

2012 WL 6723976 (Ga.State Ct.) (Trial Filing)
Georgia State Court.
Fulton County

Patricia E. ROWE, Plaintiff,

v.

Deborah EVANS, P.A.-C, John L. Pearson, M.D., and Northside Emergency
Associates, P.C. d/b/a Northside Hospital Emergency Services, Defendants.

No. 10EV010753J.
August 31, 2012.

Amended Proposed Consolidated Pre-Trial Order

[Ervin H. Gerson](#), P.C., Attorney for Plaintiff, [Ervin H. Gerson](#), Georgia Bar No. 292050, 6065 Roswell Road, Suite 880, Atlanta, Georgia 30328, (770) 255-0072.

[Paul D. Hermann](#), P.C., Attorney for Plaintiff, [Paul D. Hermann](#), Georgia Bar No. 348500, The Candler Building, Suite 1112, 127 Peachtree Street, Atlanta, Georgia 30303, (404) 525-0095.

[Robert P. Monyak](#), Georgia Bar No.: 517675, [Melissa B. Johnson](#), Georgia Bar No. 064539, Attorneys for Defendants, Peters & Monyak, LLP, Suite 2275, One Atlanta Plaza, 950 East Paces Ferry Road, N.E., Atlanta, Georgia 30326, (404) 607-0100.

The following constitutes the Proposed Pre-Trial Order to be entered in the above-styled case:

1.

The name, address, and phone number of the attorneys who will conduct the trial are as follows:

For Plaintiff:

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For Defendants

Deborah Evans, P.A.-C, John L. Pearson, M.D., and Northside Emergency Associates, P.C. d/b/a Northside Hospital Emergency Services ("Defendants"):

Robert P. Monyak

Melissa B. Johnson

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2.

The estimate time required for trial is five (5) to six (6) trial days.

(a) Plaintiff estimates it will take 3 - 3 ½ days to present her case

(b) Defendants estimate it will take 1 ½ - 2 days to present their evidence.

3.

There are no motions or other matters pending for consideration by the court except as follows:

Subsequent to the filing of the lawsuit, a petition was filed in the Probate Court of Fulton County seeking the appointment of a guardian and conservator by reason of Plaintiff's lack of capacity to make or communicate significant responsible decisions concerning her health and safety and concerning the management of her property. On March 3, 2011, Letters of Conservatorship of an Adult Ward were issued and on August 31, 2011, an order was entered allowing the resignation of the initial conservator and appointing Plaintiff's brother-in-law, Timothy Joseph Frederick, as her successor conservator. Plaintiff has filed with the Probate Court of Fulton County a petition to terminate the Conservatorship, which is scheduled for a hearing on September 7, 2012. The proper party plaintiff will be determined at that time and Plaintiff requests that the court entertain a motion to substitute parties as soon as the correct party plaintiff can be determined.

The parties will file *motions in limine* and reserve the right to file trial briefs as necessary.

In addition, the parties will file a consent motion authorizing early access to the courtroom.

In addition, the defendants have filed a motion to bifurcate the trial, if necessary, pursuant to [O.C.G.A. § 51-12-5.1\(d\)](#).

4.

The jury will be qualified as to relationship with the following:

Plaintiff:

Patricia E. Rowe; Theodore Rowe; Deborah Evans, P.A.-C; John L. Pearson, M.D.; agents, employees, officers, directors and shareholders of Northside Emergency Associates, P.C. d/b/a Northside Hospital Emergency Services; agents, employees, officers, directors and shareholders of MAG Mutual Insurance Company; Paul D. Hermann, Esq. and Ervin H. Gerson, Esq.

Defendants:

- (1) Patricia Rowe;
- (2) Deborah Evans, P.A.-C;
- (3) John L. Pearson, M.D.;
- (4) Northside Emergency Associates, P.C. d/b/a Northside Hospital Emergency Services;
- (5) Ervin H. Gerson, Esq.;
- (6) Members of Ervin H. Gerson, P.C.;
- (7) Paul D. Hermann, Esq.;
- (8) Members of Paul D. Hermann, P.C.;
- (9) Officers, directors, and employees of MAG Mutual Insurance Company.

5.

(a) All discovery has been completed, unless otherwise noted, and the court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any persons for the preservation of evidence for use at trial.

(b) Unless otherwise noted, the names of the parties shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or nonjoinder of any parties.

As stated, subsequent to the filing of the lawsuit, a petition was filed in the Probate Court of Fulton County seeking the appointment of a guardian and conservator by reason of Plaintiff's lack of capacity to make or communicate significant responsible decisions concerning her health and safety and concerning the management of her property. On March 3, 2011, Letters of Conservatorship of an Adult Ward were issued and on August 31, 2011, an order was entered allowing the resignation of the initial conservator and appointing Plaintiff's brother-in-law, Timothy Joseph Frederick, as her successor conservator. Plaintiff has filed with the Probate Court of Fulton County a petition to terminate the Conservatorship, which is scheduled for a hearing on September 7, 2012. The proper party plaintiff will be determined at that time and Plaintiff requests that the court entertain a motion to substitute parties as soon as the correct party plaintiff can be determined.

6.

The following is the Plaintiff's brief and succinct outline of the case and contentions:

On Sunday August 17, 2008, Ms. Rowe, who had recently returned with her children from a trip to Mexico, was taken by her next door neighbor Peter Schantz to the Northside Emergency Room. She asked to be taken because she was suffering from a massive headache that had become unbearable over the previous day and hours. When Schantz arrived to take her, she was holding the left side of her head and was bent down in pain. --

Rowe and Schantz arrived at the Northside Hospital Emergency Room at around 11:00 a.m. Rowe was triaged at 11:42 a.m. by Mary Ellen Dallow, a registered nurse. Based on her triage assessment, Nurse Dallow rated Rowe a 3 or Yellow on a five level scale. Acuity levels 1 (Red) and 2 (Pink) were considered to constitute an emergency situation. Thus, nurse Dallow did not consider Rowe to be a patient in need of life-saving intervention. Nor did she consider Rowe's situation to be high risk. The only other medical provider who saw Rowe that day was Deborah Evans, a physician's assistant. Evans was being supervised at the time by emergency room physician, John Pearson, M.D. Dr. Pearson is listed as Rowe's admitting physician and both Pearson and Evans were performing their duties as agents or employees of Defendant, Northside Emergency Associates, P.C.

Rowe's chief complaint upon her admission to Northside Hospital is stated in the record as nausea and vomiting constantly with headache and diarrhea. The principal reason Rowe was taken to the emergency department and her main problem from the time she was taken to the emergency department until the time Evans discharged her, was her headache. Rowe describes her headache as the worst headache of her life. Rowe did not have a history of headaches.

Evans saw and examined Rowe at 12:00 p.m. she documented "mild" head pain and diagnosed Rowe with acute gastroenteritis. She prescribed IV pain and nausea medication, which was administered to Rowe in the emergency department from 12:43 p.m. until 1:45 p.m. There is no documentation in the medical chart of a physical or neurological examination having been performed by Evans. Even with the documented head pain complaints, Evans considered nothing in her differential diagnosis other than acute gastroenteritis. Evans never determined the cause of Rowe's headache prior to discharge. Evans noted Rowe's condition on discharge as "stable".

Dallow did not do a neurological examination and does not know if Evans did one. During Rowe's stay in the emergency department, Dallow documented continued complaints of 8/10 head pain with no reduction in pain even after medications for pain and GI complaints were administered.

Rowe was so sick when she was discharged from the emergency department by Evans that she had to be assisted in signing her name on the discharge instructions. She was unable to walk out under her own power and Schantz requested and received a wheel chair so that he could get her to the car.

Rowe was found the next morning by her housekeeper unresponsive and *in extremis*. She was taken by ambulance to the North Fulton Hospital Emergency Department at 11:04 a.m. Immediate emergency surgery was performed to evacuate a large acute and sub acute left fronto-temp-parietal subdural hematoma. The intracranial pressure caused by the subdural hematoma resulted in several ischemic strokes and permanent brain damage.

Plaintiff contends that her symptoms in the emergency department were highly suggestive of an acute neurological event and the diagnosis of a subdural hematoma could not be excluded. Based on Rowe's symptoms, the exercise of even slight diligence required that an appropriate neurological examination be performed and that a CT scan of her head be performed, neither of which were done. Even the exercise of slight or minimal care required that Evans consider a diagnosis other than acute gastroenteritis, since Rowe's head pain was not adequately explained by that diagnosis. The exercise of even slight diligence required that the existence of a present or impending neurological event be either confirmed or excluded prior to allowing Ms. Rowe to be discharged from the emergency department. Plaintiff further contends that had the proper standard of care been exercised, the sequence of events leading to her strokes could have been interrupted and that her permanent brain damage could have been avoided.

Plaintiff further contends that John Pearson, M.D. as Evan's statutorily required supervising physician was responsible for her negligence and that Defendant Northside Emergency Associates, P.C. is responsible for the negligence of the Defendants Evans and Pearson under the doctrine of *respondeat superior*.

7.

The following is the Defendants' brief and succinct outline of the case and contentions:

Deborah Evans, P.A.-C. is a local physician's assistant. She is certified by the National Commission on Certification of Physician Assistants. John L. Pearson, M.D. is a local emergency room physician. He is Board Certified in emergency medicine. Both Ms. Evans and Dr. Pearson worked for Northside Emergency Associates, P.C. d/b/a Northside Hospital Emergency Services, which staffs the emergency room at Northside Hospital.

Ms. Evans saw Patricia Rowe on August 17, 2008 following her triage in the Northside Hospital Emergency Room. Ms. Evans reviewed the triage record; obtained a history from the patient; completed a thorough physical exam, including a neurological exam; ordered a variety of tests (all of which were normal); monitored the patient in the emergency room; placed her on IV fluids ("which made her feel much better."); ordered various medications to be administered in the emergency room ("with relief of her symptoms"); assessed the patient and diagnosed Ms. Rowe with acute gastroenteritis (inflammation or irritation of the intestinal tract). Ms. Evans discharged the patient with a prescription for Cipro and a few Phenergen; instructions to stop the Z-Pack she already had been taking; and orders to follow up with her primary care physician and to return to the emergency room if her symptoms persisted or worsened.

Dr. Pearson never saw Ms. Rowe and never discussed her care with Ms. Evans prior to her release. Dr. Pearson authenticated the record on 9/2/08.

Ms. Rowe presented to North Fulton Hospital by ambulance after being found unresponsive by her housekeeper approximately 21 hours after her release from the Northside Hospital Emergency Room. After intubation, a CT scan of the head was done and showed an acute and subacute left frontotemporoparietal subdural hematoma (a collection of blood next to the brain). A neurosurgeon was consulted, and Ms. Rowe was taken to the operating room emergently at 1:00 p.m. where a craniotomy was performed for evacuation of the subdural hematoma. Postoperatively, an MRI demonstrated a small thalamic infarct on the left.

The information pointed towards a diagnosis of gastroenteritis. Ms. Rowe had returned from a 3-week stay in Mexico City approximately 10 days earlier. She reported that she and her children developed food poisoning while they were there and that she had been having nausea, vomiting, and diarrhea ever since. At the time she presented to the ER, Ms. Rowe was in no acute distress, was afebrile with normal vital signs, was ambulatory, and was oriented times three.

A CT scan was not indicated due to the absence of history of trauma, lack of neurological deficits, and the fact that the patient was alert and oriented. There were no signs or symptoms suggestive of a subdural hematoma, and the patient had no risk factors for this condition. Ms. Rowe reported no history of a head injury, and the patient was not on anticoagulation. In addition, she had no history of long-term alcohol **abuse**, was neither **elderly** nor very young, and had no coagulopathies or vascular diseases which would qualify as a risk factor. Further, there was no history suggestive of a neurological deficit, such as irritability, seizures, numbness, disorientation, lethargy, slurred speech, blurred vision, or gait anomalies. The patient's anemia (due to menstrual bleeding), dehydration (BUN/Creatinine ratio a little elevated, which can be indicative of dehydration), or overall gastroenteritis symptoms could have caused her headache. Finally, diarrhea is not associated with a subdural hematoma.

The medical standard of care did not require that Ms. Evans suspect a subdural hematoma. And, the standard of care did not require that Ms. Evans order a CT scan. Ms. Evans' care and treatment, including her belief that the patient was suffering from gastroenteritis, was entirely reasonable and in compliance with the standard of care. Ms. Evans did not commit medical malpractice and should not be found liable to the plaintiff.

There was no physician patient relationship between Dr. Pearson and Ms. Rowe. Dr. Pearson never saw the patient and never consulted with Ms. Evans on August 17, 2008. Dr. Pearson also should not be found liable under the theory of respondeat superior, as Ms. Evans was not negligent, and she was not his agent.

8.

The issues for determination by the jury are as follows:

By the Plaintiff:

- (a) Negligence
- (b) Proximate cause.
- (c) Damages.
- (d) Punitive damages.

By Defendants:

Compensatory Damage Phase

- A. Whether Ms. Evans exercised slight diligence in caring for Patricia Rowe;
- B. Whether any alleged lack of slight diligence by Ms. Evans and Northside Emergency Associates, P.C., d/b/a, Northside Hospital Emergency Services proximately caused the alleged injuries to Patricia Rowe;
- C. Whether Dr. Pearson is liable under the theory of respondeat superior; and
- D. Compensatory Damages, if any.

E Whether by clear and convincing evidence Ms. Evans' actions showed willful misconduct, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.

Punitive Damage Phase (If Any)

A. The amount of punitive damages, if any.

By listing these issues, the defendants do not concede that genuine issues of material fact will exist at trial as to any.

9.

Specifications of negligence excluding applicable code sections are as follows:

Plaintiff:

[O.C.G.A. § 51-1-27](#) Medical Malpractice

Defendant:

[O.C.G.A. § 51-1-27](#) (malpractice liability generally); [O.C.G.A. § 51-1-29.5](#) (liability standard for emergency medical care).

The defendants deny that they were negligent or violated the standard of care.

10.

If the case is based on a contract, either oral or written, the terms of the contract are as follows (or, the contract is attached as an Exhibit to this order): Not applicable.

11.

The types of damages and the applicable measure of those damages are stated as follows:

Plaintiff seeks to recover her medical expenses reasonably incurred as a result of the Defendants' negligence. Plaintiff seeks to recover for her past, present and future physical and mental pain and suffering as determined by the enlightened conscious of the jury. Plaintiff seeks to recover punitive damages pursuant to [O.C.G.A. § 51-12-5.1](#).

Plaintiff respectfully reserves the right to supplement.

For the Defendants:

The defendants deny that they are liable for damages. The defendants maintain that they are entitled to judgment in their favor on the issue of punitive damages, as there is no evidence, let alone "clear and convincing" evidence, that Ms. Evans's or Dr. Pearson's actions showed willful misconduct or "that entire want of care which would raise the presumption of conscious indifference to consequences" pursuant to [O.C.G.A. § 51-12-5.1](#). Punitive damages are also subject to the cap set forth in [O.C.G.A. § 51-12-5.1\(f\)](#).

12.

If the case involves divorce, each party shall present to the court at the pre-trial conference the affidavits require by Rule 24.2.

Not applicable.

13.

The following facts are stipulated:

The parties have stipulated to the following:

1. At all times pertaining hereto, Defendants Evans and Pearson were acting in their capacity as agents of Defendant Northside Emergency Associates, P.C.
2. An agreed upon certified copy of Northside Hospital Emergency Department record dated August 17, 2008;
3. As to the unavailability for trial of Charles Weaver, Jr., M.D., M. Seth Hochman, M.D., Frank Puhlovich, M.D. and Peter Schantz

14.

The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiff. Unless noted, Plaintiff shall stipulate as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

(a) *By the Plaintiffs:*

At the discretion of Plaintiffs' counsel:

1. Medical Bills of Patricia E. Rowe from the following providers:

- (a) Northside Hospital;
- (b) North Fulton Hospital;
- (c) St. Joseph's Hospital;
- (d) Peachtree Neurological Clinic;
- (e) Wellstar Cobb Hospital;
- (f) Wellstar Kennestone Hospital;
- (g) River Woods Behavioral Health System;
- (h) Jeff DeMercy, DDS;

- (i) Resurgens Orthopedics;
- (j) Physicians Pain & Wellness;
- (k) Center for Medicine END/DBT;
- (l) Kathleen Klotz, M.D.;
- (m) Hennepin County Medical Center;
- (n) Sierra Tucson;
- (o) Metta Johnson & Associates

Plaintiff reserves the right to supplement.

- 2. Exhibit listing all reasonable and necessary medical expenses which were incurred by Patricia E. Rowe as a result of Defendants' negligence;
- 3. Various photographs or videotapes of Patricia Rowe;
- 4. Any and all deposition transcripts and exhibits in this matter;
- 5. Charts, diagrams, medical illustrations or models used as demonstrative aids;
- 6. Numerous CT and MRI films or scans of Plaintiff's head
- 7. Any document listed by the Defendants;
- 10. All documents needed for impeachment or rebuttal
- 11. Affidavits of Philip Shayne, M.D., Karl Schultz, Jr., M.D. and Deborah Evans;
- 12. Composite State Board of Medical Examiners documents pertaining to Deborah Evans, Northside Emergency Associates, P.C. and John Pearson, M.D. including , but not limited to, Basic Job Description Physician's Assistant - Primary Care and Page 2, Physician's Assistant - Primary Care Job Description dated November 7, 2006 and signed by John Pearson, M.D. on October 7, 2006;
- 13. Georgia [Reg. 360-5-.11](#);
- 14. Annuity Mortality Table For 1949, Ultimate

Plaintiff does not stipulate as to the authenticity of any documentary or physical evidence listed that the parties have not been afforded an opportunity to review, except for documents produced at evidentiary depositions and the complete medical chart and record for Patricia Rowe's August 17, 2008, visit to Northside Hospital. *The parties will exchange pertinent documents, exhibits for use at trial, witness lists, in advance of trial to evaluate any objections and with respect to documents as to authenticity or*

genuiness. The Plaintiff reserves the right to raise any and all other objections to any documentary and physical evidence listed upon the same being properly marked and tendered into evidence.

With the exception of the plaintiff' complete certified medical chart or record from Northside hospital dated August 17, 2008, the plaintiff specifically does not stipulate or agree to waive any objections to admissibility based solely on hearsay.

The Plaintiff reserves the right to amend this list of exhibits upon 48 hours notice to all parties.

Plaintiff objects to the listing of any documents or evidence by the Defendant which have not been previously provided by said Defendant.

(b) By Defendants;

The following is a list of all documentary and physical evidence that will be tendered at the trial by the plaintiff or defendants. Defendants do not stipulate to the authenticity of any documentary or physical evidence listed that the parties have not had an opportunity to review except for Patricia Rowe's August 17, 2008 Northside Hospital emergency room chart. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

The parties will endeavor in good faith to stipulate to the admissibility of additional exhibits before trial.

By Defendants:

1. Certified Medical Records and any and all radiological films of Patricia Rowe maintained by the following providers:

- a. Northside Emergency Room
- b. North Fulton Regional Hospital
- c. Northside Hospital Forsyth
- d. St. Joseph's Hospital
- e. Michael Echemendia, M.D.
- f. Atlanta Center for Laparoscopic Urogynecology
- g. Jeff DeMercy, DDS
- h. Resurgens Orthopedics
- i. Peachtree Neurological Clinic
- j. Restore Neurobehavioral Center
- k. Joy's Personal Home Care
- l. Physician Pain & Wellness / Daniel A. Danyo, M.D.
- m. Metta Johnson & Associates;

2. Radiology records from North Fulton Hospital;
3. Letter from North Fulton Hospital dated 10/28/11 stating they were unable to retrieve head and cervical CT scans performed on 8/18/08;
4. Radiology records from Northside Hospital Forsyth;
5. Radiology records from Wellstar Cobb Hospital;
6. Curriculum vitae of Deborah Evans, P.A.-C.;
7. CME documents of Deborah Evans, P.A.-C.;
8. Curriculum vitae of John L. Pearson, M.D.;
9. CME documents of John L. Pearson, M.D.;
10. Curriculum vitae of Karl Schultz, M.D.;
11. Curriculum vitae of Philip Shayne, M.D.;
12. Complaint (August 13, 2010);
13. Affidavit of Richard Serra, M.D.;
14. Plaintiff's Response to Defendants Deborah Evans, P.A.-C; John L. Pearson, M.D.; and Northside Emergency Associates, P.C.'s First Continuing Interrogatories and First Requests for Production to Plaintiff (November 22, 2010);
15. Plaintiff's Supplemental Response to Defendants Deborah Evans, P.A.-C; John L. Pearson, M.D.; and Northside Emergency Associates, P.C.'s First Continuing Interrogatories and First Requests for Production to Plaintiff (May 12, 2011);
16. Plaintiff's Second Supplemental Response to Defendants Deborah Evans, P.A.-C; John L. Pearson, M.D.; and Northside Emergency Associates, P.C.'s First Continuing Interrogatories and First Requests for Production to Plaintiff (December 15, 2011);
17. Plaintiff's Third Supplemental Response to Defendants Deborah Evans, P.A.-C; John L. Pearson, M.D.; and Northside Emergency Associates, P.C.'s First Continuing Interrogatories and First Requests for Production to Plaintiff (January 24, 2012);
18. 2008 American Academy of Emergency Medicine Practice Guideline regarding the indications for brain imaging upon a complaint of headache;
19. Billing material relating to plaintiff's experts;
20. Advertising/marketing material relating to plaintiff's experts;
21. Illustrations/diagrams -head anatomy;
22. Illustrations/diagrams - subdural hematoma;

23. Illustrations/diagrams - causes of subdural hematoma;
24. Any document produced by any party or third party in this case;
25. Any document identified in discovery in this case;
26. Any materials contained in the files of plaintiff's experts in this case;
27. Any materials provided to plaintiff's experts in this case;
28. Medical literature authored/edited by experts of both plaintiff and defendants or referenced in the depositions in this case;
29. All exhibits and documents identified by the plaintiff in this case;
30. All deposition exhibits from this case; and
31. Any document listed by the plaintiff.

Portions of exhibits, redacted versions and enlargements may be used as allowed by law. Learned treatises and medical articles may be used as allowed by law without being listed in this Pre-Trial Order. Transcripts or other documents used to impeach witnesses may be used as allowed by law without being listed in this Pre-Trial Order. Demonstrative aids need not be listed in this Pre-Trial Order. These exhibits may be renumbered before trial.

The parties shall be permitted to supplement this list before trial with any document previously disclosed in discovery, provided notice is given to the other party. The parties shall be permitted to supplement this list prior to trial with additional, previously undisclosed documents by agreement of the parties or upon Order of this Court.

15.

Special authorities relied upon by Plaintiff relating to the peculiar evidentiary or other legal questions are as follows:

Plaintiff contends that the provisions of [O.C.G.A. § 51-1-29.5](#) are not applicable to this case and that the standard of care to be applied is that of ordinary care. The Plaintiff will address any additional peculiar evidentiary issues in motions in limine or a trial brief.

16.

Special authorities relied upon by Defendant relating to the peculiar evidentiary or other legal questions are as follows:

For the Defendants:

The defendants will address any peculiar evidentiary issues in *motions in limine* or a trial brief.

17.

All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18.

The testimony of the following persons may be introduced by depositions:

By the Plaintiff:

1. M. Seth Hochman, M.D., video deposition;
2. Charles Weaver, Jr., M.D., video deposition;
3. Peter Schantz;
4. Mary Ellen Dallow;
5. Frank Puhlovich, M.D.
6. John R. Sass, Ph.D.
7. Alan M. Harben, M.D., Ph.D.
7. Any witness listed in this Pre-Trial Order who is unable to attend the trial for a legally sufficient reason

Plaintiff reserves the right to use the deposition testimony of any witness who is present and testifying at trial for the purposes of cross-examination or any other proper legal cause. Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the Court prior to trial.

By the Defendants:

The Defendants currently do not plan to introduce any witnesses by deposition. Defendants reserve the right to introduce depositions of any witness if the witness is deemed unavailable under the Georgia Civil Practice Act or the trial court otherwise permits such use. Defendants object to the use of deposition testimony of any witness that is available to appear and testify at trial or who is subject to being compelled to appear and testify at trial.

No later than three (3) days before trial, the parties shall designate by page and line number the deposition testimony that they intend to present to the jury, if any, so that the opposing party can interpose any objections and designate additional testimony to be read under the rule of completeness. Any objection to the deposition designations or the questions or arguments in the depositions designated shall be called to the attention of the Court prior to trial.

The Parties reserve the right to supplement this list upon notice to opposing counsel at least five (5) days prior to trial.

19.

The following are lists of witnesses the

a. Plaintiff will have present at trial:

Patricia E. Rowe (She may have to be excused and may not be in attendance for the entire trial)

b. Plaintiff may have present at trial:

Theodore P. Rowe

Olivia Rowe

Barbara Wiesel

Peter Schantz

Sheri Garvin

Susie Albisu

Suzanne Yocubonis

Mary Ellen Dallow

Barbara Ooulette

Regine Carnegie

Cindy Morgan

Alan N. Harbin, M.D., Ph.D.

Richard Serra, M.D.

John R. Sass, Ph.D.

Any witness listed by the Defendant.

Any person who has been deposed in this case.

The Plaintiff respectfully reserves the right to amend this list of witnesses and may do so by giving at least five (5) days written notice prior to trial of any such additional witnesses to opposing counsel. Plaintiff just served defendants with her Fourth Supplemental Responses to Defendants' Interrogatories, identifying witnesses, which defendants have not had time to analyze. Defendants reserve the right to object to any untimely identified witnesses.

c. Defendants will have present at trial:

(1) Deborah Evans, P.A.-C; and

(2) John L. Pearson, M.D.

d. Defendants may have present at trial:

1) Karl Schultz, M.D.;

- 2) Philip Shayne, M.D.;
- 3) Mary Ellen Dallow, RN;
- 4) Frank Puhlovich, M.D.;
- 5) Kristin Rigby, M.D.;
- 6) Boyd Byrd, M.D.;
- 7) Charles Sykes, M.D.;
- 8) Jerome Silver, M.D.;
- 9) Michael Jurgens, M.D.;
- 10) Burton McDaniel, M.D.;
- 11) Alan Harben, M.D.;
- 12) Dharmaraj H. Patil, M.D.;
- 13) Bernard Drexinger, M.D.;
- 14) Bruce Bosse, M.D.;
- 15) James Petway, M.D.;
- 16) Walter Watkins, M.D.;
- 17) Any person deposed in this lawsuit;
- 18) Any person identified in any deposition taken in this lawsuit;
- 19) Any person required for rebuttal;
- 20) Medical records custodians, if necessary;
- 21) Any person designated by any medical provider to authenticate their medical records;
- 22) Any person designated by any entity to authenticate their records;
- 23) Any medical provider or other person identified in Patricia Rowe's medical records; and
- 24) Any person listed on the plaintiff's "will call" and "may call" lists.

Opposing counsel may rely on representation by the designated party that he will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

Plaintiff objects to defendants' inclusion on its "may call" list of "Any medical provider or other person identified in Patricia Rowe's medical records" on the basis that said designation renders the listing of witnesses to be useless and defeats the entire purpose of this requirement. Since countless numbers of medical providers and "other persons" are contained in Plaintiffs medical records, this designation provides no meaningful guidance to Plaintiff or to the Court.

20.

The form of all possible verdicts to be considered by the jury are as follows:

By the Plaintiff;

We, the jury, find in favor of the Plaintiff and against Defendants for compensatory damages in the amount of _____;

We, the jury find in favor of the Plaintiff and against the Defendants for punitive damages in the amount of _____.

or

We, the jury, find in favor of Defendants.

By the Defendant;

The defendants will submit a verdict form to the Court prior to the submission of the case to the jury after rulings on anticipated directed verdict motions.

21.

a. The possibilities of settling the case are poor.

b. The parties do want the case reported.

c. The cost of take-down will be shared equally by both parties.

d. Other matters:

a) The case will be tried to a jury of (12) with two (2) alternates.

b) The Court understands that there are various witnesses, including physicians and others, who are under subpoena or who will be subpoenaed to testify at the trial of this case. Counsel are authorized by this Court to have any such witnesses which they have caused to be served with a subpoena, to be available to testify on reasonable notice, rather than to appear at the call of this case. This reasonable notice rule is designed to accommodate the witnesses, counsel, and the Court and does not affect the validity of any such subpoena served or to be served in this case.

SUBMITTED BY:

Plaintiff:

ERVIN H. GERSON, P.C.

Attorney for Plaintiff

BY: /s/ Ervin H. Gerson

ERVIN H. GERSON

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It is hereby ORDERED that the foregoing, including the attachments thereto, constitutes the PRE-TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice.

This _____ day of _____, 2012.

.....
Judge Diane E. Bessen

State Court of Fulton County

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