD

IT IS HEREBY ORDERED that the Defendants shall pay John Bass, Jr. 340 weeks of compensation at the rate of \$532.77 per week as a result of his permanent partial disability without credit for temporary total disability benefits previously paid. Additionally, the Defendants shall be financially responsible for previously incurred psychiatric and psychological treatment rendered by Dr. A. Sale Estefano and Patricia Feigley and for all future psychiatric and psychological treatment under the direction of Dr. Estefano so long as such treatment tends to lessen the period of the Claimant's disability under [S.C. Code Ann. § 42-15-60](#).

***8 AND IT IS SO ORDERED.**

March 18, 2003

South Carolina Workers' Compensation Commission

George N. Funderburk
Commissioner

2003 WL 22977624 (S.C. Work.Comp.Comm.)

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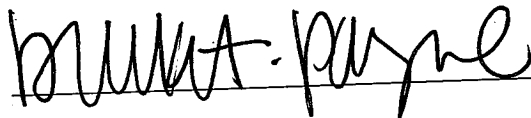
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted:

Payne Law Group, LLC

A handwritten signature in cursive script, appearing to read "Brooke A. Payne", written over a horizontal line.

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Dated: 1.28.2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Panel Decision
SCWCC No. 1102937

Case No. 2019-001141

RECEIVED

Jul 28 2020

SC Court of Appeals

Barry Adickes, Claimant,

Respondent,

v.

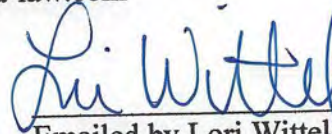
Philips Healthcare, Employer, and Fidelity and
Guarantee Insurance Company, Carrier,

Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal to the Respondent via electronic mail on
July 28, 2020, addressed to his attorney of record at the below address:

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Dated: 7/28/2020