4-15-2010

Aguilar v. Coonrod Clerk's Record v. 13 Dckt. 36980

(VOLUME 13)

IN THE

SUPREME COURT

OF THE

STATE OF IDAHO

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs-Respondents,

-vs-

NATHAN COONROD and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants,

Defendants-Appellants.

Appealed from the District of the Third Judicial District for the State of Idaho, in and for Canyon County

Honorable GREGORY M. CULET, District Judge

Steven K. Tolman
TOLMAN & BRIZEE, P.C. and
Steven J. Hippler
GIVENS PURSLEY, LLP.

Attorneys for Appellants

David E. Comstock
and
Byron V. Foster

Attorneys for Respondents

IN THE SUPREME COURT OF THE

STATE OF IDAHO

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,	)	
Plaintiffs-Respondents,	)	Supreme Court No. 36980
-vs-	)	
NATHAN COONROD and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants,	)	
Defendants-Appellants.	)	

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE GREGORY M. CULET, Presiding

Steven K. Tolman, TOLMAN & BRIZEE, P.C., P. O. Box 1276, Twin Falls, Idaho 83303-1276
Steven J. Hippler, GIVENS PURSLEY, LLP., P. O. Box 2720, Boise, Idaho 83701

Attorneys for Appellants

David E. Comstock, P. O. Box 2774, Boise, Idaho 83701-2774
Byron V. Foster, P. O. Box 1584, Boise, Idaho 83701

Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

TABLE OF CONTENTS, Continued

INDEX

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

INDEX, Continued

Gary T. Dance, ISB No. 1513
Julian E. Gabiola, ISB No. 5455
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
412 West Center
Post Office Box 817
Pocatello, Idaho 83204
Telephone (208) 233-2001
Facsimile (208) 232-0150
gtd@moffatt.com
jeg@moffatt.com
17230.0107

Attorneys for Steven R. Newman, M.D.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, AND LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs,

vs.

ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., CATHERINE ATUP-LEAVITT, M.D., MITCHELL LONG, D.O., COLUMBIA WEST VALLEY MEDICAL CENTER, an Idaho corporation, MERCY MEDICAL CENTER, an Idaho corporation, PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES, I through X, employees of one or more of the Defendants,

Defendants.

Case No. CV 05-5781

DEFENDANT STEVEN R. NEWMAN, M.D.'S OBJECTION TO PLAINTIFFS' NINTH SUPPLEMENTAL EXPERT WITNESS DISCLOSURE

COMES NOW defendant Steven R. Newman, M.D. ("Dr. Newman"), by and through undersigned counsel, and hereby objects to Plaintiffs' Ninth Supplemental Expert Witness Disclosure.

RELEVANT FACTUAL BACKGROUND

On February 18, 2009, plaintiffs filed a Motion for Protective Order, seeking to preclude defendants from deposing Kenneth Bramwell, M.D., a Boise physician with whom plaintiffs' experts Paul Blaylock, M.D., and Dean Lapinel, M.D., spoke to become familiar with the standard of care for a physician practicing emergency medicine in Caldwell, Idaho. In support of their motion, plaintiffs argued that they were unable to speak with any physician in Caldwell, Idaho, who was familiar with the standard of care for a physician practicing emergency medicine in May 2003.

On March 26, 2009, a hearing was held on plaintiffs' Motion for Protective Order, and at the pretrial conference on March 30, 2009, the Court issued a verbal order granting the motion. The Court also informed plaintiffs' counsel that by granting the Motion for Protective Order (and not allowing Dr. Bramwell's deposition to be taken), plaintiffs would be left with their argument, on the record as it stood, in opposition to Dr. Newman's Second Motion in Limine seeking the exclusion of Dr. Blaylock's and Dr. Lapinel's testimony on the basis that neither were familiar with the standard of care applicable to Dr. Newman.

On April 9, 2009, plaintiffs filed their Ninth Supplemental Expert Witness Disclosure, wherein they indicate that on April 8, 2009, Drs. Blaylock and Lapinel spoke on the phone with William Blahd, M.D. Affidavit of C. Clay Gill in Support of Defendant Steven Newman, M.D.'s Objection to Plaintiffs' Ninth Supplemental Expert Witness Disclosure, Exhibit A. Dr. Blahd saw Mrs. Aguilar on April 26, 2003, at West Valley Medical Center.

I. ARGUMENT

A. The Court Should Prohibit Plaintiffs From Relying Upon Their Ninth Supplemental Expert Witness Disclosure.

1. Plaintiffs should be estopped from relying upon their experts' conversation with Dr. Blahd.

Plaintiffs should be judicially estopped from relying upon Dr. Blahd to allow Dr. Blaylock and Dr. Lapinel to become familiar with the standard of care applicable to Dr. Newman. Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. *A & J Constr. Co., Inc. v. Wood*, 141 Idaho 682, 116 P.3d 12, 14 (2005) (citing *Sword v. Sweet*, 140 Idaho 242, 252, 92 P.3d 492, 502 (2004)).

> It is quite generally held that where a litigant, by means of such sworn statements, obtains a judgment, advantage or consideration from one party, he will not thereafter, by repudiating such allegations and by means of inconsistent and contrary allegations or testimony, be permitted to obtain a recovery or a right against another party, arising out of the same transaction or subject matter.

Id., 141 Idaho at 685, 116 P.3d at 15 (quoting *Loomis v. Church*, 76 Idaho 87, 93-94, 277 P.2d 561, 565 (1954)).

> Essentially, this doctrine prevents a party from assuming a position in one proceeding and then taking an inconsistent position in a subsequent proceeding. There are very important policies underlying the judicial estoppel doctrine. One purpose of the doctrine is to protect the integrity of the judicial system, by protecting the orderly administration of justice and having regard for the dignity of judicial proceedings. The doctrine is also intended to prevent parties from playing fast and loose with the courts.

Id. (quoting *Robertson Supply, Inc. v. Nicholls*, 131 Idaho 99, 101, 952 P.2d 914, 916 (Ct. App. 1998)).

Judicial estoppel protects the integrity of the judicial system, not the litigants, so numerous courts have held that "'[w]hile privity and/or detrimental reliance are often present in judicial estoppel cases, they are not required.'" *Id.*, 116 P.3d at 16 (quoting *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282, 1286 (11th Cir. 2002)). "Additionally, parties asserting judicial estoppel are not required to demonstrate individual prejudice since courts have concluded that the doctrine is intended to protect the judicial system." *Id.* (citing *Burnes*, 291 F.3d at 1286).

Plaintiffs represented to the Court in arguing their Motion for Protective Order that none of the physicians in Caldwell, Idaho, would respond to their request for a conference regarding the standard of care. Memorandum in Support of Plaintiffs' Motion for Protective Order, p. 12; Affidavit of Byron Foster in Support of Plaintiffs' Motion for Protective Order, ¶¶ 7, 8, Exhibit E, August 7, 2008 letter. The Court relied upon that representation in granting plaintiffs' Motion for Protective Order, precluding defense counsel from deposing Dr. Bramwell. The Court also informed plaintiffs' counsel on March 30, 2003, that in granting the protective order, plaintiffs were left with the foundation upon which they relied to argue that Dr. Blaylock and Dr. Lapinel had sufficient knowledge of the standard of care, i.e., conversation with Dr. Bramwell, in opposition to Dr. Newman's Second Motion in Limine.

Now, contrary to their representation to the Court relative to the Motion for Protective Order, plaintiffs now indicate that they have spoken with Dr. Blahd, who was practicing emergency medicine in May 2003 in Caldwell, Idaho. And, contrary to the Court's verbal order of March 30, 2009, and well after Dr. Newman filed his Second Motion in Limine, they now are relying upon a Caldwell physician to argue that their experts are familiar with the standard of care applicable to Dr. Newman. Accordingly, plaintiffs should be judicially estopped from relying upon their experts' conversation with Dr. Blahd, and the Court should enter an

order precluding plaintiffs from introducing any evidence relative to Dr. Blaylock's and Dr. Lapinel's conversation with Dr. Blahd.

2. Plaintiffs should not be allowed to rely upon their experts' conversation with Dr. Blahd, as they have turned him into an expert witness beyond their expert witness disclosure deadline.

Prior to August 8, 2009, Dr. Blahd was a fact witness who treated Maria Aguilar on April 26, 2003, at West Valley Medical Center. As Plaintiffs' Ninth Supplemental Expert Witness Disclosure indicates, Dr. Blahd is now an expert, because Dr. Blaylock and Dr. Lapinel provided him with their opinions of Dr. Newman's treatment in this case. The supplemental disclosure is nothing other than a statement to Dr. Blahd of what Dr. Blaylock and Dr. Lapinel argue were Mrs. Aguilar's history and symptoms: showering emboli, respiratory alkalosis, metabolic acidosis, shortness of breath, chest pain, abnormal EKG findings, syncope/near syncope, dizziness, fatigue, weakness, birth control medication, cardiac catheterization and that all of these alleged symptoms are consistent with a showering of emboli and indicative of a pulmonary embolism that Dr. Newman should have diagnosed. Plaintiffs' Ninth Supplemental Expert Witness Disclosure, pp. 3, 4. The disclosure also indicates that a D-Dimer test should have been done. *Id.*, p. 4. Finally, they allege that Dr. Blahd informed them that paramedics more likely than not give a report directly to the emergency physician on duty, which is contrary to what is indicated in the paramedic's May 31, 2003 report.

In short, plaintiffs, through Dr. Blaylock and Dr. Lapinel, have given Dr. Blahd their version of Mrs. Aguilar's history and symptoms and taken him from being a fact witness to a standard of care expert. Plaintiffs expert witness disclosure deadline was September 8, 2008. They should be precluded from relying upon any conversation with Dr. Blahd at trial.

3. **If the Court allows plaintiffs to rely upon their Ninth Supplemental Expert Witness Disclosure, then the Court should allow Dr. Blahd's deposition.**

If the Court rules that plaintiffs may rely upon their Ninth Supplemental Expert Witness Disclosure, then the Court should allow Dr. Blahd's deposition for two reasons. First, to confirm the statements that plaintiffs represent Dr. Blahd made in their Ninth Supplemental Expert Witness Disclosure. Second, to ascertain what Dr. Blahd's opinions are regarding the standard of care.

II. CONCLUSION

Based upon the foregoing argument and authority, Dr. Newman respectfully requests that the Court preclude the plaintiffs from relying upon their Ninth Supplemental Expert Witness Disclosure at trial or, in the alternative, allow the deposition of Dr. Blahd.

DATED this 13th day of April, 2009.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____ Fax

Gary T. Dance – Of the Firm
Attorneys for Steven R. Newman, M.D.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 2009, I caused a true and correct copy of the foregoing **DEFENDANT STEVEN R. NEWMAN, M.D.'S OBJECTION TO PLAINTIFFS' NINTH SUPPLEMENTAL EXPERT WITNESS DISCLOSURE** to be served by the method indicated below, and addressed to the following:

David E. Comstock LAW OFFICES OF COMSTOCK & BUSH P.O. Box 2774 BOISE, ID 83701-2774 Facsimile: (208) 344-7721	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile
Byron V. Foster Attorney-at-law P.O. Box 1584 Boise, ID 83701-1584 Facsimile: (208) 344-7721	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile
John J. Burke HALL FARLEY OBERRECHT & BLANTON, PA 702 W. Idaho, Ste. 700 P.O. Box 1271 Boise, ID 83701 Facsimile: (208) 395-8585	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile
Andrew C. Brassey BRASSEY WETHERELL CRAWFORD & MCCURDY 203 W. Main Street Boise, ID 83702 Facsimile: (208) 344-7077	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile
Steven K. Tolman TOLMAN & BRIZEE, P.C. P.O. Box 1276 Twin Falls, ID 83303-1276 Facsimile: (208)733-5444	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile

~~Gary T. Dance~~
C. Clayton Gill

Gary T. Dance, ISB No. 1513
Julian E. Gabiola, ISB No. 5455
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
412 West Center
Post Office Box 817
Pocatello, Idaho 83204
Telephone (208) 233-2001
Facsimile (208) 232-0150
gtd@moffatt.com
jeg@moffatt.com
17230.0107

Attorneys for Steven R. Newman, M.D.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, AND LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs,

vs.

ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D. CATHERINE ATUP-LEAVITT, M.D., MITCHELL LONG, D.O., COLUMBIA WEST VALLEY MEDICAL CENTER, an Idaho corporation, MERCY MEDICAL CENTER, an Idaho corporation, PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES, I through X, employees of one or more of the Defendants,

Defendants.

Case No. CV 05-5781

AFFIDAVIT OF C. CLAYTON GILL IN SUPPORT OF DEFENDANT STEVEN R. NEWMAN, M.D.'S OBJECTION TO PLAINTIFFS' NINTH SUPPLEMENTAL EXPERT WITNESS DISCLOSURE

STATE OF IDAHO)
) ss.
County of Ada)

C. CLAY GILL, being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney with the law firm of Moffatt, Thomas, Barrett, Rock & Fields, which represents the defendant, Steven R. Newman, M.D., in the above-referenced matter and, as such, have personal knowledge with respect to the matters herein.

2. Attached hereto as Exhibit "A," is a true and correct copy of Plaintiffs' Ninth Supplemental Expert Witness Disclosure.

DATED this 13th day of April, 2009.

C. Clayton Gill

SUBSCRIBED AND SWORN to before me this 13th day of April, 2009.

JENNIFER R. TAYLOR NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at Boise, ID
My Commission Expires 4/24/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF C. CLAYTON GILL IN SUPPORT OF DEFENDANT STEVEN R. NEWMAN, M.D.'S OBJECTION TO PLAINTIFFS' NINTH SUPPLEMENTAL EXPERT WITNESS DISCLOSURE** to be served by the method indicated below, and addressed to the following:

David E. Comstock LAW OFFICES OF COMSTOCK & BUSH P.O. Box 2774 BOISE, ID 83701-2774 Facsimile: (208) 344-7721	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile
Byron V. Foster Attorney-at-law P.O. Box 1584 Boise, ID 83701-1584 Facsimile: (208) 344-7721	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile
John J. Burke HALL FARLEY OBERRECHT & BLANTON, PA 702 W. Idaho, Ste. 700 P.O. Box 1271 Boise, ID 83701 Facsimile: (208) 395-8585	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile
Andrew C. Brassey BRASSEY WETHERELL CRAWFORD & MCCURDY 203 W. Main Street Boise, ID 83702 Facsimile: (208) 344-7077	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile
Steven K. Tolman TOLMAN & BRIZEE, P.C. P.O. Box 1276 Twin Falls, ID 83303-1276 Facsimile: (208)733-5444	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (✓) Facsimile

~~Gary T. Dance~~
C. Clayton Gill

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON

JOSE AGUILAR, Individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs,

v.

ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants,

Defendants.

Case No. CV 05-5781

PLAINTIFFS' NINTH SUPPLEMENTAL EXPERT WITNESS DISCLOSURE

EXHIBIT
tabbies A

COME NOW Plaintiffs', by and through their counsel of record, and pursuant to the Court's Scheduling Order and in accordance with I.R.C.P. 26, hereby supplement their Expert Witness Disclosures.

1. **Paul Blaylock, M.D., FACEP**
   Providence Medical Group
   4500 N.W. Malheur Avenue
   Portland, OR 97229

2. **Dean Lapinel, M.D.**
   1437 E. Braemere Road
   Boise, ID 83702

On April 8, 2009, Plaintiffs' expert witnesses Paul Blaylock, M.D. and Dean Lapinel, M.D. participated in a telephone conference with William Blahd, M.D., a Board Certified Emergency Medicine specialist who was practicing as an emergency physician at the Emergency Department at West Valley Medical Center in May of 2003.

Dr. Blahd indicated that he knows the standard of health care practice for an emergency medicine physician at West Valley Medical Center in May of 2003 because he was one of those physicians. He also indicated that he knew the standard of health care practice for emergency medicine physicians practicing at Mercy Medical Center in Nampa, ID in April through June of 2003 due to the fact that during that time period; as an emergency physician practicing at West Valley Medical Center he was in contact with emergency medicine physicians in Nampa because these physicians often saw the same patients at various times. It was common that a patient might be seen in the WVMC emergency department and then subsequently be seen in the emergency department at MMC and visa versa. The emergency physicians at both facilities would also often utilize the same referral physicians to refer patients out. During this period of

time, the two emergency departments would often send each other's patients' medical records back and forth between the two hospitals when a patient of one was seen in the other's emergency department. Dr. Blahd indicated that with regard to the diagnosis, recognition of signs and symptoms of and treatment of pulmonary embolus; there was no difference in the standard of health care practice for an emergency physician between the emergency department at WVMC and the emergency department at MMC.

The three physicians (Blaylock, Lapinel and Blahd) also discussed and agreed that there were, in May of 2003, no deviations from the standard of health care practice in Caldwell, Nampa, Portland or Boise (according to the standards existing in Boise that Dr. Lapinel has kept abreast of regarding pulmonary embolus) regarding the following subjects, among others:

1. The methodology for an emergency physician in diagnosing a showering of pulmonary emboli.
2. The method which an emergency physician would utilize to approach a diagnosis of pulmonary embolus.
3. The capability at those hospitals to perform D-Dimer blood testing; pulmonary angiogram; VQ scan and/or pulmonary CT;
4. The indications for ordering of a D-Dimer blood test;
5. The steps to take when the D-Dimer result is positive;
6. The fact that the emergency physicians should know that if a patient is experiencing a showering of pulmonary emboli, the risk of developing a fatal saddle pulmonary embolus is high;

7. That when a patient is experiencing a showering of pulmonary emboli that cause intermittent signs and symptoms, the patient is more likely to survive if they are diagnosed and treated in a timely manner.

The three physicians also discussed various "red flag" warning signs of an impending pulmonary embolus such as: shortness of breath; chest pain, either pleuritic or non pleuritic; dyspnea; abnormal EKG findings and various patterns on EKGs; syncope or near syncope; dizziness; fatigue/weakness/tiredness/low energy; dyspnea on exertion; history of superficial thrombophlebitis; history of birth control medication; significance of cardiac catheterization with a finding of normal cardiac arteries; the significance of various findings on arterial blood gas testing such as respiratory alkalosis and metabolic acidosis and agreed that these "red flags" are consistent with a showering of pulmonary emboli and are indicative of an increased risk for a fatal pulmonary embolus, both in May of 2003 and presently.

The three physicians discussed their understanding that a D-Dimer blood test was and is a valuable tool if pulmonary emboli are suspected and that the standard of health care practice at West Valley Medical Center and Mercy Medical Center in May of 2003 would require that a positive D-Dimer require further testing and follow-up to rule out a pulmonary embolus as the cause of the positive test. That even if the practitioner suspected that a D-Dimer would be falsely positive for some reason, the emergency physician would be required; in order to meet the standard of health care practice in May of 2003, to follow up in the face of a history of syncope/near syncope, history of shortness of breath or history of chest pain, pleuritic or not.

The three physicians also discussed Dr. Blahd's experience that if a patient was

brought by ambulance to the emergency department at West Valley Medical Center in May of 2003 with a serious medical condition, the paramedics would more probably than not give a report directly to the emergency physician on duty. During that period of time, there was only one emergency physician on duty per shift in the emergency department at WVMC.

The three physicians agreed that in May of 2003, if an emergency physician thought of pulmonary emboli as a cause for a patient's signs and symptoms, the standard of health care practice required that it be ruled out because the consequences of not ruling it out can be catastrophic for the patient. Pulmonary embolus has to be ruled out quickly and a practitioner cannot simply rule it out in his head. In order to comply with the standard of care at either West Valley or Mercy Medical Centers in May of 2003, an emergency physician would have been duty bound to at least obtain a negative D-Dimer to rule out the presence of pulmonary emboli.

At the conclusion of the discussion, the three emergency physicians agreed that there were no local deviations in either Nampa or Caldwell from the standard of care during that same period in Portland, Boise , regionally or nationally for the testing, diagnosis or treatment of pulmonary embolus as it relates to emergency physicians or physicians Board Certified in family medicine acting in the capacity of emergency department physicians in May of 2003.

DATED THIS 9 day of April, 2009.

Byron V. Foster
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☐ U.S. Mail
☐ Hand Delivery
☑ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☐ U.S. Mail
☐ Hand Delivery
☑ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☐ U.S. Mail
☐ Hand Delivery
☑ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☐ U.S. Mail
☐ Hand Delivery
☑ Facsimile (208) 395-8585

Byron V. Foster

ORIGINAL

FILED
A.M. 4:10 P.M.
APR 13 2009
CANYON COUNTY CLERK
DEPUTY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased, Plaintiffs, v. ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants, Defendants.	Case No. CV 05-5781 **AFFIDAVIT OF KENNETH J. BRAMWELL, M.D.**

STATE OF IDAHO)
: ss.
County of Ada)

I, Kenneth J. Bramwell, M.D., being first duly sworn upon oath, deposes and says:

1. That I make this affidavit based upon my own personal knowledge.

2. That I am a physician, duly licensed by the Idaho State Board of Medicine to practice medicine in the State of Idaho.

3. That I am fellowship-trained in Pediatric Emergency Medicine at Primary Children's Medical Center at the University of Utah; July, 1999 to September, 2001.

4. That I am residency-trained in Emergency Medicine at the University of California San Diego; July, 1995 to June, 1999.

5. That I was attending physician in Emergency Medicine, McKay-Dee Hospital, Ogden, UT; September, 2001 to June, 2002.

6. That I was attending physician, Primary Children's Medical Center, SLC, UT, October, 2001 to June, 2002 and June, 2003 to July, 2005.

7. That I was Assistant Professor of Clinical Emergency Medicine, and Director of Pediatric Emergency Medicine, Department of Emergency Medicine, University Physicians, Inc., University of Arizona, July, 2002 to June, 2003.

8. That I came to the Treasure Valley in June of 2003 and have since that time practiced both adult and pediatric Emergency Medicine in Meridian and Boise, Idaho.

9. That since arriving here in June of 2003, I have continually interacted with physicians practicing Emergency Medicine in Caldwell, Nampa, Meridian and Boise, Idaho.

10. That through my practice in Meridian and Boise and my continual contact with emergency physicians not only in Caldwell, Nampa, Meridian and Boise, but also with emergency physicians in Salt Lake City; I know and understand that the local, community

standard of health care practice as it relates to the diagnosis and treatment of pulmonary embolus; the recognition of signs and symptoms thereof and the treatment modalities which are virtually the same throughout the Treasure Valley do not deviate from the standards and practices exhibited by emergency physicians at the other locations where I have practiced emergency medicine.

11. That these standards of health care practice have been consistent over the last several years, including May and June of 2003 through the present.

12. That while I did not arrive and begin practicing in the Treasure Valley until June of 2003; when I came here I reached an understanding that the standard of health care practice as it pertains to the diagnosis and treatment of pulmonary embolus had not suddenly changed in June of 2003 from what it was in April and May of 2003 and in fact had been consistent for the few years prior to my arrival.

13. That during the telephone conference of November 14, 2007, with Dr. Blaylock, Dr. Lapinel and Byron Foster, I discussed with the physicians my knowledge of the standard of health care practice in the Treasure Valley in the spring of 2003 and presently as it pertains to the diagnosis and treatment of pulmonary embolus in an adult patient; the recognition of signs and symptoms of pulmonary embolus and the treatment modalities utilized to diagnose and treat pulmonary embolus available at the various medical centers in Caldwell, Nampa, Meridian and Boise, in April through June of 2003. I also discussed with them the fact that these matters had not and have not changed during the period of time I have been practicing in the Treasure Valley and, based upon what I have learned since June of 2003, had not changed in the few years before my arrival here.

14. At the end of our discussion of November 14, 2007, Dr. Blaylock, Dr. Lapinel and I agreed that there were no deviations, with regard to diagnosing and treating

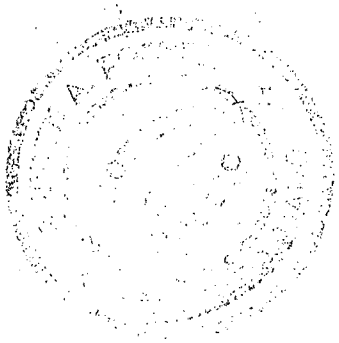
pulmonary embolus in adult patients; between Dr. Blaylock's location of practice in Portland, OR; Dr. Lapinel's experience as an emergency physician in the Boise area through 2001 and my practice and knowledge of the standard of health care practice in the Treasure Valley both before and after my arrival here in June of 2003.

15. At the end of our conversation of November 14, 2007, we all three agreed that; with regard to the issues discussed above relating to pulmonary embolus, there were no local deviations in the Treasure Valley in April and May of 2003 from what we understand to have been at least the regional, if not the national standard of care.

FURTHER YOUR AFFIANT SAITH NAUGHT.

Kenneth J. Bramwell, M.D.

SUBSCRIBED AND SWORN TO BEFORE ME this 20th day of March, 2009.



NOTARY PUBLIC FOR Idaho
Residing at: Boise, ID
My Commission Expires: 2/20/11

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of ~~March, 2009~~ April, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☑ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
Hawley Troxell Ennis & Hawley LLP
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

James B. Lynch
Lynch & Associates, PLLC
1412 W. Idaho Street, Suite 200
PO Box 739
Boise, ID 83701-0739
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 331-0088

Byron V. Foster

ORIGINAL

FILED
A.M. 4:10 P.M.
APR 13 2009
CANYON COUNTY CLERK
DEPUTY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs,

v.

ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants,

Defendants.

Case No. CV 05-5781

AFFIDAVIT OF BYRON V. FOSTER IN SUPPORT OF PLAINTIFFS' MEMORANDUM IN OPPOSITION TO ANDREW CHAI, M.D.'S MOTION IN LIMINE

Your Affiant, being first duly sworn up oath, deposes and states:

1, That I am an attorney, duly licensed by the Idaho State Bar to practice law in the State of Idaho;

2. That I am one of the attorneys representing Plaintiffs in the above-referenced matter;

3, That I make this Affidavit based upon my own personal knowledge;

4. That attached hereto as Exhibit "A" is a copy of the Curriculum Vitae of Andrew Chai, M.D..

5. That attached hereto as Exhibit "B" is an excerpt from the transcript of the Deposition of Andrew Chai, M.D., pp. 10-12.

6. That attached hereto as Exhibit "C" is an excerpt from the transcript of the Deposition of Andrew Chai, M.D., p. 26.

7. That attached hereto as Exhibit "D" is an excerpt from the transcript of the Deposition of Daniel Brown, M.D., pp. 24-28.

8. That attached hereto as Exhibit "E" is a true and correct copy of the Affidavit of Daniel C. Brown dated April 10, 2009.

8. That attached hereto as Exhibit "F" are excerpts from the transcript of the Deposition of Andrew Chai, M.D., pp. 19-25; 27-29 and 68-72.

9. That attached hereto as Exhibit "G" is a true and correct copy of Plaintiffs' Second Supplemental Expert Witness Disclosure.

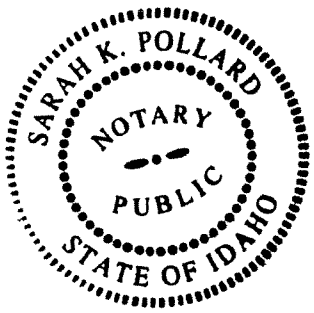
Further your Affiant sayeth naught.

DATED This 13 day of April, 2009.

Byron V. Foster

STATE OF IDAHO,)
: ss.
County of Ada.)

SUBSCRIBED and SWORN to before me this 13th day of April, 2009.



Sarah K Pollard
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 10/07/2009

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

Byron V. Foster

CURRICULUM VITAE

ANDREW U. CHAI, MD, FACC

HOME
4420 N. Keldoon
Boise, ID 83702
208-938-1338

OFFICE
Idaho Cardiology Associates
520 S. Eagle Rd. Ste 3104
Meridian, ID 83642

CURRENT POSITIONS

1999 - Present	Invasive Cardiologist, Idaho Cardiology Associates, P.A.
1999 - Present	Assistant Clinical Professor, University of Washington and Boise VA Medical Center
2003 - Present	Director of Non-invasive Cardiology, St. Lukes Regional Medical Center, Boise, Idaho

EDUCATION

1988-92	Doctor of Medicine Medical College of Wisconsin Milwaukee, WI
1980-85	Bachelor of Science- Biology University of California Los Angeles

POST GRADUATE TRAINING & EDUCATION

1995-1998	Fellowship in Cardiology University of New Mexico Albuquerque, NM
1993-95	Residency in Internal Medicine Medical College of Wisconsin Milwaukee, WI
1992-93	Internship in Internal Medicine University of California, Davis Sacramento, CA

Revised: Jan 2007
Initialed: _____

DEPOSITION EXHIBIT 8 12/5/07 A. Chai, M.D.

EXHIBIT A

LICENSE

Current	Idaho State Medical License, No. M-7714
1995	New Mexico, Medical License
1993	Wisconsin, Medical License

SPECIALTY BOARDS

2000	Fellow, American College of Cardiology
2000	Board Certified, American Society of Nuclear Cardiology
1998	Board Certified, Cardiovascular Disease
1995	American Board of Internal Medicine
1992	National Board of Medical Examiners, Parts I-III

ACADEMIC POSITIONS

1999-Present	Assistant Clinical Professor, University of Washington and Boise VA Medical Center
1998-June 1999	Instructor in Medicine Division of Cardiology University of New Mexico Health Sciences Center VAMC, Albuquerque, New Mexico

MEMBERSHIPS

Present	American College of Cardiology, Affiliate
Present	Idaho Medical Association

HONORS & AWARDS

1997	ACC/Littmann Scholarship
1995	Carl S. Junkerman Award (Awarded to the best resident in internal medicine at the Medical College of Wisconsin)

Revised: Jan 2007
Initialed: _____

PUBLICATIONS

Papers:

1. James E. Udelson, Gary V. Heller, Frans J.Th. Wackers, Andrew Chai, David Hinchman, Patrick S. Coleman, Vasken Dilsizian, Marcello DiCarli, Rory Hachamovitch, James R. Johnson, Richard J. Barrett, and Raymond J. Gibbons. **Binodenoson for Pharmacological Stress as an Adjunct to Myocardial Perfusion Imaging**
Circulation 2004 109: 457 – 464.

2. Clare-Salzler M, Mullen Y, Chai A, Stein E, Girman D, Lennartz K. **Effect of H-2 Compatibility in Autoimmune Destruction of Islet Allografts from B10 Congenic Mice to Non-obese Diabetic Mice.** Pancreas 1994, 9(2):179-85.

3. Clare-Salzler MJ, Brooks J, Chai A, Van Herle K, Anderson C. **Prevention of Diabetes in Non-obese Diabetic Mice by Dendritic Cell Transfer.** Journal of Clinical Investigation 1992, 90(3): 741-8.

4. Wicker LS, Miller BJ, Chai AU, Terada M., Mullen Y. **Expression of Genetically Determined Diabetes and Insulitis in the Non-obese Diabetic Mouse at the Level of Bone Marrow Derived Cells.** Journal of Experimental Medicine 1988, 167:1801-1810.

5. Siegel RJ, Fishbein MF, Said JW, Fealy M, Chai AU, Rubin SA, Melmed S. **Identification of Growth Hormone Receptors at the Myocardial Cell Surface.** American Journal of Cardiovascular Pathology 1989, 2:345-50

6. Carter RS, Siegel RJ, Chai AU, Fishbein MF. **Immunohistochemical Localization of Apolipoproteins A-1 and B in Human Carotid Arteries.** Journal of Pathology 1987, 153:31-36.

Review Articles:

1 Chai, A, Crawford, MH **Traditional Mediacal Therapy for Unstable Angina.** Cardiology Clinics 1999, 2:359-72.

Revised: Jan 2007
Initialed:_____

2. Chai, AU, Abrams, J. **Homocysteine: A New Cardiac Risk Factor?** Clinical Cardiology 2001, 24:80-84.

Abstracts:

1. James E. Udelson, Gary V. Heller, Frans J Th. Wackers, Andrew Chai, David Hinchman, Patrick S. Coleman, Vasken Dilsizian, Marcello DiCarli, Rory Hachamovitch, James R. Johnson, Richard J. Barrett, and Raymond J. Gibbons. **Randomized, Controlled Dose-Ranging Study of the Selective Adenosine A_{2A} Receptor Agonist Binodenoson for Pharmacological Stress as an Adjunct to Myocardial Perfusion Imaging.** Circulation 109: 457 –464.

2. Chai AU, Roldan CA, Crawford MH. **The Importance of Mitral Annular Performance in Determining the Mechanism of Functional Mitral Regurgitation.** JACC 1998, 31(2A):206A

3. Roldan CA, Chai, A, Coughlin C, Crawford MH. **Mechanism of Mitral Regurgitation Post Myocardial Infarction.** JACC 1998, 31(5C).

4. Chai AU, Roldan CA, Crawford MH. **The Importance of Mitral Annular Function in Determining the Mechanism of Functional Mitral Regurgitation.** Journal of Investigative Medicine 1998, 46(1):128A.

5. Chai AU, Roldan CA, Coughlin C, Crawford, MH. **Mechanism of Mitral Regurgitation by Location of Myocardial Infarction.** Journal of Investigative Medicine 1998, 46(1):136A.

6. Chaulton G, Field J, Chai A, Shively B **Estimation of Left Ventricular Pressure by Outflow Tract Velocity Indices.** Journal of the American Society of Echocardiography 1997, 10(4):429.

7. Clare-Salzler M, Chai A, Mullen Y. The Effect of H-2 Compatibility on Beta Cell Survival in the NOD Mouse. Diabetes 1988, 37:662.

8. Clare-Salzler M, Chai A, Mullen Y. **The Characteristics of Dendritic Cell Clusters in the NOD Mouse.** Diabetes 1988, 37:662.

9. Schwaiger M, Fishbein M, Wijns W, Kulber D, Chai A, Phelps M, Schelbert H. **Prolonged Glycogen Depletion and Increase of Glucose Utilization in Reperfused Canine Myocardium.** JACC 1986, 74 (Supplement II):211.

Revised: Jan 2007
Initialed: _____

RESEARCH ACTIVITIES

Sub-Investigator: Protocol Acute Evaluation of Atrial Autocapture Capability Using Affinity DR Device (St. Jude Medical, 1999)

Sub-Investigator: 99-242 Medtronic Model 7250 Arrhythmia Management Device VT/VF + AF (Medtronic, 1999)

Sub-Investigator: AMISTAD II Clinical Trial (Medco Research Inc., 1998)

Sub-Investigator: Protocol A to Z Study Trial, Aggrastat to Zocor (Merck 2000)

Sub-Investigator: Protocol SAGE Study Trial (Parke-Davis, 2000)

Sub-Investigator: Protocol COMPLY study trial, Complement Inhibition in Myocardial Infarction Treated with Thrombolytics (Proctor & Gamble, 2000)

Sub-Investigator: Protocol SYNERGY study trial (Aventis Pharmaceuticals, 2001)

Sub-Investigator: Protocol, METEOR Study, Otsuka Maryland Research Institute, 2002

Sub-Investigator: Protocol, PREVAIL Study, Chugai Pharmaceuticals, 2002

Sub-Investigator: Protocol, Stamina-Heft Study, Amgen Pharmaceuticals, 2003

Sub-Investigator: Protocol, ARISE Study, Integrium, 2003

Sub-Investigator: Protocol, HAT Study, NIH, 2003

Sub-Investigator: Protocol, VISION Study, King Pharmaceuticals, 2003

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, Deceased, Plaintiffs, vs.	Case No. CV 05-5781 VIDEOTAPED DEPOSITION OF ANDREW U. CHAI, M.D. DECEMBER 5, 2007

(Caption continued on next page):

REPORTED BY:

SHERI LUDIKER FOOTE, CSR No. 90, RPR, CRR

Notary Public

College of Wisconsin in Milwaukee, Wisconsin. The cardiology fellowship was at the University of New Mexico hospitals. And after that I was on the faculty at the University of New Mexico for a year before joining Idaho Cardiology here in 1999.

Q. So, you came to the State of Idaho in 1999 and have practiced as a cardiologist continuously since that time?

A. Yes.

Q. And have you always been affiliated with Idaho Cardiology?

A. Yes.

Q. In that capacity, can you describe for me how it is that you're an employee of Idaho Cardiology or if you're an owner of stock. Explain that circumstance for me.

A. In the beginning I was an employee of Idaho Cardiology and then after three years I became a shareholder of the physician group until recently.

Q. If you wouldn't mind, can you tell me whether or not in 2003 at or about the time you were providing care and treatment for Mrs. Aguilar, were you an employee of Idaho

09:42:59 1 Cardiology or a shareholder?
09:43:01 2 A. 2003? I think I was a shareholder at
09:43:05 3 that time.
09:43:05 4 Q. Are you certain about that? Because I
09:43:07 5 won't hold you to it.
09:43:13 6 A. Yes, 2003 I believe I was a shareholder,
09:43:16 7 yes.
09:43:16 8 Q. So, you began in 1999 with Idaho
09:43:21 9 Cardiology?
09:43:21 10 A. Yes.
09:43:21 11 Q. At some point along the line you became
09:43:24 12 a shareholder. And you were a shareholder in
09:43:25 13 that entity as of the time that you were treating
09:43:28 14 Mrs. Aguilar?
09:43:29 15 A. I believe that's correct, yes.
09:43:30 16 Q. With respect to what you were doing in
09:43:37 17 your practice back in 2003, describe that for me
09:43:40 18 in general. Where were you primarily working?
09:43:43 19 What types of cardiology were you doing?
09:43:46 20 A. I'm a general cardiologist, which means
09:43:49 21 that I, you know, see all sorts of cardiac
09:43:49 22 problems. I'm an invasive general cardiologist,
09:43:56 23 which means I do cardiac catheterization. And
09:44:00 24 some general cardiologists like myself do
09:44:04 25 pacemaker implantations and other things. I'm

board certified in nuclear cardiology. So, I'm also a nuclear cardiologist. About 50 to 60 percent of my practice is probably office based, the remainder being hospital based.

Q. What hospitals are you licensed to practice in?

A. I am -- I have privileges currently at West Valley, St. Luke's Meridian, St. Alphonsus, and St. Luke's Regional Medical Center downtown. At that time in 2003 I also had privileges at Mercy Medical Center.

Q. Are you board certified in cardiology as well as nuclear --

A. Yes.

Q. -- cardiology? When did you become board certified in cardiology?

A. 1998, I believe.

Q. And have you continuously since 1999 practiced invasive cardiology, as you've described it?

A. Yes.

Q. One of the things that you ordered as a physician for Mrs. Aguilar was a cardiac catheterization. That is a type of invasive cardiology that you yourself do; is it not?

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

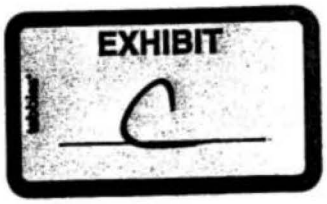
JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, Deceased, Plaintiffs, vs.	Case No. CV 05-5781 VIDEOTAPED DEPOSITION OF ANDREW U. CHAI, M.D. DECEMBER 5, 2007

(Caption continued on next page):

REPORTED BY:

SHERI LUDIKER FOOTE, CSR No. 90, RPR, CRR

Notary Public



10:01:29 1 him, you know, it's not realtime. I'm not
10:01:33 2 getting the notes from him as he's dictating or
10:01:36 3 immediately after dictating. So, I would have to
10:01:39 4 say that it would be unusual for me to do that.
10:01:44 5 Q. Back in 2003 with regard to the practice
10:01:48 6 in your cardiology group, I want to have a better
10:01:53 7 understanding of when a patient becomes someone
10:01:55 8 else's patient within the group. In this
10:01:59 9 context, I do know that Dr. Field copied you with
10:02:03 10 the cardiac catheterization. I do know that you
10:02:07 11 were listed as the admitting physician for Maria
10:02:11 12 Aguilar starting on the 28th. Why wasn't she
10:02:15 13 continuing to be your patient for follow-up by
10:02:18 14 you as a cardiologist?
10:02:22 15 A. I guess it's because we are considered
10:02:26 16 one entity as a group. So, even though I
10:02:31 17 admitted this patient, Field and I are in all
10:02:38 18 intents and purposes one continuous entity that
10:02:42 19 provides care for this patient. So, I am turning
10:02:49 20 over the care of Mrs. Aguilar to Dr. Field at
10:02:52 21 that time because I am not able to adequately
10:02:56 22 provide care for her because I was not physically
10:02:58 23 there.
10:02:58 24 Q. When you received a copy of the results
10:03:03 25 of the cardiac catheterization, did it occur to

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,	)	Case No. CV05-5781
Plaintiffs,	)	
vs.	)	
ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D.,	)	
_____	)	

(Caption continued)

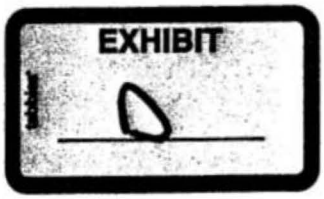
DEPOSITION OF DANIEL C. BROWN, M.D.

APRIL 14, 2008

REPORTED BY:

CATHERINE PAVKOV, CSR NO. 638

Notary Public



utility of those medical procedures varies geographically, actually quite significantly, from place to place. Those differences have been looked at and have not satisfactorily been explained, although people have put forward hypotheses on why those differences occur.

Specifically, what I'm talking to is perhaps the rate at which procedures such as hip replacement or carotid endarterectomies are utilized per thousand population. The standard of care, therefore, becomes a term that has to do with what a group of physicians in a relatively limited geographical area do.

Now, that being said, there is concern on a national level, both from the standpoint of the regulators and the federal government and also on the basis of professional societies, to try to squeeze this regional variation out of the standard of practice so that the standard of practice becomes more geographic.

My understanding from a legal sense, however, is -- and this is not my area of expertise -- is that the geography is still the central issue in the standard of practice.

Q. I'll represent to you, Dr. Brown,

that in Plaintiffs' Second Supplemental Expert Disclosures, that at least my office received in early February 2008, that you hold an opinion that the standard of care or standard of health care practice in Twin Falls, Idaho, is the same as Nampa, Idaho. My first question is, do you hold that opinion?

A. Yes.

MR. LYNCH: I'm going to object to that being vague.

Q. (BY MR. BRASSEY) Well, let me rephrase the question. And at least for purposes of the question I just asked, Dr. Brown, I want to limit that to the standard of health care practice or standard of care for a cardiologist.

A. Yes.

Q. All right. And is your answer the same?

A. Yes.

Q. And on what do you base that opinion that the standard of practice in Twin Falls is the same as Nampa?

A. Well, I think that there are several things that do that. As I said, all of us read the same literature. And when I have had the

opportunity, which I've had on several occasions, to have interactions with cardiologists who practice in the Boise metropolitan area that it's very clear that we think the same, act the same and approach patients more or less the same on the areas of specific discussion that I've had with them.

Q. Have any of those discussions had to do with treatment of pulmonary embolus?

A. No.

Q. And these discussions have occurred in what settings?

A. They occur at conferences. They occur by telephone call. Those are probably the two most important ways. But they're also written in the sense that we will share patients with physicians in the Boise metropolitan area, where we can't provide services here, and we will get written reports back from them, which obviously reflect the standard of care.

Q. And is that the basis for you to say that the standard of health care practice for a cardiologist in Twin Falls is the same for a cardiologist practicing in Nampa?

A. Yes.

Q. And --

A. There's more to it than that, however.

Q. Well, go ahead and tell me.

A. And more to it than that is that our professional organization, which is called the American College of Cardiology, essentially practices or publishes on a periodic basis practice guidelines. And these practice guidelines are intended for cardiologists who are taking care of patients with a specific problem nationwide.

Now, it is very important to understand that the American College of Cardiology sees guidelines as guidelines, and not purely standard of practice. And they expect to see, from case to case, minor variations in the way that some patients are treated.

So in point of fact, not only do I rely on the communications with my colleagues in the Boise metropolitan area, but we also both rely on what our professional society says.

Q. Okay. Any other basis for you to opine that the standard of health care practice for a cardiologist in Twin Falls is the same as that for a cardiologist in Nampa?

A. No.

Q. Is it your belief that the standard of health care practice for a cardiologist in Boise is the same as for a cardiologist in Twin Falls?

A. The answer is roughly. And the reason that I say roughly is because there are services that are provided in Boise that are not provided in Twin Falls. For example, we don't have open-heart surgery here, and so the standard of practice for a cardiologist may be assisting in taking care of people who have had post open-heart surgery, where that isn't an element of our practice here. But that's a nuance.

Q. Any other examples that come to mind?

A. There are other things where the tertiary treatments are provided in Boise that aren't provided here. Implantation of implantable defibrillators, various electrophysiologic ablation procedures, et cetera, et cetera.

Q. Do you recall when you were retained in this case as an expert?

A. It was shortly after the conversation with Dr. Blaylock. So I'd say

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased, Plaintiffs, v. ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants, Defendants.	Case No. CV 05-5781 **AFFIDAVIT OF DANIEL C. BROWN, M.D.**

EXHIBIT E

Your Affiant, being first duly sworn upon oath, deposes and states:

1. That I make this affidavit based upon my own personal knowledge;

2. That the opinions expressed herein are opinions I hold to a reasonable medical certainty;

3. That I am a physician, specializing in the practice of cardiology, Board Certified in cardiology, a fellow of the American College of Cardiology, duly licensed by the Idaho State Board of Medicine to practice cardiology in the State of Idaho;

4. That I have reviewed the deposition of Andrew Chai, M. D. taken in the above-entitled matter;

5. That I began my practice of cardiology in Twin Falls, Idaho in June of 2003, having moved my practice from Bellingham, WA;

6. That when I first entered into practice in Twin Falls, I came to understand; through contact, communication, sharing patients and attending conferences with colleagues that the standard of health care practice in Twin Falls in June of 2003 had not changed, with regard to the issues involved in this case, from what the standard of care had been before my arrival here;

7. That the standard of care for the practice of cardiology did not deviate, in any relevant respects, from the standard of care to which I had practiced in Bellingham, WA;

8. That based upon my conversations with my colleagues; sharing of patients, treating patients and communications with other providers in Twin Falls, I understood and was aware of the fact that the standard of care had not changed between May and June of 2003, with regard to the practice of cardiology;

9. That based upon my contact with cardiologists in the Boise metropolitan area, the area encompassed by the Treasure Valley, in June 2003 to the present, I have come to understand that the standard of health care practice for a cardiologist such as myself does not and did not deviate, in May of 2003; regarding the issues present in this case, between the Boise metropolitan area and Twin Falls;

10. That I base this opinion; not only on my review of Dr. Chai's deposition but on the numerous patients I have shared over the years with my cardiologist colleagues in the Boise metropolitan area, my communications with these colleagues, both oral and written, my attendance at annual conferences conducted by cardiologists in Idaho up until a couple of years ago and through my review of national and regional cardiology publications including publications of the American College of Cardiology;

11. That I have interacted on numerous occasions with cardiologists practicing in the Boise metropolitan area between June of 2003 and the present and with regard to the issues pertinent to this case, it is my opinion that the standard of care in the Boise metropolitan area in May of 2003 for a cardiologist such as Dr. Chai was the same as the standard of care for a cardiologist such as myself in Twin Falls with regard to the issues involved in this case.

12. That I agree with Dr. Chai's statements contained in his deposition at pages 68 through 72 regarding what the standard of care required him to do. Specifically, I am referencing the following statements by Dr. Chai:

> "Q. In your practice, do you review cardiac catheterization reports that are copied to you for patients that you admit to the hospital?
>
> A. Yes.

Q. Is it fair to say, then, that you reviewed this cardiac catheterization report regarding Mrs. Aguilar?

A. I would assume so, yes.

Q. And having reviewed this report, Dr. Chai, which is essentially normal, it would have occurred to you at that point that her differential would now include the potential for a pulmonary embolus causing right-sided heart stress as a possible explanation for her abnormal EKG?...

THE WITNESS: If I had reviewed the document, possibly, yes.

Q. (BY MR. COMSTOCK) Doctor, if you did not review the document which is the cardiac catheterization report copied to you for a patient you admitted into the hospital, would that be a departure from the standard of care applicable to you as a cardiologist?

A. You know, sometimes these things never make it back to us. So that's the reason I'm saying if I reviewed it. Even if we CC it, sometimes it just doesn't make it back to us through the paperwork and the medical records and things like that.

Q. I'm going to apologize for following up on this, but I think I need to gat a little better understanding of what you're telling me. There's a cardiac catheterization report copied to yourself as the admitting physician, as the physician ordering the cardiac catheterization. And whether you received it or not, Dr. Chai, would you agree with me that it was your responsibility as a cardiologist to review that report if it had been received by you?

A. Yes.

Q. And if you had reviewed this report as it's written, you would agree that the differential at that point should include the possibility of a pulmonary embolus giving rise to right-sided heart stress, which is the explanation for the abnormal EKG?

A. Yes.

Q. And at that point, Dr. Chai, assuming that the report did find its way to you and assuming that you came to that thought in your mind, would you agree that as a cardiologist it was your responsibility to see to it that someone recommended to this woman's primary physician to have her worked up for a pulmonary embolus?

A. I think that probably the person who did the cardiac catheterization would follow up with that.

Q. What would you do, though, as the admitting physician to assure yourself that that happened? Because we know in this case, don't we, Dr. Chai, that it did not?...

THE WITNESS: Can you repeat that question for me?

Q. (BY MR. COMSTOCK) I can repeat it. What would you do, Dr. Chai, to assure yourself that someone, whether it be Dr. Field or someone else within your clinic, followed up on this patient who had been admitted by yourself to make sure that there was a workup done to rule out pulmonary embolus?...

THE WITNESS: Speak to the physician, Dr. Field or—I guess at that point.

Q. (BY MR. COMSTOCK) Did you do that?

A. I don't recall. I don't think I did specifically, no."

13. That based upon the above exchange in Dr. Chai's deposition; as well as the totality of Dr. Chai's deposition testimony and the other bases for my knowledge of the standard of care in May of 2003 for cardiologists such as Dr. Chai and myself, whether in Twin Falls or the Boise metropolitan area, it is my opinion that there were no deviations in that standard of care applicable to myself and Dr. Chai.

Further your Affiant sayeth naught.

DATED This 10 day of April, 2009.

Daniel C. Brown, M.D.

STATE OF IDAHO)
: ss.
County of Twin Falls)

SUBSCRIBED and SWORN To before me this 10 day of April, 2009.

NANCY R. SWAIN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Twin Falls Id
My Commission Expires: 8-16-2010

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, Deceased, Plaintiffs, vs.	Case No. CV 05-5781 VIDEOTAPED DEPOSITION OF ANDREW U. CHAI, M.D. DECEMBER 5, 2007

(Caption continued on next page):

REPORTED BY:

SHERI LUDIKER FOOTE, CSR No. 90, RPR, CRR

Notary Public

EXHIBIT F

09:52:22 1 was it your recommendation to Dr. Field that
09:52:26 2 Mrs. Aguilar have a cardiac catheterization?
09:52:29 3 A. Yes.
09:52:30 4 Q. And had Dr. Field not been on call the
09:52:34 5 following day, would it have been yourself who
09:52:38 6 would have done that cardiac catheterization?
09:52:41 7 A. If I was the person there, yes. We have
09:52:50 8 quite a few members in our group. So, it might
09:52:54 9 have been somebody else. But if I was in the
09:52:55 10 hospital the next day, yes.
09:52:56 11 Q. And when you and Dr. Field spoke about
09:52:59 12 Mrs. Aguilar, it was your understanding that he
09:53:01 13 was going to do a cardiac catheterization.
09:53:01 14 A. Mm-hmm.
09:53:05 15 Q. Why did you recommend that?
09:53:07 16 A. I recommended it because I felt that she
09:53:10 17 had a high probability of having coronary artery
09:53:16 18 disease because of her presenting symptoms and
09:53:18 19 her EKG findings.
09:53:24 20 Q. In the presence of a cardiac
09:53:27 21 catheterization that is negative for coronary
09:53:34 22 artery disease yet you still have the underlying
09:53:37 23 abnormal EKG symptoms of chest pain, what are the
09:53:43 24 other medical diagnoses that are contained within
09:53:48 25 the differential?

09:53:49 1 **A. In the EKG similar to Mrs. Aguilar's?**

09:53:54 2 **Q. Yes.**

09:53:57 3 **A. There's a litany of things that can**
09:53:59 4 **cause T-wave changes, which she has had. Such**
09:54:04 5 **things can be very nonspecific, such as**
09:54:04 6 **gastrointestinal problems, pancreatitis, any**
09:54:10 7 **abdominal processes. It could be related to lung**
09:54:13 8 **problems. It could be related to cardiac**
09:54:19 9 **problems such as Prinzemetal's angina possibly**
09:54:25 10 **that was not diagnosed at the time of cardiac**
09:54:28 11 **catheterization. You know, many different**
09:54:30 12 **things.**

09:54:30 13 **Q. Amongst those things, as part of the**
09:54:36 14 **differential, would you agree that the**
09:54:47 15 **differential should include possibly some stress**
09:54:52 16 **upon the right side of the heart?**

09:54:55 17 **A. Sure.**

09:54:56 18 **Q. So, you can have -- you would agree**
09:54:59 19 **that, you know, deep T-wave findings like she had**
09:55:02 20 **on EKG with a history of chest pain and shortness**
09:55:06 21 **of breath, we could be looking at a patient who**
09:55:09 22 **has stress upon the right side of the heart?**

09:55:11 23 MR. BRASSEY: Just a minute. I'm going
09:55:13 24 to object, Dave, only because I think the
09:55:15 25 symptoms you just described were not the symptoms

09:55:19 1 she had with Dr. Chai. But other than that --
09:55:24 2 specifically the shortness of breath. So --
09:55:26 3 MR. COMSTOCK: I did say "history of."
09:55:30 4 MR. LYNCH: Well, I'll object on the
09:55:32 5 grounds that it assumes facts not in evidence.
09:55:34 6 **Q. (BY MR. COMSTOCK) Go ahead. You can**
09:55:35 7 **answer.**
09:55:36 8 **A. Yeah, I -- yes, it's possible.**
09:55:39 9 **Q. And the etiology for stress upon the**
09:55:49 10 **right side of the heart could possibly be a**
09:55:53 11 **pulmonary embolus?**
09:55:55 12 **A. Yes.**
09:55:56 13 **Q. And so, when you have a patient who has,**
09:55:59 14 **like Maria Aguilar had, an abnormal EKG as you've**
09:56:06 15 **described, a history of chest pain, difficulty**
09:56:18 16 **breathing, shortness of breath upon exertion, one**
09:56:24 17 **of the differentials should be potentially a**
09:56:26 18 **pulmonary embolus. Would you agree with that?**
09:56:26 19 MR. LYNCH: I'll object, no foundation
09:56:26 20 for the opinion.
09:56:30 21 MR. DANCE: Join.
09:56:30 22 MR. BRASSEY: I'm going to object, Dave,
09:56:31 23 just based on the form and the hypothetical. But
09:56:33 24 if you can answer it, go ahead.
09:56:35 25 THE WITNESS: Yeah, I'm not sure from my

notes actually Mrs. Aguilar had shortness of breath according to what I -- if I remember my H&P correctly. But yes, it is a possibility, sure. But, you know, there's also many other EKG findings associated with a pulmonary embolus as well.

Q. (BY MR. COMSTOCK) And so, the purpose of performing the cardiac catheterization on Maria Aguilar was to try to figure out some of this and determine whether or not, first of all, if she had coronary artery disease; right?

A. Yes.

Q. And the results of that procedure are important if they're positive, but they're also just as important if they're negative for coronary artery disease; right?

A. Yes.

Q. So, if it's negative for coronary artery disease, what is the next step for a cardiologist in order to determine the cause of the patient's abnormal EKG, chest pain, and whatever other history you're comfortable describing?

MR. BRASSEY: Dave, you mean in these circumstances?

MR. COMSTOCK: Sure.

09:57:50 1 MR. BRASSEY: Okay.

09:57:51 2 THE WITNESS: Are you -- I guess I'm not

09:57:55 3 sure what you're asking me. Are you asking me in

09:57:58 4 generalities or in this specific or --

09:58:01 5 **Q. (BY MR. COMSTOCK) Well, let's start in**

09:58:03 6 **general, Dr. Chai, if we can. In general, you**

09:58:06 7 **have a patient of Maria Aguilar's background and**

09:58:10 8 **history. And the history includes chest pain.**

09:58:10 9 **A. Mm-hmm.**

09:58:14 10 **Q. And the history includes difficulty**

09:58:16 11 **breathing with exertion.**

09:58:16 12 **A. Mm-hmm.**

09:58:18 13 **Q. The EKG's that have been performed show**

09:58:24 14 **deep T-wave abnormalities.**

09:58:24 15 **A. Mm-hmm.**

09:58:26 16 **Q. The cardiac catheterization on that**

09:58:28 17 **patient is negative for any coronary artery**

09:58:32 18 **disease.**

09:58:32 19 **A. Mm-hmm.**

09:58:34 20 **Q. You would agree that one of the**

09:58:35 21 **considerations thereafter --**

09:58:35 22 **A. Mm-hmm.**

09:58:36 23 **Q. -- in a patient with that background**

09:58:38 24 **should be stress on the right side of the heart**

09:58:42 25 **that could be caused by a pulmonary embolus?**

09:58:45 1 **A. That would be one of the things, sure.**

09:58:47 2 **Q. And if that is one of the reasonable**

09:58:53 3 **differential diagnoses --**

09:58:53 4 **A. Mm-hmm.**

09:58:55 5 **Q. -- in a patient with that presentation,**

09:58:57 6 **what is the cardiologist compelled to do in order**

09:59:00 7 **to rule that out?**

09:59:03 8 MR. BRASSEY: Dave, let me interrupt

09:59:04 9 you. Dr. Chai, it might be helpful for the Court

09:59:07 10 Reporter if as Mr. Comstock is giving these

09:59:10 11 questions, I think you're saying "mm-hmm." I

09:59:14 12 think it's easier for the Court Reporter if you

09:59:14 13 not do that.

09:59:15 14 THE WITNESS: Okay. I think it depends

09:59:20 15 kind of on the situation and how the patient's

09:59:24 16 clinical status is at that time. You know, as we

09:59:27 17 talked about, T-wave inversions can be from many

09:59:31 18 things, including pulmonary embolus and other

09:59:33 19 things that may or may not reflect pulmonary

09:59:39 20 disease. So, I think, obviously, if the patient

09:59:41 21 is ill, unstable, having ongoing problems, then I

09:59:46 22 think your workup might include hospital workup

09:59:50 23 or some of those things you've talked about.

09:59:52 24 Otherwise, somebody might decide that this, you

09:59:54 25 know, workup could be done as an outpatient with

discussion with their primary physician. But I think, you know, that's my answer, I guess. I don't know if that --

Q. (BY MR. COMSTOCK) Should a workup be done to rule out pulmonary embolus?

MR. BRASSEY: I'm going to object to the form of the question, Dave, first. And second, I guess by whom? But if you can answer what he asked, go ahead.

THE WITNESS: I think -- it's not black and white, but I guess the simple answer would be yes.

Q. (BY MR. COMSTOCK) And in the context of a situation like Maria Aguilar where you arranged for Dr. Field to do the cardiac catheterization and she was initially your patient, and Dr. Field copies you with the results of the cardiac catheterization, in that setting is it your obligation to follow up, Doctor, to determine whether or not this person does or does not have a potentially lethal pulmonary embolus?

A. I don't feel that it's my obligation because I have spoken to Dr. Field about this case and Dr. Field has assumed her care. So, and, you know, my -- the notes that I got from

10:03:06 1 **you that number one, we have a cardiac cath**
10:03:14 2 **procedure that's negative for coronary artery**
10:03:20 3 **disease, what else should be ordered for this**
10:03:22 4 **woman in order to help get to the root of her**
10:03:24 5 **problem?**
10:03:25 6 **A. I don't -- I don't recall actually**
10:03:27 7 **reviewing her cardiac catheterization. You know,**
10:03:31 8 **I'm not -- I don't remember that event.**
10:03:35 9 **Q. You said to me that you and Dr. Field**
10:03:43 10 **are one entity, if you will, in terms of**
10:03:49 11 **providing cardiology care to this patient. So,**
10:03:55 12 **let me just speak in terms of the two of you as**
10:03:59 13 **an entity or as you've described the**
10:04:02 14 **relationship.**
10:04:03 15 **Would you agree that in the face of a**
10:04:07 16 **negative cardiac catheterization for coronary**
10:04:10 17 **artery disease, Mrs. Aguilar should have been**
10:04:15 18 **recommended for some follow-up work to get to the**
10:04:19 19 **root of her cardiac -- of her abnormal EKG?**
10:04:23 20 **A. Yes.**
10:04:26 21 **Q. And in terms of either you or Dr. Field,**
10:04:31 22 **I don't care which, what recommendations should**
10:04:34 23 **have been made?**
10:04:35 24 MR. BRASSEY: I'm going to object to the
10:04:36 25 form of the question. But go ahead if you can

answer.

THE WITNESS: What recommendations were made or should have been made?

Q. (BY MR. COMSTOCK) Should have been made.

A. I think the recommendations should have been made to work up the process further. What specific that is, you know, that I think depends again on the patient's continuing situation. And I think, you know, that probably would be done in conjunction with her family physician, primary physician and other care providers.

Q. Would the standard of medical practice applicable to a cardiologist such as yourself back in 2003 have called for a recommendation to do further work to see whether or not there is a pulmonary etiology for her abnormal EKG and chest pain?

MR. BRASSEY: I'm going to object, Dave, only insofar as, do you mean a recommendation for themselves or someone else? But if you understand that question, Dr. Chai, go ahead.

THE WITNESS: I'm not sure I understand that question.

MR. COMSTOCK: Do you want to read the

question back, please.

(Record read back.)

THE WITNESS: If she was having ongoing symptoms, yes.

Q. (BY MR. COMSTOCK) Can you tell me, Dr. Chai, what records, if any, you reviewed before coming here today to refresh your recollection regarding Mrs. Aguilar and the care you provided her.

A. I reviewed the records from Mercy Medical Center, I believe it's the 27th and the 28th of May, and her subsequent hospital stay.

Q. Do you know whether any recommendation was made by Dr. Field or by yourself to Dr. Coonrod, who was the primary care physician for Mrs. Aguilar?

A. The only thing I know is from what the records, it says Dr. Field wrote that she should follow up with her primary care doctor.

Q. Sitting here as a cardiologist applying your knowledge of cardiology that you held back in 2003, what do you consider to be the differential diagnoses for her abnormal EKG and chest pain in the face of a negative cardiac catheterization looking for coronary artery

11:08:35 1 Q. And that's a two-page report; is it not?
11:08:44 2 A. Actually, a three-page report.
11:08:46 3 Q. Looking at the report itself, do you
11:08:57 4 recognize the findings as basically normal for
11:09:03 5 coronary artery disease?
11:09:04 6 A. Yes.
11:09:10 7 Q. Do you see on the third page of that
11:09:12 8 report where it says: "Report Signature on File"
11:09:19 9 and "Reported by: James Field, M.D. Signed by:
11:09:23 10 Field, M.D., James"?
11:09:25 11 A. Yes.
11:09:26 12 Q. Do you also see at the bottom of that
11:09:29 13 where it says: "CC: Andrew Chai, M.D."?
11:09:34 14 A. Yes.
11:09:34 15 Q. Under your practice and procedure back
11:09:38 16 then, how would this document have come to your
11:09:41 17 review, if you were copied?
11:09:44 18 A. The transcriptionist would have
11:09:50 19 transcribed it. It would have went to medical
11:09:53 20 records. And somebody from medical records would
11:09:55 21 have sent a copy to my office.
11:09:57 22 Q. In your practice, do you review cardiac
11:10:03 23 catheterization reports that are copied to you
11:10:06 24 for patients that you admit to the hospital?
11:10:08 25 A. Yes.

11:10:08 1 **Q. Is it fair to say, then, that you**
11:10:10 2 **reviewed this cardiac catheterization report**
11:10:13 3 **regarding Mrs. Aguilar?**
11:10:17 4 **A. I would assume so, yes.**
11:10:27 5 **Q. And having reviewed this report,**
11:10:29 6 **Dr. Chai, which is essentially normal, it would**
11:10:32 7 **have occurred to you at that point that her**
11:10:36 8 **differential would now include the potential for**
11:10:36 9 **a pulmonary embolus causing right-sided heart**
11:10:40 10 **stress as a possible explanation for her abnormal**
11:10:45 11 **EKG?**
11:10:46 12 MR. BRASSEY: Is your question did it?
11:10:47 13 MR. COMSTOCK: You can read the question
11:10:47 14 back.
11:10:47 15 MR. BRASSEY: Well, I'm going to object,
11:10:49 16 Dave, to the form of the question unless it's
11:10:51 17 what differential, if any, may.
11:10:54 18 MR. COMSTOCK: You can read the question
11:10:55 19 back.
11:11:12 20 (Record read back.)
11:12:40 21 THE WITNESS: If I had reviewed the
11:12:42 22 document, possibly, yes.
11:12:50 23 **Q. (BY MR. COMSTOCK) Doctor, if you did**
11:12:51 24 **not review the document which is a cardiac**
11:12:54 25 **catheterization report copied to you for a**

patient you admitted into the hospital, would that be a departure from the standard of care applicable to you as a cardiologist?

A. You know, sometimes these things never make it back to us. So, that's the reason I'm saying if I reviewed it. Even if we CC it, sometimes it just doesn't make it back to us through the paperwork and the medical records and things like that.

Q. I'm going to apologize for following up on this, but I think I need to get a little better understanding of what you're telling me. There's a cardiac catheterization report copied to yourself as the admitting physician, as the physician ordering the cardiac catheterization. And whether you received it or not, Dr. Chai, would you agree with me that it was your responsibility as a cardiologist to review that report if it had been received by you?

A. Yes.

Q. And if you had reviewed this report as it's written, you would agree that the differential at that point should include the possibility of a pulmonary embolus giving rise to right-sided heart stress, which is the

11:14:31 1 **explanation for the abnormal EKG?**

11:14:33 2 **A. Yes.**

11:14:34 3 **Q. And at that point, Dr. Chai, assuming**

11:14:42 4 **that the report did find its way to you and**

11:14:45 5 **assuming that you came to that thought in your**

11:14:47 6 **mind, would you agree that as a cardiologist it**

11:14:52 7 **was your responsibility to see to it that someone**

11:14:55 8 **recommended to this woman's primary physician to**

11:14:59 9 **have her worked up for a pulmonary embolus?**

11:15:02 10 **A. I think that probably the person who did**

11:15:05 11 **the cardiac catheterization would follow up with**

11:15:08 12 **that.**

11:15:09 13 **Q. What would you do, though, as the**

11:15:13 14 **admitting physician to assure yourself that that**

11:15:16 15 **happened? Because we know in this case, don't**

11:15:19 16 **we, Dr. Chai, that it did not?**

11:15:21 17 MR. BRASSEY: Well, I'm going to object

11:15:23 18 to the comment. I think that misstates -- I

11:15:26 19 think that comment, Dave, is wrong. But if you

11:15:30 20 can answer the question that he asked, go ahead.

11:15:33 21 THE WITNESS: Can you repeat that

11:15:34 22 question for me?

11:15:36 23 **Q. (BY MR. COMSTOCK) I can repeat it.**

11:15:38 24 **What would you do, Dr. Chai, to assure yourself**

11:15:41 25 **that someone, whether it be Dr. Field or someone**

11:15:45 1 **else within your clinic, followed up on this**
11:15:48 2 **patient who had been admitted by yourself to make**
11:15:52 3 **sure that there was a workup done to rule out**
11:15:55 4 **pulmonary embolus?**
11:15:56 5 **A. What would --**
11:15:58 6 MR. BRASSEY: He's asking what would you
11:15:59 7 do?
11:16:02 8 THE WITNESS: Speak to the physician,
11:16:07 9 Dr. Field or -- I guess at that point.
11:16:10 10 **Q. (BY MR. COMSTOCK) Did you do that?**
11:16:13 11 **A. I don't recall. I don't think I did**
11:16:16 12 **specifically, no.**
11:16:55 13 MR. COMSTOCK: Andy, I am concluding the
11:16:57 14 questions I have for right now, but I'd like to
11:17:00 15 take just a very brief recess to speak with
11:17:03 16 Mr. Foster. We'll leave the room and you all can
11:17:06 17 stay here and it will just take me one moment. I
11:17:09 18 want to ask him a question before I close my
11:17:12 19 opportunity.
11:17:12 20 MR. BRASSEY: I need to take a break
11:17:14 21 anyway.
11:17:14 22 THE VIDEOGRAPHER: Off the record.
11:17:20 23 (Recess held.)
11:25:28 24 THE VIDEOGRAPHER: On the record.
11:25:35 25 **Q. (BY MR. COMSTOCK) Dr. Chai, I did**

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON COUNTY

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs,

v.

ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants,

Defendants.

Case No. CV 05-5781

PLAINTIFFS' SECOND SUPPLEMENTAL EXPERT WITNESS DISCLOSURE

EXHIBIT G

COME NOW Plaintiffs, by and through their attorneys of record, David E. Comstock, of Comstock & Bush, and Byron V. Foster, Attorney at Law, and pursuant to the Court's Scheduling Order and in accordance with I.R.C.P. 26, hereby supplements their list of expert witnesses to be called at the trial of this case:

1. **Paul Blaylock M.D., FACEP**
   Providence Medical Group
   4500 N.W. Malheur Avenue
   Portland, OR 97229

Dr. Daniel Brown is a cardiologist who is board certified in internal medicine and cardiology and practices in Twin Falls, Idaho. He and Paul Blaylock, M.D. spoke on January 29, 2008 regarding the standard of health care practice applicable to Dr. Chai in May of 2003 in Nampa, ID.

Drs. Blaylock and Brown first discussed, in general, the medical facts of Mrs. Aguilar's presentation to the ED at MMC on May 27, 2003 and the events that led to Dr. Chai having her return to the hospital on May 28, 2003. They discussed the signs and symptoms that Mrs. Aguilar had exhibited at Primary health on May 27, 2003 and the fact she was sent to the ED at MMC by Dr. Coonrod. They discussed her presentation at the ED on May 27th and the fact she was sent home and then brought back the next day. They discussed her past history in terms of signs and symptoms and the treatments which had been rendered up until the point in time when she came under the care of Dr. Chai.

They then discussed the obligations of a cardiologist under such circumstances in Twin Falls, Idaho, in May of 2003 and the fact that Br. Brown was of the opinion that the standard of health care practice for a cardiologist under such circumstances would be the same in Nampa as it was in Twin Falls. Dr. Brown explained that Twin Falls is an isolated town of about 40,000 in population with a population draw of about 180,000 from the

surrounding area. He explained that Nampa is a larger town of about 60,000, is contiguous with Boise and that the population of the Treasure Valley is sizably larger than the Magic Valley. Dr. Brown explained that up until 2 years ago, the cardiologists in Idaho held an annual conference in Sun Valley which he attended and at which he always engaged in conversations with his fellow Idaho cardiologists regarding the practice of cardiology in Idaho. He also indicated that he speaks regularly with cardiologists in Boise in addition to his own colleagues in Twin Falls.

Drs. Brown and Blaylock discussed the fact that, with regard to the obligation of a cardiologist such as Dr. Chai under the circumstances as presented by Mrs. Aguilar on May 28, 2003, his obligation to appropriately evaluate, diagnose and treat Mrs. Aguilar was not specific only to a cardiologist. In other words, the standard of health care practice under the circumstances of this case would cross specialty lines and apply to any specialist evaluating Mrs. Aguilar.

It was Dr. Brown's opinion that the obligation to take an appropriate history, know the patient's past treatment, signs and symptoms and order appropriate tests to reach a valid diagnosis applied to Dr. Chai regardless of his specialty. Both Dr. Brown and Dr. Blaylock agreed that the obligation of any specialist under these circumstances in May of 2003 would be to look further than just the heart for an explanation for the patient's condition. Thus, it was Dr. Brown's opinion that the standard of care for Dr. Chai would have been no different in this case than the standard of care for a family medicine physician, an emergency medicine physician or any other specialty. Whether or not the heart had been ruled out as the cause, the specialist would have a duty to make a differential diagnosis and rule in or out those conditions because each and every specialist has the obligation, pursuant to the standard of care, to rule out possible causes of a patient's condition until

the cause is determined. They both agreed that these standard of care obligations would exist in the face of a referral to Dr. Chai's partner for a cardiac catheterization and would have existed before such a referral took place. As the attending physician, Dr. Chai had these obligations.

The two discussed the testing available to reach a diagnosis of pulmonary embolus and agreed that all the necessary tests and scans would have been available at Mercy Medical Center in May of 2003.

They also discussed the fact that, based upon their conversation, there were no deviations in the standard of care between Portland, Oregon where Dr. Blaylock practices and Twin Falls, Idaho where Dr. Brown practices during May of 2003 for any specialist when faced with a patient like Mrs. Aguilar and the signs and symptoms with which she presented on May 28, 2003, including her past history and previous treatment.

2. **Daniel C. Brown, M.D.**
414 Shoup Avenue
Twin Falls, ID 83301

A. **Subject matter of expected testimony.**

Dr. Daniel Brown is a cardiologist who is board certified in internal medicine and cardiology and practices in Twin Falls, Idaho. Dr. Brown and Paul Blaylock, M.D. spoke on January 29, 2008 regarding the standard of health care practice for a cardiologist under the circumstances of this case and as a result of the conversation between Dr. Blaylock and Dr. Brown, due to opinions expressed by Dr. Brown, Plaintiffs intend to have Dr. Brown testify as an expert in this matter. He is expected to testify regarding the applicable standard of health care practice as to the work-up and diagnosis of pulmonary emboli.

He will testify and comment on the testimony of Defendants and their disclosed experts witnesses. Dr. Brown may also testify based upon any medical literature which he deems appropriate to support or substantiate his testimony. He may employ illustrative aids in rendering testimony. If and when such medical literature and illustrative aids are identified, this disclosure will be supplemented.

B. Substance of Facts.

Dr. Brown is in the process of reviewing the medical records of Maria A. Aguilar generated by Primary Health, Dr. Coonrod, Mercy Medical Center, West Valley Regional Medical Center, Canyon County Paramedics, Boise Gastroenterology Associates, St. Alphonsus RMC, Canyon County Coroner, Pennywise Drug, Robin King, D.C. and the Death Certificate. Dr. Brown is also in the process of reviewing the depositions of Defendants taken thus far and the depositions of the Plaintiffs. It is expected that Dr. Brown will also review depositions taken in the future of various experts and/or treating health care providers.

Dr. Brown's main focus will be on the activities of Defendant Chai, however, he may also have opinions regarding the activities of Dr. Coonrod and that disclosure must await the deposition testimony of Dr. Coonrod.

Dr. Brown will testify as to his understanding of the facts of this case based upon his review of the above-referenced documents and depositions.

C. Substance of opinions.

Once Dr. Brown has completed his review of the record set forth, this disclosure will be supplemented.

D. Witness's credentials.

Attached hereto as Exhibit "A" is a copy of Dr. Brown's curriculum vitae. Dr. Brown's fee schedule and prior testimony will be provided at a later time through supplementation.

DATED THIS 1 day of ~~January,~~ FEBRUARY 2008.

Byron V. Foster
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of ~~January~~ February, 2008, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & McCurdy LLP
203 W. Main St.
Boise, ID 83702

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Joseph D. McCollum, Jr.
Hawley Troxell Ennis & Hawley LLP
877 W. Main St., Ste. 1000
PO Box 1617
Boise, ID 83701-1617

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 342-3829

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

James B. Lynch
Lynch & Associates, PLLC
1412 W. Idaho Street, Suite 200
PO Box 739
Boise, ID 83701-0739

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 331-0088

Byron V. Foster

ORIGINAL

FILED
A.M. 4:10 P.M.
APR 13 2009
CANYON COUNTY CLERK
DEPUTY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs,

v.

ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants,

Defendants.

Case No. CV 05-5781

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT ANDREW CHAI, M.D.'S MOTION IN LIMINE

COME NOW Plaintiffs above-named, by and through their attorneys of record and hereby respond in opposition to Defendant Chai's Motion in Limine as follows:

I.

DR. CHAI

In his Memorandum in Support of Motion in Limine, at page 2, Dr. Chai makes the statement that he was a cardiologist practicing in Nampa, Idaho in May of 2003. While there is no doubt that at that time he was a Board Certified Cardiologist; there is doubt concerning the location of Dr. Chai's practice in May of 2003. In his curriculum vitae (C.V.), Dr. Chai lists his office address as "Idaho Cardiology Associates, 520 S. Eagle Road, Suite 3104, Meridian, Idaho 83642." *See* Chai C.V., attached as Exhibit "A" to the Affidavit of Byron V. Foster filed herewith.

His C.V. goes on to indicate that from 1999 to the present, he was an invasive cardiologist with Idaho Cardiology Associates and an assistant clinical professor, University of Washington and Boise VA Medical Center. From 2003 to the present, he has, according to his C.V, been Director of Non-invasive Cardiology, St. Luke's Regional Medical Center, Boise, Idaho. *See* Chai C.V., above.

In his deposition, taken on December 5, 2007, Dr. Chai testified as follows:

"Q. So, you came to the State of Idaho in 1999 and have practiced as a cardiologist continuously since that time?

A. Yes.

Q. And have you always been affiliated with Idaho Cardiology?

A. Yes....

Q. With respect to what you were doing in your practice back in 2003, describe that for me in general. Where were you primarily working? What types of cardiology were you doing?

A. I'm a general cardiologist, which means that I, you know, see all sorts of cardiac problems....About 50 to 60 percent of my practice is probably office based, the remainder being hospital based.

Q. What hospitals are you licensed to practice in?

A. I am—I have privileges currently at West Valley, St. Luke's Meridian, St Alphonsus, and St Luke's Regional Medical Center downtown. At that time in 2003 I also had privileges at Mercy Medical Center."

(See portions of the deposition transcript of Defendant Chai, pages 10-12, attached as Exhibit "B" to the Affidavit of Byron V. Foster filed herewith.)

Thus, while it is true that on the morning of May 28, 2003, Dr. Chai saw Mrs. Aguilar as a patient at Mercy Medical Center in Nampa; it is also true that on that date, his main office was in Meridian and that the geographical boundaries of his practice extended from at least Nampa to the downtown branch of St. Luke's Regional Medical Center in Boise. The question then becomes; "What is the standard of care for Dr. Chai on May 28 and 29, 2003?" Is Dr. Chai seriously arguing that his standard of care as a cardiologist was different based upon whether he was in his office in Meridian, next to St. Luke's Meridian Medical Center; at St. Luke's Regional Medical Center in downtown Boise or at Mercy Medical Center in Nampa? Is Dr. Chai arguing that his standard of care would be lower if he was giving care to a patient in Nampa than it would be if he was giving the same care to that same patient in Meridian or Boise? If so, did Dr. Chai inform the patients he saw in Nampa that he would not provide them the same level of diagnostic care as he would to that same patient if he were in Meridian or Boise? There is certainly no evidence that he informed Mrs. Aguilar of this before he took her on as a patient.

Another indication that the standard of care for Dr. Chai was not specific to Nampa or confined to Nampa stems from additional testimony he give at his deposition when he stated in response to questioning the following:

> "Q. Back in 2003 with regard to the practice in your cardiology group, I want to have a better understanding of when a patient becomes someone else's patient within the group. In this context, I do know that Dr. Field copied you with the cardiac catheterization. I do know that you were listed as the admitting physician for Maria Aguilar starting on the 28th. Why wasn't she continuing to be your patient for follow-up by you as a cardiologist?
>
> A. I guess it's because we are considered one entity as a group. So even though I admitted this patient, Field and I are in all intents and purposes one continuous entity that provides care for this patient...."

(See Chai deposition transcript page 26, attached as Exhibit "C" to the Affidavit of Byron V. Foster filed herewith.)

If the members of Idaho Cardiology Associates were considered by Defendant Chai to be "one continuous entity;" then the standard of health care practice for that one continuous entity encompassed the geographic area from Nampa to the Idaho Cardiology Associates office next to St. Luke's Meridian Medical Center in Meridian to their office adjacent to St. Alphonsus Regional Medical Center in West Boise to their office across the street from St. Luke's Regional Medical Center in downtown Boise. For this "one continuous entity" there must be one continuous standard of care; at least as to the facts of this case.

Thus, in the situation presented by this case, there is no requirement that Plaintiffs utilize a local expert in the Nampa-Caldwell area to familiarize Dr. Brown. Dr. Chai and his "one continuous entity" group of cardiologists provided care for Mrs. Aguilar. Plaintiffs truly hope they did not practice a lower or different standard of care

depending upon where they saw their patients within the confines of the Treasure Valley.

II.

DR. BROWN

In Dr. Brown's deposition, he indicated that, based upon several factors, it was his opinion that the standard of care for a cardiologist was the same in May of 2003 in Nampa/Boise as it was in Twin Falls.

> "Q. I'll represent to you, Dr. Brown, that in Plaintiffs' Second Supplemental Expert Witness Disclosures, that at least my office received in early February 2008, that you hold an opinion that the standard of care or standard of health care practice in Twin Falls, Idaho, is the same as Nampa, Idaho. My first question is, do you hold that opinion?
>
> A. Yes....
>
> Q. and on what do you base that opinion that the standard of practice in Twin Falls is the same as in Nampa?
>
> A. Well, I think there are several things that do that. As I said, all of us read the same literature. And when I have had the opportunity, which I've had on several occasions, to have interactions with cardiologists who practice in the Boise metropolitan area that it's very clear that we think the same, act the same and approach patients more or less the same on the areas of specific discussion that I've had with them.
>
> Q. Have any of those discussions had to do with the treatment of pulmonary embolus?
>
> A. No.
>
> Q. And these discussions have occurred in what settings?
>
> A. They occur at conferences. They occur by telephone call. Those are probably the two most important ways. But they're also written in the sense that we will share patients with physicians in the Boise metropolitan area, where we can't provide services here, and we will get written reports back from them, which obviously reflect the

standard of care.

Q. And is that the basis for you to say that the standard of health care practice for a cardiologist in Twin Falls is the same for a cardiologist practicing in Nampa?

A. Yes....

There's more to it than that, however.

Q. Well, go ahead and tell me.

A. And more to it than that is that our professional organization, which is called the American College of Cardiology, essentially practices or publishes on a periodic basis practice guidelines. And these practice guidelines are intended for cardiologists who are taking care of patients with a specific problem nationwide.

Now it's very important to understand that the American College of Cardiology sees guidelines as guidelines, and not purely standard of practice. And they expect to see, from case to case, minor variations in the way that some patients are treated.

So in point of fact, not only do I rely on communications with my colleagues in the Boise metropolitan area, but we also both rely on what our professional society says.

Q. Okay. Any other basis for you to opine that the standard of health care practice for a cardiologist in Twin Falls is the same as that for a cardiologist in Nampa?

A. No.

Q. Is it your belief that the standard of health care practice for a cardiologist in Boise is the same as for a cardiologist in Twin Falls?

A. The answer is roughly. And the reason that I say roughly is because there are services that are provided in Boise that are not provided in Twin Falls. For example, we don't have open-heart surgery here, and so the standard of practice for a cardiologist may be assisting in taking care of people who have had post open-heart surgery, where it isn't an element of our practice here. But that's a nuance.

Q. Any other examples that come to mind?

A. There are other things where the tertiary treatments that are provided in Boise that aren't provided here. Implantation of implantable defibrillators, various electrophysiologic ablation procedures, et cetera, et cetera."

(*See* portions of the deposition transcript of Daniel Brown, M.D., pages 24 through 28, attached as Exhibit "D" to the Affidavit of Byron V. Foster, filed herewith.)

In addition to the above-quoted portions of Dr. Brown's deposition, Plaintiffs are also attaching an Affidavit of Dr. Brown as further support for his knowledge of the standard of care applicable to Dr. Chai in May of 2003. *See* Affidavit of Daniel C. Brown, attached hereto as Exhibit "E." In that affidavit, Dr. Brown lays additional foundation for his knowledge of the standard of care applicable to Dr. Chai in May of 2003.

III.

DR. CHAI'S DEPOSITION

As further foundation for the opinions of Dr. Brown, as indicated above and in his affidavit, Dr. Brown has reviewed the transcript of the deposition of Dr. Chai. Some of the pertinent portions of Dr. Chai's deposition are the following:

"Q. In the presence of a cardiac catheterization that is negative for coronary artery disease yet you still have the underlying abnormal EKG symptoms of chest pain, what are the other medical diagnoses that are contained within the differential?

A. In the EKG similar to Mrs. Aguilar's?

Q. Yes.

A. There's a litany of things that can cause T-wave changes, which she has had. Such things can be very nonspecific, such as gastrointestinal problems, pancreatitis, any abdominal processes. It could be related to lung problems. It could be related to cardiac problems such as Prinzemetal's angina possibly that was not diagnosed at the time of the cardiac catheterization. You know, many different things.

Q. Amongst those things, as part of the differential, would you agree that the differential should include some stress upon the right side of the heart?

A. Sure.

Q. So you can have—you would agree that, you know, deep T-wave findings like she had on EKG with a history of chest pain and shortness of breath, we could be looking at a patient who had stress upon the right side of the heart?...

A. Yeah, I—yes, it's possible.

Q. And the etiology for the stress upon the right side of the heart could possibly be a pulmonary embolus?

A. Yes.

Q. And so, when you have a patient who has, like Maria Aguilar had, an abnormal EKG as you've described, a history of chest pain, difficulty breathing, shortness of breath upon exertion, one of the differentials should be potentially a pulmonary embolus. Would you agree with that?...

THE WITNESS: Yeah, I'm not sure from my notes actually Mrs. Aguilar had shortness of breath according to what I—if I remember my H&P correctly. But yes, it is a possibility, sure. But you know, there's also many other EKG findings associated with a pulmonary embolus as well.

Q. And so, the purpose of performing the cardiac catheterization on Maria Aguilar was to try to figure out some of this and determine whether or not, first of all, if she had coronary artery disease, right?

A. Yes.

Q. And the results of that procedure are important if they're positive, but they're also just as important if they're negative for coronary artery disease, right?

A. Yes.

Q. So, if it's negative for coronary artery disease, what is the next step for a cardiologist in order to determine the cause of the patient's abnormal EKG, chest pain, and whatever other history you're comfortable describing?...

Q. (BY MR. COMSTOCK) Well, let's start in general, Dr. Chai, if we can. In general, you have a patient of Maria Aguilar's background and history. And that history includes chest pain.

A. Mm-hmm.

Q. And the history includes difficulty breathing with exertion.

A. Mm-hmm.

Q. The EKG's that have been performed show deep T-wave abnormalities.

A. Mm-hmm.

Q. The cardiac catheterization on that patient is negative for any coronary artery disease.

A. Mm-hmm.

Q. You would agree that one of the considerations thereafter—

A. Mm-hmm.

Q. —in a patient with that background should be stress on the right side of the heart that could be caused by a pulmonary embolus?

A. That would be one of the things, sure.

Q. And if that is one of the reasonable differential diagnoses—

A. Mm-hmm.

Q . –in a patient with that presentation, what is the cardiologist compelled to do in order to rule that out?...

THE WITNESS: Okay. I think it depends kind of on the situation and how the patient's clinical status is at that time. You know, as we talked about, T-wave inversions can be from many things, including pulmonary embolus and other things that may or may not reflect pulmonary disease. So, I think, obviously, if the patient is ill, unstable, having ongoing problems, then I think your workup might include hospital workup or some of those things that you've talked about. Otherwise, somebody might decide that this, you know, workup could be done as an outpatient with discussion with their primary physician. But I think, you know, that's my answer, I guess. I don't know if that—

Q. Should a workup be done to rule out pulmonary embolus?...

THE WITNESS: I think—it's not black and white, but I guess the simple answer would be yes....

Q. You said to me that you and Dr. Field are one entity, if you will, in terms of providing cardiology care to this patient. So, let me just speak in terms of the two of you as an entity or as you've described the relationship.

Would you agree that in the face of a negative cardiac catheterization for coronary artery disease, Mrs. Aguilar should have been recommended for some follow-up work to get to the root of her cardiac—of her abnormal EKG?

A. Yes.

Q. And in terms of either you or Dr. Field, I don't care which, what recommendations should have been made?...

A. I think the recommendations should have been made to work up the process further. What specific that is, you know, that I think depends on the patient's continuing situation. And I think, you know, that would be done in conjunction with her family physician, primary physician and other care providers.

Q. Would the standard of medical practice applicable to a cardiologist such as yourself back in 2003 have called for a recommendation to do further work to see whether or not there is a pulmonary etiology for her abnormal EKG and chest pain?...

THE WITNESS: If she was having ongoing symptoms, yes....

Q. In your practice, do you review cardiac catheterization reports that are copied to you for patients that you admit to the hospital?

A. Yes.

Q. Is it fair to say, then, that you reviewed this cardiac catheterization report regarding Mrs. Aguilar?

A. I would assume so, yes.

Q. And having reviewed this report, Dr. Chai, which is essentially normal, it would have occurred to you at that point that her

differential would now include the potential for a pulmonary embolus causing the right-sided heart stress as a possible explanation for her abnormal EKG?...

A. If I had reviewed the document, possibly, yes.

Q. (BY MR. COMSTOCK) Doctor, if you did not review the document which is the cardiac catheterization report copied to you for a patient you admitted into the hospital, would that be a departure from the standard of care applicable to you as a cardiologist?

A. You know, sometimes these things never make it back to us. So, that's the reason I'm saying if I reviewed it. Even if we CC it, sometimes it just doesn't make it back to us through the paperwork and the medical records and things like that.

Q. I'm going to apologize for following up on this but I think I need to get a little better understanding of what you're telling me. There's a cardiac catheterization report copied to yourself as the admitting physician, as the physician ordering the cardiac catheterization. And whether you received it or not, Dr. Chai, would you agree with me that it was your responsibility as a cardiologist to review that report if it had been received by you?

A. Yes.

Q. And if you had reviewed this report as it's written, you would agree that the differential at that point should include the possibility of a pulmonary embolus giving rise to right-sided heart stress, which is the explanation for the abnormal EKG?

A. Yes.

Q. And at that point, Dr. Chai, assuming that the report did find its way to you and assuming that you came to that thought in your mind, would you agree that as a cardiologist it was your responsibility to see to it that someone recommended to this woman's primary physician to have her worked up for a pulmonary embolus?

A. I think that probably the person who did the cardiac catheterization would follow up with that.

Q. What would you do, though, as the admitting physician to assure yourself that that happened? Because we know in this case, don't we, Dr. Chai, that it did not?...

THE WITNESS: Can you repeat that question for me?

Q. (BY MR. COMSTOCK) I can repeat it. What would you do, Dr. Chai, to assure yourself that someone, whether it be Dr. Field or someone else within your clinic, followed up on this patient who had been admitted by yourself to make sure that there was a workup done to rule out pulmonary embolus?...

THE WITNESS: Speak to the physician, Dr. Field or—I guess at that point.

Q. (BY MR. COMSTOCK) Did you do that?

A. I don't recall. I don't think I did specifically, no."

(See portions of the deposition transcript of Andrew Chai, M.D., pages 19 through 25; 27 through 29; and 68 through 72, attached as Exhibit "F" to the Affidavit of Byron V. Foster filed herewith.)

IV.

ARGUMENT

A. Dr. Brown

In *Perry v. Magic Valley Regional Medical Center,* 134 Idaho 46, 995 P. 2d 816 (Idaho 2000); the Idaho Supreme Court discussed the foundational sufficiency in a situation where an expert from another state, as part of the basis for her expert opinions, utilized information she had gleaned from reading the depositions of several of the defendant's employees. The Supreme Court, in discussing this issue, stated:

> "A common means for an out-of-area expert to obtain knowledge of the local standard of care is by inquiring of a local specialist. (Citations omitted). This is not, however, the only means for obtaining knowledge of the local standard of care. An expert's review of a deposition stating that the local standard does not vary from the national standard, coupled with the expert's personal knowledge of the national standard, is sufficient to lay a foundation for the expert's opinion. (Citations omitted)." *See Perry, supra* at 51-52.

In this case, the national standard of care is not the issue. The issue is that whether or not there were, in May of 2003, any deviations in the standard of care for a cardiologist practicing in either Twin Falls or the Boise metropolitan area, including Nampa, Meridian, West Boise or East Boise; with regard to the issues involved in this case.

Dr. Brown, Plaintiffs' cardiology expert, is and was personally familiar with the standard of care both in Twin Falls and in Nampa/Boise; based upon his affidavit and his deposition testimony. In addition, the testimony of Defendant Dr. Chai, as quoted above from his deposition, and as reviewed by Dr. Brown, lays additional foundation for the qualifications of Dr. Brown to testify in this matter. Thus, while the Supreme Court in *Perry* discussed a national standard, the same logic applies to a situation such as here where the expert is testifying not about a national standard of care but about a local standard of care.

Plaintiffs are not arguing that the standard of care for Dr. Chai is indeterminable; they are arguing that Dr. Brown has laid a sufficient foundation for his personal knowledge of the standard of care in the Nampa/Boise area in May of 2003.

B. <u>Dr. Blaylock</u>

It follows that if Dr. Brown knows the standard of care applicable to Dr. Chai in May of 2003; that he can impart that information to Dr. Blaylock, an Emergency Medicine specialist.

In *Pearson v. Parsons*, 114 Idaho 334, 757 P. 2d 197 (Idaho 1988); the Supreme Court stated the following with regard to whether or not an expert must be of the same specialty as the defendant physician:

> "There is no requirement in these statutes that an expert witness whose testimony is offered to establish a case of medical malpractice against a board-certified physician must also be board certified in the same specialty. We specifically hold that to fulfill the requirement of presenting expert testimony in a medical malpractice case against a board-certified specialist, plaintiff may offer the testimony of a physician who is not board-certified in the same specialty as the defendant physician, so long as the testimony complies with the requirements of I.C. Sections 6-1012 and 6-1013." *Pearson, supra* at 337.

As is evidenced in Plaintiffs' Second Supplemental Expert Witness Disclosure; Drs. Brown and Blaylock spoke by telephone on January 29, 2008 regarding the standard of care applicable to Dr. Chai in May of 2003. Dr. Brown explained that through his contacts with cardiologists in Boise, the population base of the hospitals in Nampa and Twin Falls, respectively, his contact with other Idaho cardiologists at the then annual meeting of Idaho cardiologists in Sun Valley and his frequent conversations with cardiologists in Boise; he was familiar with the standard of health care practice for a cardiologist in the Treasure Valley, including for one who happened to be caring for a patient in Nampa.

The two physicians then engaged in a discussion which concluded with the consensus that; for circumstances such as those presented by Maria Aguilar on May 28-29, 2003; a physician's standard of care obligations to properly evaluate, diagnose and treat an individual with her history and presentation would cross specialty lines and apply to any competent physician practicing in Boise, Nampa, Twin Falls or Portland Oregon.

The two physicians discussed that in their opinions, the obligation to take an appropriate history, know the patient's past treatment, signs and symptoms and order

appropriate testing in order to reach a valid diagnosis and treatment plan for the patient were obligations which applied to the treating physician regardless of specialty, whether it be cardiology or emergency medicine. Drs. Blaylock and Brown agreed that each and every physician has the obligation, pursuant to the standard of care, to rule out possible causes of a patient's condition until the cause is determined. This is one of the basic tenants of medical practice regardless of specialty. *See* Plaintiffs' Second Supplemental Expert Witness Disclosure, attached as Exhibit "G" to the Affidavit of Byron V. Foster filed herewith.

C. Dr. LeBaron

Plaintiffs do not intend to elicit testimony from Dr. LeBaron, their Family Medicine specialist, regarding the standard of health care practice applicable to Dr. Chai as a cardiologist. The only exception is that Dr. LeBaron is expected to testify concerning the universal standard of care obligations for any physician to take a detailed history, explore the patient's past treatment, signs and symptoms and take steps to diagnose the patient's condition in a situation where the testing ordered by the physician leaves unexplained the cause of the patient's signs and symptoms. Dr. LeBaron is also expected to testify regarding the obligation of any physician to insure that his or her patient receives appropriate follow up care and treatment.

D. Defendant Chai's joinder in co-defendants' Motions in Limine.

Plaintiffs hereby adopt and incorporate by reference herein, as if set forth fully herein, their responses to Defendant Newman's First and Third Motions in Limine regarding : (1) Medical Malpractice Screening Panel; (2) Insurance; (3) Testimony regarding grief and anguish; (4) Loss Counselor; (5) Testimony by Canyon County

Paramedics Carol Bates and Michelle Giokas; (6) Sympathy testimony; (7) Coroner's Record and Bill Kirby; and, (8) Learned treatises.

V.

CONCLUSION

Plaintiffs believe that Defendant Chai's Motion in Limine is not well founded in either law or fact and for the forgoing reasons request that the Court deny the Motion in all respects argued for by Plaintiffs.

DATED This 13 day of April, 2009.

Byron ~~V.~~ Foster
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

Byron V. Foster

ORIGINAL

FILED
A.M. 4:20 P.M.
APR 13 2009
CANYON COUNTY CLERK
DEPUTY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON COUNTY

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, Deceased, Plaintiffs, v. ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CENTER, an Idaho Corporation, JOHN AND JANE DOES I through X, employees of one or more of the Defendants, Defendants.	Case No. CV 05-5781 PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS NATHAN COONROD'S AND PRIMARY HEALTH CARE CENTER'S SECOND MOTION IN LIMINE

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS NATHAN COONROD AND PRIMARY HEALTH CARE CENTER'S SECOND MOTION IN LIMINE, P. 1

COME NOW, Plaintiffs above-named, by and through their counsel of record and hereby respond in opposition to Defendants Nathan Coonrod, M.D. and Primary Health Care Center's Second Motion in Limine.

(Note: Plaintiffs are responding to the numbering system utilized by Defendants in their Motion).

II. A.

Sequestration of the medical chart of Maria A. Aguilar. No objection.

II. B.

Regarding the preclusion of the testimony at trial of Ecliserio Marquez, Edelmira DeValle, Jennifer and Bill Kirby; Plaintiffs hereby adopt and incorporate by reference herein, as if set forth fully herein, Plaintiffs' Memorandum in Opposition to Defendant Steven R. Newman M.D.'s Third Motion in Limine.

II. C.

Regarding Deputy Canyon County Coroner Bill Kirby's Case Summary and the Death Certificate authored by Canyon County Coroner Vicki DeGeus Morris and testimony regarding same; Plaintiffs hereby adopt and incorporate by reference herein, as if set forth fully herein, Plaintiffs' Memorandum in Opposition to Defendant Steven R. Newman, M.D.'s Third Motion in Limine.

DATED this 13 day of April, 2009.

Byron V. Foster
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

Byron V. Foster

ORIGINAL

FILED
A.M. 4:10 P.M.
APR 13 2009
CANYON COUNTY CLERK
DEPUTY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs,

v.

ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants,

Defendants.

Case No. CV 05-5781

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT LONG'S JOINDER IN DEFENDANT DR. NEWMAN'S SECOND MOTION IN LIMINE AND OPPOSITION TO PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

COME NOW Plaintiffs above-named, by and through their attorneys of record and hereby respond in opposition to Dr. Long's Joinder in Defendant Dr. Newman's Second Motion in Limine and Opposition to Plaintiffs' Motion for Protective Order.

Plaintiffs hereby adopt and incorporate by reference herein, as if set forth fully herein, their Memorandum in Opposition to Defendant Steven R. Newman, M.D.'s Second Motion in Limine, the Affidavit of Byron V. Foster in support thereof and all exhibits attached to said Affidavit.

DATED This 13 day of April, 2009.

Byron V. Foster
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

Byron V. Foster

ORIGINAL

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON COUNTY

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, Deceased, Plaintiffs, v. ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CENTER, an Idaho Corporation, JOHN AND JANE DOES I through X, employees of one or more of the Defendants, Defendants.	Case No. CV 05-5781 PLAINTIFFS' MEMORDANDUM IN OPPOSITION TO NATHAN COONROD, M.D.'S AND PRIMARY HEALTH CENTER'S MOTION IN LIMINE

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS, NATHAN COONROD, M.D.'S AND PRIMARY HEALTH CENTER'S MOTION IN LIMINE, P. 1

COME NOW Plaintiffs above-named, by and through their counsel of record, and hereby respond to Defendants Coonrod and Primary Health Care Center's Motion in Limine as follows:

(Note: Plaintiffs will use the numbering system contained in Defendants Coonrod and Primary Health's Motion).

II. A.

No objection.

II. B.

No objection with the exception that Plaintiffs believe that questions relating to bias either in favor of or against the insurance industry are appropriate subjects to be dealt with during voir dire. The Court has discretion to allow both sides to inquire to ascertain if any potential jurors should be excused for cause or pursuant to a preemptory challenge based upon responses to questions designed to determine if any juror will not render a fair verdict based upon feelings either for or against the insurance industry or for or against plaintiffs seeking compensation. If the goal is to seat an impartial jury, such matters must be investigated.

II. C.

Plaintiffs object to a blanket exclusion of testimony which may be interpreted as evidencing grief and/or mental anguish. It is impossible for the Court to fashion a ruling excluding such testimony without knowing the context in which the testimony is rendered. For example, if a witness describes an empty feeling based upon the inability to simply touch or talk to their mother or wife; is this grief or loss of love, comfort and companionship?

The jury instruction regarding damages which can properly be awarded in a wrongful death case describes the nature of compensable damages and contains an admonishment that damages for grief or sorrow are not recoverable. It is for the jury to determine these matters based upon the evidence presented. Thus, a blanket exclusion is not only impractical but infringes upon Plaintiffs' ability to fully explain the nature of the losses they have suffered. These matters are best left to the instructions which will be given to the jury.

II. D.

Plaintiffs" object to the exclusion of Decedent Maria Aguilar's pain and suffering prior to her death if the intent is to exclude the signs and symptoms Maria Aguilar was experiencing and which Plaintiffs' experts will testify were signs and symptoms of a showering of pulmonary emboli which should have led Defendants to diagnose and treat the condition which led to her death.

Plaintiffs will not be attempting to recover for the pain and suffering Decedent Maria Aguilar experienced but fully intend and expect to be allowed to present testimony regarding her signs and symptoms as her condition progressed. Once again, this matter is adequately dealt with by IDJI No. 9.05.

II. E.

Plaintiffs do not intend to present testimony from a loss counselor.

II. F.

Plaintiffs object to the blanket exclusion of testimony from any of Plaintiffs' expert witnesses to the effect that the standard of health care practice regarding the duties of a health care provider when confronted with a patient such as Plaintiffs' Decedent cross

specialty lines. If Plaintiffs' experts establish, through their testimony; that it is expected that Emergency Medicine specialists, Cardiologists and Family Medicine specialists, in Nampa and Caldwell, Idaho in the spring of 2003, all have sufficient training and knowledge to diagnose and treat pulmonary emboli, then such testimony is relevant. Plaintiffs' evidence will show that any competent practitioner in Nampa and Caldwell in the spring of 2003 should have possessed the basic knowledge adequate to make such diagnoses and render such treatment. Therefore evidence from Plaintiffs' experts should not be excluded out of hand without first allowing Plaintiffs the opportunity to lay a foundation for such testimony at trial.

II. G.

Plaintiffs do not intend to play upon the sympathy of the jury and Plaintiffs urge the Court to prevent Defendants from doing the same by eliciting testimony regarding how a verdict for Plaintiffs may adversely effect either Defendants personally, their families, their standing in the community or their professional reputations or earning power.

II. H.

Plaintiffs agree that learned treatises should not be admitted into evidence as exhibits unless the proper showing is made pursuant to applicable Idaho law. A ruling by the Court regarding any specific exhibit of this type should be made at trial at the time such an offer is made.

CONCLUSION

The intent of the judicial process is to achieve a full and fair trail for both sides. Plaintiffs' response to this and other of Defendants' Motions in Limine is meant to

emphasize that the Court's rulings on the matters presented by these Motions should respectfully be designed to guard against bias and prejudice to either side and effectuate the fundamental purpose of fairness inherent to trial by jury.

RESPECTFULLY SUBMITTED This 13 day of April, 2009.

Byron V. Foster
Attorney for ~~Plaintiffs~~

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

Byron V. Foster

ORIGINAL

FILED
A.M. 4:20 P.M.
APR 13 2009
CANYON COUNTY CLERK
DEPUTY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased, Plaintiffs, v. ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants, Defendants.	Case No. CV 05-5781 **AFFIDAVIT OF BYRON V. FOSTER IN OPPOSITION TO DEFENDANT MITCHELL LONG, D.O.'S MOTION IN LIMINE**

STATE OF IDAHO)
: ss.
County of Ada)

I, Byron V. Foster, being first duly sworn upon oath, deposes and says:

1. That I am an attorney, duly licensed by the State of Idaho Bar Association to practice law in the State of Idaho.

2. That I am one of the attorneys for Plaintiffs Aguilar in the above-referenced lawsuit. I make this affidavit upon my own personal knowledge.

3. That attached hereto as Exhibit "A" are color copies of four pages of records of Primary Health Care Center dated May 27, 2003;

4. That attached hereto as Exhibit "B" are true and correct copies of excerpts from the transcript of the deposition of Nathan Coonrod, M.D., taken on February 7, 2008.

5. That attached hereto as Exhibit "C" are true and correct copies of four pages from the certified copy of the Mercy Medical Center records produced at the Kay Hall deposition taken on January 18, 2008.

FURTHER YOUR AFFIANT SAITH NAUGHT.

Byron V. Foster

SUBSCRIBED AND SWORN TO BEFORE ME this 15 day of April, 2009.

SARAH K. POLLARD NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR Idaho
Residing at: Boise, ID
My Commission Expires: 10/07/2009

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

Byron V. Foster

(4) Pt. Name: Maria Aguilar
Pt. Contact#: 431-1536
Medic#: 3120199 DO[redacted]
BP:(R)____ (L) 134/84 Resp: 20 Pulse: 110 Sex: M / (F)
Temp: 98.6 Wt 193.2# LMP 4/13 Pain Level None
Meds: See med list
Allergies: NKA
Last Tetanus: 1990 Time: 1458 Initials: AS
Primary MD: Curnow
Was condition related to accident?
☐ Yes, Work related ☐ Yes, Not Work Related ☑ No

DATE: 5/27/13 TIME: 1450
HISTORIAN: ✓ patient __spouse __other

follow up of:
4th pod here for follow up anemia, states has been getting a sharp pain mid chest since Sunday only gets it activity

Provider Reviewing Initials:

HPI

duration: __long standing __recent
Sharp chest pain started Sunday

context:

therapy (modifying factors):
response to therapy
__unchanged __resolved __improved __worse

compliance with therapy
(good) __poor (why)

current / associated symptoms:

severity:
__mild (moderate) __severe pain
__interfere with activities of daily living:
(sleep) (work) ~~school~~ ~~appetite~~ ~~household activities~~

comorbid disease:

__Recently seen by doctor office / ER / hospitalized

27
Primary Health
PHYSICIAN RECORD
General Adult Follow Up (5)

~~Past Hx~~ __Family Hx __Social Hx
(in chart) __reviewed and updated

ROS
Time____

CONST
__~~fever~~
subjective / to ____°F
~~chills~~
(fatigue) lcx

ENT
__~~sore throat~~
__~~nasal drainage~~ / (congestion)

PULMONARY / CVS
__~~cough~~
~~sputum~~
(trouble breathing)
(chest pain)

GI
__~~abdominal pain~~
__nausea / ~~vomiting~~ / ~~diarrhea~~
__~~black~~ / bloody stools

GU
__problems urinating
__frequent urination

FEMALE GENITAL
__LMP
postmenopausal / hysterectomy
__abnormal bleeding / discharge

SKIN / MS
__skin rash
__back pain
__leg pain
__foot swelling

NEURO / EYES
__headache
__blackout
__lost feeling / power
arm leg face R / L
__difficulty walking
__difficulty with speech
__double vision
__confusion
☐ all systems neg. except as marked

Past Hx __negative

CURRENT MEDS: Nexium 40 QD
Ferrous sulfate 325 TID

Social Hx __smoker __ETOH use

Family Hx

PHYSICAL EXAM
__Alert __Anxious __Lethargic
General Appearance- Distress- __no acute __moderate __severe

ENT
(nml ENT inspection)
(nml pharynx)
__scleral icterus / pale conjunctivae
__purulent nasal drainage
__pharyngeal erythema / exudate

NECK
(nml inspection)
(nml thyroid)
__thyromegaly
__lymphadenopathy (R / L)
__JVD present
__carotid bruits

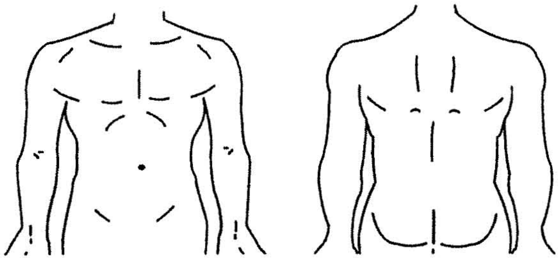
RESPIRATORY
(no resp. distress)
(nml breath sounds)
(chest non-tender)
__see diagram (on back)
__wheezing
__rales / rhonchi

EXHIBIT A

CVS
__regular rate, rhythm (circled)
__no murmur (circled)
__no gallop (circled)

__irregularly irreg[...] [...]thm______
__extrasystoles *occasional / frequent*______
__tachycardia / bradycardia______
__murmur grade ___/6 *sys / dias*______

__gallop (S3 / S4)______
__friction rub______



T=tenderness R=rebound m=mild mod=moderate sv=severe
Example- Tsv indicates severe tenderness.

ABDOMEN
__soft, non-tender (circled)
__no organomegaly (circled)
__nml bowel sounds (circled)

__tenderness______
__guarding / rebound______
__hepatomegaly / splenomegaly / mass______
__abnml bowel sounds / bruits______

RECTAL
__non-tender
__heme neg stool
__nml prostate

__black / bloody / heme pos. stool______
__tenderness / mass / nodule______

BACK
__nml inspection (circled)

__CVA tenderness (R / L)______

SKIN
__nml color (circled)
__warm, dry (circled)
__no rash (circled)

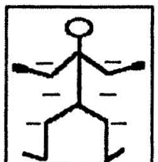
__cyanosis / pallor / diaphoresis______
__skin rash / abnml growths______

EXTREMITIES
__non-tender (circled)
__no pedal edema (circled)
__nml pulses (circled)

__calf tenderness______
__pedal edema______
__varicose veins______
__decreased pulse(s)______

NEURO / PSYCH
__oriented x3 (circled)
__nml mood / affect (circled)
__nml CN's as tested
__no motor / snsry deficit
__nml reflexes

__disoriented______
to: person / place / time
__depressed affect______
__facial droop / EOM palsy
__weakness / sensory loss


Reflexes

NURSES FOLLOW UP CALL

OFFICE TESTS

LABS, XRAYS, AND P[ROG]RESS NOTES

✓	LAB	ORDERED	TIME	INITIAL
	CULT			
✓	U / A			
	CBC			
✓	OTHER			
	EKG			
✓	X-RAYS	Chest 11051	1550	KPC
	LABS			

(margin: M 1545)

1545 VP- Dani x 1 attempt successful

CLINICAL IMPRESSION / DIAGNOSIS
Chest pain – ischemia on EKG

TREATMENT PLAN
__return to work / school in ______days / weeks______

Discharge Medication / Plan
Vioxx 25 q Tod
#(?) 12.5 Dcp
Sample

To ED
Discussed c ED MD
will see pt
copy of EKG & original CXR sent c her

Refer To? Mercy Hospital	#Visit	#Referral 126016

FOLLOW-UP PLANS
__will see in office in ____ Day / Week / Month ______

HEALTH EDUCATION / COUNSELING
Counseled patient regarding:
__Labs __Diagnosis __Follow-up
__Weight reduction __Diet and exercise __Smoking cessation
__Alcohol cessation __Compliance w/ meds

Total face-to-face time: _____minutes __*visit dominated by counseling*

Call or Return If No Improvement	
Return In______Days______Wks______Mos	
Discharge Instructions Given by:	Time

[signature] ______ ***Signature***

☐ Nathan Coonrod, MD ☐ Catherine Atup-Leavitt, MD
☐ Gale Tinker, PA-C
☐ Other______

Primary Health Nampa 208-466-6567
Call Back: ☐ Yes ☐ No Call back notes:

DOS: 5/27/03 PATIENT NAME: Maria Aguila ______ DOB: 12/15/46 CONTACT#:______

27-May-2003 14:41:33 MARIA AGUILAR PRIMARY HEALTH NAMPA
41 Years Female 193 lb 60 in Blood Pressure: 134/84 Department: NAMPA

Operator: AT

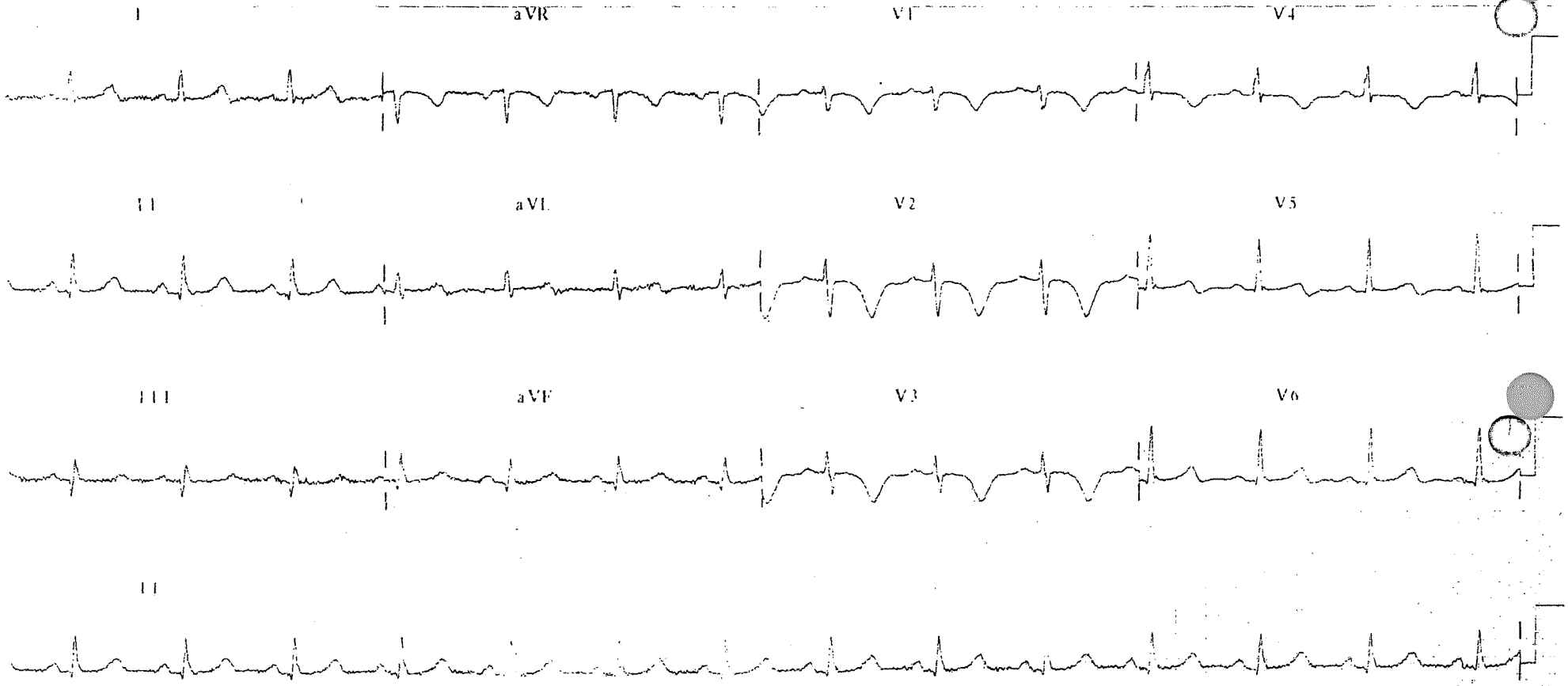
Rate	84	. Normal sinus rhythm, rate 84
PR	161	. Old Inferior infarct
QRSD	93	. QT interval long for rate
QT	424	. Anterior T wave abnormalities
QTc	501	. . Consistent with ischemia

Normal P axis, PR, rate & rhythm
Significant Q-waves in II,III,aVF
QTc > 470 mS
T waves - .60 mV V2-V4
T > -.60 mV

--Axis--
P 69
QRS 36
T 43

Requested by:
COONROD

- ABNORMAL ECG - Unconfirmed. MD must review.



2352

Primary Health SM

QBC AUTOREAD HEMATOLOGY ANALYZER

MAY 27,2003 Time: 16:25

Patient: Maria Hyndais / / #

Age Group: Adult Female

		Venous Sample		Adult Female Ranges
				¦VL¦Low ¦ Normal ¦High¦VH¦
Hematocrit	=	**41.2** %	(37.0-47.0)	
Hemoglobin	=	**12.8** g/dL	(12.0-16.0)	
MCHC	=	**31.1** g/dL	(31.7-36.0)	
Total WBC	=*	--.- x10⁹/L	(4.3 -10.0)	no result
Granulocytes	=*	--- x10⁹/L	(1.8 - 7.2)	Grans Unreadable (4)
%Granulocytes	=*	--- %		
Lymphs+Monos	=	**4.5** x10⁹/L	(1.7 - 4.9)	
%Lymphs+Monos	=*	-- %		
Platelets	=	**368** x10⁹/L	(140 - 400)	

BECTON DICKINSON

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,	Case No. CV 05-5781
Plaintiffs,	
vs.	
ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES 1 through X, employees of one or more of the Defendants,	
Defendants.	

VIDEOTAPED DEPOSITION OF NATHAN COONROD, M.D.

February 7, 2008

VOLUME 1
Pages 1 - 102

Reported by
Brooke R. Bohr
CSR No. 753

P.O. Box 1625
605 West Fort Street
Boise, ID 83701

Voice 208 345 3704
Fax 208 345 3713
Toll free 800 424 2354
Web www.etucker.net
E-mail info@etucker.net

Page 45

Impression" that she has "chest pain and ischemia on EKG," correct?
A. Correct.
Q. And ischemia -- I'm sorry?
A. Yes. That's true.
Q. Ischemia can be related to either a cardiac or a pulmonary condition, can it not?
A. I was thinking, specifically, of cardiac ischemia, because I'm referring to the EKG.
Q. Okay. But the pattern on the EKG can also indicate a pulmonary origin for that pattern, can it not?
A. I guess what I would have been looking for, since we're talking about pulmonary emboli, is I would have been looking for a right axis shift. I would have been looking for atrial flutter or atrial fib in that EKG. Unfortunately, it didn't show any of those things. But it did show signs suggestive of anterior ischemia.
Q. And pulmonary embolus can be implicated in a finding of anterior ischemia, can it not?
A. Unusually, yes, I understand it can be.
Q. Okay. And then you've written down here under "Discharge Medication Plan," it says,

Page 46

"Vioxx 25," something, something.
A. I don't know at what point I wrote that. But as soon as I saw the EKG, it became clear to me that we weren't going to do anything. We were going to send her to the hospital. That was -- the end of that plan was to have her go directly to the hospital.
Q. Okay. Well, when did you put her on Vioxx, or did you?
A. I don't think it happened, no.
Q. Okay. What is written beneath Vioxx, the next two lines?
A. Although, it does make me think that when I reviewed her chest pain, it probably was pleuritic. That would be a treatment for pleuritic chest pain, frankly.
Q. But you don't think you ever prescribed Vioxx for her?
A. No, because I sent her to the hospital.
Q. Okay. What is written in beneath the line that has "Vioxx" on it?
A. "25 milligrams today and then 12.5 each day, sample."
Q. Okay. Did you give her samples of Vioxx on that day?

Page 47

A. I doubt it. Again, that plan -- once I saw that EKG, that plan had ended. The plan was to get her as expeditiously as possible to the hospital.
Q. What did you think was going on with her that caused you to send her as expeditiously as possible to the hospital?
A. I was concerned that she had unstable angina.
Q. "Unstable angina," meaning what?
A. She had a narrowing in one or more of her coronary arteries that was causing the chest pain and was causing the changes I was seeing on her EKG, or possibly a heart attack in progress. She appeared to be having cardiac problems.
Q. Did you consider, at that point in time, that her problems may have been pulmonary in nature?
A. Consider it? I don't know. Certainly, the immediate need was to get her evaluated. And I didn't have the resources to do it where I was. So I needed to get her somewhere where I could get her evaluated.
Q. Okay. And then the next writing that is on this particular page says what?

Page 48

A. It says, "To emergency department," or "ED" is what it says. "Send for emergency department. Discussed with emergency doctor my patient," maybe. I don't know. "Discussed with emergency doctor," at any rate, "who will see patient. Copy of the EKG and original chest X-ray sent with her."
Q. Does it say, "Discussed with EDMD"? Is that what that says?
A. Yes, that's what it does say. Yep.
Q. Okay. I note that in the Mercy Medical Center record, these two pages of the Primary Health record appear, but they do not have the copy in -- the Mercy Medical Center records does not have the writing that says, "To ED. Discussed with EDMD. Will see patient," et cetera?
A. I suspect I told my nurse to get the chart copied. So I didn't have access to the chart because I was getting ready to send her. When I got the chart back, I finished the note.
Q. Okay. Which emergency physician did you talk to at Mercy Medical Center that day?
A. Unfortunately, I didn't write it down. So I can't tell you.
Q. Tell me what you can recall about the

27

Primary Health
PHYSICIAN RECORD
General Adult Follow Up (5)

(Cpt) Name: Maria Aguilar
Pt. Contact#: 454-1536
Medic#: 312019 [redacted] Age: 41
BP:(R)____ (L) 134/84 Resp: 20 Pulse: 110 Sex: M (F)
Temp: 98.6 Wt 193.2 LMP 4/13 Pain Level None
Meds: See med list
Allergies: NKA
Last Tetanus: UTD Time: 1450 Initials: AG
Primary MD: Cubbison
Was condition related to accident?
☐ Yes, Work related ☐ Yes, Not Work Related ☑ No

DATE: 5/27/13 TIME: 1450
HISTORIAN: ✓ patient __spouse __other

follow up of:
41 y/o F here for f/u follow up anemia, states has been getting a sharp pain mid chest since Sunday only gets it c activity — AG

Provider Reviewing Initials:

HPI

duration: __long standing __recent
Sharp chest pain started Sunday

context:

therapy (modifying factors):
response to therapy
__unchanged __resolved __improved __worse

compliance with therapy
(good) __poor (why)

current / associated symptoms:

severity:
__mild (moderate) __severe / pain
__interfere with activities of daily living:
(sleep) (work) ~~school~~ ~~appetite~~ ~~household activities~~

comorbid disease:

Recently seen by doctor / office / ER / hospitalized

~~Past Hx~~ __Family Hx __Social Hx
(in chart) __reviewed and updated

ROS Time____

CONST
__~~fever~~
subjective / to ____°F
~~chills~~
(fatigue) Low

ENT
__~~sore throat~~
__~~nasal drainage~~ / ~~congestion~~

PULMONARY / CVS
__~~cough~~
~~sputum~~
(trouble breathing)
(chest pain)

GI
__~~abdominal pain~~
__nausea / ~~vomiting~~ / ~~diarrhea~~
~~black~~ / bloody stools

GU
__problems urinating
__frequent urination

Past Hx __negative

CURRENT MEDS: Nexium 40 QD
Ferrous Sulfate 325 TID

Social Hx

Family Hx

PHYSICAL EXAM __Alert __Anxious __Lethargic
General Appearance Distress- __no acute __moderate __severe

ENT
(nml ENT inspection)
(nml pharynx)
__scleral icterus / pale conjunctivae
__purulent nasal drainage
__pharyngeal erythema / exudate

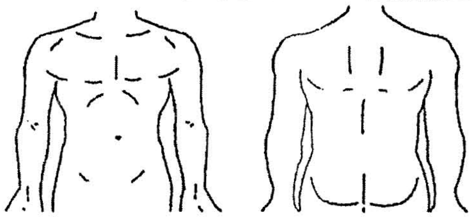
NECK
(nml inspection)
(nml thyroid)
__thyromegaly
__lymphadenopathy (R / L)
__JVD present
__carotid bruits

RESPIRATORY
(no resp. distress)
(nml breath sounds)
(chest non-tender)
__see diagram (on back)
__wheezing
__rales / rhonchi

EXHIBIT C

CVS
- __regular rate, rhythm
- __no murmur
- __no gallop

__irregularly irregular r[redacted]
__extrasystoles occasional / frequent
__tachycardia / bradycardia
__murmur grade __/6 sys / dias
__gallop (S3 / S4)
__friction rub



T=tenderness R=rebound m=mild mod=moderate sv=severe
Example- Tsv indicates severe tenderness.

ABDOMEN
- __soft, non-tender
- __no organomegaly
- __nml bowel sounds

__tenderness
__guarding / rebound
__hepatomegaly / splenomegaly / mass
__abnml bowel sounds / bruits

[redacted]

BACK
- __nml inspection

__CVA tenderness (R / L)

SKIN
- __nml color
- __warm, dry
- __no rash

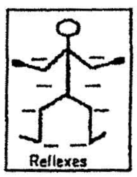
__cyanosis / pallor / diaphoresis
__skin rash / abnml growths

EXTREMITIES
- __non-tender
- __no pedal edema
- __nml pulses

__calf tenderness
__pedal edema
__varicose veins
__decreased pulse(s)

NEURO / PSYCH
- __oriented x3
- __nml mood / affect
- __nml CN's as tested
- __no motor / snsry deficit
- __nml reflexes

__disoriented
to: person / place / time
__depressed affect
__facial droop / EOM palsy
__weakness / sensory loss



NURSES FOLLOW UP CALL

OFFICE TESTS

LABS, XRAYS, AND PRO[redacted]SS NOTES

✓	LAB	ORDERED	TIME	INITIAL
	CULT			
✓	U/A			
	CBC			
✓	OTHER			
	EKG			
✓	X-RAYS	Chest 1105	1550	KPC
	LABS			

1815 VP Dani x 1 attempt successful

CLINICAL IMPRESSION / DIAGNOSIS
Chest pain

TREATMENT PLAN
__return to work / school in ______days / weeks______

Discharge Medication / Plan.
Vioxx 25 q Tab
Flex 12.5 (ilegible)
Crazy do

Refer To?	#Visit	#Referral

FOLLOW-UP PLANS
__will see in office in ____ Day / Week / Month

HEALTH EDUCATION / COUNSELING
Counseled patient regarding:
__Labs __Diagnosis __Follow-up
__Weight reduction __Diet and exercise __Smoking cessation
__Alcohol cessation __Compliance w/ meds

Total face-to-face time: _____minutes __visit dominated by counseling

Call or Return If No Improvement	
Return In__________Days__________Wks__________Mos	
Discharge Instructions Given by:	Time

______________________ *Signature*

☐ Nathan Coonrod, MD ☐ Catherine Atup-Leavitt, MD
☐ Gale Tinker, PA-C
☐ Other______

Primary Health Nampa 208-466-6567
Call Back: ☐ Yes ☐ No Call back notes:

DOS: 5/27/03 PATIENT NAME: Maria Aguilar DOB: 12/15/6 CONTACT#:
General Adult Follow-up -27

27-May-2003 14:41:33 MARIA AGUILAR PRIMARY HEALTH NAMPA
41 Years Female 193 lb 60 in Blood Pressure: 134/84 Department: NAMPA

Operator:. AT

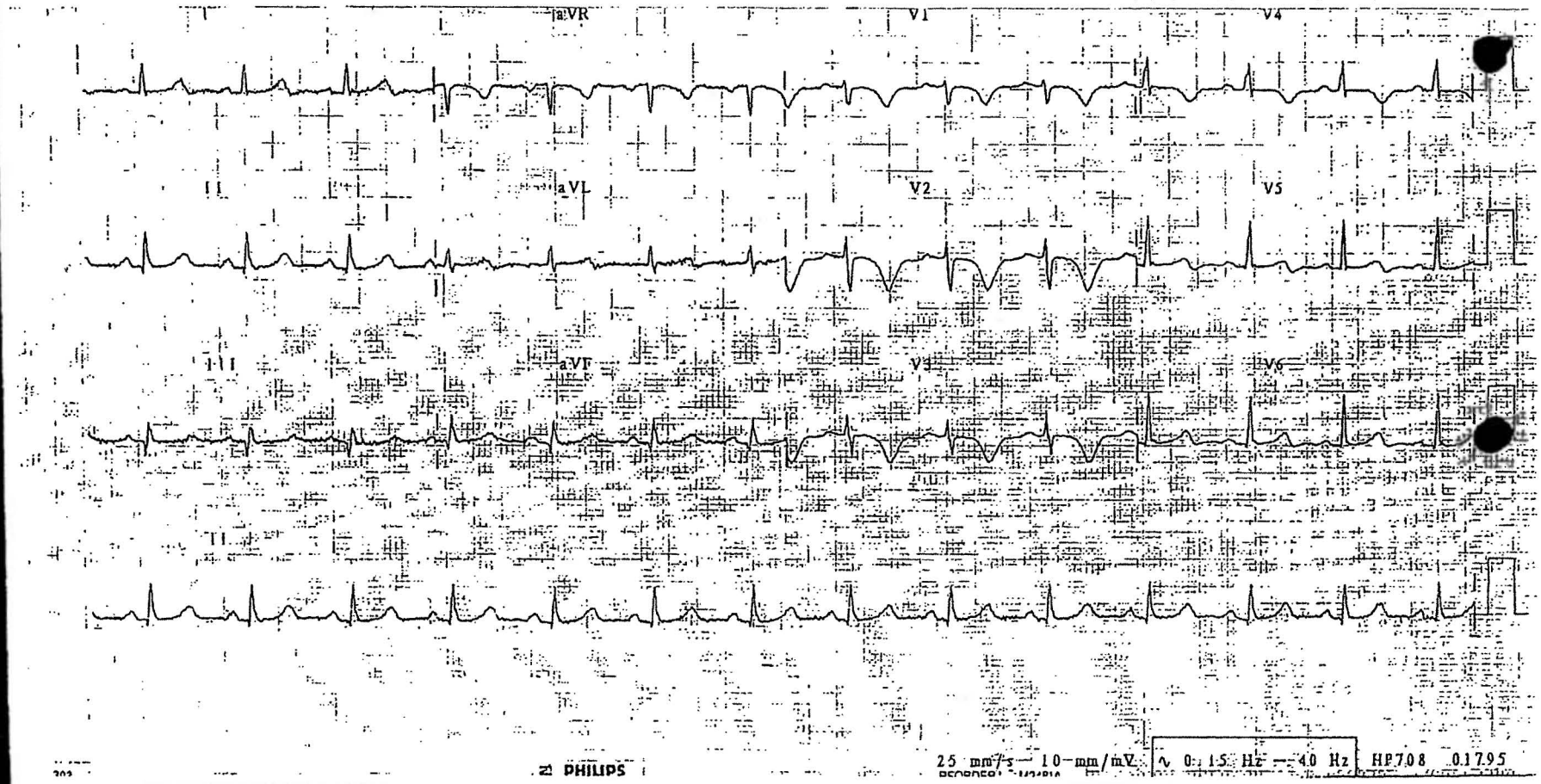
Rate	84	Normal sinus rhythm, rate 84	Normal P axis, PR, rate & rhythm
PR	161	Old inferior infarct	Significant Q-waves in II, III, aVF
QRSD	93	QT interval long for rate	QTc > 470 mS
QT	424	Anterior T wave abnormalities,	T waves - 60 mV V2-V4
QTc	501	Consistent with ischemia	T > -.60 mV

--Axis--
P 69
QRS 36
T 43

Fax 322-1688
Rear

Requested by:
COONROD

- ABNORMAL ECG - Unconfirmed MD must review.



PHILIPS 25 mm/s 10 mm/mV 0.15 Hz 40 Hz HP 708 0.17 95

2358

Primary Health

QBC AUTOREAD HEMATOLOGY ANALYZER

MAY 27,2003 Time: 16:25

Patient: Maria Aguilar / / #

Age Group: Adult Female

	Venous Sample		Adult Female Ranges
			VL | Low | Normal | High | VH
Hematocrit	= 41.2 %	(37.0-47.0)	
Hemoglobin	= 12.8 g/dL	(12.0-16.0)	
MCHC	= 31.1 g/dL	(31.7-36.0)	
Total WBC	=*---.- x10⁹/L	(4.3 -10.0)	no result
Granulocytes	=* --- x10⁹/L	(1.8 - 7.2)	Grans Unreadable (4)
%Granulocytes	=* --- %		
Lymphs+Monos	= 4.5 x10⁹/L	(1.7 - 4.9)	
%Lymphs+Monos	=* -- %		
Platelets	= 368 x10⁹/L	(140 - 400)	

BECION
DICKINSON

PRIMARY HEALTH, INC. • 700 CALDWELL BLVD • NAMPA, ID 83651 • (208) 466-6567 • FAX (208) 466-7922

ORIGINAL

FILED
A.M. 4:02 P.M.

APR 13 2009

CANYON COUNTY CLERK
B DEPUTY

David E. Comstock, ISB #: 2455
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721

Byron V. Foster ISB, #: 2760
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs,

v.

ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants,

Defendants.

Case No. CV 05-5781

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT MITCHELL LONG, D.O.'S MOTION IN LIMINE

COME NOW, Plaintiffs above-named, by and through their counsel of record and hereby respond in opposition to Defendant Mitchell Long D.O.'s Motion in Limine. (Note: Plaintiffs will utilize the numbering system contained in Defendant Long's Memorandum).

I.

INTRODUCTION

Defendant Long argues that Plaintiffs will attempt to utilize their opening statement to allege he knew of the information contained in four pages of office notes of Dr. Coonrod. Plaintiffs' Decedent Maria A. Aguilar was seen by Dr. Coonrod at his office on May 27, 2003. Because of his findings on that date and testing he performed, he advised Maria to go to the Emergency Department at Mercy Medical Center. It is expected that Dr. Coonrod will testify at trial that he sent Maria to the ED at Mercy Medical Center with copies of the two pages of chart notes, the EKG and the chest x-ray referenced in his office notes of that date and the blood work he ordered performed on that date. Those four documents are contained in the Mercy Medical Center chart for May 27, 2003. As is stated in Defendant Long's Memorandum, the Mercy Medical Center record for that date contains the two (2) pages of Primary Health Care Center notes constructed by Dr. Coonrod. In addition, the Mercy Medical Center record also contains the EKG performed on Maria that day at Dr. Coonrod's office and a copy of blood work performed at Primary Health on that date. *See* Exhibit "A" to the Affidavit of Byron V. Foster ("Foster Aff.") filed herewith.

The factual issue for the jury will be how and when those records went from Primary

Health to Mercy Medical Center.

Copies of the four (4) pages of Primary Health documents contain writing not on the copies in the MMC records. *See* Exhibit "C" to the Foster Aff. filed herewith. The inference is that the additional writing contained on the Primary Health records was placed on the original chart after the copies were sent with the patient on May 27, 2003

II.

FACTS

Plaintiffs do not disagree with the quoted portions of the deposition transcripts of Kay Hall, Dr. Coonrod or Dr. Long. However, Defendant Long neglected to include a portion of the transcript of Dr. Coonrod which bears upon this issue. In his deposition, at page 48; in discussing the issue of why the Primary Health Care Center's copy of the chart notes for that day contains writing not contained on the copies in the Mercy Medical Center file, Dr. Coonrod stated:

> "A. It says 'To emergency department,' or 'ED' is what it says. 'Send for emergency department. Discussed with emergency doctor my patient.' Maybe. I don't know. 'Discussed with emergency doctor,' at any rate, 'who will see patient. Copy of the EKG and original chest X-ray sent with her.'
>
> Q. Does it say, 'Discussed with EDMD'? Is that what that says?
>
> A. Yes, that's what it does say. Yep.
>
> Q. Okay. I note that in the Mercy Medical Center record, these two pages of the Primary Health record appear, but they do not have the copy in—the Mercy Medical Center records does not have the writing that says, 'To ED. Discussed with EDMD. Will see patient,' et cetera?
>
> A. suspect I told my nurse to get the chart copied. So I didn't have access to the chart because I was getting ready to send her. When

I got the chart back, I finished the note."

See Exhibit "B" to the Foster Aff. filed herewith.

This portion of the testimony, at least inferentially, indicates that Dr. Coonrod also sent with Maria to the hospital the two pages of Primary Health office notes constructed on that date. It will be for the jury to determine if those four pages of documentation were available for Dr. Long to review, whether he should have reviewed them and whether if he failed to review them it was a violation of the applicable standard of health care practice.

While Plaintiffs agree that at this point, there may be a difference of opinion regarding whether or not Dr. Long reviewed the documents, there is no doubt that the Primary health records are in the original Mercy Medical Center chart. Since Dr. Coonrod is expected to testify that he sent these documents with the patient to the emergency department; there is circumstantial evidence the documents went to the hospital and found their way into the hospital chart because Maria A. Aguilar did just what she was told to do by Dr. Coonrod, she took them with her to the emergency room.

III.

CONCLUSION

Plaintiffs do not intend to distort or misstate the facts in opening argument. However, Plaintiffs should be allowed to discuss the factual issue of whether or not the Primary Health records went with Maria to the emergency room, the fact Dr. Coonrod called the emergency room and spoke to an emergency physician, what he told the emergency physician and the fact that the documents are contained in the hospital

record. It will be for the jury to determine which facts have been established by the evidence presented.

DATED This 13 day of April, 2009.

Byron V. Foster
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

Byron V. Foster

ORIGINAL

FILED
A.M. 4:10 P.M.
APR 13 2009
CANYON COUNTY CLERK
DEPUTY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased, Plaintiffs, v. ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants, Defendants.	Case No. CV 05-5781 **AFFIDAVIT OF BYRON V. FOSTER IN OPPOSITION TO DEFENDANT STEVEN NEWMAN, M.D.'S THIRD MOTION IN LIMINE**

I, Byron V. Foster, being first duly sworn upon oath, deposes and says:

1. That I am an attorney, duly licensed by the State of Idaho Bar Association to practice law in the State of Idaho.

2. That I am one of the attorneys for Plaintiffs Aguilar in the above-referenced lawsuit. I make this affidavit upon my own personal knowledge.

3. That attached hereto as Exhibit "A" is a copy of Plaintiffs' Fourth Supplemental Answers to Defendant Steven R. Newman, M.D.'s First Set of Interrogatories;

4. That attached hereto as Exhibit "B" is a excerpt from the deposition transcript of Steven R. Newman, M.D. containing page 27;

5. That attached hereto as Exhibit "C" is page 12 of Exhibit 1 to the deposition of Steven R. Newman, M.D.;

6. That attached hereto as Exhibit "D" are copies of Idaho Code Sections 19-4301 through 19-4301D,and Idaho Code, Sections 34-618 and 34-622.

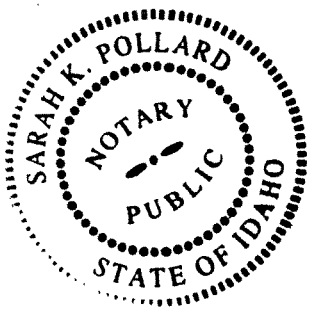
7. That attached hereto as Exhibit "E" is an excerpt from the transcript of the deposition of Thomas M. Donndelinger, M.D. containing pages 42 and 43.

FURTHER YOUR AFFIANT SAITH NAUGHT.

Byron V. Foster

STATE OF IDAHO)
: ss.
County of Ada)

SUBSCRIBED AND SWORN TO BEFORE ME this 13th day of April, 2009.



Sarah K Pollard
NOTARY PUBLIC FOR Idaho
Residing at: Boise, ID
My Commission Expires: 10/07/2009

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

Byron V. Foster

COPY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON COUNTY

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, Deceased, Plaintiffs, v. ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CENTER, an Idaho Corporation, JOHN AND JANE DOES I through X, employees of one or more of the Defendants, Defendants.	Case No. CV 05-5781 PLAINTIFFS' FOURTH SUPPLEMENTAL ANSWERS TO DEFENDANT STEVEN R. NEWMAN, M.D.'S FIRST SET OF INTERROGATORIES

EXHIBIT A

COME NOW the above-named Plaintiffs, by and through their counsel of record, and pursuant to IRCP 33 and 34, hereby supplement their answers to Defendant Steven R. Newman, M.D.'s First Set of Interrogatories as follows:

INTERROGATORIES

INTERROGATORY NO. 3: Identify by name, address and telephone number each and every person you may call as a lay witness at the trial of this matter, and state the subject matter on which each such witness is expected to testify.

SUPPLEMENTAL ANSWER:

1. Carol Bates
   Michelle Giokas
   Canyon County Paramedics
   1222 North Midland Blvd.
   Caldwell, ID 83651
   (208) 466-8800

Ms. Bates and/or Ms. Giokas are expected to testify that in May of 2003; they would have, based upon the Paramedics Run Sheet of May 31, 2003, reported by radio to the Emergency Department at West Valley Medical Center as they were bringing Plaintiffs' Decedent Maria Aguilar to the hospital. They will testify that the radio report is a part of their standard procedure. They are also expected to testify that upon arrival at the hospital, they would have given a verbal report to medical and/or nursing staff at the Emergency Department. The information they would have given both by radio and verbal report would be that contained in their Canyon County Paramedics Report which they would have completed no later than the end of their shift that day. The report would then have been faxed to the Emergency Department at West Valley Medical Center. It is expected that Ms. Bates and/or Ms. Giokas will testify based upon the written report

dated May 31, 2003. They are expected to testify to those matters contained in the report and are expected to testify that they would have reported the contents of the report as above indicated.

They are expected to testify that the radio and verbal reports are a part of their standard operating procedure as mandated by both their training and the procedures of Canyon County Paramedics.

Dated this 6 day of April, 2009.

Byron V. Foster
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 6 day of ~~March~~ April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☐ U.S. Mail
☐ Hand Delivery
☑ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☐ U.S. Mail
☐ Hand Delivery
☑ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☐ U.S. Mail
☐ Hand Delivery
☑ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☐ U.S. Mail
☐ Hand Delivery
☑ Facsimile (208) 395-8585

Byron V. Foster

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,

Plaintiffs,

v.) Case No.

ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D.,) CV 05-5781

(Caption Continued)

VIDEOTAPED DEPOSITION OF STEVEN R. NEWMAN, M.D.
September 25, 2007
REPORTED BY:
DIANA L. DURLAND, CSR No. 637, Notary Public

MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants,

Defendants.

THE VIDEOTAPED DEPOSITION OF STEVEN R. NEWMAN, M.D., was taken on behalf of the Plaintiffs at the offices of Moffatt, Thomas, Barrett, Rock & Fields, Chartered, 101 South Capitol Boulevard, Tenth Floor, Boise, Idaho, commencing at 10:00 a.m. on September 25, 2007, before Diana L. Durland, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

APPEARANCES

For the Plaintiffs: Law Offices of Comstock & Bush
By: DAVID E. COMSTOCK
BYRON V. FOSTER
TAYLOR L. MOSSMAN
199 North Capitol Boulevard
Suite 500
Post Office Box 2774
Boise, Idaho, 83701-2774

For the Defendant Andrew Chai, M.D.: Brassey, Wetherell, Crawford & Garrett
By: BRADLEY S. RICHARDSON
203 West Main Street
Post Office Box 1009
Boise, Idaho, 83702-1009

For the Defendant Steven R. Newman, M.D.: Moffatt, Thomas, Barrett Rock & Fields, Chartered
By: GARY T. DANCE
412 West Center
Suite 2000
Post Office Box 817
Pocatello, Idaho, 83204-0817

APPEARANCES (Continued)

For the Defendants Nathan Coonrod, M.D., and Primary Health Care Center: Hawley, Troxell, Ennis & Hawley, LLP
By: ANDREA L. JULIAN
JOSEPH D. McCOLLUM, JR.
877 West Main Street
Suite 1000
Post Office Box 1617
Boise, Idaho, 83701-1617

For the Defendant Mitchell Long, D.O.: Lynch & Associates, PLLC
By: JAMES B. LYNCH
1412 West Idaho Street
Suite 200
Post Office Box 739
Boise, Idaho, 83701-0739

Also Present: John Glenn Hall, Videographer

EXHIBIT B

10:27:17 A. No.
10:27:18 Q. Did you review any of the records from her
10:27:22 cardiologist regarding this woman before coming here
10:27:25 today?
10:27:25 A. No.
10:27:26 Q. Have you ever seen the coroner's record that
10:27:31 arise at the cause of her death?
10:27:34 A. No.
10:27:34 Q. I'm going to hand you what's been marked as
10:27:37 Exhibit No. 2.
10:27:38 A. Thank you.
10:27:40 Q. I'd represent to you, Doctor, that that's
10:27:42 the Canyon County coroner's record, and on page two
10:27:47 there's a final anatomic diagnosis there regarding
10:27:51 the cause of death. Do you see that?
10:27:54 A. I do.
10:27:54 Q. Would you read that for the record, please?
10:27:57 A. "Saddle emboli (sic) right and left
10:28:03 pulmonary arteries."
10:28:05 Q. And again, would you describe anatomically,
10:28:07 so our jury can understand, what that is?
10:28:16 A. A saddle emboli is a blood clot that has
10:28:21 become lodged in the pulmonary arteries.
10:28:26 Q. So this blood clot is a bilateral blood clot
10:28:31 then; correct? In other words, it's covering both

10:30:04 today, to indicate to us that Dr. Donndelinger is
10:30:09 wrong for some reason?
10:30:11 A. Correct.
10:30:14 Q. Looking back at what we marked as Exhibit 1,
10:30:18 if you would please, Dr. Newman, at the bottom of --
10:30:23 this is a multi-page exhibit. At the bottom of each
10:30:28 page we have numbers WVMC -- for West Valley Medical
10:30:34 Center -- 12, 13, 14, 15, 16 and 17 sequentially. Do
10:30:43 you see that?
10:30:43 A. Yes.
10:30:45 Q. Looking at the first page of this exhibit,
10:30:49 Exhibit 1, which is identified as West Valley Medical
10:30:55 Center page 12, is the handwriting on this document
10:31:01 yours?
10:31:01 A. Yes.
10:31:02 Q. Are all of the markings -- aside from the
10:31:07 form itself, are all of the markings on this page of
10:31:10 this document yours?
10:31:12 A. Yes.
10:31:13 Q. Let's turn to the next page which is page
10:31:16 13. Are all of the markings on this page yours?
10:31:25 A. With the exception of the "1636" and the --
10:31:31 some sort of initial at the top above the black line.
10:31:35 Q. I see. There's the square box at the top
10:31:37 right where we have Maria Aguilar's name identified,

:28:34 the right and the left pulmonary artery?
10:28:38 A. That's correct.
10:28:39 Q. I gather that's much more severe than a
10:28:42 blood clot that is covering just one of the arteries?
10:28:47 A. Yes.
10:28:52 Q. Had you ever seen this autopsy report
10:28:53 before?
10:28:53 A. No.
10:28:55 Q. Before coming here today, did you know that
10:28:58 on June 4th of 2003 you, having examined
10:29:03 Maria Aguilar on May 31st, 2003, that she died from a
10:29:09 saddle pulmonary embolism on June 4th?
10:29:12 A. I knew that she had died, but I wasn't sure
10:29:16 of the exact cause.
10:29:23 Q. As you sit here today, do you have any
10:29:25 reason to dispute or question the final anatomic
10:29:28 diagnosis of Dr. Donndelinger who came to the
10:29:32 conclusion that her death was a resultant from saddle
10:29:37 embolism, right and left pulmonary arteries?
10:29:42 A. I do not know Dr. Donndelinger. I presume
10:29:49 that he is the coroner and he did the autopsy, and
10:29:52 that was his diagnosis. I don't have any particular
10:29:55 comments on stating whether that is not -- I cannot
10:29:59 state that that is not a true diagnosis.
10:30:02 Q. So you have no reason, as you sit here

10:31:41 and to the right of that there's written in "1636,"
10:31:45 and it does appear to be some initial; correct?
10:31:48 A. Correct.
10:31:48 Q. That's not your writing, I gather?
10:31:51 A. That is correct.
10:31:51 Q. The rest of the marking on the page,
10:31:54 however, is your marking?
10:31:57 A. Yes.
10:32:00 Q. Let's turn to the next page which is page
10:32:03 14. Same question. Is the writing on this document
10:32:11 yours or someone else's?
10:32:13 A. This page is not -- I do not -- excuse me.
10:32:15 This page is someone else's. I do not have any
10:32:18 writing on this page.
10:32:19 Q. This is the emergency department nursing
10:32:22 record from May 31st, 2003. Is it fair for us to
10:32:27 assume that the writing contained on this page was
10:32:30 done by a nurse there at the emergency room
10:32:32 department?
10:32:33 A. Yes.
10:32:35 Q. And the filling in of the boxes at the
10:32:38 bottom would be the same?
10:32:40 A. Yes.
10:32:43 Q. Do you review this document as part of your
10:32:48 review of the patient when you see her there in the

Syncope / Near Syncope #03

WEST VALLEY MEDICAL CENTER [illegible]

[illegible]

AGUILAR, MARIA A
M01000291714 REG ER Newman, Steven*
05/31/03 Coonrod, Nathan F
DOB: 12/15/61 41 F MR# M000191876
West Valley Medical Center Caldwell, ID

Date: ________ E.P. time: ________ Age: ________ Wt: ____ Temp: ______ Sex: M / F

P: ________ BP: ______ / ______ RR: ________ ☐ VS reviewed, see Nurse's Notes

Referred by: self / clinic / PMD / family / (EMS)

Arrived by: (EMS) / walk-in / wheelchair

Historian: (patient) / (family) / friend / (EMS) ______ ☐ Interpreter Used

Hx limited by: Altered LOC / acuity / intoxication

Chief Complaint: (fainting) / near fainting

"I feel like I'm going to faint"

HPI: L1-3: 1-3 elements; L4-5: 4+ elements

Onset: (sudden) / gradual / undetermined

Began: ________ time ________ date

3 0 (min) / hrs / days PTA

Timing: one (episode) / multiple

Frequency, duration:

Quality / Location:

collapsed / LOC / decr. responsiveness

felt faint / almost fainted

weak / lightheaded / (dizzy)

Faintel.

Premonitory sxs: ___ can't recall

abrupt s̄ warning

(lightheaded) / weak / (dizzy)

diaphoretic

headache

visual symptoms

chest pain / (palpitations)

abdominal pain / N/V

Context: (new problem) / chronic / recurrent

If chronic, current episode:

same / not as bad / worse / worst ever

Setting:

Occurred ē: sitting / standing / exertion

Associated with: stress / coughing / urination / defecation / head turning

E/T palpations → before this occurred + felt weak.

Associated sxs: ___ none

Seizure activity c̄ syncope:

LOC: none / unknown / dazed / + LOC

Duration: (5) sec / mins / hrs

Remembers: incident / coming to hosp.

Witnessed:

confused

Incontinent: urine / stool

stopped breathing / cyanotic

Pulse: absent / weak

diaphoresis

Associat. injury:

Modifying factors: ___ none

Prior EMS Rx: IV placed.

Baseline functioning: ___ nl

Deficits (alertness / orientation / activities):

Hosp Nampa → CP → ⊖ cath
Easy Fatigue.
April → palpitations
Holter monitor → ⊖
Seeing GI Tues
Cath 5/29/03 ⊖
[illegible]
[illegible] of Cath.

Recent Rx / Similar Previous Sxs: ___ none

Description:

Workup, Dx:

Rx:

ROS: L1-3: 1 system/pert. prob. L4: 2-9 systems L5: 10+ systems

All systems reviewed: ___ negative / ~~negative except as marked~~

___ Constit: malaise / wt. loss / ~~fever~~ / ~~chills~~

___ Eyes: blurred vision / double vision / "saw spots" / eyes red

___ ENT: dysphagia / sore throat / congestion / URI / flu sxs / ear pain

___ CV: ~~chest discomfort~~ / ~~palpitations~~ / orthopnea / PND / ankle swelling

___ Resp: ~~breathing probs~~ / ~~SOB~~ / DOE / wheezing / hemoptysis / cough

___ GI: ~~abdominal discomfort~~ / tarry stools / rectal bleeding / diarrhea / constipation

___ GU: urinary probs / urgency / frequency / hesitation / hematuria
kidney probs / vag d/c
LMP: ______ nl / abnl heavy periods
oral contraceptives:

___ MS: myalgias / painful areas:

___ Skin: rash / skin probs

___ Neuro: focal weakness / numbness

___ Psych: hallucinations / agitation / change in behavior / stress / anxiety / depression

___ Hemat / Lymph: bruising / bleeding (Anemia)

___ Endo: polyuria / polydipsia / thyroid probs / adrenal probs

___ Immun / Allerg: HIV / AIDS: T cell# ____ Viral load ____

Exh. No. 1
Date 9-25-07
Name Newman
M & M Court Reporting

Past, Family, Social History: L1-4: 1 area L5: 2 of 3 areas

PMH: ___ none ___ unknown

hypertension / CVA / TIA

CAD / IDDM / NIDDM / CHF / COPD

Arrhythmia: a. fib / SVT / WPW

Other:

migraines / seizures

sickle cell disease / clotting probs

P.E. / DVT

PUD / GI bleeding

ETOH / drug abuse

Anemia

Surgical Hx: ~~X~~ none ___ unknown

head injury

brain / neck surgery

CABG / pacemaker / AICD / prosth valve

Family Hx: ~~X~~ none ___ unknown

CVA / subarachnoid hemorrhage

IDDM / NIDDM / hypertension

seizures / heart probs

Meds: ___ none ___ see RN note

ASA / NSAID's / acetaminophen

coumadin

corticosteroids

Nexium @ 30 y

Allergies: ___ see RN note

Social Hx: ___ unknown

Tobacco: ___ ppd ____ yrs

current: ___ no / yes

ETOH: ___ drinks / wk

Recent? ________

Drugs:

Occupation:

Home situation: lives alone / nursing hm

WVMC 12

EXHIBIT C

19-4301. Coroner to investigate deaths. — When a coroner is informed that a person in his county has died:

(a) As a result of violence whether apparently homicidal, suicidal or accidental, or

(b) Under suspicious or unknown circumstances, or

(c) When not attended by a physician during his last illness and the cause of death cannot be certified by a physician, the coroner must refer the investigation of the death to the sheriff of the county or the chief of police of the city in which the incident causing death occurred; or, if unknown, then in which the death occurred; or, if unknown, then in which the body is found. The investigation shall be the responsibility of said officer who, upon completion of his investigation, shall furnish a written report of the result of such investigation to said coroner. The coroner of said county must refer said case to the coroner of the county in which the incident causing death occurred, if known, or if unknown, then in which the death occurred, if known, to hold an inquest. Provided, however, that a coroner shall conduct an inquest only if he has reasonable grounds to believe that the death has occurred under any of the circumstances heretofore stated in sections 19-4301(a) or 19-4301(b), Idaho Code. If so, he may summon six (6) persons qualified by law to serve as jurors to appear before him to hold said inquest.

Nothing in this section shall be construed to affect the tenets of any church or religious belief. [I.C., § 19-4301, as added by 1961, ch. 262, § 2, p. 459; am. 1963, ch. 4, § 1, p. 8.]

Compiler's notes. Former section 19-4301 which comprised 1864, p. 475, § 134; R.S., R.C., & C.L., § 8377; C.S., § 9309; I.C.A., § 19-4401 was repealed by S.L. 1961, ch. 263, § 1.

Cross ref. Disposal of money or property found on dead body, § 31-2117.

Burial of unclaimed bodies after inquest, § 31-2802.

Disposal of property found on corpse, § 31-2803.

District judge to act as coroner when office vacant, § 31-2805.

Impaneling of juries of inquest, § 2-508.

Jury of inquest defined, § 2-106.

Payment to legal representative of deceased, § 31-2118.

Sec. to sec. ref. This chapter is referred to in § 39-268.

This section is referred to in § 19-4301A.

Cited in: Haman v. Prudential Ins. Co., 91 Idaho 19, 415 P.2d 305 (1966); Hagy v. State, 137 Idaho 618, 51 P.3d 432 (Ct. App. 2002).

ANALYSIS

Admissibility of results and records.
Failure to hold inquest.
Physician's fee.
Preliminary examination.

Admissibility of Results and Records.

Where the coroner's inquest, a public meeting, as well as the results and records of the investigation were a matter of public record, the results of the blood-alcohol test on the accident victim which would necessarily be a part of the coroner's report as well as a significant issue at the inquest, were admissible at the wrongful death trial. Stattner v. City of Caldwell, 111 Idaho 714, 727 P.2d 1174 (1986).

Failure to Hold Inquest.

Failure of coroner to hold an inquest is not ground for the release of a person charged with the murder of deceased. In re Sly, 8 Idaho 779, 76 P. 766 (1904).

EXHIBIT D

ssion of testimony to
ate.
for arrest of accused
warrant.
f warrant.

hen a coroner

omicidal, suicid

illness and the ca
oner must refer
the chief of poli
or, if unknown,
ch the body is fo
l officer who
eport of the resu
unty must refer
dent causing de
death occurr
roner shall con
that the death
stated in sec
mon six (6) per
o hold said inqu
the tenets of
961, ch. 262, §

LYSIS

s and records.
t.

on.

ults and Records.
nquest, a public m
ults and records of
atter of public
d-alcohol test" on
would necessarily
report as well as
inquest, were adm
eath trial. Stattner
ho 714, 727 P.2d

ist.
old an inquest if
of a person char
ceased. In re Sly
04).

ician's Fee.
oner is not authorized to make contract
Ada county shall pay physician subpoe-
to examine body of deceased person.
child v. Ada County, 6 Idaho 340, 55 P. 654

liminary Examination.
oner is not a magistrate, and has no
ority to hold a preliminary examination.
not a judicial officer. In re Sly, 9 Idaho
76 P. 766 (1904).

Inquisition of coroner is not a sufficient basis for an information by public prosecutor. In re Sly, 9 Idaho 779, 76 P. 766 (1904).

Collateral References. 18 Am. Jur. 2d, Coroners or Medical Examiners, §§ 7-17.

18 C.J.S., Coroners and Medical Examiners, §§ 10-26.

Reviewing, setting aside, or quashing of verdict at coroner's inquest. 78 A.L.R.2d 1218.

19-4301A. Deaths to be reported to law enforcement officials and coroner. — Where any death occurs which is subject to investigation by the coroner under section 19-4301, Idaho Code, the person who finds or has custody of the body shall promptly notify the coroner who shall notify the appropriate law enforcement agency. Pending arrival of the law enforcement officers the person finding or having custody of the body shall take reasonable precautions to preserve the body and body fluids and the scene of the event shall not be disturbed by anyone until authorization is given by the law enforcement officer conducting the investigation. [I.C., § 19-4301A, as added by 1961, ch. 262, § 3, p. 459.]

Cited in: Haman v. Prudential Ins. Co., 91 Idaho 19, 415 P.2d 305 (1966).

19-4301B. Performance of autopsies. — The coroner may, in the performance of his duties under this chapter, summon a person authorized to practice medicine and surgery in the state of Idaho to inspect the body and give a professional opinion as to the cause of death. The coroner or the prosecuting attorney may order an autopsy performed if it is deemed necessary accurately and scientifically to determine the cause of death. When an autopsy has been performed, pursuant to an order of a coroner or prosecuting attorney, no cause of action shall lie against any person, firm or corporation for participating in or requesting such autopsy. [I.C., § 19-4301B, as added by 1961, ch. 262, § 4, p. 459.]

Cited in: Haman v. Prudential Ins. Co., 91 Idaho 19, 415 P.2d 305 (1966); Stattner v. City of Caldwell, 111 Idaho 714, 727 P.2d 1142 (1986).

Collateral References. Civil liability in conjunction with autopsy. 97 A.L.R.5th 419.

19-4301C. Release of body. — Where a body is held for investigation or autopsy under this act the coroner shall, if requested by next of kin, release the body for funeral preparation not later than 24 hours after death or discovery of the body, whichever is later. Any district judge may ex parte order the 24 hour period extended upon a showing of reasonable cause by the prosecuting attorney by petition supported by affidavit. [I.C., § 19-4301C, as added by 1961, ch. 262, § 5, p. 459.]

Compiler's notes. The words "this act" refer to S.L. 1961, ch. 262 compiled as §§ 19-4301 — 19-4303, 19-4305.

Due Process.
In prosecution for murder where the autopsy was complete and adequate, defendant

was not prejudiced by the cremation of the body where there was no support for any allegation that state officials allowed the body to be cremated to destroy any evidence and the body was released to the next of kin, as provided in this section, in good faith. Parad v. Arave, 667 F. Supp. 1361 (D. Idaho 198 rev'd on other grounds, 954 F.2d 1488 (Cir. 1992).

19-4301D. Coroner to make reports. — When the cause and manner of death is established under the provisions of this chapter the coroner shall make and file a written report of the material facts concerning the cause and manner of death in the office of the clerk of the district court. The coroner shall promptly deliver to the prosecuting attorney of each county having criminal jurisdiction over the case copies of all records relating to every death as to which further investigation may be advisable. Any prosecuting attorney or other law enforcement official may upon request secure copies of the original of such records or other documents or pertinent objects or information deemed necessary by him to the performance of his official duties. [I.C., § 19-4301D, as added by 1961, ch. 262, § 6, p. 459.]

19-4302. Jurors to be sworn. — When six (6) or more of the jurors attend, they must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon according to the evidence offered them. [1864, p. 475, § 136; R.S., R.C., & C.L., § 8378; C.S., § 9310; I.C.A., § 19-4402; am. 1961, ch. 262, § 7, p. 459.]

Cited in: Fairchild v. Ada County, 6 Idaho 340, 55 P. 654 (1898); In re Sly, 9 Idaho 779, 76 P. 766 (1904); Stattner v. City of Caldwell, 111 Idaho 714, 727 P.2d 1142 (1986).

19-4303. Examination of witnesses. — Coroners may issue subpoenas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who, in their opinion, or that of any of the jury, or the prosecuting attorney, has any knowledge of the facts. [1864, p. 475, § 137; R.S., R.C., & C.L., § 8379; C.S., § 9311; I.C.A., § 19-4403; am. 1961, ch. 262, § 8, p. 459.]

Compiler's notes. Section 9 of S.L. 1961, ch. 262 is compiled as § 19-4305.

Cited in: In re Sly, 9 Idaho 779, 76 P. 766 (1904); Stattner v. City of Caldwell, 111 Idaho 714, 727 P.2d 1142 (1986).

Compensation of Physician.

Where physician is subpoenaed at an inquest and is ordered by coroner to inspect the body of deceased person and to give a professional opinion as to the cause of death, the reasonable value of his services in making the inspection is a charge against the county. Fairchild v. Ada County, 6 Idaho 340, 55 P. 654 (1898).

19-4304. Compelling attendance of witnesses. — A witness served with a subpoena may be compelled to attend and testify, or punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace. [1864, p. 475, § 138; R.S., R.C., & C.L., § 8380; C.S., § 9312; I.C.A., § 19-4404.]

Cited in: Fairchild 340, 55 P. 654 (1898).

19-4305. Verc render their verdi by them, and sett by what means h occasioned by the [1864, p. 475, § § 19-4405; am. 1

Compiler's notes. ch. 262 is compiled as **Cited in:** In re Sly,

19-4306. Red witnesses examin the coroner, or u inquisition, in the p. 475, § 140; R.S

Cited in: State v. I 300 P. 908 (1931); Stat 111 Idaho 714, 727 P.

Depositions Not Ad The coroner is not proceedings are not re of record. In re Sly, (1904).

19-4307. Trai the person charge inquisition can h testimony taken, brought, who mu taken before him, [1864, p. 475, § § 19-4407.]

Cited in: In re Sly, (1904); State v. Squir 413 (1908).

19-4308. War person was killed able by law, or t criminal means, inquisition, and i by him, with his necessary, for the R.C., & C.L., § 8

34-617. Election of county commissioners — Qualifications. — (1) A board of county commissioners shall be elected in each county at the general elections as provided by section 31-703, Idaho Code.

(2) No person shall be elected to the board of county commissioners unless he has attained the age of twenty-one (21) years at the time of the election, is a citizen of the United States, and shall have resided in the county one (1) year next preceding his election and in the district which he represents for a period of ninety (90) days next preceding the primary election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 97, p. 351; am. 1982, ch. 332, § 2, p. 839; am. 1993, ch. 159, § 1, p. 409; am. 1996, ch. 28, § 13, p. 67.]

STATUTORY NOTES

Cross References. — District from which member elected, § 31-702.

Prior Laws. — Former § 34-617 was repealed. See Prior Laws, § 34-615.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975); Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 (1982).

Decisions Under Prior Law

Analysis

Counting of votes.
Vacancies.

Counting of Votes.

While commissioners are elected one from each district, voters of the whole county should cast their votes for each of the commissioners, and all votes so cast should be counted in determining who is elected to board. Cunningham v. George, 3 Idaho 456, 31 P. 809 (1892).

Vacancies.

Statutory provisions relating to filling vacancies in county offices by appointment until next general election recognizes the democratic principle requiring that elective offices shall, if possible, be filled at all times by incumbents chosen by electors, and that it is general policy of law that vacancies shall be filled at an election as soon as practicable after vacancy occurs. Winter v. Davis, 65 Idaho 696, 152 P.2d 249 (1944).

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-618. Election of county sheriffs — Qualifications. — (1) At the general election, 1972, and every four (4) years thereafter, a sheriff shall be elected in every county.

(2) No person shall be elected to the office of sheriff unless he has attained the age of twenty-one (21) years at the time of election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury.

(5) Each person who has been elected to the office of sheriff for the first time shall complete a tutorial concerning current Idaho law and rules as prescribed by the Idaho peace officers standards and training academy, unless the person is already certified as a chief of police, peace officer or detention deputy in the state of Idaho, and shall attend the newly elected sheriffs' school sponsored by the Idaho sheriffs' association. [1970, ch. 140, § 98, p. 351; am. 1996, ch. 28, § 14, p. 67; am. 2008, ch. 329, § 1, p. 901.]

STATUTORY NOTES

Prior Laws. — Former § 34-618 was repealed. See Prior Laws, § 34-615.

Amendments. — The 2008 amendment, by ch. 329, added subsection (5).

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Term.

Const., Art. XVIII, § 6, as amended at the 1964 election, provided that the legislature should "commencing with general election in 1964 provide *** for the election of a sheriff every four years ***." This provision was self-executing and the term of the sheriff elected in 1964 was for four years regardless of whether the legislature obeyed the constitutional mandate. Haile v. Foote, 90 Idaho 261, 409 P.2d 409 (1965).

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-619. Election of clerks of district courts — Qualifications. — (1) At the general election, 1974, and every four (4) years thereafter, a clerk of the district court shall be elected in every county. The clerk of the district court shall be the ex officio auditor and recorder.

(2) No person shall be elected to the office of clerk of the district court unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 99, p. 351; am. 1996, ch. 28, § 15, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-621 was repealed. See Prior Laws, § 34-615.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-622. Election of county coroners — Qualifications. — (1) At the general election, 1986, and every four (4) years thereafter, a coroner shall be elected in every county.

(2) No person shall be elected to the office of coroner unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 102, p. 351; am. 1994, ch. 54, § 5, p. 93; am. 1996, ch. 28, § 18, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-622 was repealed. See Prior Laws, § 34-615.

Effective Dates. — Section 7 of S.L. 1994, ch. 54, provided that "an emergency existing therefor, which emergency is hereby declared to exist, Sections 4, 5 and 6 of this act shall be in full force and effect on and after March 3, 1994. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1994."

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-623. Election of county prosecuting attorneys — Qualifications. — (1) At the general election, 1984, and every four (4) years thereafter, a prosecuting attorney shall be elected in every county.

(2) No person shall be elected to the office of prosecuting attorney unless he has attained the age of twenty-one (21) years at the time of his election, is admitted to the practice of law within this state, is a citizen of the United States and a qualified elector within the county.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 103, p. 351; am. 1972, ch. 115, § 1, p. 230; am. 1984, ch. 80, § 1, p. 147; am. 1996, ch. 28, § 19, p. 67.]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased,	Case No. CV 05-5781
Plaintiffs,	
vs.	
ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES 1 through X, employees of one or more of the Defendants,	
Defendants.	

DEPOSITION OF THOMAS M. DONNDELINGER, M.D.

April 25, 2008

VOLUME 1
Pages 1 - 52

Reported by
Brooke R. Bohr
CSR No. 753

EXHIBIT E

Page 42

A. It's actually used in the pathology textbooks. Most of them, if you go to pulmonary embolus, you'll see a picture of them, and that will be the term that is used.
Q. And you would not have used that term, I take it, unless in your visualization of the pathology that it met the criteria of a saddle embolus?
A. It was not a unique term on my part. It is a term that is used to describe an embolus that's in the pulmonary artery and wedged into the bilateral arteries.
Q. So that term, in dictating your report after the procedure, you would be using in its technical sense?
A. Yes.
Q. Likewise, I take it from your report that you, in using the term "saddle embolus," you were speaking in the singular?
MR. FOSTER: Object to the form.
THE WITNESS: Yes.
Q. BY MR. McCOLLUM: That is, rather than emboli?
A. The term is meant to be singular. Usually, these things are a single, long piece of

Page 43

clot.
Q. Even though it may be bilateral in the sense that parts of it go into one pulmonary artery and the other?
A. Yes. They fold.
MR. McCOLLUM: Thank you very much, Doctor.

EXAMINATION

BY MR. FOSTER:
Q. Doctor, you indicated that -- well, first of all, are you confident that you reached an accurate determination of Maria Aguilar's cause of death?
A. Yes.
Q. Does the fact that a saddle embolus occurs rule out the occurrence of other pulmonary emboli that predate the terminal event?
A. No, it does not.
Q. In fact, it happens in, I'm assuming, many situations where a pulmonary emboli is found to be a saddle embolus, that the patient has been suffering from preterminal emboli for some time before the terminal event occurs, correct?
MR. DANCE: Objection on the basis it calls for speculation.

Page 44

MR. BRASSEY: I'll join.
MR. McCOLLUM: Likewise, foundation.
MR. LYNCH: Also on the grounds that in the particular way it is worded may assume facts not in evidence or facts in conflict with his other testimony.
Q. BY MR. FOSTER: You can go ahead and answer.
A. Re-ask it.
MR. FOSTER: Could you read that back to him?
(Record read.)
MR. BRASSEY: I'll also object to the form of the question as vague, but go ahead.
THE WITNESS: From my experience, it does occur that there are prior pulmonary. The use of the term "many" or "often," in my experience, it does occur. That's what I can say.
Q. BY MR. FOSTER: And I know you're not a clinician, in terms of clinical physician, other than as a clinical pathologist, but the determination of whether previous preterminal embolic events had occurred would be based on clinical presentation of the patient, I'm assuming?

Page 45

MR. BRASSEY: I'll object to the form.
MR. DANCE: It calls for speculation. It's also an inadequate foundation, in that it does not include all the necessary facts to arrive at that conclusion. Also, on the basis this witness has not been previously qualified on the basis of foundation to express that opinion.
MR. LYNCH: Joined.
Q. BY MR. FOSTER: They don't like the question, Doctor. You can answer the question if you can.
A. Read it again, please.
(Record read.)
THE WITNESS: No. That determination was blocked in this case by the cessation of the permission to go on with examination. Usually, we would go ahead and look at the lungs, and that's how we make that determination.
Q. BY MR. FOSTER: What my question was aimed at, Doctor, is there are clinical signs and symptoms of pulmonary emboli, correct?
A. Yes.
Q. Okay. And if those clinical signs and symptoms were present at various times by history of the patient, then that very well may lend

ORIGINAL

FILED
A.M. 4:10 P.M.
APR 13 2009
CANYON COUNTY CLERK
DEPUTY

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Ste 500
P.O. Box 2774
Boise, Idaho 83701-2774
Telephone: (208) 344-7700
Facsimile: (208) 344-7721
ISB #: 2455

Byron V. Foster
Attorney At Law
199 N. Capitol Blvd., Ste 500
P.O. Box 1584
Boise, Idaho 83701
Telephone: (208) 336-4440
Facsimile: (208) 344-7721
ISB #: 2760

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO FOR THE COUNTY OF CANYON

JOSE AGUILAR, individually, as the Personal Representative of the Estate of Maria A. Aguilar, deceased, and as the natural father and guardian of GUADALUPE MARIA AGUILAR, ALEJANDRO AGUILAR, and LORENA AGUILAR, minors, and JOSE AGUILAR, JR., heirs of Maria A. Aguilar, deceased, Plaintiffs, v. ANDREW CHAI, M.D., STEVEN R. NEWMAN, M.D., NATHAN COONROD, M.D., MITCHELL LONG, D.O., and PRIMARY HEALTH CARE CENTER, an Idaho corporation, JOHN and JANE DOES I through X, employees of one or more of the Defendants, Defendants.	Case No. CV 05-5781 **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT STEVEN NEWMAN, M.D.'S THIRD MOTION IN LIMINE**

COME NOW Plaintiffs above-named, by and through their counsel of record, and hereby respond in opposition to Defendant Newman's Third Motion in Limine as follows: (Note: Plaintiffs are responding to the numbering system of Defendant Newman as reflected in his Memorandum in Support).

III.

A. Carol Bates and Michelle Giokas Should be Precluded from Offering Habit Evidence, as it Inadmissible Under I.R.E. 406, 402, and 403.

1. Bates' and Giokas' proposed habit testimony is inadmissible under I.R.E. 406.

Defendant Newman argues that Plaintiffs should be precluded from offering "habit evidence" by Paramedics Gates and Giokas at trial. Plaintiffs will agree that their Supplemental Answer to Defendant Newman's Interrogatory No. 3 may not be a model of clarity regarding to what Ms. Bates and Ms. Giokas will testify. However, the Interrogatory merely asked for the "subject matter" on which the witnesses were expected to testify, not the content of the testimony.

Plaintiffs have filed a Fourth Supplemental Answer which further clarifies their testimony. (*See* Exhibit "A" to the Affidavit of Byron V. Foster ((Foster Aff.)) filed herewith). What Plaintiffs were attempting to portray is that one or both of the Paramedics will testify as to what is in their report, the fact they made a radio report while enroute to the hospital with Plaintiffs' Decedent and that once they arrived there they would have given a verbal report to hospital and/or medical staff. These are steps they will testify they take in every case and so that activity is habit on their part. However, whether or not these activities rise to the level of "habit" for purposes of IRE 406 is not the point. The point is that their report and their procedures would have been followed in this instance.

Therefore, whether it is defined as "habit" or "standard operating procedure" or something else; these witnesses can and will testify that they would have not only made the radio report referenced in their written report but they would also have given a verbal report once they arrived at the hospital. If at trial they testify that they sometimes do and sometimes don't give a verbal report; that issue can be dealt with at the time. However, Plaintiffs fully expect these witnesses to testify that a radio and a verbal report occur with invariable regularity.

2. Evidence of Bates' and Giokas' habit is irrelevant and inadmissible under I.R.E. 402 and I.R.E. 403.

Defendant next argues that whether or not Paramedics Bates and Giokas gave a report is irrelevant because there is no indication to whom they made the report. Frankly, neither Ms. Gates nor Ms. Giokas recall this incident. However, Defendant Newman's assertion that nothing in the record indicates either of them spoke directly to him is without merit. In his deposition, taken on September 25, 2007; Defendant Newman testified as follows:

> "Q. Looking back at what we have marked as Exhibit 1, if you would please, Dr. Newman, at the bottom of—this is a multi-page exhibit. At the bottom of each page we have numbers WVMC—for West Valley Medical Center—12,13,14,15,16 and 17 sequentially. Do you see that?
>
> A. Yes.
>
> Q. Looking at the first page of this exhibit, Exhibit 1, which is identified as West Valley Medical Center page 12, is the handwriting on this document yours?
>
> A. Yes.
>
> Q. Are all of the markings—aside from the form itself, are all of the markings on this page of this document yours?

A. Yes.

(*See* Transcript of the deposition of Steven R. Newman, M.D., page 27, lines 4-19, attached as Exhibit "B" to the Foster Aff. filed herewith).

At the upper right hand portion of page 12 of Exhibit 1 to the deposition of Defendant Newman is a space which states: "Historian"

In that space Dr. Newman indicated that the historians who gave information regarding the patient's condition were: "patient/family/...EMS." (*See* Exhibit "C" to the Foster Aff. filed herewith). Thus the evidence will show that Dr. Newman did indeed gain information regarding the patient's condition from the paramedics who brought the patient to the hospital. This evidence is therefore relevant because one of the issues at trial will be what Defendant Newman knew or should have known of the patient's condition, signs and symptoms and when he knew or should have known it.

B. Ecliserio Marquez, Edelmira DeValle, and Jennifer Aguilar Should not be Allowed to Testify, as Their Expected Testimony is Inadmissible Under I.R.E. 402, I.R.E. 403, and I.R.E. 802.

1. Ecliserio Marquez

2. Eledmira DeValle

3. Jennifer Aguilar

Defendant Newman next argues that Plaintiffs' lay witnesses Marquez, DeValle and Jennifer Aguilar should not be allowed to testify on the basis that such testimony would be cumulative, not sufficiently specific as to time and place and not probative to any issue in the case.

First; as to Ecliserio Marquez: Mr. Marquez is expected to testify as to observations of Plaintiffs' Decedent's health in the spring of 2003, the time period when she was being seen and treated by Defendants. His lay observations are admissible

pursuant to IRE 701 as they are "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the testimony of the witness or the determination of a fact in issue, and (c) not based on scientific, technical or other specialized knowledge within the scope of Rule 702." (I.R.E. 701).

Mr. Marquez's observations will be concerned with the spring of 2003, the time period during which Maria Aguilar was being seen and treated by Defendants and while not specific as to dates, his testimony will serve to portray Maria's observable condition during that time frame. Plaintiffs are not attempting to show what her signs and symptoms were on any particular date but rather her general health and condition as observed by Mr. Marquez during the relevant time period. As such, his observations should be relevant and admissible.

Second; as to Mr. Marquez's observations of the quality of the interfamilial relationships between Plaintiffs and their wife and mother; his testimony in this regard is relevant as Mr. Marquez was a member of the Aguilar household during this period of time and his observations of their family life lend credence to their own testimony. Such testimony by the Plaintiffs themselves may be thought to be self serving and biased while such testimony by Mr. Marquez, a quasi outside observer may carry more weight with a jury. The testimony is thus not needlessly cumulative and will not be a waste of the jury's time nor will it result in undue delay. The testimony will be short and to the point. The fact that some testimony may take some time is not the determining factor. The issue is basically whether the testimony supports a fact at issue, whether it is relevant and whether its presentation is consistent with the principles of fair play and substantial justice. Plaintiffs should be given a fair day in court and the exclusion of

evidence such as this thwarts this goal.

Third; with regard to Defendant Newman's assertion that Mr. Marquez's testimony related to conversations he had with family members and Maria Aguilar are hearsay, IRE 803 (1), indicates that Mr. Marquez's present sense impressions of his conversations with family members and Maria Aguilar should be admissible. IRE 803 (3) indicates that his observations and any conversations with Maria Aguilar regarding her then existing physical condition are also admissible. IRE 803 (24) further indicates the circumstances under which a statement not specifically falling within one of the exceptions to the hearsay rule can be found admissible so long as the statement is offered as evidence of a material fact; the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts and the general purposes of the Idaho Rules of Evidence and the interests of justice will be served by the admission of the statements into evidence.

Plaintiffs submit that the proposed testimony of Mr. Marquez, Ms. DeValle and Jennifer Aguilar all fall into these categories within the exceptions to the hearsay rule. Further, specifically with regard to Jennifer Aguilar, her testimony will help to establish the loss of the love, services, society, companionship, guidance, and support suffered by Plaintiffs as a result of the loss of Decedent Maria Aguilar. This type of testimony by a non-party is certainly relevant and its probative value outweighs considerations of undue delay, waste of time and will not amount to needless presentation of cumulative evidence. Plaintiffs are confident this Court can and will use its discretion should Plaintiffs stray from the boundaries set forth in the Idaho Rules of Evidence. However, rulings of the sort urged by Defendant Newman should not be made in the vacuum of

sterile oral or written argument but should be made in the overall context of Plaintiffs' trial presentation.

C. Plaintiffs Should Not be Allowed to Introduce the Canyon County Coroner's Record or Testimony from the Duty Coroner, Bill Kirby, as such Evidence is Inadmissible Under I.R.E. 403, 702, 703, and 802.

Defendant Newman next argues that the Coroner's Report should not be admitted into evidence and cites to IRE 403, 702, 703 and 802.

However, Defendant's argument once again lacks merit. Defendant Newman seems to be referencing both Deputy Coroner Kirby's Case Summary and Coroner Vicki DeGeus Morris's signed Death Certificate.

Pursuant to Idaho Code § 19-4301, *et seq*, the coroner; in this case Deputy Coroner William Kirby, has a statutory obligation to conduct an investigation into a death caused by unknown circumstances. (IC Section 19-4301 (c)). Pursuant to the duties of a coroner, he or she may summon a qualified person to perform an autopsy. (I.C. § 19-4301B). The coroner is required by IC Section 19-4301D to make and file a written report of his findings. The coroner is not a law enforcement officer. (*See* IC Section 19-4301, *et seq* and Idaho Code Section 34-622). In this case, by coincidence, Mr., Kirby was not only the Deputy Canyon County Coroner but also the Sheriff of Parma. However, his status as Sheriff does not translate into him being a law enforcement officer in his status as Deputy Coroner. (*See* Exhibit "D" to the Foster Aff., filed herewith. This exhibit contains the above-referenced sections of the Idaho Code). Canyon County Coroner Vicki DeGeus Morris is also not a law enforcement officer for the same reason.

Under these circumstances, IRE 803(8) is the applicable exception to the hearsay rule.

IRE 803(8) states, as an exception to the hearsay rule:

> (8) Public records and reports. Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or other data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (A) investigative reports by police or other law enforcement personnel, except when offered by an accused in a criminal case;..."

As indicated above, neither William Kirby, is his capacity as Deputy Coroner, nor Vicki DeGeus Morris, in her capacity as Canyon County Coroner, are "police or other law enforcement personnel" for purposes of their activities with the coroner's office. Idaho Code § 19-4301A. is entitled "Deaths to be reported to law enforcement officials and coroner." If the coroner was a law enforcement official, this language would be redundant. In addition, Idaho Code §§ 34-618 and 34-622 specify the qualifications for election of county sheriffs and county coroners, respectively. IC §§ 34-618 specifies that each person elected to the office of county sheriff for the first time "shall complete a tutorial concerning Idaho law and rules as prescribed by the Idaho peace officers standards and training academy,...and shall attend the newly elected sheriffs' school sponsored by the Idaho sheriffs' association." In contrast, IC §§ 34-622 requires age, citizenship and residency requirements but no law enforcement training. Thus a county coroner is not a "police or other law enforcement personnel." Thus the Deputy Coroner's Case Summary comes within the IRE 803(8) exception to the hearsay rule.

As to the statements of Plaintiffs attributed to them in Mr. Kirby's report; those statements come within either IRE 803(1); (2); (3); (4) or all of them. Maria Aguilar died at

10:46 p.m. on June 4, 2003. This is the time resuscitation efforts were stopped in the Emergency Department at West Valley Medical Center. Mr. Kirby arrived at the scene at 11:30 p.m. Thus the statements made to Mr. Kirby regarding the deceased's physical condition as observed by them at the very least fall into the excited utterance exception to the hearsay rule. Also, due to the circumstances of the immediate event, the statements of Plaintiffs have circumstantial guarantees of trustworthiness equivalent to those contained in IRE 803(1-4) and as such fall within the catch-all exception to the hearsay rule.

Regarding Defendant Newman's argument concerning whether Mr. Kirby was correct or incorrect in his characterization of the fatal embolus as "Bilateral Pulmonary Embolism;" Dr. Donndelinger's deposition testimony is instructive. At page 42 of his deposition, lines 9-12; he said the following regarding a saddle embolus:

> A. It was not a unique term on my part. It is a term that is used to describe an embolus that's in the pulmonary artery and wedged into the bilateral arteries."

Dr. Donndelinger went on to state, at page 42, line 24 through page 43, line 5:

> A. The term is meant to be singular. Usually, these things are a single, long piece of clot.
>
> Q. Even though it may be bilateral in the sense that parts of it go into one pulmonary artery and the other?
>
> A. Yes. They fold."

See Exhibit "E" to the Foster Aff. filed herewith.

Therefore, Mr. Kirby was not incorrect when he described the pulmonary embolism as "bilateral."

Regarding both Mr. Kirby's and Ms. DeGeus Morris' description of the bilateral pulmonary embolus as "multiple;" Defendants can call these two individuals as witnesses and determine what information led them to make such a description. Defendants can also call Dr. Donndelinger for such information. With regard to Mr. Kirby and Ms. DeGeus Morris' description of the embolus as "Multiple Bilateral Pulmonary Embolism; Dr. Donndelinger had this to say in his deposition:

> "Q. Okay. Do you recall having any conversation with him that would have led him—by 'him' I mean Bill Kirby—to write under cause of death, 'Multiple bilateral pulmonary embolism'?
>
> A. Well, I don't recall any discussion. But what happens when they get the information from us and they take it and put it on a death certificate or any other, you know, discussion, there is some license of verbiage that goes on because of his lack of training. So the 'multiple pulmonary emboli,' if he was using it, he probably got that—he, I think, would use that just because we would extract the impacted embolus. And you could see it was a tangle and you could see it was going both ways, but, usually, it's continuous and connected. But I can see that he would transmit the information that way."

See Exhibit "F" to the Foster Aff., filed herewith.

The Death Certificate and the Coroner's Case summary are public records and reports and as such fall within the IRE 803(8) exception to the hearsay rule. Thus they should be accepted into evidence as any other official public record.

CONCLUSION

For all of the above reasons, Plaintiffs request that the Court deny Defendant Newman's Third Motion in Limine.

DATED This 13 day of April, 2009.

Byron V. Foster
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2009, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Andrew C. Brassey, Esq.
Brassey Wetherell Crawford & Garrett LLP
203 W. Main St.
Boise, ID 83702
Attorneys for Defendant Andrew Chai, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 344-7077

Steven K. Tolman
Tolman & Brizee, PC
132 3rd Ave. E
P.O. Box 1276
Twin Falls, ID 83303
Attorneys for Defendants Nathan Coonrod, M.D. and Primary Health Care Center

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 733-5444

Gary T. Dance
Moffatt Thomas Barrett Rock & Fields Chartered
412 W. Center, Suite 2000
PO Box 817
Pocatello ID 83204-0817
Attorneys for Defendant Steven R. Newman, M.D.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 232-0150

John J. Burke
Hall Farley Oberrecht & Blanton
702 W. Idaho, Ste. 700
PO Box 1271
Boise, ID 83701
Attorneys for Defendant Mitchell Long, D.O.

☑ U.S. Mail
☐ Hand Delivery
☐ Facsimile (208) 395-8585

Byron V. Foster