

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

GARY YERDON : CASE NO. 08 CV 6949
Plaintiffs :
vs. : JUDGE BARBARA P. GORMAN
MAGISTRATE DAVID FUCHSMAN
LAWRENCE B. ROTHSTEIN, M.D. : MOTION TO COMPEL
PRODUCTION PURSUANT
Defendants : TO SUBPOENA

Plaintiffs request that this Court issue an Order compelling Defendant Dayton Laser Spine Center, Riverview Health Institute, LLC and David Fallang, M.D. to comply with Subpoena *Duces Tecum* and overrule Defendants' objections to Civil Rule 30(B)(5) Deposition and subpoena pursuant to Civil Rule 45(C)(2)(b). The objections are without merit and must be overruled. A Brief in Support is attached.

Respectfully submitted:



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BRIEF IN SUPPORT

I. BACKGROUND

A. MEDICAL HISTORY

Gary Yerdon was a 63 year old retired Navy seaman who had a history of chronic low back pain since an automobile accident. In 2007 he came under the care of Lawrence Rothstein, M.D. Dr. Rothstein is an anesthesiologist, not a trained spine surgeon. On August 21, 2007 Dr. Rothstein performed his first surgery on Mr. Yerdon which consisted of a lumbar transpedicular neural decompression and discectomy at the L4-L5 level. Mr. Yerdon did not enjoy any improvement after this first surgery. Dr. Rothstein recommended that Mr. Yerdon undergo another surgery.

On January 8, 2008 Dr. Rothstein performed an arthroscopic laser neurolysis and transforaminal neural decompression via foraminoplasty of the L4-L5 and L5-S1 left endoscopic laser neurolysis on Mr. Yerdon at Riverview Health Institute. Immediately, in the post operative period, Mr. Yerdon was unable to walk and had significant weakness and instability in his legs. The next day, he went to the emergency department at Wright Patterson Air Force Base. He was diagnosed with profound and permanent neurologic condition known as Cauda Equina syndrome.

Cauda Equina is a devastating neurologic injury which affects the branches of the lower end of the spinal cord. Cauda Equina or Horsetail is used to describe this area of the end of the spinal column. As a result of this Cauda Equina condition, Plaintiff Yerdon he has no control of his bowel and urinary function. He required catheterization. This condition has been found to be permanent. Mr. Yerdon is also suffering from severe back and bilateral leg pain which were both new conditions following the January 8, 2008 surgery.

B. EXPERIMENTAL SURGERY

Plaintiff will prove that Dr. Rothstein's inappropriate surgical procedure – an unproven and experimental process – Defendant calls “epidural laser discectomy” or “ELD” is responsible for Plaintiff Yerdon's condition. Dr. Rothstein claims to have invented this experimental ELD surgery. In allowing Dr. Rothstein to perform this unproven and

experimental surgery Riverview Health Institute violated its legal duty to ensure that the physicians who operated there are properly credentialed and are performing valid medical procedures. Plaintiffs will prove that all the Defendants failed to obtain informed consent of Mr. Yerdon. The informed consent claim stands in part from the fact that Defendants were not disclosing to patients how untested and unproven ELD was and remains.

The ELD surgery is completely unproven and untested. The ELD surgery has never been published in a peer review journal. Its scientific methodology has never been subjected to peer review. There has never been a published rate of error associated with the ELD. There has been no reliable testing of the ELD surgery to show that it is a medically valid procedure, nor what the associated complication rate is with the ELD surgery.

Defendant Rothstein intends to try and give his experimental surgery a cloak of credibility by claiming it was submitted to an Institutional Review Board (IRB) at Grant Medical Center in Columbus, Ohio in 1999. An IRB is supposed to be an independent committee that reviews all proposed research projects involving human subjects to assure the rights of the subjects are protected, that adequate and informed consent of the patient is obtained and that any possible benefits of the research are commensurate with the risk involved. The IRB committee is designed to approve, monitor and review research involving human with the aims of protecting the welfare of the research subjects. An IRB performs critical oversight functions for research conducted on human subjects that are scientific, ethical and regulatory. IRB will close or discontinue a research project if it is proving to be harmful to its subjects or does not warrant further human risk.

During the time period Dr. Rothstein was developing his experimental surgery at Grant Medical Center, Dr. Rothstein's medical license was suspended for an indefinite period of time, but not less than three months, for felony possession of cocaine.¹ Dr. Rothstein's license was restored, but he remained under supervision through 2007. The IRB at Grant Medical Center was **never** completed. Dr. Rothstein has not been able to produce any documentation to suggest the IRB that was started at Grant Medical Center was completed or why it was stopped.

¹ Medical Board license information consent agreement for Step 1 and Step 2 attached as 1 and 2

Dr. Rothstein is not able to produce a single scientifically valid document that deals with short-term and long term follow up with patients who have undergone an experimental ELD surgery.

C. MALPRACTICE INSURANCE COVERAGE

Defendants did not provide informed consent to Mr. Yerdon by not informing him that they did not have valid medical malpractice insurance coverage, as required by Ohio Revised Code 4731.143.² Dr. Rothstein has not been able to produce anything that proves that he did in fact have malpractice insurance. Riverview claims it has insurance but claims they do not have coverage and that they do not insure Dr. Rothstein. Riverview has not produced nor offered an explanation as to why they have no coverage and who is insured under the policy.

1. LAWRENCE ROTHSTEIN, M.D. INSURANCE COVERAGE

Gary Yerdon filed this medical negligence case on July 29, 2008. Interrogatories and Requests for Production of Documents were exchanged amongst the parties. At that time Dr. Rothstein was being represented by his brother, Steven M. Rothstein. One of the areas of inquiry in the Interrogatories was the nature of Dr. Rothstein's malpractice insurance coverage. Ultimately in their un-verified responses, Dr. Rothstein indicated he was insured through St. Clair Insurance.

Steve Rothstein again represented to Plaintiff's counsel during the course of Dr. Rothstein's deposition that Dr. Rothstein had medical malpractice insurance coverage. Steve Rothstein stated, "He [Dr. Rothstein] is insured under a policy. I don't know as I sit here today know what the actual inception dates of the policy are."³ Through out his representation Steve Rothstein continued to represent to plaintiff's counsel and the Court that Dr. Rothstein had medical malpractice insurance coverage.

On September 10, 2009, Michael Lyon of the law firm Lindhorst & Dreidame, substituted for Steve Rothstein as counsel for Dr. Rothstein. On November 19, 2009, at the final pretrial conference before Judge Gorman it was allegedly for the first time that Dr.

² R.C. 4731.143 attached as 3

³ Dr. Rothstein deposition previously filed. Pages 65/66 attached as 4

Rothstein does not have malpractice insurance for this lawsuit. As a result, Judge Gorman continued the trial so that a determination could be made as to whether or not Dr. Rothstein did or did not have insurance coverage. Judge Gorman also allowed Dr. Rothstein's alleged employer Riverview Health Institute, LLC to be brought back into the case to see if they had malpractice insurance coverage for both their independent and vicarious liabilities of their employee Dr. Rothstein. As a result, Plaintiffs were given leave to file an amended complaint to bring Riverview Health Institute back into the case as a party. Riverview Health Institute had previously been voluntarily dismissed as a party based on the representation that Dr. Rothstein did in fact have medical negligence insurance.

In September 2009, additional interrogatories and request for production of documents were served on all Defendants. Dr. Rothstein answered his in March 2010. He indicated that he was insured through St. Clair Insurance. Dr. Rothstein stated he never had a copy of the policy, only a "certificate of professional malpractice insurance" which listed the policy number as ANG071001.⁴ It is important to note that the certificate of professional medical malpractice insurance lists Larry Rothstein as the "certificate holder." The documents states in capital letters **"THIS CERTIFICATE DOES NOT GRANT ANY COVERAGE OR RIGHTS TO THE CERTIFIED HOLDER."** The certificate makes reference to a Policy No. ANG071001. It reports to have limits of One Million Dollars per each claim and Two Million Dollars in the Aggregate.

Dr. Rothstein also produced an email from a Marilee Fuller of Tribeca Partners to Steven Rothstein on November 4, 2008 which seems to suggest they were at least considering insuring Dr. Rothstein for medical malpractice insurance coverage purchased by Riverview Health Institute.⁵ Tribeca Strategic Advisors, LLC is an independently owned, alternative risk captive insurance company. It is a consulting and management company. It is believed that Tribeca advises high net worth clients of ways in which to minimize taxes by creating self funded off-shore captive insurance companies. This email was provided to Plaintiff's counsel by Dr. Rothstein's attorney as some alleged evidence of proof of medical malpractice insurance

⁴ Interrogatory response and Certificate of Professional Medical Malpractice Insurance attached as 5 and 6

⁵ November 4, 2008 email attached as 7

coverage. Of course, this email was sent to Steven Rothstein eleven months after Plaintiff Yerdon's last surgical procedure by Dr. Rothstein and after the lawsuit was already filed.

Finally, Dr. Rothstein recently filed an affidavit with the Montgomery county common pleas court in the Clawson medical negligence case.⁶ Dr. Rothstein indicated in his affidavit that he was aware at the time Mrs. Clawson filed her claim, that he learned he did not have medical malpractice insurance.⁷ He also stated that his brother Steven Rothstein handled all of his financial affairs. The Clawson medical negligence case was filed on December 3, 2007. Thus, Dr. Rothstein as well as his brother Steven Rothstein, who was handling all his financial affairs which presumably would include his medical malpractice insurance coverage, were aware as of December 3, 2007 that he did not have malpractice insurance coverage. This was a full month before Mr. Yerdon's surgery on January 8, 2008.

2. RIVERVIEW INSURANCE COVERAGE

Riverview was served with interrogatories and requests for production of documents as well. The interrogatories were answered by the one of Riverview's founders Dr. David Fallang. In his interrogatory responses, he indicated that there was malpractice insurance, but **"there was a policy in effect at the time, however there is no coverage available for this case under the former policy."**⁸ The next interrogatory question asked the name of the policy, the type of policy and the names of the insured's under the policy, the limits of the policy and the name or employer or custodian of such policy. The question was objected to on the basis that it was irrelevant but "a copy of the policy is attached..."⁹ The policy that was attached to the production of documents was an incomplete copy of ANG MP 39 00 08.¹⁰ The page numbering on Policy No. ANG MP 39 00 08 seems to indicate that it is missing pages.

⁶ The Clawson case will be discussed in detail in section D

⁷ Dr. Rothstein affidavit attached as 8

⁸ Riverview Interrogatory response are attached as 9

⁹ Id.

¹⁰ Policy ANG MP 39 00 08 attached as 10

Subsequently, counsel for Riverview has produced three additional separate insurance documents. The first was a “schedule of declarations” referencing Policy No. ANG 081008, indicating a policy period of January 1, 2008 – December 31, 2009 with a retroactive date to May 30, 2003 indicating there as a One Million Dollar per occurrence and a One Million Dollar Aggregate limit.¹¹ The second was a “schedule of declarations” for Policy No. ANG 0910462 indicating a policy period of January 1, 2009 – January 1, 2010 with limits of liability of One Million Dollars per occurrence and Three Million Dollars Aggregate limit with a retroactive date to December 31, 2007.¹² The third item that was produced was a copy of a medical professional liability coverage form, Policy No. ANG MP 39 00 09.¹³

None of the policies that were produced match the any of policy numbers on the schedule of declaration sheets. Nor do they match the policy number that is on the certificate of professional malpractice insurance that Dr. Rothstein produced.

David Fallang, M.D. owns and operates a private hospital founded with his wife Lynn in 2004 known as Riverview Health Institute. In July 2007, Dr. Fallang was interviewed in the Dayton Daily News about medical negligence cases.¹⁴ Dr. Fallang has personally been sued over thirty times for medical negligence cases. In fact, in August of 2006 a Butler County jury found Dr. Fallang failed to have malpractice insurance as require by R.C. 4731.143 and awarded a judgment against him.¹⁵ Dr. Fallang at that time of the Dayton Daily News article indicated Riverview was covered by commercial insurance but he declined to say that he was currently covered by malpractice insurance. He was quoted as stating, **“to be perfectly blunt, I do not believe it is my responsibility to make the patients rich, if there should be an adverse occurrence.”** Dr. Fallang went on to state in the article, **“but lawyers and the crooked malpractice system – the industry, the courts – have finished me off.”**

¹¹ Schedule of declarations referencing Policy No. ANG 081008 attached as 11

¹² Schedule of declarations for Policy No. ANG 0910462 attached as 12

¹³ Policy No. ANG MP 39 00 09 attached as 13

¹⁴ Dayton Daily New Article, “Surgeon Has Made Himself Judgment Proof” attached as 14

¹⁵ Vaughan v. Fallang Judgment entry attached as 15

3. SELF FUNDED CAPTIVE INSURANCE

From the documentation Defendants have provided, they allege they had insurance coverage through St. Clair Insurance, Inc. It appears that St. Clair. is a captive insurance company situated in the British Virgin Islands. A captive insurance company is one that is self-insured and only has assets to the degree that the insured have placed funds within the captive insurance company. Captive insurance companies are not subject to the regulations of the Ohio Department of Insurance. Since the St. Clair Insurance is purported to be self-funded, it is entirely unclear as to whether St. Clair Insurance has any assets to pay any potential claim rendered into or under any potential policy that may have been issued to Riverview Health Institute and/or Dr. Rothstein which would cover this claim. In other words, the potential exist that the Defendants have never put any money into St. Clair in order to pay any claims but only created it as a means to fictional comply with R.C. 4731.143.

D. OTHER MALPRACTICE LAUITS / MAPLEFIVE TRUST

Since 2006, Dr. Rothstein and various corporations and/or Riverview Health Institute have been sued over 30 times in Montgomery County alone for medical negligence. These same Defendants have been sued in other counties as well. A Hamilton County Jury returned a verdict against Dr. Rothstein in the *Krause v. Greater Cincinnati Pain Management*, Hamilton County Case No.: A0070075 in the amount of \$772,000.00. From the Court docket it does not appear that the verdict has not been satisfied. Dr. Rothstein was also found liable in Montgomery County Ohio in *Clawson v. Lawrence Rothstein, M.D., et al*, Montgomery County Case No.: 2007-CV-10081. The jury awarded \$6,300,000.00. Riverview Health Institute, LLC has purportedly paid their portion of that judgment. In the *Clawson* case, just as in this matter, a mere few weeks before trial, once again Dr. Rothstein's counsel had represented that he had ample medical negligence insurance of at least Five Million Dollars.¹⁶ Since Dr. Rothstein did not have malpractice insurance coverage he has a judgment pending against him in excess of

¹⁶ Plaintiff's Motion for Temporary Restraining Order and Preliminary Judgment attached as 16

Five Million Dollars. As a result of that judgment, Dr. Rothstein submitted to a judgment debtor examination.¹⁷

A spendthrift trust is a trust that is created for the benefit of a person (often because he or she is unable to control spending) that gives an independent trustee full authority to make decisions as to how the trust funds may be spent for the benefit of the beneficiary. It protects the trust's assets from the creditors of the "spendthrift." However, an individual can not self fund a spend thrift trust for obvious reasons one of which would be to fraudulently protect your own assets from your legitimate creditors.

On July 3, 2007, Steven Rothstein created the spendthrift trust entitled "MapleFive Trust." Steven Rothstein is the Trustee and Grantor. The sole beneficiary of the spendthrift trust is Lawrence Rothstein, M.D. It is the belief of these plaintiffs that all of the money being generated through Dayton Laser Spine, Lawrence Rothstein, M.D. and Riverview Health Institute are being funneled through the MapleFive Trust in an inappropriate effort to try and protect it from Dr. Rothstein, Dayton Laser Spine and Riverview Health Institute's creditors. It is the belief of these plaintiffs that multiple millions of dollars have been put into the trust.

Dr Rothstein testified in his debtors examination that the MapleFive Trust pays for everything from his cable bill, internet bill, DP&L, landscaping, to the \$140,000.00 Mercedes SL 63 MG, as well as provide him with a house rent free at 8085 Countrybrook Courts, Springboro, OH and a Porsche Cayenne and a Mercedes S 550. Dr. Rothstein testified he had no idea what his sources of income are and that he has turned all that information and the handling of his financial affairs through his brother Steven Rothstein.¹⁸ Additionally, both Steven Rothstein and Dr. Rothstein filed affidavit in the *Clawson* case that since July 2007, Dr. Rothstein has entrusted all his financial affairs through his brother.¹⁹

¹⁷ Dr. Rothstein debtors examination deposition filed separately

¹⁸ *Id.*

¹⁹ Steven Rothstein Affidavit attached as 17

E. LAWRENCE ROTHSTEIN, MD. DIVORCE

Dr. Rothstein is presently going through a lengthy divorce which was initially filed in 2007 in Montgomery County. As a part of the divorce proceedings, Dr. Rothstein listed in his pretrial statement of Steven Rothstein as a witness who will testify regarding Dr. Rothstein’s “Employment, non-ownership in any business interest, income, salary, bonuses and other matters related to thereto.”²⁰ Dr. Rothstein’s spouse filed a motion to join Steven Rothstein as a third party defendant to the divorce. That motion was granted. The basis of the motion was that as the Grantor of the MapleFive Trust, timely payments were not being made to Mrs. Rothstein pursuant to the temporary order. Dr. Rothstein testified that he pays \$12,000.00 per month in support during his debtor examination.

F. RIVERVIEW LEGAL MALPRACTICE ACTION AGAINST STEVEN ROTHSTEIN

On May 14, 2010, Riverview Health Institute, LLC filed a legal negligence action against Steven Rothstein.²¹ Riverview alleges that they hired Steven Rothstein to perform general legal services on August 1, 2007 and that his services were terminated on May 28, 2009. The lawsuit specifically alleges that Steven Rothstein devised an implement and legal plan to isolate the assets of Dr. Rothstein from all judgment creditors, thus leaving Riverview Health Institute the only financial responsible party. In other words, they are alleging that Steve Rothstein purposely created the MapleFive Trust to shield his brother, Lawrence Rothstein, M.D. from potential legal liabilities to his creditors, to the detriment of Riverview Health Institute.

II. LAW AND ARGUMENT

Plaintiffs will address each objections of Riverview, Dayton Laser Spine Center and Dr. Fallang as laid out in their objections to Civil Rule 30(B)(5) Deposition and Subpoena pursuant to Civil Rule 45(C)(2)(B).

²⁰ Dr. Rothstein Divorce Pretrial Statement attached as 18

²¹ Complaint attached as 19

A. OBJECTIONS BY RIVERVIEW, DAYTON LASER SPINE AND FALLANG.

1. Any And All Requests Which Relate To A Timeframe Which Is Not The Subject Of This Litigation.

Plaintiffs in their 35(B) notices have identified the years 2007 – 2010 as being the time period they wish to question the 35(B) witness on information relative to malpractice insurance coverage, among other topics. Gary Yerdon treated with Dr. Rothstein in 2007 and 2008. As the Court can see from the declaration sheets which have been attached as Footnotes, they make references to the time period from 2003 all the way through 2009. Plaintiff should be entitled to determine and find out from the 35(B) representative whether any current policy that has been produced has tail coverage, or coverage going back into a period of time to cover this claim. Plaintiffs are also entitled to find out what steps were taken to invoke coverage under any of the policies that have been identified. Clearly the insurance information provided to date goes beyond the time period of Mr. Yerdon’s treatment with Dr. Rothstein.

Defendants do not provide any explanation as to why requests which relate to a “timeframe” which is not the subject of this litigation is somehow questionable. The reason is there is no basis in law for this objection. Moreover, the objection is extremely vague and overbroad. Plaintiffs request the Court specifically deny Defendants’ objections to Number 1.

2. Objection to Documents Requested and Not Related to Riverview Health Institute, Dayton Laser Spine in the Matter Currently before the Court or Dayton Laser Spine, Including Requests f, g and h.

This objection is without merit. Defendants have supplied two different declaration sheets that would appear to cover this time period. Both declaration sheets indicate that there is either aggregate of One Million Dollars or Three Million Dollars. What this means, is that under that particular policy, the total amount or aggregate amount of claims the insurance company would be liable to potentially payout would be either One Million or Three Million Dollars. Thus, if the insurance company has paid out multiple claims under one of those policies of insurance, plaintiffs are entitled to know what portion is remaining of the aggregate limit.

The request for correspondence to or from St. Clair or any malpractice insurance carrier giving notice of lawsuits or declining coverage would be notice to the Defendants that they did not have insurance coverage and had an obligation to notify Mr. Yerdon. There is no privilege that would protect requests f, g, and h.

3. Defense Objects to the Amounts Paid Under Any Policy Not Related to The Matter Before This Court.

Assuming Defendants even have insurance coverage, it is limited by the total aggregate of either One Million or Three Million Dollars. Since these defendants have been sued over 30 times, there is a fairly good chance that there may not be any insurance left. It also raises the issue that if you know you do not any money available under the insurance coverage then you effectively do not have insurance. Defendants were required to disclose an effective lack of insurance coverage.

4. Objections to the Establishment of the Policy, The Broker of The Policy, the relationship between St. Clair and Tribeca including Requests j, k & l

5. Requests j, k, and l As They Do Not Request a Document But Rather Information

These two objections will be dealt with jointly as they deal with the same information. First, there is an objection that the requests are topics and not requests for production of documents. Plaintiffs believe they are proper requests. However, if the Court believes they are not requests, Plaintiffs respectfully request the Court to convert the request j, k and l into Topics 11, 12 and 13 for a 35(B) witness to discuss.

Defendants also object that this information is not relevant. Once again this information goes to the issue of whether or not any of these defendants actually purchased insurance and if so, what policy and what time period does it cover. Ohio Civil Procedure Rule 26(B)(2) provides:

Insurance agreements. A party may obtain discovery of the existence ***and contents*** of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure subject to comment or admissible in evidence at trial. (emphasis added).

Everything in this request is perfectly discoverable pursuant to C.R. 26(B).

7. **Objections to Requests d and s as to Correspondence Between Riverview Health Institute, Dayton Laser Spine Center and Steven Rothstein as They are Protected by Attorney/Client or Work Product Doctrine**
8. **Oral Communications Between Riverview Health Institute, Dayton Laser Spine, Steven Rothstein**

The objections to requests d and s are without merit. Request d deals with any kind of correspondence or respective insurance coverage provided by St. Clair Insurance to Dr. Rothstein, Riverview Health Institute and North American Dayton Laser Spine. There is absolutely no way that any information between the insurance company and their alleged insured in any way subject to attorney/client privilege or work product rule. First, any document generated by St. Clair Insurance to them is not attorney/client privilege nor a work product document. Second, any response back to St. Clair would not be subject to attorney/client privilege or nor work product because it would be sent to someone who is not Steven Rothstein's client. **Judge Gorman has already overruled Riverview's objection of attorney client privilege when Riverview object to the production of the email that Dr. Rothstein produced from Tribeca to Steven Rothstein.**²²

In Request "s", Plaintiffs are asking defendants to produce a copy of anything in writing describing the relationship between Riverview Health Institute, Dayton Laser Spine, Dr. Rothstein and Steven Rothstein. The purpose of this request is to determine the nature of the relationship between these individuals over various points in time. It is imperative that this information be discovered in order to be able to understand potential vicarious liability in the case as well as employment issues that can lead to *Responder Superior* liability. Moreover, even if there were some privilege that would apply to this, it clearly has been waived (1) by the legal malpractice lawsuit that has been filed by Riverview Health Institute against Steven Rothstein, (2) Steve Rothstein's affidavit testimony in the Clawson case, and (3) his identification as a witness in Dr. Rothstein's divorce case. The attorney privilege cannot apply during any time periods when Steven Rothstein was not retained as counsel for any of these

²² Entry of Judge Gorman attached as 20

individuals. The attorney/client privilege is limited to communication between an attorney and their “client” in that relationship. R.C. 2317.02.

Here the witnesses are trying to assert a completely overly broad assertion of attorney/client privilege. It simply is not that broad. Organizations employing in-house lawyers expect their lawyers to “know the business” of the organization. In many cases they expect their lawyers to participate in business decisions. Which hat, then, is the lawyer wearing during the conversation, and how does that affect the privilege? Comment *i* to § 73 of the RESTATEMENT provides:

- *Inside legal counsel and outside legal counsel.* The privilege . . . applies without distinction to lawyers who are inside legal counsel or outside legal counsel for an organization Communications *predominantly for a purpose other than obtaining or providing legal services* for the organization are *not* within the privilege

Cases cited in the Reporter’s Note to § 73, in which the privilege was either lost or jeopardized, because of the business role of in-house counsel are *Georgia-Pacific Corp. v. GAF Roofing Manufacturing Corp.*, 1996 U.S. Dist. LEXIS 671 (S.D.N.Y. Jan. 25, 1996), *In re Grand Jury Subpoena*, 561 F. Supp. 1247 (E.D.N.Y. 1982), and *United Jersey Bank v. Wolosoff*, 483 A.2d 821 (N.J. Super. Ct. App. Div. 1984).

In-house counsel may be involved in giving advice on many issues that are more business, rather than legal, in nature or may be involved in such discussions as a matter of course, conversations in which in-house counsel is a participant, as well as documents addressed to or from in-house counsel, that are of a business nature are not subject to privilege as it is the offering of business advice that is being given and not legal advice. *Epstein, The Attorney-Client Privilege and the Work Doctrine (4th ed.)*, Section of Litigation, American Bar Association.

In *Upjohn Company v. United States*, 101 S.Ct. 677, 449 U.S. 383, 66 L.Ed. 584 (1981), the United States Supreme Court decided that the attorney/client privilege protects communications between a corporation’s employees and the corporation’s lawyers *only when* all the following criteria are satisfied:

- Corporate employees must have made the communication to corporate counsel acting as such, for the purpose of providing legal advice to the corporation.

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- The substance of the communication must involve matters that fall within the scope of the corporate employee's official duties.
- The employees themselves must be sufficiently aware that their statements are being provided for the purpose of obtaining legal advice for the corporation.
- The communications also must be confidential when made and must be kept confidential by the company

Only if these criteria are satisfied, the attorney/client privilege will protect statements made by corporate employees to corporate attorneys. Thus, "if an in-house counsel has other non-legal responsibilities, **the party invoking the privilege has the burden of producing evidence in support of its contention** that in-house counsel was engaged in giving legal advice and not in some other capacity at the time of the disputed conversation." Harper and Row Publishers, Inc. v. Decker, 423 F.2d 487 (7TH Cir. 1970). The attorney/client privilege, although recognized, is **recognized to a very limited extent since it interferes with "the truth-seeking mission of the legal process," and conflicts with the predominant principle of utilizing all rational means for ascertaining truth.** Trammel v. United States, 445 U.S. 40, 100 S.Ct. 906 (1980); Hawkins v. Stables, 148 F.3d 379 (4th Cir. 1998); United States v. Tedder, 801 F.2d 1437, 1441 (4th Cir. 1986), cert. den., 480 U.S. 938, 107 S.Ct. 1585, 94 L. Ed.2d 775 (1987); U.S. v. Aramony, 88 F.3d 1369 (4th Cir. 1996). As such, it "is in derogation of the public's right to every man's evidence," and therefore, is not favored by courts and must be strictly confined within the narrowest possible limits consistent with the logic of its principle. Keeping in mind its very strict construction and narrow application, the party asserting the application of the attorney/client privilege to information, which it seeks to conceal, bears the burden of proving each and every element essential to its application. **a corporation cannot prevent a document or communication from disclosure if that document was prepared in the ordinary course of business, even if an attorney prepared it.** In re Hutchins, 211 B.R. 330 (Bkrcty. E.D.Ark. 1997), on reconsideration in part, 216 B.R. 11 (Bkrcty. E.D.Ark. 1997). Further, attorney/client privilege **only protects confidential communications by an employee to an attorney when it includes and/or seeks legal advice and opinions.** This privilege is not applied to factual information that is discovered and reported by an attorney. American Standard, Inc. v. Bendix Corp., 80 F.R.D. 706 (D.C. Mo. 1978). Stated simply, **merely because factual information is transmitted through an attorney does not mean that it takes on a confidential character.** Cuno, Inc. v. Pall Corp.,

121 F.R.D. 198 (E.D.N.Y 1998); Union Carbide Corp. v. Dow Chemical Co., 619 F. Supp. 1036, 1047(D.Del. 1985).

The elements essential to the application of the attorney/client privilege are:

- (1) the asserted holder of the privileges is or sought to become a client;
- (2) the communication is made to an attorney or his subordinate, in his professional capacity;
- (3) the communication is made outside the presence of strangers;
- (4) for the purpose of obtaining an opinion on the law or legal services; and
- (5) the privilege is not waived.

Here, the witnesses will not be able to meet any of the above elements. Plaintiffs are simply attempting to obtain information about the relationship between the individuals described in request s. It is a proper request and the object should be overruled.

B. DR. FALLANG OBJECTIONS

4. Any and All Requests for Documents Related to the Amount of Paid for Premiums for any Insurance Policy

The scope of this request goes directly to the Plaintiffs' belief that Defendants have not maintained medical negligence insurance. Moreover, they knowingly did not maintain it. Plaintiffs are entitled to know if Defendants had malpractice insurance. Proof that they paid for malpractice insurance is simply an element of Defendants obligation to show that they did in fact purchase insurance.

C. RIVERVIEW AND DAYTON LASER SPINE OBJECTIONS

5. Income Tax Returns or Financial Statements of Riverview Health Institute, LLC and Dayton Laser Spine.

Plaintiffs are trying to determine the nature of the relationship between all the defendants in the case. Plaintiffs are entitled to know see the income tax returns as well as financial statements of Riverview Health Institute in order to ascertain what resource they have

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to pay any potential judgment in this matter, as well as to see if they paid for insurance premiums.

III. CONCLUSION

Plaintiffs respectfully request that Defendants' objections be overruled and Defendants be compelled to comply and respond fully to the notice of depositions. Moreover, Plaintiffs request this Court require defendants to identify their 35(B) witness(s) at least 2 days in advance of the depositions.

Respectfully submitted:



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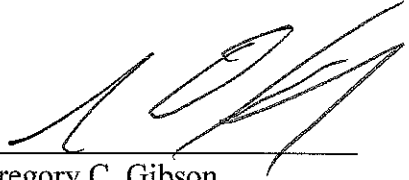
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent via facsimile this 22 day of June 2010 to:

Thomas J. Intili
SKILKEN, LOWE & DANKOF
40 North Main Street
1500 Kettering Tower
Dayton, OH 45423-1001
Attorney for St. Clair Insurance

Michael F. Lyon
LINDHORST & DREIDAME
312 Walnut Street, Suite 3100
Cincinnati, OH 45202-4048
Attorney for Defendant Lawrence B. Rothstein, M.D.

David S. Lockemeyer
CALDERHEAD, LOCKEMEYER & PESCHKE
5405 DuPont Circle, Suite E
Milford, OH 45150
Attorney for Defendant Riverview Health Institute, LLC



Gregory C. Gibson

SEP - 7 2001

**STEP I
CONSENT AGREEMENT
BETWEEN
LAWRENCE B. ROTHSTEIN, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

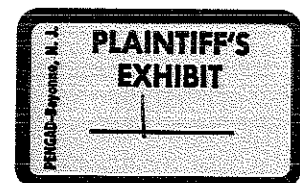
This CONSENT AGREEMENT is entered into by and between LAWRENCE B. ROTHSTEIN, M.D., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

LAWRENCE B. ROTHSTEIN, M.D. enters into this CONSENT AGREEMENT being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B)(26), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care or involving criminal acts, regardless of whether the acts underlying such additional violations are related to the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth below.



- C. LAWRENCE B. ROTHSTEIN, M.D., is licensed to practice medicine and surgery in the State of Ohio.
- D. LAWRENCE B. ROTHSTEIN, M.D., STATES that he is also licensed to practice medicine and surgery in the State(s) of N/A.
- E. LAWRENCE B. ROTHSTEIN, M.D., ADMITS that he has been diagnosed with substance abuse and that his drug of choice is cocaine. DOCTOR ROTHSTEIN further ADMITS that he participated in residential treatment for his substance abuse at Shepherd Hill Hospital, a Board approved treatment provider in Newark, Ohio, from May 22, 2001, to June 29, 2001, after having been arrested and charged by complaint with possession of drugs (cocaine).

DOCTOR ROTHSTEIN STATES that since his discharge from Shepherd Hill Hospital he has maintained compliance with his aftercare agreement with Shepherd Hill Hospital, including participating in Caduceus and aftercare meetings weekly, attending AA meetings three to four times weekly, and submitting to random urine drug screens weekly. DOCTOR ROTHSTEIN further STATES that he has entered into an advocacy agreement with the Ohio Physicians Effectiveness Program, and that he remains compliant with such agreement to date.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, LAWRENCE B. ROTHSTEIN, M.D., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The certificate of DOCTOR ROTHSTEIN to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than three (3) months;

Sobriety

2. DOCTOR ROTHSTEIN shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of DOCTOR ROTHSTEIN's history of chemical dependency;
3. DOCTOR ROTHSTEIN shall abstain completely from the use of alcohol;

Releases; Quarterly Declarations and Appearances

4. DOCTOR ROTHSTEIN shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for DOCTOR ROTHSTEIN's chemical dependency or related conditions, or for purposes of complying with the CONSENT AGREEMENT, whether such treatment or evaluation occurred before or after the effective date of this CONSENT AGREEMENT. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. DOCTOR ROTHSTEIN further agrees to provide the BOARD written consent permitting any treatment provider from whom he obtains treatment to notify the BOARD in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this CONSENT AGREEMENT.

5. DOCTOR ROTHSTEIN shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this CONSENT AGREEMENT. The first quarterly declaration must be received in the BOARD's offices on the first day of the third month following the month in which the CONSENT AGREEMENT becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;

6. DOCTOR ROTHSTEIN shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR ROTHSTEIN written notification of scheduled appearances, it is DOCTOR ROTHSTEIN's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the

end of the month in which the appearance should have occurred, DOCTOR ROTHSTEIN shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

Drug & Alcohol Screens; Supervising Physician

7. DOCTOR ROTHSTEIN shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR ROTHSTEIN shall ensure that all screening reports are forwarded directly to the BOARD on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the BOARD;

Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR ROTHSTEIN shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR ROTHSTEIN shall submit the required urine specimens. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR ROTHSTEIN. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR ROTHSTEIN shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in compliance with this CONSENT AGREEMENT, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his responsibilities;

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR ROTHSTEIN must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR ROTHSTEIN shall further ensure that the previously designated supervising physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore;

All screening reports and supervising physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR ROTHSTEIN's quarterly declaration. It is DOCTOR ROTHSTEIN's responsibility to ensure that reports are timely submitted;

CONDITIONS FOR REINSTATEMENT

8. The BOARD shall not consider reinstatement of DOCTOR ROTHSTEIN's certificate to practice medicine and surgery unless and until all of the following conditions are met:
- a. DOCTOR ROTHSTEIN shall submit an application for reinstatement, accompanied by appropriate fees, if any;
 - b. DOCTOR ROTHSTEIN shall demonstrate to the satisfaction of the BOARD that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that DOCTOR ROTHSTEIN has successfully completed any required inpatient treatment;
 - ii. Evidence of continuing full compliance with an aftercare contract or consent agreement;
 - iii. Two written reports indicating that DOCTOR ROTHSTEIN's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the BOARD for making such assessments and shall describe the basis for this determination.
 - c. DOCTOR ROTHSTEIN shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the BOARD or, if the BOARD and DOCTOR ROTHSTEIN are unable to agree on the terms of a written CONSENT AGREEMENT, then DOCTOR ROTHSTEIN further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of DOCTOR ROTHSTEIN's certificate to practice medicine and surgery in this state, the BOARD shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into

before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code and, upon termination of the consent agreement or Board Order, submission to the BOARD for at least two years of annual progress reports made under penalty of BOARD disciplinary action or criminal prosecution stating whether DOCTOR ROTHSTEIN has maintained sobriety.

9. In the event that DOCTOR ROTHSTEIN has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the BOARD may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of DOCTOR ROTHSTEIN's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

10. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR ROTHSTEIN shall provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. DOCTOR ROTHSTEIN further agrees to provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, DOCTOR ROTHSTEIN shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.
11. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR ROTHSTEIN shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR ROTHSTEIN shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

The above described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR ROTHSTEIN appears to have violated or breached any term or condition of this CONSENT AGREEMENT, the BOARD reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this CONSENT AGREEMENT.

ACKNOWLEDGMENTS/LIABILITY RELEASE

DOCTOR ROTHSTEIN acknowledges that he has had an opportunity to ask questions concerning the terms of this CONSENT AGREEMENT and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR ROTHSTEIN hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.

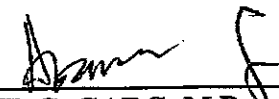
Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

EFFECTIVE DATE

It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below, or October 1, 2001, whichever is later.



LAWRENCE B. ROTHSTEIN, M.D.




ANAND G. GARG, M.D.
Secretary

9/6/01

DATE


09/12/01

DATE




R. William Meeks, Esq.
Attorney for Dr. Rothstein

Sept 6 2001
DATE



RAYMOND J. ALBERT
Supervising Member

9/14/01
DATE



REBECCA J. ALBERS, ESQ.
Assistant Attorney General

9/12/01
DATE

STEP II
CONSENT AGREEMENT
BETWEEN
LAWRENCE BRIAN ROTHSTEIN, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

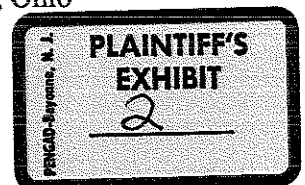
This Consent Agreement is entered into by and between Lawrence Brian Rothstein, M.D., and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Rothstein enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

1. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violations of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," and Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed."
2. Dr. Rothstein is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, License #35-057342, which was suspended pursuant to the terms of the Step I Consent Agreement Between Lawrence B. Rothstein, M.D., and The State Medical Board of Ohio that became effective on October 1, 2001, a copy of which is attached hereto and incorporated herein. Dr. Rothstein's certificate to practice medicine and surgery in the State of Ohio remains suspended to date.
3. Dr. Rothstein states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
4. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph E of the October 2001 Step I Consent Agreement, and Section 4731.22(B)(10), Ohio



Revised Code, to wit: Section 2925.11, Ohio Revised Code, Possession of Drugs (cocaine) as set forth in paragraph (9) below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violations of Section 4731.22(B)(26) or (B)(10), Ohio Revised Code, as were set forth in the October 2001 Step I Consent Agreement or are set forth in paragraph (9) below.

5. Dr. Rothstein admits that after entering treatment for cocaine abuse on May 22, 2001, at Shepherd Hill Hospital, a Board approved treatment provider in Newark, Ohio, he was discharged on June 29, 2001, treatment complete.
6. Dr. Rothstein states, and the State Medical Board of Ohio acknowledges receipt of information to support, that since being discharged from Shepherd Hill Hospital on June 29, 2001, he has remained compliant with his recovery plan and subsequent Aftercare Contract with his treatment provider, Shepherd Hill Hospital, including participating in Caduceus and aftercare meetings weekly, attending AA meetings three to four times weekly, and submitting to random urine screen weekly. In addition, Dr. Rothstein states that since his discharge from Shepherd Hill Hospital, Dr. Rothstein has remained fully compliant with the terms of the Advocacy Contract, which he entered with the Ohio Physicians Effectiveness Program. Dr. Rothstein admits that such contracts remain in effect.
7. Dr. Rothstein states, and the Board acknowledges, that Richard N. Whitney, M.D., of Shepherd Hill Hospital, a Board approved treatment provider in Newark, Ohio, and Edna Marie Jones, M.D., of Parkside Behavioral Health Care, a Board approved treatment provider in Gahanna, Ohio, have provided written reports indicating that Dr. Rothstein's ability to practice has been assessed and that he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place, including the condition that Dr. Rothstein continue treatment for depression.
8. Dr. Rothstein states, and the State Medical Board of Ohio acknowledges, that Dr. Rothstein has fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the aforementioned October 2001 Step I Consent Agreement Between Lawrence B. Rothstein, M.D. and The State Medical Board of Ohio.
9. Dr. Rothstein admits that, on or about March 18, 2001, in Gahanna, Ohio, he had cocaine within his possession, which he was not legally authorized to possess pursuant to 2925.11(B), and that such cocaine was discovered during a police search of an

automobile in which Dr. Rothstein was riding as a passenger. Dr. Rothstein admits that he was arrested and charged by complaint with felony possession of cocaine, and that final disposition of these criminal charges remains pending at this time.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Rothstein to practice medicine and surgery in the State of Ohio shall be reinstated, and Dr. Rothstein knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Rothstein to practice medicine and surgery in the State of Ohio shall remain **SUSPENDED** until April 1, 2002.

INTERIM MONITORING

2. During the period that Dr. Rothstein's certificate to practice medicine and surgery in the State of Ohio is suspended, Dr. Rothstein shall comply with the following terms, conditions and limitations:
 - a. Dr. Rothstein shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Rothstein shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his October 2001 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 - c. Dr. Rothstein shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his next appearance would have been scheduled pursuant to his October 2001 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

MONITORING OF REHABILITATION AND TREATMENT

Sobriety

- d. Dr. Rothstein shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to he/her by another so authorized by law who has full knowledge of Dr. Rothstein's history of chemical dependency.
- e. Dr. Rothstein shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Supervising Physician

- f. Dr. Rothstein shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Rothstein shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Consent Agreement, Dr. Rothstein shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Rothstein shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Rothstein. Dr. Rothstein and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Rothstein shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Rothstein must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Rothstein shall further ensure that the previously

designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Rothstein's quarterly declaration. It is Dr. Rothstein's responsibility to ensure that reports are timely submitted.

- g. The Board retains the right to require, and Dr. Rothstein agrees to submit, blood or urine specimens for analysis at Dr. Rothstein's expense upon the Board's request and without prior notice. Dr. Rothstein's refusal to submit a blood or urine specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

Management of Depression

- h. Within thirty (30) days of the effective date of this Consent Agreement, Dr. Rothstein shall submit to the Board for its prior approval the name and qualifications of a physician and/or psychologist of his choice for management of his depression. Upon approval by the Board, Dr. Rothstein shall undergo and continue treatment monthly or as otherwise directed by the Board. Dr. Rothstein shall comply with his depression management treatment plan, including taking medications as prescribed and/or ordered for his depression. Dr. Rothstein shall ensure that reports are forwarded by his physician and/or psychologist to the Board on a quarterly basis, or as otherwise directed by the Board. These reports shall contain information describing Dr. Rothstein's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Rothstein's compliance with his treatment plan; Dr. Rothstein's mental status; Dr. Rothstein's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Rothstein shall ensure that his physician and/or psychologist immediately notifies the Board of his failure to comply with his treatment plan and/or any determination that Dr. Rothstein is unable to practice due to his depression or any other psychiatric disorder. It is Dr. Rothstein's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Rothstein's quarterly declaration.

Rehabilitation Program

- i. Within thirty days of the effective date of this Consent Agreement, Dr. Rothstein shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Rothstein shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Rothstein's quarterly declarations.

Aftercare/Physician Health Program

- j. Dr. Rothstein shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider and with the advocacy contract entered into with the Ohio Physicians Effectiveness Program, or, if approved in advance by the Board, another physician health program, provided that, where terms of the aftercare contract or advocacy contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Releases

- k. Dr. Rothstein shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

Required Reporting by Licensee

- l. Within thirty days of the effective date of this Consent Agreement, Dr. Rothstein shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Rothstein shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- m. Within thirty days of the effective date of this Consent Agreement, Dr. Rothstein shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Rothstein further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Rothstein shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

PROBATIONARY TERMS

3. Upon reinstatement, Dr. Rothstein's certificate to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions and limitations for a minimum of five (5) years:
 - a. Dr. Rothstein shall continue to be subject to the terms, conditions and limitations specified in sub-paragraphs (a) through (m) of paragraph (2) of this Consent Agreement.
 - b. In the event that Dr. Rothstein should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Rothstein must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under this Consent Agreement, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
 - c. In the event Dr. Rothstein is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

Monitoring Physician

- d. Before engaging in any medical practice, Dr. Rothstein shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Rothstein and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Rothstein and his medical practice, and shall review Dr. Rothstein's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Rothstein and his medical practice, and on the review of Dr. Rothstein's patient charts. Dr. Rothstein shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Rothstein's quarterly declaration.

In the event that the designated monitoring physician becomes unable or

unwilling to serve in this capacity, Dr. Rothstein must immediately so notify the Board in writing. In addition, Dr. Rothstein shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Rothstein shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

Drug Associated Restrictions

- e. Dr. Rothstein shall keep a log of all Ultram and controlled substances purchased, prescribed, personally furnished, administered, or ordered, including all samples of Ultram and controlled substances. Such log shall be submitted, in the format approved by the Board, thirty days prior to Dr. Rothstein's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Rothstein shall make his patient records with regard to such prescribing, personally furnishing, and administering available for review by an agent of the Board upon request.

If Dr. Rothstein administers any controlled substances, he shall have the disposal of any waste controlled substances witnessed and reflected in the log referred to above.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Rothstein appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Rothstein has violated any term, condition or limitation of this Consent Agreement, Dr. Rothstein agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

Dr. Rothstein shall not request termination of this Consent Agreement for a minimum of five years following reinstatement of Dr. Rothstein's certificate to practice medicine and surgery. In addition, Dr. Rothstein shall not request modification to the probationary terms, limitations, and

conditions contained herein for at least one year. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Rothstein acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.


Dr. Rothstein hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Rothstein agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

EFFECTIVE DATE


It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



LAWRENCE B. ROTHSTEIN, M.D.


ANAND G. GARG, M.D.
Secretary

2-7-2002
DATE


2/13/02
DATE


R. WILLIAM MEEKS, ESQ.
Attorney for Dr. Rothstein



RAYMOND J. ALBERT
Supervising Member

2-7-2002
DATE

2/13/02
DATE



REBECCA J. ALBERS, ESQ.
Assistant Attorney General



DATE

Ohio Statutes

Title 47. OCCUPATIONS - PROFESSIONS

Chapter 4731. PHYSICIANS; LIMITED PRACTITIONERS

Current through legislation filed and passed through 4/6/2010

§ 4731.143. Notice of lack of coverage of medical malpractice insurance

(A) Each person holding a valid certificate under this chapter authorizing the certificate holder to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, who is not covered by medical malpractice insurance shall provide a patient with written notice of the certificate holder's lack of that insurance coverage prior to providing nonemergency professional services to the patient. The notice shall be provided alone on its own page. The notice shall provide space for the patient to acknowledge receipt of the notice, and shall be in the following form:

"N O T I C E: Dr. (here state the full name of the certificate holder) is not covered by medical malpractice insurance. The undersigned acknowledges the receipt of this notice.

.....
(Patient's Signature)

.....
(Date)" The certificate holder shall obtain the patient's signature, acknowledging the patient's receipt of the notice, prior to providing nonemergency professional services to the patient. The certificate holder shall maintain the signed notice in the patient's file.

(B) This section does not apply to any officer or employee of the state, as those terms are defined in section 9.85 of the Revised Code, who is immune from civil liability under section 9.86 of the Revised Code or is entitled to indemnification pursuant to section 9.87 of the Revised Code, to the extent that the person is acting within the scope of the person's employment or official responsibilities. This section does not apply to a person who complies with division (B)(2) of section 2305.234 of the Revised Code.

(C) As used in this section, "medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death,

disease, or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed physician, podiatrist, or hospital, as those terms are defined in section 2305.113 of the Revised Code.

History. Effective Date: 04-10-2001; 12-30-2004; 06-27-2005



1 company?

2 A. No.

3 Q. No?

4 MR. ROTHSTEIN: I'm going to object
5 to this line of questioning. It has nothing to do
6 with the issues in this case.

7 BY MR. GIBSON:

8 Q. Back in 2008 -- or seven when you did
9 these procedures, you were an employee of whom?
10 Riverview?

11 A. I believe Riverview. We've had lots
12 of changes of the exact structure of my employee
13 relationship; but suffice it to say, in some form
14 I was an employee of Riverview.

15 Q. And you were insured under their
16 policy?

17 MR. ROTHSTEIN: Again, I hate to keep
18 interrupting, but let the record show that nowhere
19 in the doctor's CV did he go to law school and
20 he's answering these questions to the best of his
21 understanding of the terms which may be layman's
22 understanding of the terms, and I want a
23 continuing objection to this line of questioning.
24 Go ahead.

25 MR. GIBSON: Maybe we can put this on

1 the record. Are you going to be raising any -- so
2 I don't need to go into this -- any allegation
3 that he was not an insured under the policy issued
4 by Lexington Insurance Company through which you
5 have told me you're defending him?

6 MR. ROTHSTEIN: I don't think I ever
7 told you I was defending him under that policy.

8 MR. GIBSON: Well, you provided me
9 with the policy naming -- in which you said that
10 he was insured in answers to interrogatories.

11 MR. ROTHSTEIN: In January of '08 or
12 in August of '07?

13 MR. GIBSON: Right.

14 MR. ROTHSTEIN: Which?

15 MR. GIBSON: Both.

16 MR. ROTHSTEIN: He is insured under a
17 policy. I don't, as I sit here today, know what
18 the actual inception dates of that policy are.

19 MR. GIBSON: Okay.

20 MR. ROTHSTEIN: Is and was insured
21 under that policy, but I don't know what the
22 inception dates are.

23 MR. GIBSON: Okay. You've given
24 me -- off the record.

25 (Thereupon, an off-the-record

or bond, pursuant to which any corporation or person is or may be liable to satisfy or indemnify part or all of any judgment which may be entered against you in this action?

ANSWER: Yes.

3. If the answer to the preceding question is in the affirmative, for each such policy state:

(a) The name of the company or companies issuing such policy;

ANSWER: St. Clair Insurance.

(b) The name, type and number of such policy;

ANSWER: This defendant has never had a copy of the policy, only a "Certificate of Professional Medical Malpractice Insurance" which lists a policy number of ANG0710001. Recently a copy of a policy was produced by Riverview Health Institute which lists a policy number of ANG081008.

(c) The name or names of each insured under such policy;

ANSWER: Unknown other than this answering defendant was an insured.

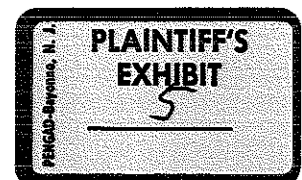
(d) The limits of liability of such policy. Please state both limits for individual claims and aggregate limits;

ANSWER: As stated on the Certificate, \$1,000,000 per occurrence / \$2,000,000 aggregate.

(e) The name, address and employer of the present custodian of such policy.

ANSWER: Unknown.

4. Please attach a copy of each such policy.



ANG C 001 TSA-07

CERTIFICATE OF PROFESSIONAL MEDICAL MALPRACTICE INSURANCE

This certificate is issued for informational purposes only. It certifies that the policies listed in this document have been issued to the Named Insured. It does not grant any rights to any party nor can it be used, in any way, to modify coverage provided by such policies. Alteration of this certificate does not change the terms, exclusions or conditions of such policies. Coverage is subject to the provisions of the policies, including any exclusions or conditions, regardless of the provisions of any other contract, such as between the certificate holder and the Named Insured. The limits shown below are the limits provided at the policy inception. Subsequent paid claims may reduce these limits.

Issuing Office: St. Clair Insurance, Inc. 1535 N Greenfield Rd., Ste 127 Mesa, AZ 85205	Named Insured: Riverview Health Institute One Elizabeth Place Dayton, OH 45408
--	---

Policy Number: ANG 0710001	
Type of Coverage:	<input type="checkbox"/> Occurrence <input checked="" type="checkbox"/> Claims-made Retroactive Date (if claims-made): May 30, 2003
Policy Effective Date: _____ Policy Expiration Date: _____	
Limits of Insurance:	\$ 1,000,000 Professional Medical Malpractice Liability Each Occurrence
	\$ 2,000,000 Professional Medical Malpractice Liability Aggregate
	\$ Incl. Good Samaritan Liability
	\$ Incl. Personal Injury
	\$ Incl. Malplacement Liability
	\$ Incl. Workplace Liability
\$ Incl. Fire & Water Legal Liability	
General Aggregate Limit applies per: <input checked="" type="checkbox"/> Policy <input type="checkbox"/> Project <input type="checkbox"/> Location	

Additional Insured Status			
<input type="checkbox"/> General Liability	<input type="checkbox"/> Automobile Liability	<input type="checkbox"/> Umbrella Liability	<input type="checkbox"/> Professional Liability
THIS CERTIFICATE DOES NOT GRANT ANY COVERAGE OR RIGHTS TO THE CERTIFICATE HOLDER. (IF THIS CERTIFICATE INDICATES THAT THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED, THE POLICY(IES) MUST EITHER BE ENDORSED OR CONTAIN SPECIFIC LANGUAGE PROVIDING THE CERTIFICATE HOLDER WITH ADDITIONAL INSURED STATUS. THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED ONLY TO THE EXTENT INDICATED IN SUCH POLICY LANGUAGE OR ENDORSEMENT.			

Cancellation
In the event of cancellation of any policy described above, the insurer will attempt to mail <u>10</u> days written notice to the certificate holder prior to the effective date of cancellation. However, failure to do so will not impose any duty or liability upon the insurer, its agents or representatives, nor will it delay cancellation.

Certificate Holder: Larry Rothstein One Elizabeth Place, Dayton, OH 45408	
Authorized Representative: <i>[Signature]</i>	Date: 11/26/2007



Steven M. Rothstein

From: Merilee Fuller [Merilee@tribecapartners.net]
Sent: Tuesday, November 04, 2008 3:48 PM
To: Steven M. Rothstein
Subject: Med Mal Coverage

Mr. Rothstein,

When we spoke this morning, I indicated to you that I would be able to release to you an updated coverage letter showing that both Dr. Scheibler and Dr. Rothstein are covered under the Med Mal coverage purchased by Riverview Health Institute. Unfortunately, I will be unable to provide an official Certificate of Insurance to you today. My underwriter has to approve all forms prior to their release; and, as Dr. Fallang has recently increased the limits of liability attached to this policy, we need Underwriting's approval prior to releasing the Certificates. And, as luck would have it, Underwriting has several meetings scheduled today that have precluded their ability to finalize the Certificates today. We expect to be able to release the updated Certificates tomorrow, but no later than Friday of this week.

What I can confirm for you now is that Certificates of Insurance will be issued to cover both Dr. Scheibler and Dr. Rothstein. As discussed, they had been erroneously omitted from the first listing of covered individuals we received. Once the new Certificates are approved by Underwriting, we will begin the process to ensure that all current Certificate holders receive updated forms. We hope to have that process completed by Thanksgiving.

If you have any further questions, comments or concerns, please do not hesitate to contact me.

Regards,

Merilee K. Fuller
Captive Manager



Tribeca Strategic Advisors, LLC
1635 N. Greenfield Rd., Suite 115
Mesa, Arizona 85205

Phone: 480.654.2400 x334
Fax: 480.248.6444
Email: merilee@tribecapartners.net
Website: www.captiveadvisors.com

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IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

MICHAEL CLAWSON, *et al.*, : CASE NO. 2007 CV 10081
: JUDGMENT LIEN NO. 2009 CJ 171642
Plaintiffs, :
: JUDGE TIMOTHY O'CONNELL
vs. :
: **AFFIDAVIT OF LAWRENCE**
: **ROTHSTEIN IN SUPPORT OF REPLY**
LAWRENCE ROTHSTEIN, *et al.*, : **TO MOTION TO QUASH**
:
Defendants. :

STATE OF OHIO)
)
COUNTY OF HAMILTON)

I, Lawrence Rothstein, being first duly sworn and cautioned, depose and state upon personal knowledge as follows:

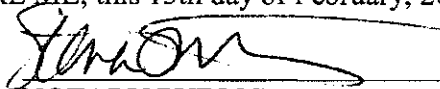
1. Since approximately July 2007, I have entrusted my financial affairs to my brother, Steven M. Rothstein.
2. I have little to no knowledge of the Maplefive Trust, how it was created, or how it is currently operated.
3. At the time of Ms. Clawson's injury, I was covered by insurance paid for and managed by Riverview Health Institute, LLC ("Riverview Health").
4. At the time of Ms. Clawson's claim, I learned for the first time that Riverview Health had not maintained my malpractice insurance for prior injuries.
5. I was under the mistaken belief that I was covered by insurance at the time Ms. Clawson filed her claim.
6. In July 2007 I was unaware that Ms. Clawson would file a medical malpractice claim against me.



FURTHER AFFIANT SAYETH NAUGHT.


Lawrence Rothstein

SWORN TO AND SUBSCRIBED BEFORE ME, this 15th day of February, 2010.


NOTARY PUBLIC

My Commission Expires:

N/A

STEVEN M. ROTHSTEIN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date. Section 247.02 O.R.C.

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Affidavit of Lawrence Rothstein was served on ~~February~~ ^{March} 10, 2010 via electronic and ordinary U.S. mail to the following:

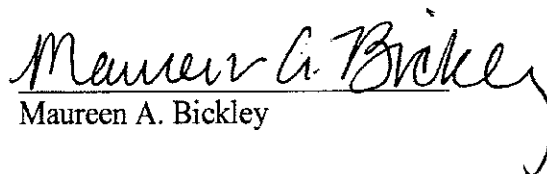
James M. Kelley, III
Phillip A. Kuri
Elk & Elk, Ltd.
6105 Parkland Boulevard
Mayfield Heights, OH 44124

David F. Proano
Baker & Hostetler LLP
3200 National City Center
1900 East 9th Street
Cleveland, OH 44114

Attorneys for Plaintiff

Michael F. Lyon, Esq.
James A. Tomaszewski Jr., Esq.
LINDHORST & DREIDAME CO., L.P.A.
312 Walnut Street, Suite 3100
Cincinnati, OH 45202

Trial Attorneys for Defendant


Maureen A. Bickley

3. State the name, address and title of the person or persons who answered or assisted in answering these Interrogatories.

ANSWER: Dr. David Fallang, CEO of Riverview Health Institute, LLC, One Elizabeth Place, Dayton, Ohio 45408 with assistance from counsel.

4. Is this Defendant's name correctly stated in the Compliant on file in this case? If not, state the correct way this Defendant should be designated as a party Defendant in an action of law at the time of the occurrence made the basis of this suit and at the time these Interrogatories are answered.

ANSWER: Defendants are named correctly.

5. Is there, or was there at any time, in effect any policy or policies of insurance, malpractice or any other type of liability, indemnity, or financial responsibility insurance or bond, pursuant to which any corporation or person is or may be liable to satisfy or indemnify part or all of any judgment which may be entered against you in this action?

ANSWER: Yes. There was a policy in effect at the time however there is no coverage available for this case under the former policy.

6. If the answer to the preceding question is in the affirmative, for each such policy state:

- (a) The name of the company or companies issuing such policy;
- (b) The name, type and number of such policy;
- (c) The name or names of each insured under such policy;
- (d) The limits of liability of such policy;
- (e) The name, address and employer of the present custodian of such policy.

ANSWER: Objection. The information sought by this interrogatory is irrelevant to the issues of the case at hand and not calculated to lead to discovery of admissible evidence. A copy of the policy is attached and is self-explanatory and responsive to (a) - (e).

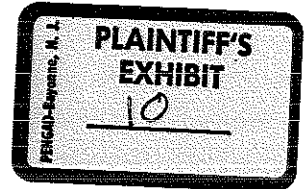


David S. Lockemeyer



ANG MP 39 00 08

MEDICAL PROFESSIONAL LIABILITY COVERAGE FORM



IMPORTANT NOTICE

THIS POLICY IS ISSUED BY AN INSURANCE COMPANY THAT IS NOT LICENSED BY NOR SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR THIS POLICY.

THE LIMITS OF INSURANCE PROVIDED BY THIS POLICY ARE INCLUSIVE OF COVERED LEGAL AND LOSS ADJUSTMENT EXPENSES YOU PAY. RECOVERIES UNDER THIS POLICY ARE LIMITED TO THE AGGREGATE LIMIT SHOWN ON THE POLICY DECLARATIONS.

THIS POLICY IS A REIMBURSEMENT POLICY. WE HAVE NO DUTY TO DEFEND YOU. YOU ARE REQUIRED TO DEFEND YOURSELF. WE WILL ONLY REIMBURSE YOU FOR COVERED PAYMENTS, LEGAL AND LOSS ADJUSTMENT EXPENSES, AND OTHER COVERED COSTS ACTUALLY PAID BY YOU AND APPROVED IN WRITING BY THE PRIMARY NAMED INSURED.

THE INSURANCE AFFORDED BY THIS POLICY IS CLAIMS MADE COVERAGE. THIS POLICY, SUBJECT TO ITS TERMS AND CONDITIONS, APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "Insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VII – Definitions.

SECTION I – Insuring Agreement

A. Coverage

1. We will reimburse the Insured for those sums that the Insured has paid as damages because of injury to which this insurance applies. We will have no duty to defend the Insured against any "suit" seeking those damages.
 - a. The amount we will reimburse the Insured for damages is limited as described in Section IV – Limits Of Insurance.

- b. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for in the terms and conditions of this policy.
- 2. This insurance applies to injury only if:
 - a. The injury is caused by a "Medical Professional Incident" that takes place in the "Coverage territory";
 - b. The "Medical Professional Incident" did not occur before the Retroactive Date shown in the Declarations or after the end of the policy period; and
 - c. A "claim" for damages, with respect to the injury, is first made, in accordance with Paragraph d. below, during the policy period or an Extended Reporting Period we provide in accordance with Section VI – Extended Reporting Period.
 - d. A "claim" shall be considered to be first made at the earlier of the following:
 - (1) When notice of a "Medical Professional Incident" is received by the Insured and reported to us in writing; or
 - (2) When a "claim" is made directly to us in writing. A report of a "Professional Medical Incident" received by the Insured during the policy period and reported to us within 30 days after the end of the policy period will be considered to have been reported within the policy period.
 - e. All "claims" out of the same "Medical Professional Incident" will be deemed to have been made at the time the first of those "claims" is made.

SECTION II – Who is An Insured

- A. If you are designated in the Declarations as:
 - 1. An individual, you and your spouse are Insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - 2. A partnership, you are an Insured. Your partners and their spouses are also Insureds, but only with respect to that partner's liability as such.
 - 3. A limited liability company, you are an Insured. Your members are also Insureds, but only with respect to the conduct of your business. Your managers and "employees" are Insureds, but only for acts or omissions within the scope of their employment.
 - 4. An organization other than a partnership, you are an Insured. Your "executive officers", directors, trustees and governors are Insureds, but only with respect to their duties as your officers, directors, trustees or governors. Your stockholders are also Insureds, but only with respect to their liability as stockholders.
- B. Your "employees" are also Insureds, but only for acts or omissions within the scope of their employment by you or while performing duties related to the conduct of your business.
- C. If an Insured dies or is adjudged incompetent, this insurance will terminate for that Insured. But the Insured's legal representative will be an Insured for any "Medical Professional Incident" previously committed and covered by this policy.

No person or organization is an Insured with respect to the conduct of any current or past partnership or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – Exclusions

- A. This insurance does not apply to any injury based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - 1. Any actual or alleged Wrongful Act by any of the Insured's Directors or Officers in the discharge of their duties as such. For purposes of this Exclusion "Wrongful Act" shall mean any actual or alleged misstatement, misleading statement, act, error, or omission;

2. The rendering of or failure to render "Medical Professional Services" by any person other than an Insured. However this exclusion shall not apply to the Insured's vicarious liability with regard to such "Medical Professional Services";
3. Any "Medical Professional Incident" taking place prior to the Retroactive Date shown on the Declarations.
4. Any willful misconduct or dishonest, fraudulent, or malicious act, error, or omission by any Insured; any willful violation by any Insured of any law, statute, ordinance, rule or regulation; any Insured gaining any profit, remuneration, or advantage to which such Insured was not legally entitled; or any alleged criminal conduct by an Insured. For purposes of this Exclusion no act, error, or omission of any Insured shall be imputed to any other Insured;
5. Any acts, errors, omissions, "Medical Professional Incidents", facts, matters, events, "suits", or demands notified or reported to, or in accordance with, any policy of insurance or policy or program of self-insurance in effect prior to the inception date of this policy;
6. Any acts, errors, omissions, or "Medical Professional Incidents" taking place prior to the earlier of:
 - a. The inception date of this policy; or
 - b. The inception date of the first policy issued by us to the Insured, of which this policy is a renewal.
 - c. If any Insured on or before such date knew or reasonably could have foreseen that such act, error, or omission or "Medical Professional Incident" might result in a "claim".
7. Any actual or alleged sexual misconduct or sexual abuse, including but not limited to, any physical acts or oral statements of a sexually suggestive manor, or any unwelcome physical contact or touching;
8. Any actual or alleged liability of on Insured under any workers compensation, unemployment compensation, disability benefits or similar law or regulation;
9. Any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA), or any similar federal, state, or local law or regulation, except to the extent such violation arises out of any Insured's rendering of or failing to render "Medical Professional Services";
10. "Employment Practices";
11. Any "Medical Professional Incident" arising from any "Medical Professional Service":
 - a. That takes place while any Insured's professional license is under suspension or has been revoked, surrendered, or has otherwise terminated or is not in effect; or
 - b. That is not allowable pursuant to any probation or restriction of any Insured's professional license or any Insured's license or registration to dispense or prescribe controlled substances.
12. Any "Medical Professional Service" rendered while the Insured is under the influence of any type of alcohol, narcotic, hallucinogenic agent or any other type of intoxicant.
13. Any change in specialty.
14. Any actual or alleged discrimination of any kind by any Insured.
15. Any "claim" for:
 - a. Misuse or improper release of confidential, private, or proprietary information;
 - b. Any actual, alleged act, error, or omission in violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
 - c. Any "Medical Professional Incident" arising out of or involving the improper alteration or modification of medical records by an Insured or any person for whose acts the Insured is legally responsible.

SECTION IV – Limits Of Insurance

- A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
- a. Insureds;
 - b. "Claims" made.
- B. The Aggregate Limit is the most we will pay for the sum of all damages because of injury.
- C. Subject to the Aggregate Limit, the Each "Medical Professional Incident Limit" shown in the Declarations is the most we will pay for all damages because of all injury arising out of any one "Medical Professional Incident".
- All related "Medical Professional Incidents" arising out of the providing of professional health care services to any one person shall be considered one "Medical Professional Incident".

The limits of this Coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION V – Conditions

- A. Bankruptcy
Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve us of our obligations under this Coverage.
- B. Duties In The Event Of A Medical Incident
1. You must see to it that we are notified as soon as practicable of a circumstance which may result in a "claim". To the extent possible, notice should include:
 - a. Specific circumstances surrounding the "Medical Professional Incident";
 - b. The names and addresses of any injured persons and witnesses; and
 - c. The nature and location of any injury arising out of the "Medical Professional Incident".
 2. If notice of a "Medical Professional Incident" is received by any Insured, you must:
 - a. Immediately record the specifics of the "Medical Professional Incident" and the date received; and
 - b. Notify us as soon as practicable.
You must see to it that we receive written notice of the "Medical Professional Incident" as soon as practicable.
- C. Legal Action Against Us
No person or organization has a right under this Policy:
1. To join us as a party or otherwise bring us into a "suit" asking for damages from an Insured; or
 2. To sue us on this Policy unless all of its terms have been fully complied with.
- We will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance.
- D. Other Insurance
If other valid and collectible insurance is available to the Insured for a loss we cover under this Policy, our obligations are limited as follows:
1. Primary Insurance
This insurance is primary except when Paragraph 2. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph 3. below.
 2. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown in the Declarations of this insurance and applies to injury on other than a "claims"-made basis, if:

- a. No Retroactive Date is shown in the Declarations of this insurance; or
- b. The other insurance has a policy period which continues after the Retroactive Date shown in the Declarations of this insurance.

When this insurance is excess over other insurance, we will pay, up to the applicable limits of insurance, the amount of the loss that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of this insurance.

If other insurance is also excess, we will share the remaining loss with that other insurance.

3. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

E. Representations

By accepting this policy, you agree:

1. The statements in the Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this policy in reliance upon your representations.

F. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Policy to the first Named Insured, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each Insured.

SECTION VI – Extended Reporting Period

- A. The Extended Reporting Period starts with the end of the policy period. It does not extend the policy period or change the scope of coverage provided. It applies only to injury caused by a "Medical Professional Incident" which occurred after the Retroactive Date shown in the Declarations and before the end of the policy period provided a "claim" for such injury is first made during the Extended Reporting Period.
- B. The insurance provided under the Extended Reporting Period Endorsement will be excess over any other valid and collectible insurance available to the Insured, whether primary, excess, contingent or on any other basis, whose policy period begins or continues after the endorsement takes effect. Other insurance of Section V – Conditions will be amended accordingly by the Extended Reporting Period Endorsement.

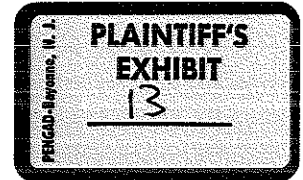
SECTION VII – Definitions

- A. "Claim(s)" means a written request for us to reimburse you for cost and expenses you have paid as a result of an injury or alleged injury to which this insurance applies.
- B. "Coverage territory" means the United States of America including its territories and possessions, Puerto Rico and Canada.
- C. "Employee" includes a "leased worker". "Employee" does not include "temporary worker".
- D. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
- E. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- F. "Medical Professional Incident" means:
 - 1. An actual or alleged act, error or omission in the Insured's rendering of or failure to render "Medical Professional Services";
 - 2. An actual or alleged act, error or omission in connection with the Insured's activities as a member of a duly authorized board or committee of the Insured, or as a member of any committee of the medical or professional staff of the Insured when engaged in peer review;
 - 3. An actual or alleged act, error or omission in connection with the Insured's activities as a member of an accreditation, standards review or similar board or committee;
 - 4. Any actual or alleged act, error or omission in connection with the Insured's performance of quality assurance activities, or
 - 5. Any actual or alleged act, error or omission in connection with Good Samaritan Acts.
- G. "Medical Professional Services" means services performed by an Insured in the treatment or care of any person, (including medical, dental, nursing, psychiatric, osteopathic, or chiropractic services; the furnishing or dispensing of medications, drugs, or medical or surgical supplies, equipment or appliances in connection with such treatment or care; and the providing of counseling or social services in connection with such services or care.
- H. "Suit" means a civil proceeding in which damages because of injury to which this insurance applies are alleged against and Insured.
- I. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- J. "Employment Practices" means any actual or alleged breach of an employment contract; failure or refusal to hire, employ or promote a person; demotion or discharge of a person; employment-related defamation or humiliation; discipline or evaluation of an "Employee"; discrimination, harassment, segregation, limitation or classification of persons in any way that tends to deprive any person of employment opportunities or otherwise adversely affect his/her status as an "Employee", because of his/her race, age, sex, national origin, marital status, physical or mental handicap, pregnancy, religion, sexual orientation.

ANG MP 39 00 09

MEDICAL PROFESSIONAL LIABILITY COVERAGE FORM

IMPORTANT NOTICE



THIS POLICY IS ISSUED BY AN INSURANCE COMPANY THAT IS NOT LICENSED BY NOR SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR THIS POLICY.

THE LIMITS OF INSURANCE PROVIDED BY THIS POLICY ARE INCLUSIVE OF COVERED LEGAL AND LOSS ADJUSTMENT EXPENSES YOU PAY. RECOVERIES UNDER THIS POLICY ARE LIMITED TO THE AGGREGATE LIMIT SHOWN ON THE POLICY DECLARATIONS.

THIS POLICY IS A REIMBURSEMENT POLICY. WE HAVE NO DUTY TO DEFEND YOU. YOU ARE REQUIRED TO DEFEND YOURSELF. WE WILL ONLY REIMBURSE YOU FOR COVERED PAYMENTS, LEGAL AND LOSS ADJUSTMENT EXPENSES, AND OTHER COVERED COSTS ACTUALLY PAID BY YOU AND APPROVED IN WRITING BY THE PRIMARY NAMED INSURED.

THE INSURANCE AFFORDED BY THIS POLICY IS CLAIMS MADE COVERAGE. THIS POLICY, SUBJECT TO ITS TERMS AND CONDITIONS, APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "Insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VII – Definitions.

SECTION I – Insuring Agreement

A. Coverage

1. We will reimburse the Insured for those sums that the Insured has paid as damages because of injury to which this insurance applies. We will have no duty to defend the Insured against any "suit" seeking those damages.
 - a. The amount we will reimburse the Insured for damages is limited as described in Section IV – Limits Of Insurance.

- b. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for in the terms and conditions of this policy.
- 2. This insurance applies to injury only if:
 - a. The injury is caused by a "Medical Professional Incident" that takes place in the "Coverage territory";
 - b. The "Medical Professional Incident" did not occur before the Retroactive Date shown in the Declarations or after the end of the policy period; and
 - c. A "claim" for damages, with respect to the injury, is first made, in accordance with Paragraph d. below, during the policy period or an Extended Reporting Period we provide in accordance with Section VI – Extended Reporting Period.
 - d. A "claim" shall be considered to be first made at the earlier of the following:
 - (1) When notice of a "Medical Professional Incident" is received by the Insured and reported to us in writing; or
 - (2) When a "claim" is made directly to us in writing. A report of a "Professional Medical Incident" received by the Insured during the policy period and reported to us within 30 days after the end of the policy period will be considered to have been reported within the policy period.
 - e. All "claims" out of the same "Medical Professional Incident" will be deemed to have been made at the time the first of those "claims" is made.

SECTION II – Who Is An Insured

- A. If you are designated in the Declarations as:
 - 1. An individual, you and your spouse are Insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - 2. A partnership, you are an Insured. Your partners and their spouses are also Insureds, but only with respect to that partner's liability as such.
 - 3. A limited liability company, you are an Insured. Your members are also Insureds, but only with respect to the conduct of your business. Your managers and "employees" are Insureds, but only for acts or omissions within the scope of their employment.
 - 4. An organization other than a partnership, you are an Insured. Your "executive officers", directors, trustees and governors are Insureds, but only with respect to their duties as your officers, directors, trustees or governors. Your stockholders are also Insureds, but only with respect to their liability as stockholders.
 - B. Your "employees" are also Insureds, but only for acts or omissions within the scope of their employment by you or while performing duties related to the conduct of your business.
 - C. If an Insured dies or is adjudged incompetent, this insurance will terminate for that Insured. But the Insured's legal representative will be an Insured for any "Medical Professional Incident" previously committed and covered by this policy.
- No person or organization is an Insured with respect to the conduct of any current or past partnership or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – Exclusions

- A. This insurance does not apply to any injury based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - 1. Any actual or alleged Wrongful Act by any of the Insured's Directors or Officers in the discharge of their duties as such. For purposes of this Exclusion "Wrongful Act" shall mean any actual or alleged misstatement, misleading statement, act, error, or omission;

2. The rendering of or failure to render "Medical Professional Services" by any person other than an Insured. However this exclusion shall not apply to the Insured's vicarious liability with regard to such "Medical Professional Services";
3. Any "Medical Professional Incident" taking place prior to the Retroactive Date shown on the Declarations.
4. Any willful misconduct or dishonest, fraudulent, or malicious act, error, or omission by any insured; any willful violation by any insured of any law, statute, ordinance, rule or regulation; any insured gaining any profit, remuneration, or advantage to which such Insured was not legally entitled; or any alleged criminal conduct by an insured. For purposes of this Exclusion no act, error, or omission of any insured shall be imputed to any other insured;
5. Any acts, errors, omissions, "Medical Professional Incidents", facts, matters, events, "suits", or demands notified or reported to, or in accordance with, any policy of insurance or policy or program of self-insurance in effect prior to the inception date of this policy;
6. Any acts, errors, omissions, or "Medical Professional Incidents" taking place prior to the earlier of:
 - a. The inception date of this policy; or
 - b. The inception date of the first policy issued by us to the Insured, of which this policy is a renewal.
 - c. If any Insured on or before such date knew or reasonably could have foreseen that such act, error, or omission or "Medical Professional Incident" might result in a "claim".
7. Any actual or alleged sexual misconduct or sexual abuse, including but not limited to, any physical acts or oral statements of a sexually suggestive manor, or any unwelcome physical contact or touching;
8. Any actual or alleged liability of on Insured under any workers compensation, unemployment compensation, disability benefits or similar law or regulation;
9. Any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA), or any similar federal, state, or local law or regulation, except to the extent such violation arises out of any Insured's rendering of or failing to render "Medical Professional Services";
10. "Employment Practices";
11. Any "Medical Professional Incident" arising from any "Medical Professional Service":
 - a. That takes place while any Insured's professional license is under suspension or has been revoked, surrendered, or has otherwise terminated or is not in effect; or
 - b. That is not allowable pursuant to any probation or restriction of any Insured's professional license or any Insured's license or registration to dispense or prescribe controlled substances.
12. Any "Medical Professional Service" rendered while the insured is under the influence of any type of alcohol, narcotic, hallucinogenic agent or any other type of intoxicant.
13. Any change in specialty.
14. Any actual or alleged discrimination of any kind by any Insured.
15. Any "claim" for:
 - a. Misuse or improper release of confidential, private, or proprietary information;
 - b. Any actual, alleged act, error, or omission in violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
 - c. Any "Medical Professional Incident" arising out of or involving the improper alteration or modification of medical records by an Insured or any person for whose acts the Insured is legally responsible.

SECTION IV -- Limits Of Insurance

- A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:**
- a. Insureds;
 - b. "Claims" made.
- B. The Aggregate Limit is the most we will pay for the sum of all damages because of injury.**
- C. Subject to the Aggregate Limit, the Each "Medical Professional Incident Limit" shown in the Declarations is the most we will pay for all damages because of all injury arising out of any one "Medical Professional Incident".**
- All related "Medical Professional Incidents" arising out of the providing of professional health care services to any one person shall be considered one "Medical Professional Incident".

The limits of this Coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION V -- Conditions

- A. Bankruptcy**
Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage.
- B. Duties In The Event Of A Medical Incident**
1. You must see to it that we are notified as soon as practicable of a circumstance which may result in a "claim". To the extent possible, notice should include:
 - a. Specific circumstances surrounding the "Medical Professional Incident";
 - b. The names and addresses of any injured persons and witnesses; and
 - c. The nature and location of any injury arising out of the "Medical Professional Incident".
 2. If notice of a "Medical Professional Incident" is received by any Insured, you must:
 - a. Immediately record the specifics of the "Medical Professional Incident" and the date received; and
 - b. Notify us as soon as practicable.
 You must see to it that we receive written notice of the "Medical Professional Incident" as soon as practicable.
- C. Legal Action Against Us**
No person or organization has a right under this Policy:
1. To join us as a party or otherwise bring us into a "suit" asking for damages from an Insured; or
 2. To sue us on this Policy unless all of its terms have been fully complied with.
- We will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance.
- D. Other Insurance**
If other valid and collectible insurance is available to the Insured for a loss we cover under this Policy, our obligations are limited as follows:
1. **Primary Insurance**
This insurance is primary except when Paragraph 2. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph 3. below.
 2. **Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown in the Declarations of this insurance and applies to injury on other than a "claims"-made basis, if:

- a. No Retroactive Date is shown in the Declarations of this insurance; or
- b. The other insurance has a policy period which continues after the Retroactive Date shown in the Declarations of this insurance.

When this insurance is excess over other insurance, we will pay, up to the applicable limits of insurance, the amount of the loss that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of this insurance.

If other insurance is also excess, we will share the remaining loss with that other insurance.

3. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

E. Representations

By accepting this policy, you agree:

1. The statements in the Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this policy in reliance upon your representations.

F. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Policy to the first Named Insured, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each Insured.

SECTION VI – Extended Reporting Period

- A. The Extended Reporting Period starts with the end of the policy period. It does not extend the policy period or change the scope of coverage provided. It applies only to injury caused by a "Medical Professional Incident" which occurred after the Retroactive Date shown in the Declarations and before the end of the policy period provided a "claim" for such injury is first made during the Extended Reporting Period.
- B. The insurance provided under the Extended Reporting Period Endorsement will be excess over any other valid and collectible insurance available to the Insured, whether primary, excess, contingent or on any other basis, whose policy period begins or continues after the endorsement takes effect. Other Insurance of Section V – Conditions will be amended accordingly by the Extended Reporting Period Endorsement.

SECTION VII – Definitions

- A. "Claim(s)" means a written request for us to reimburse you for cost and expenses you have paid as a result of an injury or alleged injury to which this Insurance applies.
- B. "Coverage territory" means the United States of America including its territories and possessions, Puerto Rico and Canada.
- C. "Employee" includes a "leased worker". "Employee" does not include "temporary worker".
- D. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
- E. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- F. "Medical Professional Incident" means:
 - 1. An actual or alleged act, error or omission in the Insured's rendering of or failure to render "Medical Professional Services";
 - 2. An actual or alleged act, error or omission in connection with the Insured's activities as a member of a duly authorized board or committee of the Insured, or as a member of any committee of the medical or professional staff of the Insured when engaged in peer review;
 - 3. An actual or alleged act, error or omission in connection with the Insured's activities as a member of an accreditation, standards review or similar board or committee;
 - 4. Any actual or alleged act, error or omission in connection with the Insured's performance of quality assurance activities, or
 - 5. Any actual or alleged act, error or omission in connection with Good Samaritan Acts.
- G. "Medical Professional Services" means services performed by an Insured in the treatment or care of any person, including medical, dental, nursing, psychiatric, osteopathic, or chiropractic services; the furnishing or dispensing of medications, drugs, or medical or surgical supplies, equipment or appliances in connection with such treatment or care; and the providing of counseling or social services in connection with such services or care.
- H. "Suit" means a civil proceeding in which damages because of injury to which this insurance applies are alleged against an Insured.
- I. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- J. "Employment Practices" means any actual or alleged breach of an employment contract; failure or refusal to hire, employ or promote a person; demotion or discharge of a person; employment-related defamation or humiliation; discipline or evaluation of an "Employee"; discrimination, harassment, segregation, limitation or classification of persons in any way that tends to deprive any person of employment opportunities or otherwise adversely affect his/her status as an "Employee", because of his/her race, age, sex, national origin, marital status, physical or mental handicap, pregnancy, religion, sexual orientation.

Surgeon has made himself 'judgment-proof,' lawyer says

Off-sued bariatric surgeon says most lawsuits 'are about money, they're not about malpractice.'

By Anthony Gottschlich
Staff Writer

Sunday, July 22, 2007

Driving a car is enough of a risk that Ohio requires its motorists to carry liability insurance on their vehicles.

But that same reasoning doesn't apply to another life-and-death endeavor — the practice of medicine. There's no law requiring physicians to carry professional liability insurance.

Photos



Patrick Wilson (left) and his son, Jeff, pose with a picture of Linda Wilson, who died after complications resulting from gastric bypass surgery. The Wilsons would like to sue, but were told the surgeon, David J. Fallang, doesn't have medical malpractice insurance. [Click to enlarge](#)

Patrick Wilson found that out after his 44-year-old wife died following her second weight loss surgery in 2003 at Sycamore Hospital in Miamisburg.

Wilson tried to sue the surgeon who performed the operation, Dr. David J. Fallang of the Surgical Weight Loss Center in Dayton, but his lawyer gave up when he discovered Fallang didn't have malpractice insurance and had shielded his assets from civil judgments.

"Dr. Fallang has succeeded in making himself judgment-proof," attorney J. Pierre Tismo of Dyer, Garofalo, Mann & Schultz wrote to Wilson.



While malpractice insurance isn't required, Ohio law mandates that physicians who lack the insurance inform patients in writing and obtain a signed consent form prior to treatment in non-emergency cases.

Fallang, who's been sued 22 times in Butler and Montgomery counties for malpractice since 1991, didn't do that.

"I never knew such a statute existed," Fallang, 57, said from his office at Elizabeth Place, the former St. Elizabeth's Hospital.

The bulk of the lawsuits against Fallang were filed in the last decade, when he started specializing in gastric bypass surgery, the risky, but often successful, weight-loss operation for the morbidly obese.

A veteran of more than 2,500 such surgeries, he's lost one lawsuit, where the jury awarded the plaintiff around \$1 million, and settled at least four. The rest were dismissed.

The Middletown resident admits "I'm not perfect," but he doesn't believe any of the cases against him involved actual malpractice. He said the suits were largely manufactured by the "medical malpractice lawsuit industry."

"I've just been squashed by this stuff," said Fallang, former medical staff president at Middletown Regional Hospital. "And let me tell you, I'm a pretty damn good surgeon."

Malpractice and the law

Failure to disclose a lack of malpractice insurance isn't a crime in Ohio, but it's subject to disciplinary action by the State Medical Board of Ohio. Penalties include a reprimand up to a permanent revocation of the physician's medical license.

Wilson's former lawyer filed a complaint with the board last September, and Fallang said he recently answered questions for the board.

The board would neither confirm nor deny an investigation of Fallang, who otherwise has a clean record with the agency.

Board spokeswoman Joan Wehrle said the board hasn't disciplined any doctors on this issue to date. She also said the board doesn't track doctors who lose their insurance.

Some states, including Pennsylvania, require physicians to carry the insurance, according to the National Council of State Legislatures.

But state Rep. John White, R-Kettering and chairman of the House Health Committee, said a requirement might be going too far.

White said Ohio lawmakers could explore additional disclosure requirements, though, such as placing a doctor's insurance status on his or her profile at the state medical board, which is accessible to the public.

Almeta Cooper, counsel to the Ohio State Medical Association, believes enough safeguards are already in place. Besides, she said, Medicare, Medicaid and other health insurers, as well as most hospitals, require physicians to carry the insurance before they'll do business with them.

Fallang's privileges at Middletown Regional Hospital ended in January 2002, and they ended at Kettering Medical Center and affiliate Sycamore in May 2004, the hospitals' respective spokespeople said.

Hospital officials declined to say why, but Kettering spokesman Kevin LaVoie said, "It is not our policy to allow surgeons to perform surgery without proper malpractice insurance."

Fallang, though, was operating on patients at Sycamore even after he lost his insurance, only the hospital didn't know it, court records show.

In an interview, he explained that he was covered for general surgery, but later learned the policy excluded bariatric surgery.

Costly coverage

Fallang said he's held a variety of malpractice insurance policies over the years, so many that he'd lose track of his coverage status at times.

He said his trouble obtaining the insurance began in the early 1990s after his insurance company urged him to settle a suit and then tripled his premiums. Several insurance companies went "broke on me," he said, and at one point he was paying a \$183,000 annual premium. It became too expensive to carry.

On average, malpractice insurance for general surgeons costs about \$54,000 a year in Montgomery County, according to the Ohio Department of Insurance.

Today Fallang operates in the private hospital he founded with his wife, Lynn, in 2004, the Riverview Health Institute at Elizabeth Place. The hospital also includes doctors who offer general and plastic surgery and other health care services.

Fallang said Riverview is covered by commercial insurance, but he declined to say if he's currently covered by malpractice insurance.

"To be perfectly blunt, I don't believe that it's my responsibility to make my patients rich if there should be an adverse occurrence," Fallang said. "My responsibility is to take the best medical care of them that I know how."

"No one can do surgery with zero complications, it's just not physically possible," he said. "Medical malpractice lawsuits, 95 percent of the time, are about money, they're not about malpractice."

Risky surgery

Bariatric surgery can involve a variety of procedures, but the general idea is to make the stomach smaller. The surgery is not without risks. Potential post-operative problems include leaks and infections, fatal blood clots and follow-up surgeries to correct complications. Various sources put the mortality rate at 0.3 percent to 0.5 percent, or roughly one death for every 200 patients.

Dr. John Maguire, medical director for the Weight Loss Surgery Center at Miami Valley Hospital, called the specialty a "high-risk liability practice."

"Probably because someone can be morbidly obese and look reasonably healthy (but) they're teetering on the brink," he said. "They appear healthy and if they have a complication it's like, 'Well, I was fine before I had the surgery.' I've had several patients die of heart attacks while they're waiting for approval for surgery."

"To put it in context," Maguire said, referring to Fallang, "I've had a lot of malpractice suits filed (10 in Montgomery County, court records show) that were dropped because there was no merit."

'I didn't kill his wife.'

Fallang's supporters include Diana Spencer, 52, of West Alexandria in Preble County.

Spencer, 5-feet-1, said she weighed nearly 300 pounds and was wheelchair bound prior to her gastric bypass surgery in October 2004. At 175 pounds today, she's still heavy but walking and active again.

"To me, he's the greatest thing because I wouldn't be here right now if it weren't for him," Spencer said.

Patrick Wilson can't remember how much his wife weighed, but said she sought the surgery in 1999 to lose weight and get a handle on her diabetes.

She lost around 120 pounds initially, Wilson recalled, but problems soon arose. Fallang said he tried to talk the Wilsons out of a second operation, that it was risky, but he relented.

He said the complication that led to Linda Wilson's death — a rare, massive blood clot called a hemobezoar that obstructed her bowel — was beyond his control.

"Mr. Wilson never should have sued me," Fallang said. "It was immoral of him to do so, in my opinion, because I didn't kill his wife. His wife had a rare and unfortunate complication, one that was not foreseeable. I took prudent steps to try to figure out what was wrong with her."

Wilson believes otherwise, and his claim is supported in a court affidavit signed by top weight loss surgeon **Philip R. Schauer, director of the Cleveland Clinic's Bariatric Surgery Program.**

Schauer could not be reached for comment.

Wilson can't find a lawyer to take his case, so he refiled his lawsuit July 3 without one — forcing Fallang to defend himself once again.

"I'm looking for him not to practice no more," Wilson said.

He may not have to wait for long.

"Surgery is what I'm good at," Fallang said. "But the lawyers and the crooked malpractice system — the industry, the courts — have about finished me off."

Contact this reporter at (937) 225-7408 or agottschlich@DaytonDailyNews.com.

FILED

BUTLER COUNTY
COURT OF COMMON PLEAS

2006 AUG -4 PM 3: 53

CLERK OF COURTS
BUTLER COUNTY
JENNIFER CARPENTER

MAUREEN VAUGHAN

*

Case No.: CV 03 123372

Plaintiff,

*

Judge Pater

v.

*

JUDGMENT ENTRY

DAVID FALLANG, M.D.,
et al.,

*

*

Defendants.

*

* * * * *

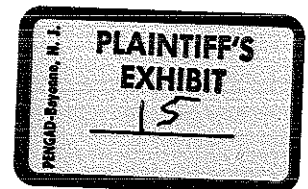
This case came on for trial before a jury on July 10, 2006, continuing through July 14, 2006, at which time the issues were duly tried and a verdict was rendered.

In conformity with the jury verdict entered in these proceedings, judgment is hereby rendered in favor of Plaintiff Maureen Vaughan and against Defendants David Fallang, M.D. and Middletown Surgical Associates, Inc. as follows:

Plaintiff Maureen Vaughan was awarded a total of \$20,000 in compensatory damages against Defendants for violation of R.C. § 4731.143. Defendants are jointly and severally liable for these damages.

WHEREFORE, IT IS ORDERED that Defendants David Fallang M.D. and Middletown Surgical Associates, Inc. pay the sum of \$20,000 to Plaintiff Maureen Vaughan as and for compensatory damages, with interest and costs as provided by law.

IT IS FURTHER ORDERED that, because the jury found in favor of Defendants David Fallang M.D. and Middletown Surgical Associates, Inc. on the



claims for fraud, battery, and lack of informed consent, those claims are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that the Court retains jurisdiction to determine issues raised or to be raised by the parties' post-trial motions.

IT IS FURTHER ORDERED that the costs are to be paid by the Defendants.

DATE _____

Charles Z Pater

Judge Charles Pater

DKG

Bill Markovits

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Trial Attorney for Defendants,
David J. Fallang, M.D. and Middletown
Surgical Associates, Inc.



IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

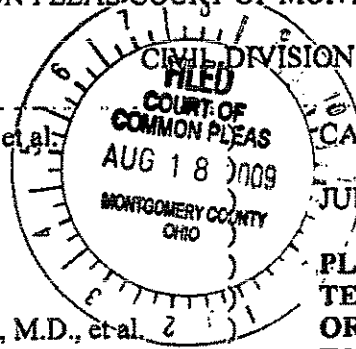
MICHAEL D. CLAWSON, et al.

Plaintiffs,

-vs-

LAWRENCE ROTHSTEIN, M.D., et al.

Defendants.



CASE NO.: 2007-CV-10081

JUDGE TIMOTHY N. O'CONNELL

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PREJUDGMENT ATTACHMENT

Now come Plaintiffs, pursuant to Civ.R. 65 and respectfully move the Court for a Temporary Restraining Order Enjoining Defendants Riverview Health Institute, LLC, Lawrence Rothstein, M.D., and their attorney Steven Rothstein from concealing, transferring, converting, encumbering or disposing of any assets up to an amount of \$5,000,000.00, including those assets held in the Maplefive Revocable Trust. It was recently discovered that Riverview and Dr. Rothstein have misrepresented to Counsel and the Court that there were up to \$5,000,000.00 in liability insurance proceeds available for recovery in this action, when apparently there are none. Further, Riverview and Dr. Rothstein have engaged in conduct indicating that they will conceal, transfer, convert, encumber or make otherwise unavailable the assets that might be pursued in satisfaction of a judgment in this action. As such, Plaintiffs will suffer irreparable harm if this injunction is not issued.


Plaintiffs also request that the Court notice and conduct a hearing to identify the location and amount of collectible assets, and that the injunction be continued until this pending suit is resolved and any judgment or settlement satisfied. Finally, Plaintiffs move the Court, upon satisfaction of due



process through notice and hearing, for an Order granting prejudgment attachment of assets of Defendants Riverview and Dr. Rothstein up to an amount of \$5,000,000.00 to ensure satisfaction of judgment or settlement of this matter, pursuant to Civ.R. 64, R.C. §2317 et seq., and/or any additional relief the Court deems appropriate.

Plaintiffs have served counsel for all parties with this Motion and Exhibits by regular U.S. Mail, on the date of filing. A Brief in Support is attached hereto.

Respectfully submitted,



(0079170)

JAMES M. KELLEY, III #0061990
STEPHEN S. CRANDALL #0063810
Elk & Elk Co., Ltd.
6105 Parkland Boulevard
Mayfield Hts., Ohio 44124
(440) 442-6677
(440) 442-6764-facsimile
Attorneys for Plaintiffs

BRIEF IN SUPPORT

I. Facts.

This is a case of clear liability and catastrophic damages. Sally Clawson suffered profound hypoxic brain injury subsequent to a procedure performed by Dr. Rothstein at the Dayton Laser & Spine Center, a d/b/a for Riverview Health Center, LLC. Ms. Clawson's neurologic function is so severely limited that her family must care for her around the clock to ensure her own and the family's health. They block the doors of their home and lock the bedrooms of her grandchildren at night to prevent Mrs. Clawson from wandering away from home or accidentally harming the children in their sleep. They have expended all monetary and emotional reserves to care for the wife, mother, and grandmother they love. Her estimated cost of future medical care alone is approximately \$3,000,000.00.

Meanwhile, after this terrible incident, Riverview, Dr. Rothstein, and their attorney Steven Rothstein, embarked upon a course of conduct clearly designed to make an eventual judgment in favor of the Clawsons unenforceable, by concealing or making otherwise unavailable any collectible assets that might be used to satisfy judgment. Days after Sally was life-flighted from Riverview with catastrophic injuries, Riverview and Dr. Rothstein had notice of the severity of her injuries and their own negligence.^a Within two months of the injury, they had notice of the undersigned's representation relating to a claim for damages via records requests, and a liability declarations page was printed the same day.^b Within approximately 4 months of the injury, their attorney had created a trust with himself as grantor & trustee, and Dr. Rothstein as the sole

^a See timeline, *infra*.

^b *Id.* The declarations page was provided to Plaintiffs in discovery, Plaintiffs do not know any more details about how it came to be in existence.

beneficiary.^c From the time the trust was created four months after Sally's injury until March of this year, Riverview has paid over 2.5 million dollars to the trust, and Riverview and Dr. Rothstein have apparently allowed their liability insurance to lapse.^d It also appears that this year, Riverview's and Dr. Rothstein's attorney restructured Dr. Rothstein's practice and moved the financial headquarters out of State.^e Moreover, throughout this time period, they affirmatively misrepresented through written discovery responses,^f written admissions,^g and oral attestations of counsel that there were \$5,000,000.00 in liability insurance coverage to satisfy any judgment or settlement. Only recently has it been revealed to Counsel and the Court that there is no such coverage.

In the day prior to this filing, the undersigned also learned that Riverview's founder and "president of the medical staff," Dr. David Fallang, has been reported by respectable news media to engage in the practice of attempting to make himself "judgment proof" by failing to carry liability insurance, and hiding personal assets through such things as family trusts.^h Moreover, the articles documenting this conduct by Riverview's founder were published approximately one week before Steven Rothstein created the Maplefive Revocable Trust. With this there can be no doubt

^c *Id.*

^d *Id.*

^e See printout of Dayton Business Journal article, dated February 6, 2009. See also printouts from Ohio Secretary of State Website related to Steven Rothstein's registration of North American Laserscopic Spine Institute, LLC. These printouts were filed via overnight mail under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

^f See declarations page, provided in response to Plaintiffs' Written Discovery Requests. The declarations page was filed via overnight mail under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

^g See Dr. Rothstein's Responses to Plaintiffs' Requests for Admissions, completed by Counsel Steven Rothstein. These Responses were filed via overnight mail under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

^h See printouts of articles from the Middletown Journal and *InjuryBoard.com*. It is known that a similar article was published by the Dayton Daily News at or around the same time as these articles – approximately 1 week prior to the creation of the Maplefive trust by Riverview and Dr. Rothstein's attorney. These printouts were filed via overnight

that Riverview, Dr. Rothstein, and their attorney are intentionally and actively attempting to irreparably harm the Clawsons by making judgment unenforceable.

Throughout the pendency of this claim, Riverview and Dr. Rothstein have put forward an outward face of willful ignorance to their negligent conduct, and willful denial of its devastating effects. This charade allowed Riverview's and the Rothsteins' movement of assets to go without scrutiny, and has only recently been exposed – liability insurance is now disavowed, and we now learn that Riverview and Dr. Rothstein never retained an expert for their defense despite representing the opposite to this Court, and despite this Court relying upon that representation as the basis for continuing trial in this matter. Plaintiffs fear that Riverview and Dr. Rothstein's entire "defense" in this matter has merely been a tool whereby they might delay judgment and conceal their financial machinations until they have completed their plan to hide any collectible assets.

The following timeline illustrates a course of conduct by Riverview Health Institute, Dr. Rothstein, and their attorney Steven Rothstein, which is compelling proof that absent an injunction they will irreparably harm the Clawsons by making unavailable any assets that would satisfy judgment in the Clawsons' favor:¹

- **March 2, 2007:** Dr. Rothstein, Riverview Health Center, LLC, and Dr. Cara Perez treat Sally Clawson in a negligent manner, necessitating an immediate life-flight to Miami Valley Hospital from Riverview, and leaving Mrs. Clawson with profound hypoxic brain injury necessitating lifetime round-the-clock care.

mail under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

¹ Some information in this timeline has been learned from Court Filings in Dr. Rothstein's divorce proceeding, and is not the personal knowledge of the undersigned but rather based upon information and belief. These papers were filed via overnight mail under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

- **March 2007:** Immediately and in the days following March 2, Dr. Rothstein repeatedly calls the Clawson family,^j at least one member of Riverview's staff supplements the chart with narrative "note".^k
- **April 4, 2007:** the undersigned's office served medical records requests upon Riverview, on behalf of Sally Clawson.^l
- **April 4, 2007:** a declarations page for Riverview's liability insurance policy is produced, reflecting \$5,000,000.00 aggregate limits.^m
- **April/May 2007:** office of the undersigned makes repeated follow-up calls upon records requests, expressing that production taking "too long." Riverview represents that multiple individuals need to review records before production to "make sure they have included everything."ⁿ
- **July 22, 2007:** Various Dayton area newspapers publish stories regarding Riverview's founder Dr. David Fallang, and his attempts to make himself "judgment proof" by concealing assets in various ways, including the creation of a family trust.^o Dr. Fallang states his belief that it was "immoral" to sue him for alleged malpractice resulting the death of the patient's wife, stating: "To be perfectly blunt, I don't believe that it's my responsibility to make my patients rich if there should be an adverse occurrence."^p
- **July 31, 2007:** Riverview's and Dr. Rothstein's attorney Steven Rothstein creates the Maplefive Revocable Trust, with Steven Rothstein as sole grantor and trustee, and Dr. Rothstein as 100% beneficiary.^q
- **September 1, 2007:** Riverview's and Dr. Rothstein's attorney Steven Rothstein registers DSLI, Inc (Dayton Laser Spine Institute) with the Ohio Secretary of State.^r

^j The Clawson family testified to Dr. Rothstein's calls, but these transcripts have not yet been typed.

^k Deposition of Doug Johnson, relevant portions attached under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

^l See printout of internal office note, attached under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

^m See "date" box in upper right corner of the declarations page produced by Riverview and Dr. Rothstein in discovery.

ⁿ See printouts of internal office notes, attached under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

^o See printout of article from Middletown Journal, dated July 22, 2007, titled "Surgeon has made himself 'judgment proof,' lawyer says."

^p See attached printout from "InjuryBoard.com."

^q See court filings from Dr. Rothstein's divorce proceedings, attached under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

^r See printouts from the Ohio Secretary of State website. It appears that a typographical error reflects the entity as DSLI, Inc. on the certificate, whereas the name DLSI, Inc., is the name registered in the application. These printouts

- **UNKNOWN:** Apparently, at some point, the liability insurance coverage for Riverview and Dr. Rothstein is allowed to lapse.³
- **July 31, 2007—March 2009:** Riverview Health Institute, LLC, pays approximately \$2,589,714.45 to the Maplefive Trust, sole beneficiary Dr. Rothstein.¹
- **April – July 2009:** Steven Rothstein registers with the Ohio Secretary of State an entity called North American Laserscopic Spine Institute, LLC (a Texas limited liability company), which pays Dr. Rothstein a base salary of \$720,000.00 with an additional \$5,000.00 bonus for every procedure he performs.⁴
- **2009/2009:** The Maplefive Trust and/or Dr. Rothstein purchase a 2009 Mercedes SL63 AMG valued at \$198,175.00, as well as a 2009 Mercedes 550V4, purchased for \$109,089.52. (Dr. Rothstein or the Maplefive Trust already leased or owned a 2008 Range Rover purchased in 2007 for \$83,896.00, a 2007 Mercedes GL450, and a 2007 Mercedes E350.)⁵

The attached court filings note that the Maplefive Trust's bank account "routinely has monthly deposits of \$4,000,000.00 to \$6,000,000.00."⁶ Dr. Rothstein has also received income from employment with an entity known as Cirrus Concepts – over \$300,000.00 combined in the years 2006-2007.⁷ Cirrus Concepts is also believed to be associated in some fashion with Riverview.⁸ According to court filings, Dr. Rothstein "also receives income from Indiana Laser Spine Center and various other entities which has not been disclosed."⁹ Plaintiffs have not been

are attached under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

³ This is based upon the representations of the new attorneys for Riverview and Dr. Rothstein to the Court and Counsel at recent hearings.

¹ See divorce court filings. Plaintiffs are uncertain whether Dr. Rothstein holds an ownership or controlling interest in Riverview Health Institute, LLC, the Defendant company that has paid the Maplefive Trust over 2.5 million dollars since the subject incident.

² See divorce court filings, printouts from the Ohio Secretary of State website, and Dayton Business Journal article dated February 6, 2009.

⁴ See divorce court filings.

⁵ *Id.*

⁶ *Id.*

⁷ Doug Johnson's deposition.

⁸ See divorce court filings.

able to determine whether Riverview, Dr. Rothstein, or their attorney hold ownership or controlling interests in these entities.

Filings in Dr. Rothstein's divorce proceedings discuss "actions being taken by [Dr. Rothstein] and his brother, Stephen Rothstein...Grantor and Trustee of the Maplefive Revocable Trust to prevent disclosure of assets and income."⁸⁸

Liability in this case is clear, damages catastrophic, Defendants Riverview and Rothstein's conduct reprehensible. Plaintiffs respectfully request the Court prevent Dr. Rothstein and Defendant Riverview Health Institute, LLC from concealing, transferring, converting, encumbering or disposing of any assets (including those held in the Maplefive Revocable Trust) up to an amount of \$5,000,000.00. Furthermore, upon satisfaction of due process through notice and hearing, Plaintiffs request that the Court attach such proceeds to ensure that they may access such to satisfy an eventual judgment or settlement.

II. Law & Argument.

a. Temporary and Preliminary Injunction

Civ.R. 65 provides, in pertinent part:

(A) Temporary restraining order; notice; hearing; duration.

A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and
- (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

⁸⁸ *Id.*

(B) Preliminary injunction.

(1) Notice. No preliminary injunction shall be issued without reasonable notice to the adverse party. The application for preliminary injunction may be included in the complaint or may be made by motion.

In *Columbus Homes, Ltd. v. S.A.R. Construction Co.*,^{bb} the Tenth District Appellate Court found that an injunction was an appropriate remedy to prevent a defendant from concealing, transferring or disposing of assets necessary to satisfy judgment, absent Court approval. In that case, the defendant had already engaged in conduct related to transferring assets and failing to account for them, such that the Court found it "eminently reasonable for the trial court to enjoin [the defendant] from actions he had already taken in violation of a court order."^{cc}

With respect to preliminary injunctions, "the purpose of a preliminary injunction is to preserve and protect the ability of the court to provide an effective judgment on the merits."^{dd} Moreover, "the function of a preliminary injunction is just this -- to maintain the status quo pending trial."^{ee} This is precisely what Plaintiffs seek in this matter, the prevention of Riverwood and Dr. Rothstein's plan to make unavailable any assets that might be collected against Defendants in the case of an eventual judgment in the Clawsons' favor.

Last, Courts will generally consider the following factors in deciding whether to grant injunctive relief:

1. the likelihood of a plaintiff's success on the merits,
2. whether the issuance of the injunction will prevent irreparable harm to plaintiff,
3. what injuries to others will be caused by granting the injunction, and

^{bb} 2007 Ohio 1702, attached under "Notice of Filing Exhibits to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment."

^{cc} *Id.* at *22.

^{dd} *Pidgeon v. Ramar Land Corp.* (1991), 62 Ohio Misc. 2d 223, 226.

^{ee} *Consun Food Ind., Inc. v. Fowkes* (1991), 81 Ohio App.3d 63, 69.

4. whether the public interest will be served by granting injunctive relief.⁶⁷

As discussed in Plaintiffs' Pretrial Statement, liability against Defendants is clear on the record. Although the Defendants debate which of them was most responsible, they were all employees of Riverview. Thus, regardless of whether Defendants formally admit liability, Plaintiffs will succeed on the merits.

As to irreparable harm, the actions of Riverview, Dr. Rothstein, and their attorney Steven Rothstein prove that they have already taken action - and will continue to take action - to irreparably harm Plaintiffs by making unavailable proceeds against which to satisfy judgment. After Riverview and Dr. Rothstein had notice of an imminent claim for money damages, their attorney created the Maplefive Revocable Trust. This same attorney affirmatively misrepresented that there were applicable liability insurance proceeds up to \$5,000,000.00 throughout the years that millions of dollars were being paid by Riverview into this trust, of which he is grantor and trustee. It appears that at some point in time near the creation of the Maplefive Trust or while Riverview was transferring millions into the Trust thereafter, Riverview and Dr. Rothstein apparently stopped carrying liability insurance. Filings in Dr. Rothstein's divorce proceedings allege Dr. Rothstein, and Riverview's attorney, have taken actions "to prevent disclosure of assets and income." These actions are clear proof that Defendants have been attempting to irreparably harm Plaintiffs since shortly after they caused Mrs. Clawson's injury, by making any judgment impossible to enforce due to the concealment of any collectible proceeds and deliberate misrepresentation of available insurance. They must be stopped immediately.

⁶⁷ *Corbett v. Ohio Bldg. Auth.*, 86 Ohio App.3d 44.

Finally, no injury to third persons is likely to be caused by an injunction freezing Riverview and Dr. Rothstein's assets up to \$5,000,000.00 and requiring an accounting to ensure satisfaction of judgment. Certainly the public interest favors preventing the type of conduct outlined above and ensuring judgment may be enforced.

III. Prejudgment Attachment

R.C. §2715 allows for attachment of property in certain circumstances, including those related to the conduct at issue here, where a Defendant is attempting to convert or put beyond reach property that may be used to satisfy an eventual judgment. Civ.R. 64 allows seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action, in the manner provided by law. Plaintiffs respectfully request that the Court attach Defendant Riverview and Dr. Rothstein's property to the extent deemed appropriate under these provisions and any others it may deem applicable.

IV. Conclusion.

Based upon the foregoing reasons, Plaintiffs request that the Court order an immediate freeze upon the assets of Riverview Health Institute, LLC and Dr. Lawrence Rothstein until such time as an accounting can be made and proceeds of \$5,000,000.00 be identified. Thereafter, Plaintiffs request that Riverview and Dr. Rothstein be enjoined from taking any action with such assets absent Court approval until satisfaction of judgment or settlement in this matter.

Respectfully submitted,

 (0079170)

JAMES M. KELLEY, III #0061990
STEPHEN S. CRANDALL #0063810
Elk & Elk Co., Ltd.
6105 Parkland Boulevard
Mayfield Hts., Ohio 44124
(440) 442-6677
(440) 442-6764-facsimile
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

A copy of the foregoing Motion was sent to the following by regular U.S. Mail, postage pre-paid, on this 18th day of August, 2009:

Michael Lyon, Esq.
312 Walnut Street, Suite 2300
Cincinnati, Ohio 45202
*Attorney for Defendants Lawrence Rothstein,
M.D. & Dayton Laser Spine Center and
Riverview Health Institute, LLC*

Patrick Adkinson, Esq.
Adkinson Law Office
4244 Indian Ripple Road, Suite 150
Dayton, Ohio 45440
Attorney for Defendant Cara Perez, M.D.

David Lockemeyer, Esq.
Triona, Calderhead & Lockemeyer, Ltd.
The Adam Riddle House
2021 Auburn Avenue
Cincinnati, OH 45219
*Attorney for Defendant Riverview Health
Institute, L.L.C.*

 (0079170)
JAMES M. KELLEY, III #0061990
STEPHEN S. CRANDALL #0063810


STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS:

Now comes affiant Egan Kilbane, being of sound mind and the age of majority, and states the following upon his own knowledge, information or belief; and so far as upon information and belief, states that he believes this information to be true:

1. I am an attorney, licensed to practice law in the State of Ohio.
2. I am one of the attorneys representing Plaintiffs in Case No. 2007-CV-10081, titled Michael Clawson, et. al. v. Lawrence Rothstein, M.D. et al., currently pending in the Montgomery County Court of Common Pleas, before the Honorable Judge Timothy N. O'Connell.
3. I hereby swear and affirm that all of the representations in Plaintiffs' Motion for a Temporary Restraining Order, Preliminary Injunction, and Prejudgment Attachment are true and accurate to the best of my knowledge.
4. I further swear that it is my belief that my clients will suffer irreparable harm if Defendants Riverview Health Institute, LLC and Dr. Lawrence Rothstein, as well as their attorney Steven Rothstein, are not enjoined from concealing, transferring, converting, encumbering or otherwise disposing of any assets.

I hereby swear and affirm that the foregoing is true and accurate to the best of my knowledge, recollection and belief.


Egan Kilbane

Sworn to me and subscribed in my presence this 18th day of August, 2009, in Cleveland, Ohio.



TINA M. MORTON
Notary Public, State of Ohio
My Commission Expires
July 11, 2010

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

MICHAEL CLAWSON, *et al.*, : CASE NO. 2007 CV 10081
: JUDGMENT LIEN NO. 2009 CJ 171642
Plaintiffs, :
: JUDGE TIMOTHY O'CONNELL
vs. :
: **AFFIDAVIT OF STEVEN M.**
: **ROTHSTEIN IN SUPPORT OF REPLY**
LAWRENCE ROTHSTEIN, *et al.*, : **TO MOTION TO QUASH**
:
Defendants. :

STATE OF OHIO)
)
COUNTY OF MONTGOMERY)

I, Steven M. Rothstein, being first duly sworn and cautioned, depose and state upon personal knowledge as follows:

1. On or around July 3, 2007 I created the Maplefive Trust with myself as Grantor and Trustee and my brother, Dr. Lawrence Rothstein, as the sole beneficiary.
2. As the Grantor of the Maplefive Trust, I retained full powers of revocation and withdrawal of all of Maplefive Trust's assets.
3. The Beneficiary, Dr. Rothstein, has no powers of revocation or withdrawal of Maplefive Trust's assets.
4. No mandatory payments are made from Maplefive Trust to Dr. Rothstein.
6. Riverview Health Institute does not currently make payments into the Trust.
7. Any declaration of Maplefive Trust payments on Dr. Rothstein's tax return is a result of Maplefive Trust's status as either a disregarded or "pass-through" entity for federal income tax purposes.



8. The amount identified on Schedule E, Line 37 of Dr. Rothstein's 2007 and 2008 Tax Returns do not reflect cash actually received from Maplevive Trust.

9. The Trust's primary income is generated via a monthly payment from North American Laserscopic Spine Institute, LLC ("North American Spine").

10. North American Spine makes a monthly payment to Maplevive Trust for Maplevive Trust's operation of North American Spine's Dayton satellite office, including management services and medical services performed by Dr. Rothstein and other doctors.

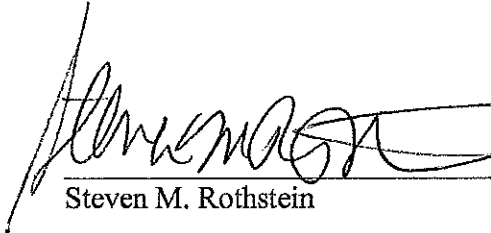
11. Upon information and belief, North American Spine pays the monthly payment to Maplevive Trust using funds received for services performed by physicians across the country.

12. Dr. Rothstein's only personal contribution of property to the Trust was an initial \$20,000 payment made from the joint bank account of Dr. Rothstein and his current wife.

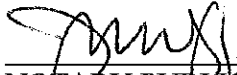
13. The original \$20,000 deposit is no longer in the Maplevive Trust.

14. Maplevive Trust has purchased and currently owns various assets, including a home and two cars.

FURTHER AFFIANT SAYETH NAUGHT.


Steven M. Rothstein

SWORN TO AND SUBSCRIBED BEFORE ME, this 15th day of February, 2010.


NOTARY PUBLIC
Attorney at Law
notary has no expiration
02c 147.03

My Commission Expires:
Does not

Redacted by Clerk of Court

Case: 2007 DR 1355
[REDACTED]
REV: 05/11

FILED
DOMESTIC RELATIONS COURT

2009 MAY 20 PM 3:12

GRECONY A. DRUSH
CLERK OF COURTS
MONTGOMERY CO. OHIO
33

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
DOMESTIC RELATIONS DIVISION

ANGELA FILIPOWICZ ROTHSTEIN

503 Old Harbor Court)

Dayton, OH 45458)

DOB: [REDACTED])

Plaintiff,)

CASE NO. 2007 DR 1355

JUDGE DENISE L. CROSS

vs.)

LAWRENCE BRIAN ROTHSTEIN)

c/o Steve M. Rothstein, Esquire)

One Elizabeth Place)

Dayton, OH 45408)

DOB: [REDACTED])

Defendant.)

DEFENDANT'S PRETRIAL
STATEMENT

NOW COMES the Defendant, Lawrence W. Rothstein, by and through counsel, and submits the following Pretrial Statement.

BACKGROUND INFORMATION

The parties were married on March 14, 2002 at Sarasota, Florida. One child has been born as issue of this marriage; Jack Stanley Rothstein born [REDACTED]. The parties have been residents of the State of Ohio and County of Montgomery for more than six (6) months. The length of the marriage is six (6) years.

The Plaintiff's date of birth is [REDACTED] and the Defendant's date of birth is July 12, 1961. Plaintiff claims grounds for divorce of gross neglect of duty, extreme cruelty and



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DAYTON OHIO 45424-2700
937-223-1120
www.psebw.com

PLAINTIFF'S
EXHIBIT
18

incompatibility. Defendant claims ground for divorce of incompatibility and specifically denies the plaintiff's allegations of gross neglect of duty and extreme cruelty.

I. **DEBTS**

Joint Marital Debts

Wells Fargo Home Mortgage
Loan No #0071843015
Marital Residence
503 Old Harbor Court
Dayton, OH 45458
Balance as of 09-15-08 (\$ 637,636.40)

Wells Fargo Home Mortgage
Loan #0071843015
Marital Residence
Escrow Shortage as of 09-15-08 (\$ 3,237.75)

R. A. Rhoads (home improvement) (\$ 43,695.09)

The Siebenthaler (landscaping) (\$ 11,463.72)

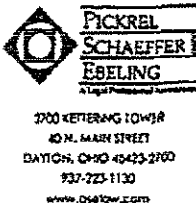
Gene Zimmerman Designer's Exchange, Inc.
(decorating) (\$ 13,276.03)

Marital Debts In Name of Lawrence W. Rothstein

Direct Merchants Bank (credit card)
Account # [REDACTED]
Balance as of January 1, 2008 (\$ 3,620.20)

Potential Medical Malpractice Claim
Michael D. Clawson, POA For Sally
Clawson vs. Lawrence Rothstein, M. D., et al.
Case No. 2007 CV 10081
Montgomery County Common Pleas Court
(Prayer for "in excess of \$25,000) (\$ 25,000.00) +

Potential Medical Malpractice Claim
Edward Tausch, et al. vs. Riverview Health
Institute, LLC, et al.
Case No. 2007 CV 3969
Montgomery County Common Pleas Court
(Prayer for "in excess of \$25,000) (\$ 25,000.00) +



Potential Medical Malpractice Claim
Gwendolyn Hayden, et al. vs. Lawrence
B. Rothstein, M. D., et al.
Case No. 2007 CV 0221
Montgomery County Common Pleas Court
(Prayer for "in excess of \$25,000) (\$ 25,000.00) +

Potential Medical Malpractice Claim
Edward Ruhstaller, et al. vs. Lawrence B.
Rothstein, M. D., et al.
Case No. 2008 CV 7883
Montgomery County Common Pleas Court
(Prayer for "in excess of \$25,000) (\$ 25,000.00) +

Potential Medical Malpractice Claim
Gary Yerdon, et al. vs. Lawrence B.
Rothstein, M. D., et al.
Case No. 2008 CV 6949
Montgomery County Common Pleas Court
(Prayer for "in excess of \$25,000) (\$ 25,000.00) +

Potential Medical Malpractice Claim
Max Dickey, et al. vs. Lawrence B.
Rothstein, M. D., et al.
Case No. 2007 CV 5720
Montgomery County Common Pleas Court
(Prayer for "in excess of \$25,000) (\$ 25,000.00) +

Medical Malpractice Claim
David A. Krause, et al. vs. Greater Cincinnati
Pain Management Center, PSC, et al.
Case No. A070075
Hamilton County Common Pleas Court
Jury Verdict rendered 03-23-09 (\$ 772,000.00)

Marital Debts In Name of Angela Filipowicz Rothstein

Mercedes-Benz Financial
Account # [REDACTED] 4362
Lease for 2007 Mercedes Sedan
(no documentation provided by plaintiff) To be assigned to
Steven M. Rothstein

Chase Auto Finance
Account # [REDACTED] 2205
Loan for 2007 Mercedes SUV GL450
(no documentation provided by plaintiff) Unknown



2700 LETTERING TOWER
40 N. MAIN STREET
DAYTON, OHIO 45423-2700
937-223-1130
www.ohio.gov

(Mercedes-Benz) Bank of America (Visa)	
Account # [REDACTED]	
Balance as of August 20, 2008	(\$ 1,394.58)
Mercedes-Benz Credit Cards (Visa)	
Account # [REDACTED]	
Balance as of 11-19-07	(\$ 7,093.03)
Saks Fifth Avenue Fur Maintenance (no documentation provided by plaintiff)	(\$ 700.00)
Bank of America (MasterCard) Bingham University Alumni Asso.	
Account # [REDACTED]	
Balance as of January [REDACTED] 008	\$ -0-
Bank of America (MasterCard) Bingham University Alumni Asso.	
Account # [REDACTED]	
Balance as of August 2, 2008	(\$ 5,621.00)
Citibank (South Dakota, NA)	
Account # [REDACTED] 9317 (no documentation provided by plaintiff)	Unknown
CitiFinancial	
Account # [REDACTED] 8909	
Balance as of August 6, 2008	(\$ 17,237.05)

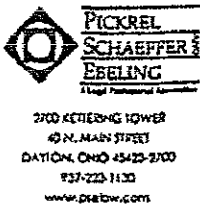
II. ASSETS

Joint Assets

Marital Residence
503 Old Harbor Court
Dayton, OH 45458
Purchase price: \$ 800,000.00

Lawrence W. Rothstein Assets

National City Bank (checking)
Account # [REDACTED]
Balance as of March 26, 2008 \$ 4,553.77



Ameriprise Financial
(Putnam Investments - 529 Plan)
Lawrence B. Rothstein FBO *Jack S. Rothstein*
Balance as of 02-12-08 (unavailable) (will supplement)

Ameriprise Financial
Account # [REDACTED] 6 021
Balance as of 02-12-08
(pre-marital asset)
Lawrence B. Rothstein FBO *Ashley R. Rothstein* \$ 5,360.18

Ameriprise Financial
Account # [REDACTED] 9 021
Balance as of 02-12-08
(pre-marital asset)
Lawrence B. Rothstein FBO *Ryan M. Rothstein* \$ 6,184.50

Ameriprise Financial Portfolio
Lawrence B. Rothstein IRA
Account # [REDACTED] 2 021
(pre-marital asset)
Balance as of 02-12-08 \$ 125,989.27

Ameriprise Financial Portfolio
RiverSource Variable Universal Life Ins.
Account # [REDACTED] 4 004
(pre-marital asset)
Value as of 04-21-08 \$ 55,009.21

Ameriprise Financial Portfolio
RiverSource Variable Universal Life IV
Account # [REDACTED] 4 004
Balance as of 04-21-08 \$ 10,089.99

Ameriprise Financial
Term Life Insurance
[REDACTED] 8 004
Benefit: \$1,000,000
Beneficiary: *Angela F. Rothstein*
Cash surrender value -0-

Disability Insurance
[REDACTED] 1 004
Benefit: \$6,000 per month
Cash surrender value -0-

Optivia Stock -0-



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937-223-1130
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Gentleman's sterling silver & 18k gold bracelet Insurance value	\$ 1,100.00
Gentleman's Rolex 18k rose gold bezel; 31 jewel watch, Chronometer, sapphire crystal, oyster bracelet Insurance value	\$ 8,700.00
Gentleman's Breitling Watch Value	\$ 2,000.00
Personal collections and effects <i>(pre-marital asset)</i>	-0-
Partial Interest in Residential Real Estate 810 Vintage Lake Court Dayton, OH 45458 <i>(post-separation asset)</i>	n/a

Angela Filipowicz Assets

Fifth Third Bank (checking) Account # [REDACTED] 1985 Balance as of 11-26-07 (\$- 1,252.00 balance as of 06-20-08)	\$ 2,643.59
Fifth Third Bank (checking) Account # [REDACTED] 9161 Balance as of 11-26-07 (\$- 149.95 balance as of 12-07-07)	\$ 32,431.08
Fifth Third Bank (savings) Account # [REDACTED] 0260 Balance as of 11-16-07 (zero balance as of 11-28-07)	\$ 66,809.76
Fifth Third Bank (Cert. of Deposit) Cert. #0523519012 Maturity Date: 11-27-07	\$ 10,005.29
Fifth Third Bank (Cert. of Deposit) Cert. #0523518984 Maturity Date: 11-27-07	\$ 10,028.39
2007 Mercedes SUV GL450 NADA value as of 09-09-08	\$ 50,375.00



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Diamond Engagement Ring
1.27 carat round brilliant diamond
SI-2, G-H Color
Insurance value

\$ 8,800.00

Smearred beaver sections jacket with fox trim
Insurance value

\$ 2,000.00

III. WITNESSES

Lawrence W. Rothstein
c/o Steve Rothstein
One Elizabeth Place
Dayton, OH 45408

Mr. Rothstein will testify as to his assets and debts, employment, non-ownership of any business interests, income, salary, bonuses and other matters related thereto.

Angela Filipowicz Rothstein
503 Old Harbor Court
Dayton, OH 45458

Mrs. Rothstein will testify as upon cross-examination.

Steve Rothstein
One Elizabeth Place
Dayton, OH 45408

Mr. Rothstein will testify as to the Defendant's employment, non-ownership of any business interests, income, salary, bonuses and other matters related thereto.

Michael Morehead
Real Tech
5600 Kentshire Drive, Suite 8A
Dayton, OH 45440-2963

Mr. Morehead will testify as to the valuation of the marital residence and other matters related thereto.

Mark Moore
Innovative Auctions, Inc.
P. O. Box 218
Dayton, OH 45441



2700 KETTERING TOWER
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DAYTON, OHIO 45429-2200
937-223-1120
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IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

RIVERVIEW HEALTH INSTITUTE, LLC : CASE NO. _____
One Elizabeth Place :
Dayton, Ohio 45417, : JUDGE _____
Plaintiff, :
vs. :
STEVEN M. ROTHSTEIN : **COMPLAINT**
One Elizabeth Place : **(WITH JURY DEMAND**
Dayton, Ohio 45417, : **ENDORSED HEREON).**
Defendant. :

Now comes the Plaintiff, Riverview Health Institute, LLC, by counsel, and, in accordance with Rules 3 and 8 of the Ohio Rules of Civil Procedure, files this Complaint against the Defendant Steven M. Rothstein, stating as follows:

INTRODUCTION

1. Beginning approximately August 1, 2007 to on or about May 28, 2009, Defendant Steven Rothstein served as a paid attorney for Plaintiff Riverview Health Institute, LLC. During the course of his legal representation, Defendant engaged in multiple acts of professional misconduct, failed to exercise the degree of skill and learning normally applied by members of the legal profession in similar circumstances and committed particular acts in furtherance of fraud and unfair dealing, all of which caused substantial damages to Plaintiff. By this action, Plaintiff seeks to recover on its claims for relief against the Defendant.



PARTIES

2. Plaintiff, Riverview Health Institute, LLC ("RHI"), is a limited liability company organized and maintained under the laws of Ohio. RHI owns and operates a small, thirteen-bed hospital and is engaged in the business of providing medical care and performing medical procedures. It maintains its principal place of business at One Elizabeth Place, Dayton (Montgomery County), Ohio 45417.

3. Defendant, Steven M. Rothstein ("Rothstein"), is an attorney licensed to practice law in the State of Ohio. At all times relevant to this cause of action and to the present, Mr. Rothstein has maintained an office for the purpose of practicing law at One Elizabeth Place, Dayton (Montgomery County), Ohio 45417.

JURISDICTION AND VENUE

4. Jurisdiction is proper in this court inasmuch as the Plaintiff is a resident of the State of Ohio and Montgomery County and the Defendant conducts business in the State of Ohio and Montgomery County. *See* R.C. §2305.01.

5. Venue is proper here inasmuch as Defendant engaged in activities in Montgomery County that gave rise to the claims for relief set forth herein. *See* Rule 3, Ohio Rules of Civil Procedure.

GENERAL ALLEGATIONS

6. Defendant Rothstein is the brother and business manager of laserscopic surgeon, Dr. Lawrence Rothstein. He also provides legal representation to Dr. Rothstein. In calendar year 2007 and thereafter, Dr. Rothstein maintained privileges and a professional office at RHI. Defendant Rothstein also maintained a business office at RHI, primarily in support of his brother.

7. Beginning approximately August 1, 2007, Plaintiff RHI retained Defendant Rothstein to perform general legal services for it in exchange for an annual retainer in the amount of Fifty

Thousand Dollars (\$50,000.00), payable in monthly increments. At the time, Defendant Rothstein represented to management of RHI that his representation of RHI was entirely compatible with his representation of his brother, Dr. Rothstein.

8. RHI continued to pay Defendant Rothstein without interruption, in accordance with the terms outlined above, until termination of his services on or about May 28, 2009, as discussed herein below.

9. As part of his professional duties to RHI, Defendant Rothstein undertook the simultaneous representation of both RHI and his brother, Dr. Rothstein, relevant to medical malpractice claims lodged against RHI and Dr. Rothstein jointly and severally, including, but not limited to, the case of Clawson v. Rothstein, et al. During the period of such joint representation, Defendant Rothstein devised and implemented a legal plan to isolate the assets of Dr. Rothstein from all judgment creditors, thus leaving RHI as the only financially responsible party- defendant subject to pending joint and several malpractice claims. In this and other instances, involving additional adverse representations, Defendant Rothstein concealed relevant facts and failed to provide RHI with adequate information in order to make an informed judgment as to the impropriety of his continuing adverse representations.

10. During the course of his joint representation of Dr. Rothstein and RHI and otherwise, Defendant Rothstein repeatedly divulged confidential RHI information and demonstrated an unreasonable lack of skill and/or fidelity in the performance of his professional duties, thus causing substantial damages to RHI, his client at the time.

11. In late 2008 Defendant Rothstein was approached by Samuel Bailey and subsequently Chris Lloyd with a proposal to establish a commercial business entity, North American Laseroscopic Spine Institute ("NALSI") in order to market and expand the business of performing laseroscopic spine surgery which Defendant Rothstein's brother, Dr. Larry Rothstein had pioneered and which

RHI had substantially assisted in achieving success under the name of Dayton Laser Spine Institute.

12. Based on substantial misrepresentations of existing capitalization and managerial expertise, Defendant Rothstein assisted in facilitating an agreement between RHI and NALSI *et al* in which Lloyd and NALSI were given access to large amounts of RHI's capital and cash flow as well as day-to-day management control over RHI's operations. Defendant Rothstein participated in and assisted in the daily operations of this undertaking.

13. During the course of such management control, Dr. Rothstein was paid enormous amounts in salary and other benefits such as the use of luxury cars paid for by the business. Defendant Rothstein subsequently admitted to RHI that he was aware during this time that Dr. Rothstein was paid sums by RHI far in excess of any contracted amounts and yet he failed to inform RHI of that fact. Mr. Lloyd and other NALSI employees unlawfully diverted substantial sums of RHI funds, totaling in excess of One Million Dollars (\$1,000,000.00), to the personal benefit of Lloyd and Bailey, NALSI, and perhaps others.

14. Defendant Rothstein knew or should have known of the substantial fraud, misrepresentation, mismanagement, misuse of funds, and conversion of RHI's assets for the improper and unlawful use of others and yet did nothing to explore or address these issues. In reward for his collusion, Defendant Rothstein and his brother received substantial stock ownership in NALSI as well as additional direct and indirect financial benefits. Thus, Defendant Steve Rothstein worked in concert and conspiracy with Bailey, Lloyd, and Dr. Larry Rothstein to damage RHI's business relationships with Dr. Rothstein and usurp RHI's ongoing laseroscopic spine business.

15. By May 15, 2009, RHI became fully aware of the substantial ongoing fraud, misrepresentations, mismanagement, and misuse of funds. Despite assurances to the contrary, RHI also became aware that Messrs. Lloyd and Bailey and NALSI did not have the funds required to complete an agreed upon purchase of RHI and its assets. At this point it became clear that the earlier

representations were but a ruse to obtain operating control of RHI and its valuable financial accounts and to damage and then usurp the laseroscopic spine business that RHI had built. The relationship between RHI on one hand, and the Messrs. Lloyd and Bailey and NALSI on the other hand, was terminated at that time.

16. Sometime during the period May 19 to May 28, 2009, outside counsel for RHI became aware of the adverse representations on the part of Defendant Rothstein and on or about the latter date, Defendant Rothstein's representation of RHI was terminated by RHI.

17. During the course of his adverse representations of Messrs. Lloyd and Bailey and NALSI, Defendant Rothstein repeatedly divulged confidential RHI information and demonstrated an unreasonable lack of skill and/or fidelity in the performance of his professional duties, thus causing substantial damages to RHI, his client at the time.

18. During the course of his adverse representation of Messrs. Lloyd and Bailey and NALSI, Defendant Rothstein furthered the fraudulent misrepresentation of facts and law by Messrs. Lloyd, Bailey and others and engaged in activities for the financial benefit of his brother, Dr. Rothstein and himself, all to the disadvantage of RHI, his client at the time.

19. Had Defendant Rothstein exercised proper skill and care in the foregoing matters, RHI would not have incurred financial losses inasmuch as Defendant Rothstein knew or should have known that the Messrs Lloyd and Bailey and NALSI were perpetrating a fraud upon RHI.

20. Defendant Rothstein never fully disclosed to RHI relevant conflicts of interest and never obtained the informed consent of RHI to such conflicts. Further, by and large, such conflicts of interest were not curable by consent.

FIRST CLAIM FOR RELIEF
(Adverse Representations)

21. The allegations contained above are realleged and incorporated by reference as if

fully set forth herein.

22. Defendant Rothstein owed an obligation to RHI to refrain from accepting any representations that were fundamentally adverse to the interests of RHI. Such obligation is inherent to the attorney/client relationship that existed between Defendant Rothstein and RHI.

23. Defendant Rothstein breached his obligation to RHI by his acceptance of multiple adverse representations covering Dr. Rothstein, Messrs. Lloyd and Bailey and NALSI. Such breach is violative of his core professional duty to RHI, his client at the time.

24. There exists a causal connection between Defendant Rothstein's acceptance of such adverse representations and resulting, substantial damages incurred by RHI.

25. Plaintiff RHI demands a money judgment against Defendant Rothstein in an amount to be established with specificity at time of trial.

SECOND CLAIM FOR RELIEF
(Unauthorized Disclosures)

26. The allegations contained above are realleged and incorporated by reference as if fully set forth herein.

27. Defendant Rothstein owed an obligation to RHI to maintain the sanctity of the attorney-client privilege and to refrain from any unauthorized disclosure of confidential information.

28. Defendant Rothstein breached his obligation to RHI by his unauthorized disclosures of confidential information, during his representation and thereafter.

29. Defendant Rothstein's unauthorized disclosures of confidential information were, and continue to be, the proximate cause of substantial damages incurred by Plaintiff RHI.

30. Plaintiff RHI demands a money judgment against Defendant Rothstein in an amount to be established with specificity at time of trial.

THIRD CLAIM FOR RELIEF
(Professional Negligence)

31. The allegations contained above are realleged and incorporated by reference as if fully set forth herein.

32. Defendant Rothstein owed a duty to RHI to render services to it that achieved a degree of care, skill and learning normally applied by members of the legal profession in similar circumstances.

33. Defendant Rothstein failed in his duty to conform to such professional standards relevant to both his litigation and counseling services.

34. Defendant Rothstein's failure of duty was the proximate cause of substantial damages suffered by RHI.

35. Plaintiff RHI demands a money judgment against Defendant Rothstein in an amount to be established with specificity at time of trial.

FOURTH CLAIM FOR RELIEF
(Fraud/Unfair Dealing)

36. The allegations contained above are realleged and incorporated by reference as if fully set forth herein.

37. Relevant to his counseling of Dr. Rothstein, Messrs. Lloyd and Bailey and NALSI relevant to the purported purchase of RHI and the interim, day-to-day management of its accounts, Defendant Rothstein breached his duty of honesty and fair dealing to RHI.

38. Defendant Rothstein's fraudulent misstatements of both law and fact damaged RHI, his client at the time, and were intended to benefit his own personal financial interests.

39. Defendant's actions were the proximate cause of substantial damages suffered by RHI.

40. Plaintiff RHI demands a money judgment against Defendant Rothstein in an

amount to be established with specificity at time of trial.

FIFTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

41. The allegations contained above are realleged and incorporated by reference as if fully set forth herein.

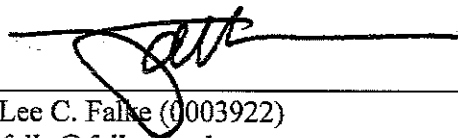
42. By virtue of his retention as an attorney for RHI, Defendant Rothstein owed RHI a fundamental fiduciary duty of honesty and fair dealing of the highest order.

43. By his willful wrongdoings described hereinabove, Defendant Rothstein violated his fiduciary duty, thereby causing substantial financial damages to Plaintiff RHI.

44. Plaintiff RHI demands a money judgment against Defendant Rothstein in an amount to be established with specificity at time of trial.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of excess of Twenty-Five Thousand Dollars (\$25,000.00), the exact amount to be determined at trial, to fully, fairly and totally compensate Plaintiff, plus punitive damages, interests, costs and attorneys fees, and whatever additional relief, legal or equitable, that the Court deems appropriate in the circumstances.

Respectfully submitted,



Lee C. Falke (0003922)
falke@falkeandunphy.com
Patrick K. Dunphy (0017827)
dunphy@falkeandunphy.com
FALKE & DUNPHY, LLC
30 Wyoming Street
Dayton, OH 45409
(937) 222-3000
(937) 222-1414 fax
Trial Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of law.

Respectfully submitted,



Lee C. Falke (0003922)
falke@falkeanddunphy.com
Patrick K. Dunphy (0017827)
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FALKE & DUNPHY, LLC
30 Wyoming Street
Dayton, OH 45409
(937) 222-3000
(937) 222-1414 fax
Trial Attorneys for Plaintiff



IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

GARY YERDON,

CASE NO.: 2008 CV 06949

Plaintiff,

JUDGE BARBARA P. GORMAN

-VS-

LAWRENCE B. ROTHSTEIN, M.D., et al.,

ENTRY ORDERING PRODUCTION

Defendant.

This Court received a letter dated April 15, 2010 from counsel for Defendant Rothstein in which he requested an in camera inspection of certain correspondence in his possession between Merilee Fuller of Tribeca Strategic Advisors, Inc. and Steven Rothstein (the "Correspondence"). At the time the Correspondence was sent, Steven Rothstein was legal counsel to Defendant Riverview Health Institute ("Riverview"). Riverview objected to the dissemination of the Correspondence to Plaintiff in the above-captioned matter on the basis that it is protected by the attorney/client privilege.

After in camera review of the Correspondence, the Court discussed the matter with counsel for Defendant Rothstein and counsel for Defendant Riverview. Counsel for Defendant Riverview stated to the Court his objection to the production of the Correspondence to Plaintiff.

Upon due consideration of the content of the Correspondence and the argument of counsel for Defendant Riverview, the Court finds that the Correspondence is not protected by the attorney/client privilege. Defendant Rothstein is hereby ordered to produce a copy of the Correspondence to counsel for Plaintiff forthwith.

A telephone status conference has been set in this matter for May 13, 2010 at 12:00 p.m.

SO ORDERED:

JUDGE BARBARA P. GORMAN

The parties listed below were notified of this Entry through the electronic notification system of the

Clerk of Courts:

Gregory C. Gibson
Michael F. Lyon
David S. Lockemeyer
Thomas J. Intilli

William Hafer, Bailiff (937) 225-4392 haferw@montcourt.org



General Divison
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Title: GARY YERDON vs LAWRENCE B ROTHSTEIN

Case Number: 2008 CV 06949

Type: Entry Signed By Judge

So Ordered

Barbara Pugh Gorman

Barbara P. Gorman