

KEVIN McELWEE, individually as	:	IN THE COURT OF COMMON PLEAS OF
parent to JESSICA McELWEE,	:	LYCOMING COUNTY, PENNSYLVANIA
deceased, and as Administrator of the	:	
Estate of JESSICA McELWEE,	:	
Deceased; KEVIN McELWEE and	:	
JO ANN McELWEE, parents of	:	
JESSICA McELWEE, individually,	:	
Plaintiffs	:	
	:	
vs.	:	NO. 00-01,795
	:	
PAUL E. LEBER, M.D.; ADAM M.	:	
EDELMAN, M.D.; DONALD E.	:	
SHEARER, M.D.; JEANINE	:	
SINSABAUGH; CINDY KOONS; JUDY	:	
KERSHNER; MUNCY VALLEY	:	
HOSPITAL; SUSQUEHANNA HEALTH	:	
SYSTEM; SUSQUEHANNA PHYSICAN	:	
SERVICES; and EM CARE and/or WEST	:	
BRANCH EMERGENCY PHYSICANS,	:	
and DONALD E. SHEARER, M.D., P.C.,	:	PLAINTIFFS' MOTION, PURSUANT TO
and NEW JERSEY/PENNSYLVANIA	:	RULE 4003.7 TO PERMIT DISCOVERY
EM-I MEDICAL SERVICES, P.C.	:	IN SUPPORT OF PUNITIVE
Defendants	:	DAMAGES CLAIM

Date: June 27, 2002

**MEMORANDUM OPINION and ORDER/PLAINTIFFS' MOTION TO PERMIT
DISCOVERY IN SUPPORT OF PUNITIVE DAMAGES CLAIM**

Before the Court in this medical malpractice action is Plaintiffs' Motion, Pursuant to Pa. R.C.P. 4003.7 to Permit Discovery in Support of Punitive Damages, filed December 21, 2001. Plaintiffs seek Court authorization to discovery of financial information from Defendants, Dr. Leber, Dr. Shearer and Donald E. Shearer, M.D., P.C., through a series of 13 interrogatories addressed to each of them. Those Defendants object to the discovery requests on the basis that the interrogatories are overly broad, not timely at this stage of the proceedings, and that the professional corporation of Dr. Shearer, being only vicariously liable

for his alleged acts of medical malpractice, is not subject to punitive damages. The named Defendants also request that any order authorizing discovery place appropriate limits upon the use and dissemination of the information.

The Court is convinced that it is not appropriate at this time to direct Donald E. Shearer, MD, P.C., to produce financial information as it would not appear to this Court that by virtue of its being the employer of Dr. Shearer that it is liable for punitive damages.

The Court believes it is appropriate for Dr. Shearer and Dr. Leber to furnish appropriate financial information to allow Plaintiffs to prepare for trial on those issues. However, Plaintiffs' request seems to be overly broad and in some respects more akin to seeking information as might be sought in aid of execution.

This Court will order that financial information from 1997 through 2000, as requested by Plaintiffs shall be furnished but such information shall be limited to that which does not unreasonably invade the privacy of the Doctors. In this regard the Court believes that furnishing appropriate net worth statements, as well copies of the Federal and State Tax returns and appropriately redacted schedules concerning sources of income or loss included on those returns is appropriate. The Court also believes that such information should not be disseminated, disclosed, distributed or published by Plaintiffs nor their counsel nor any other person to whom it is revealed, except as may be immediately necessarily for purposes of preparation for trial of this case and/or for testimony by individuals or entities directly involved in the case. In this regard, the Court will require that a proposed limiting order be submitted by the parties for the Court's consideration. Accordingly, the following Order is entered.

ORDER

It is ORDERED and DIRECTED that:

1. Defendant Donald E. Shearer, M.D., P.C., shall not be required to furnish financial information as would relate to the punitive damage interrogatories of Plaintiffs.

2. Defendants Dr. Shearer and Dr. Leber shall furnish responses to Plaintiffs' punitive damages interrogatories as follows:

a. Interrogatory #1, however, the schedules attached thereto may be redacted so that the names of stock investments and related sources of income are not revealed, except that the redaction shall not apply to any payments received as remuneration for medical services or as a medical professional; the itemized deductions, if any, may also be redacted.

b. Interrogatory #2, Interrogatory #3, Interrogatory #4, Interrogatory #7, Interrogatory #8, Interrogatory #13, Interrogatory #15, and Interrogatory #16. As relates to Interrogatories #7 and #8 they may be appropriately redacted so the nature and amount of the items are appropriately disclosed and the type of entity or person owing the same shall be disclosed, however, the actual name and address of the others involved may be redacted so long as each positive response is appropriately identified and that the amounts involved are appropriately identified.

3. Within twenty days Plaintiffs shall initiate and provide to this Court a proposed Order limiting the dissemination of the information provided as an interrogatory response, in a form outlined in the foregoing Memorandum Opinion. Plaintiffs shall consult with counsel for Defendants Dr. Shearer and Dr. Leber as to the wording of such limiting order

and seek to obtain their concurrence therein. To the extent that concurrence cannot be obtained within twenty days Defendants shall provide to this Court and to Plaintiffs' counsel a statement of their alternate proposal and the reason they prefer the alternate and will not concur in Plaintiffs' proposed order. It is the Court's intention that after the form of the order is approved by subsequent Order of this Court, that Defendants will furnish the specific information within twenty days thereafter.

BY THE COURT:

William S. Kieser, Judge

cc: David R. Bahl, Esquire & Kenneth B. Young, Esquire
Clifford A. Rieders, Esquire/C. Scott Water, Esquire
Robert A. Seiferth, Esquire
C. Edward S. Mitchell, Esquire
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Judges
Paul Petcavage, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)