

15-1148

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JOYCE E. MINNICH, as Executrix of
the Estate of ANDREW A. MINNICH, and
JOYCE E. MINNICH, Individually,

2015 OCT 28 AM 9:42

KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

Civil Action No. 13-C-1547
(Charles E. King, Judge)

v.

MEDEXPRESS URGENT
CARE, INC. – WEST VIRGINIA d/b/a
MEDEXPRESS URGENT CARE –
SOUTH CHARLESTON,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER
AND MEMORANDUM OPINION GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AS TO THE CLAIMS OF ANDREW MINNICH**

On August 31, 2015, Plaintiff, Joyce E. Minnich ("Plaintiff"), brought before this Court Plaintiff's "Motion for Reconsideration of Order and Memorandum Opinion Granting Defendant's Motion for Summary Judgment as to the Claims of Andrew Minnich." ("Motion for Reconsideration"). Plaintiff's Motion for Reconsideration requests that this Court reconsider, rescind and reverse, based upon the Court's plenary and/or inherent procedural power, its finding that Plaintiff's claims are subject to the Medical Professional Liability Act, W.Va. Code § 55-7B-1, *et seq.* ("MPLA") and requiring that Plaintiff plead her claim in accordance therewith.

In preparation of this Order, the Court has considered: (1) Plaintiff's Motion for Reconsideration; (2) "Defendant's Response to Plaintiff's Motion for Reconsideration" ("Response"); (3) Plaintiff's "Reply in Support of Plaintiff's Motion for Reconsideration" ("Reply"); (4) the Court's "Order and Memorandum Opinion Granting Defendant's Motion for Summary Judgment as to the Claims of Andrew Minnich" ("Summary Judgment Order"); (5)

“Defendant’s Motion for Summary Judgment” and brief in support thereof; (6) “Plaintiff’s Response in Opposition to Defendant’s Motion for Summary Judgment”; (7) all evidentiary materials tendered in support of the aforesaid pleadings; (8) all relevant legal authority; and (9) the August 31, 2015 oral argument of the parties. After undertaking a careful and deliberate review of the aforesaid materials, this Court holds and finds as follows:

PROCEDURAL HISTORY

1. On August 14, 2013, Petitioner filed her Complaint, which included the following counts: (1) Negligence (Premise Liability); (2) Loss of Consortium; and (3) Wrongful Death.
2. On March 7, 2014 the Kanawha County Circuit Clerk entered default against Defendant pursuant to Rule 55(a) of the West Virginia Rules of Civil Procedure for Defendant’s failure to timely answer Plaintiff’s Complaint.
3. On April 29, 2014, Defendant filed “Defendant’s Motion to Set Aside Default” (“Motion”) and its brief in support thereof.
4. On September 3, 2014 the Court entered its “Order and Memorandum Opinion Granting Defendant’s Motion to Set Aside Entry of Default.”
5. On September 8, 2014, Defendant filed its answer and for the first time asserted that the MPLA was applicable to Plaintiff’s claims.
6. On October 24, 2014, Defendant filed “Defendant MedExpress Urgent Care, Inc. – West Virginia d/b/a MedExpress Urgent Care – South Charleston’s Motion for Summary Judgment” and a brief in support thereof arguing that the MPLA is applicable to Petitioner’s claims.
7. On November 5, 2014, Plaintiff filed her response to Defendant’s Motion for Summary Judgment.

8. On November 12, 2014, Defendant filed its Reply in support of its Motion for Summary Judgment.

9. On December 1, 2014, this Court entered its Summary Judgment Order.

10. On January 16, 2015, Plaintiff petitioned for a writ of prohibition.

11. On March 11, 2015, the W.Va. Supreme Court, without explanation, refused Plaintiff's Petition.

12. On May 18, 2015, Plaintiff filed her Motion for Reconsideration.

13. On August 26, 2015, Defendant filed its Response.

14. On August 28, 2015, Plaintiff filed her Reply in support of her Motion for Reconsideration.

15. On August 31, 2015, this Court heard oral argument addressing Plaintiff's Motion for Reconsideration.

STANDARD OF REVIEW

16. The Parties agree that the Court's Order did not end the litigation on the merits and leave nothing for the Court to do but execute the judgment and, as such, constitutes an interlocutory order. Guido v. Guido, 503 S.E.2d 511, 514 (W.Va. 1998).

17. "As long as a circuit court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." Syl. Pt. 4, Hubbard v. State Farm Indem. Co., 584 S.E.2d 176 (W.Va. 2003). See also, State ex rel. Crafton v. Burnside, 528 S.E.2d 786, 771 (W.Va. 2000), (holding that a circuit court has plenary power to reconsider, revise, alter or amend its previous interlocutory orders as justice requires).

18. The Parties agree that this Court has inherent procedural power and/or plenary power to reconsider, rescind or modify its Order.

FINDINGS OF FACT

19. The Court adopts and incorporates by reference the “Findings of Fact” set forth in the Court’s Summary Judgment Order at pages 2-4.

CONCLUSIONS OF LAW

20. Plaintiff’s Motion for Reconsideration asserts that the Court’s Summary Judgment Order contains numerous errors of fact and law necessitating the reconsideration and reversal of the finding that the MPLA is applicable to Plaintiff’s claims, including: (1) The Court solely relied upon the pleadings when granting Defendant’s Motion for Summary Judgment failing to examine the evidence produced by Plaintiff in support of her opposition to Defendant’s Motion for Summary Judgment as required by West Virginia law; (2) Plaintiff’s evidence clearly demonstrated a viable premises liability claim; (3) no support exists in either Plaintiff’s Complaint or in the evidence produced to the Court to support the conclusion that Andrew Minnich received medical care prior to his fall; (4) the continuity of care argument adopted by the Court’s Summary Judgment Order contradicts controlling West Virginia law; (5) the Court’s reliance upon Palmese v. Med-Help, P.C., 2013 WL 3617085 (Conn.Super.)(Unpublished) is misplaced; (6) neither Plaintiff’s Complaint nor the evidence presented to the Court for consideration supports the Summary Judgment Order’s conclusion that Plaintiff’s claim is based upon a fall risk assessment of Mr. Minnich; (7) Mr. Minnich was never seen by a health care provider as defined by W.Va. Code § 55-7B-2(g)(2014) prior to his fall; and (8) Plaintiff’s claims against Defendant cannot be covered by the MPLA because the substance of the action, as demonstrated by the evidence developed during discovery, is Defendant’s failure to maintain a safe environment by exposing

business invitees to defective equipment – an exam table’s partially extended footstool – and said failure is unrelated to health care rendered or that should have been rendered to Mr. Minnich.

21. Upon consideration of Plaintiff’s Motion for Reconsideration, the Court declines to use its inherent procedural power and/or plenary power to reconsider its Order.

22. The Court denies Plaintiff’s Motion for Reconsideration for the reasons detailed in its Summary Judgment Order, which this Court hereby adopts and incorporates as though set forth verbatim herein.

23. Pursuant to Rule 54 of the West Virginia Rules of Civil Procedure:

When more than one claim for relief is presented in an action, whether a claim, counterclaim, cross-claim, or third party claim, ... the court may direct the entry of a final judgment as to one or more but fewer than all of the claims ... only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

W.Va. R. Civ. Pro. 54(b).

24. For an order to be certified under Rule 54(b), it must dispose of at least one substantive claim in its entirety. Province v. Province, 473 S.E.2d 894 899-900 (W.Va. 1996).

25. This Court’s Summary Judgment Order completely disposed of Plaintiff’s premises liability claim. By finding that Plaintiff’s claims are subject to MPLA, the Summary Judgment Order precluded Plaintiff from proceeding with its premises liability claim. Thus, by force and effect, the Summary Judgment Order constitutes and this Court hereby finds that it is a final judgment with regard to Plaintiff’s premises liability claim.

26. Further, the Summary Judgment Order requires Plaintiff to amend her Complaint and assert claims on behalf of Andrew Minnich in compliance with the MPLA. Accordingly, the Summary Judgment Order dictates that Plaintiff is to plead a claim for medical malpractice and comply with the requirements of the MPLA.

27. After the entry of the Court's Summary Judgment Order, Plaintiff's remaining claims include: (1) a Court imposed medical malpractice action; (2) loss of consortium; and (3) wrongful death.

28. The Court notes that Plaintiff's premises liability claim and the Court imposed medical malpractice action constitute two wholly separate claims. The two claims have different standards of proof, require different evidence, and provide for different relief and damages. In fact, the two claims cannot coexist.

29. Further, the Court finds that there exists a real danger that Plaintiff will suffer undue hardship and injustice if the appeal of this issue is delayed until the conclusion of this litigation that is relieved by an immediate appeal.

30. The Court's Summary Judgment Order rendered a final judgment as to Plaintiff's premises liability claim, while directing Plaintiff to pursue a claim under the MPLA for medical malpractice. If the Court holding is incorrect, as argued by Plaintiff, then it is best that matter be resolved now before the parties and this Court spend temporal, emotional and monetary resources addressing an inapplicable claim. The Court finds that it would be unjust and constitute an undue hardship to require Plaintiff to proceed through trial under potentially the wrong legal theory, file a post-trial appeal and, then repeat the whole process.

31. The Court notes that Defendant asserted no objection to the Court finding the Summary Judgment Order to be a final judgment and immediately appealable under Rule 54(b) of the West Virginia Rules of Evidence. Further, the Court notes that Defendant will suffer no prejudice from the immediate appeal of this issue because the early resolution of this issue will also benefit Defendant for the reasons it is advantageous to Plaintiff – avoidance of a possible

second trial. For the aforesaid reasons, this Court expressly finds that the needs of the litigants for an early resolution of this issue clearly outweigh any detriment to judicial efficiency.

RULING

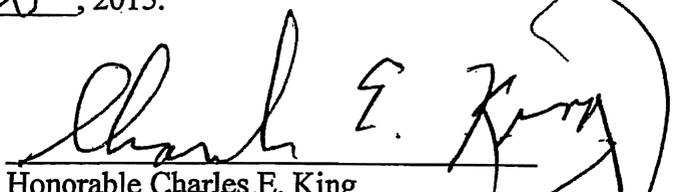
For the aforesaid reasons, this Court:

1. Hereby **DENIES** Plaintiff's "Motion for Reconsideration of Order and Memorandum Opinion Granting Defendant's Motion for Summary Judgment as to the Claims of Andrew Minnich";
2. **AFFIRMS AND INCORPORATES BY REFERENCE** its "Order and Memorandum Opinion Granting Defendant's Motion for Summary Judgment as to the Claims of Andrew Minnich";
3. **FINDS AND HOLDS** that its "Order and Memorandum Opinion Granting Defendant's Motion for Summary Judgment as to the Claims of Andrew Minnich" constitutes a final judgment with regard to Plaintiff's premises liability claim; and
4. In accordance with Rule 54(b) of the West Virginia Rules of Civil Procedure, this Court expressly **FINDS AND HOLDS** that there is no just reason for delay and that this Court's "Order and Memorandum Opinion Granting Defendant's Motion for Summary Judgment as to the Claims of Andrew Minnich" is immediately appealable to the Supreme Court of Appeals of West Virginia upon the entry of this Order.

The Parties' objections and exceptions are noted and preserved for the record.

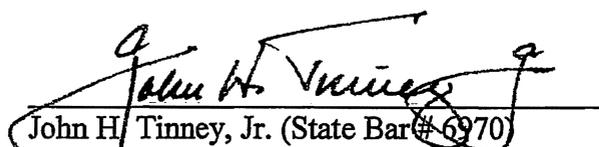
The Circuit Clerk shall distribute certified copies of this Order to counsel of record.

Enter this 27TH day of Oct., 2015.


Honorable Charles E. King

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 29
DAY OF October 2015
Cathy S. Gatson, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Prepared by:

A handwritten signature in black ink, appearing to read "John H. Tinney, Jr.", is written over a horizontal line. The signature is stylized and includes a large flourish at the end.

John H. Tinney, Jr. (State Bar #6970)

John K. Cecil (State Bar #9155)

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EXHIBIT 2

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JOYCE E. MINNICH, as Executrix of
The Estate of ANDREW A. MINNICH, and
JOYCE E. MINNICH, Individually,

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COURT REPORTER
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

Civil Action No. 13-C-1547
Hon. Charles E. King

MEDEXPRESS URGENT CARE, INC. -
WEST VIRGINIA d/b/a MEDEXPRESS
URGENT CARE- SOUTH CHARLESTON,

Defendant.

**ORDER AND MEMORANDUM OPINION GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AS TO THE CLAIMS OF ANDREW MINNICH**

On November 13, 2014, Defendant, MedExpress Urgent Care, Inc. – West Virginia d/b/a MedExpress Urgent Care-South Charleston (hereinafter “MedExpress”), timely brought before this Honorable Court Defendant’s Motion for Summary Judgment. Defendant’s Motion requests that this Court find that the claims asserted by, and on behalf of Andrew Minnich, deceased, regarding a fall occasioned while a patient and receiving health care at MedExpress on January 25, 2013, are subject to West Virginia’s Medical Professional Liability Act (hereinafter “MPLA”), West Virginia Code §55-7B-1, *et seq.*

In preparation of this Order, the Court has considered the following:

1. Defendant’s Motion and Brief in Support of Motion for Summary Judgment;
2. Plaintiff’s Response in Opposition to Defendant’s Motion;
3. Defendant’s Reply to Plaintiff’s Response in Opposition to Defendant’s Motion for Summary Judgment;
4. All evidentiary materials tendered in support of the aforesaid pleadings;

5. All relevant legal case and statutory authority;
6. West Virginia Code §55-7B-1, *et seq.*; and
7. Arguments and positions presented by counsel during the hearing of November 13, 2014.

After undertaking careful and deliberate review of the aforesaid, this Court makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT:

1. Plaintiff commenced the within action by filing a Complaint in Civil Action at Civil Action No. 13-C-1547 in the Circuit Court of Kanawha County, West Virginia, on August 14, 2013.
2. Plaintiff's claims pertain to a fall occasioned by Andrew Minnich, deceased, from an examination table while a patient at MedExpress on January 25, 2013.
3. Plaintiff alleges a claim for negligence sounding in premises liability; loss of consortium; and wrongful death. *See, generally*, Plaintiff's Complaint.
4. Mr. Minnich, along with his wife, Plaintiff Joyce Minnich, presented to South Charleston MedExpress, an urgent care facility, on January 25, 2013. *See, Id.* at ¶ 12.
5. The purpose of the visit by Mr. Minnich visit was to seek a medical evaluation for Mr. Minnich. *See, Id.*
6. Mr. Minnich presented to MedExpress on January 25, 2013, complaining of shortness of breath, weakness, and questioning the development of pneumonia. *See, Id.* at ¶ 14.
7. Mr. Minnich was initially evaluated/triaged by a certified Medical Assistant (hereinafter "MA"), Ms. Jessica Hiveley.

8. Plaintiff alleges that at the time that MA Hiveley inquired of the Minniches as to the reason for their visit, MA Hiveley was advised that Mr. Minnich had recently undergone hip surgery and had only recently began walking without the assistance of a walker. *See, Id.*

9. After being evaluated and assessed in the triage area, Mr. Minnich was escorted to an examination room by MA Hiveley at which time Plaintiff alleges that Mr. Minnich was purportedly directed to be seated on the exam table. *See, Plaintiff's Complaint at ¶ 16.*

10. According to Plaintiff's Complaint, MA Hiveley left the examination room despite, as alleged in the Complaint, having knowledge of Mr. Minnich's recent hip surgery and complaints of weakness. *See, Plaintiff's Complaint at ¶ 17.*

11. After MA Hiveley left the examination room, Mr. Minnich attempted to get onto the exam table using a retractable step for the exam table. *See, Id. at ¶ 18.*

12. As Mr. Minnich attempted to get onto the exam table, he fell back into Plaintiff Joyce Minnich and both individuals fell to the floor sustaining injury. *See, Id. at ¶¶ 20-21.* Thereafter, the clinical staff dressed and treated a skin tear on Mr. Minnich's left forearm, wrist, and hand. Mr. Minnich's chief complaints were also addressed and a chest x-ray for Mr. Minnich was ordered. *See, Id.* Mr. Minnich was thereafter discharged from the subject urgent care facility. *See, Id.*

13. In her Complaint, Plaintiff alleges that Mr. Minnich suffered a subarachnoid hematoma (brain bleed) and a laceration of his forearm from the fall that occurred at Defendant's facility on January 25, 2013. *See, Plaintiff's Complaint at ¶ 22.*

14. Plaintiff further alleges that basic precautions as to assistance, supervision, and as to a "customer's" safety were ignored while Plaintiff and Mr. Minnich were on the premises for services offered and provided by MedExpress. *See, Id. at ¶ 29.*

15. Plaintiff asserts that it was reasonably foreseeable that in directing Andrew Minnich to position himself on the exam table without assistance and/or observing him to do so, and without assuring that the retractable step was fully extended, that Mr. Minnich would sustain injury. *See, Id.* at ¶ 30.

16. Plaintiff further purports MedExpress was negligent in failing to implement precautions and procedures to guard and protect the Minniches as such in failing to assist Mr. Minnich upon the examination table, to assure the table was fully functional, and to observe Mr. Minnich's positioning to assure he was not injured in doing so. *See, Id.* at ¶ 33. Mr. Minnich expired on April 25, 2013. *See, Id.* at ¶ 46.

17. Plaintiff alleges Mr. Minnich's passing was caused as a result of injuries occasioned from Mr. Minnich's fall of January 25, 2013. *See, Id.* at ¶ 46.

As described more fully hereinbelow, Plaintiff's claims are based upon "health care services" rendered, or which should have been rendered by the within Defendant, a health care provider. Accordingly, Plaintiff's claims as to Andrew Minnich regarding the fall which is the subject of Plaintiff's Complaint are subject to the MPLA and its pre-suit requirements.

II. CONCLUSIONS OF LAW:

A. Standard of Review:

The West Virginia Rules of Civil Procedure provide that summary judgment shall be granted where "there is no general issue as to any material fact and [where] the moving party is entitled to judgment as a matter of law." W. Va. R. Civ. P. 56(c) (1998). In determining when summary judgment should be granted, the West Virginia Supreme Court of Appeals has held:

Summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient

showing on an essential element of the case that it has the burden to prove.

Syl. Pt. 2, *Painter v. Peavy*, 192 W.Va. 189, 190, 451 S.E.2d 755, 756 (1994). “Rule 56 was incorporated into West Virginia civil practice for good reason, and circuit courts should not hesitate to summarily dispose of litigation where the requirements of the Rule are satisfied.” *Jividen v. Law*, 194 W.Va. 705, 713, 461 S.E.2d 451, 459 (1995).

B. MPLA’s Statutory Requirements and Definitions:

The MPLA is the governing body of law for *all* negligence claims involving "medical professional liability" in West Virginia. *See, generally*, W.Va. Code § 55-7B-1 *et seq.* The West Virginia Legislature’s intent in passing the MPLA was to provide an exclusive remedy to address any claims related “to health care services rendered, or that should have been rendered” by a “health care provider”. *Boggs v. Camden-Clark Mem. Hosp.*, 216 W.Va. 656, 662, 609 S.E.2d 917, 923 (2004) (emphasis added). *Boggs* and its progeny, has established that the MPLA applies to claims resulting from the death or injury of a person *for any tort or breach of contract based on health care services rendered, or which should have been rendered by a health care provider or health care facility to a patient.* *Boggs*, 609 S.E.2d at 923. (emphasis added).

1. Health Care As Defined By The MPLA:

Under the MPLA, “health care” is recognized to include: “any act or treatment performed or furnished, or which should have been performed or furnished, by a health care provider for, to or on behalf of a patient during the patient’s medical care, treatment or confinement”. *See*, W.Va. Code §55-7B-2(e) (2010); *see, also, Blakenship v. Ethicon*, 221 W.Va. 700, 656 S.E.2d 451, 458 (2007). Further, “healthcare provider” is defined under W.Va. Code §55-7B-2(g) as:

A person, partnership, corporation, professional limited liability company, healthcare facility or institution licensed by, or certified in, the state or another state, to provide professional healthcare services, including, but not limited to, a physician, osteopathic physician, hospital, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, emergency medical services authority or agency, or an officer, employee or agent thereof acting in the course and scope of such officers, employees or agents employment.

W.Va. Code §55-7B-2 (2010).

2. **Application Of The MPLA To Claims Involving Alleged Health Care Negligence:**

When a claim is subject to the MPLA, a claimant is required to adhere to the statutorily mandated requirements as specified under W.Va. Code 55-7B-6(b)(2010). Specifically, a claimant must file a “Notice of Claim” and may be required to submit a “Screening Certificate of Merit” prior to filing a complaint in civil action. *See, Id.* Failure to do so prohibits a claimant from asserting a claim for medical professional liability. *See, W.Va. Code 55-7B-6(a) (2010).* The Courts of West Virginia have previously cautioned counsel regarding the failure of counsel to comply with the pre-suit mandates of the MPLA. Specifically, in *Cline v. Kresa Reahl M.D.*, 728 S.E.2d 87, 96, the West Virginia Supreme Court of Appeals recognized the Court’s cautionary warning in *Gray v. Menna*, 218 W.Va. 564, 625 S.E.2d 326 (2005), providing: “we would strongly encourage litigants to err on the side of caution by complying with the requirements of the act *if any doubt exists. . .*” *Cline, quoting Gray*, 218 W.Va. at 571, 625 at 333. (Italics Added).

C. **The MPLA applies to MedExpress and the services that it renders.**

The instant Defendant is a healthcare provider as recognized and defined under the MPLA. *See, W.Va. Code §55-7B-2(g).* Plaintiff characterizes Mr. Minnich as a “customer” in Plaintiff’s Complaint. *See, Plaintiff’s Complaint ¶¶ 29, 35.* Despite Plaintiff’s characterization

of the Plaintiff, however, the allegations in Plaintiff Complaint, and the record clearly establishes that Mr. Minnich presented to MedExpress on January 25, 2013, for the express purpose of receiving medical evaluation, treatment and care. *See*, Plaintiff's Complaint at ¶12. More particularly, Mr. Minnich presented to MedExpress as a patient on January 25, 2013; Mr. Minnich presented to MedExpress seeking medical treatment and evaluation; consented to be treated as a patient prior to the time of the incident which is the subject of Plaintiff's Complaint; and was a recipient of ongoing medical evaluation and care at the time of the incident which is the subject of Plaintiff's Complaint. *See*, Plaintiff's Complaint.

1. **The Manner or Style of Claims Plead by a Plaintiff does not prevent application of the MPLA.**

Syllabus Point 4 of *Blakenship* clarifies that the application of the MPLA to a claims is not driven by the characterization of a claim assigned by Plaintiff's counsel in the four corners of a Complaint. Rather, as the Court in *Blakenship* recognized:

The failure to plead a claim as governed by the Medical Professional Liability Act, W.Va. Code § 55-7B-1, *et. seq.*, does not preclude application of the Act. Where the alleged tortious acts or omissions are committed by a health care provider within the context of the rendering of 'health care' as defined by W.Va. Code § 55-7B-2(e) (2006) (Supp. 2007), the Act applies regardless of how the claims have been plead.

Syl. Pt. 4, *Blakenship*, 656 S.E.2d at 453. In *Boggs*, the Court further delineated what claims are subject to the MPLA. The *Boggs* Court noted that the Legislature has granted special protection to medical professionals, while they are acting as such. Consequently, this protection does not extend to intentional torts or acts *outside the scope of 'health care services.'* *Boggs*, 609 S.E.2d at 923. (emphasis added).

2. Plaintiff's Claims as to Mr. Minnich are subject to the MPLA as Mr. Minnich's alleged injuries occurred within the context and continuity of rendering health care.

Plaintiff appears to rely upon Andrew Minnich's alleged weakened condition as the basis for her asserted "premises liability" claim. Plaintiff alleges Mr. Minnich's medical history necessitated that he be assisted or observed getting on to the exam table. Again, Mr. Minnich's alleged injury occurred immediately after he was triaged by a healthcare provider and as part of the continuity of care being provided by the Defendant. Any act or treatment performed or furnished, or which should have been performed or furnished, by a health care provider contemplates all activities of health care providers and/or its employees ancillary to, and inherently involved in, providing medical services to a patient. *See*, W.Va. Code §55-7B-2(e) (2010).

The MPLA applies to all claims and/or causes of action related or resulting from death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered by a health care provider or health care facility to a patient. *See, Boggs, Supra*. Other Courts have addressed the instant issue, under state statutes identical to West Virginia's MPLA. Of note, the Connecticut Superior Court in *Palmese v. Med-Help, P.C.*, 2013 WL 3617085 (Conn.Super. 2013), addressed facts strikingly similar to the instant claim.

In *Palmese*, the Court addressed whether a Plaintiff-patient's fall from an examination table at an urgent care facility constituted professional negligence. In *Palmese*, the Plaintiff-patient presented to an urgent-care facility for a cut occasioned to her hand. *Med-Help*, 2013 WL 3617085 at * 1 Plaintiff-patient was escorted to an examination room by an intake worker or physician assistant. *See, Id.* While in the examination room, the Plaintiff-patient advised the

intake worker or physician's assistant that " 'she felt woozy, light-headed and became nauseous and fearful of the sight of her blood.' " *See, Id.* The intake worker/physician assistant responded by placing antibiotic solution on Plaintiff-patient's hand and then left the room. *See, Id.* After the intake worker/physician assistant left the room, the Plaintiff-patient fell from the examination table and injured herself. *See, Id.* As a result of the fall, Plaintiff-patient filed a Complaint in Civil Action alleging that her injuries were due to the urgent-care facility's negligence in failing to address Plaintiff-patient's concerns regarding her lightheadedness and for " 'failing to provide a safe environment in which to treat [p]laintiff and [leaving] [p]laintiff alone when it was imprudent to do so ' " *See, Id.*

In response to Plaintiff's Complaint in *Palmese*, the urgent care Defendant filed a motion to dismiss asserting that the Plaintiff-patient had failed to comply with Connecticut's medical professional liability statute. *See, Id.* Specifically, Defendant argued that, because Plaintiff-patient's claim sounded in medical negligence, Plaintiff-patient was required to comply with the pre-suit filing requirements prior to filing her Complaint. Upon review, the Superior Court granted Defendant's motion to dismiss finding that Plaintiff-patient's Complaint asserted claims for medical negligence and not ordinary negligence, and that Plaintiff-patient had failed to comply fully with the Medical Negligence Statute. *See, Id.* at *4.

In reaching its holding, the Superior Court applied a three-prong test to determine whether Plaintiff-patient's allegations sounded in medical malpractice:

(1) the defendants are sued in their capacities as medical professionals; (2) the alleged negligence is of a specialized medical nature that arises out of the medical professional-patient relationship; and (3) the alleged negligence is substantially related to medical diagnosis or treatment involved and the exercise of medical judgment.

See, Id. at *2 (internal citations omitted). The Superior Court answered the first prong in the affirmative as Plaintiff-patient's alleged injury occurred at a medical facility in the course of seeking urgent medical assistance. *See, Id.* at * 3. The Defendant also satisfied the second prong as the "incident at issue occurred in the context of ongoing medical treatment" *See, Id.* (emphasis added). The Superior Court recognized that the physician assistant's decision to leave Plaintiff-patient unsupervised required the agent to utilize medical judgment in determining whether it was permissible to do so. *See, Id.* Finally, the court found that the physician assistant's decision to leave the Plaintiff-patient unattended was substantially related to treatment involved and the exercise of medical judgment. *See, Id.* The Court noted that Plaintiff-patient's fall occurred in the context of ongoing medical treatment/examination by Defendant. *See, Id.* at *4. The Court further noted that: "a physical examination is related to medical diagnosis and treatment of a patient; therefore, any alleged negligence in the conducting of such an examination is 'substantially related' to medical diagnosis or treatment." *See, Id.* Accordingly, the Superior Court granted Defendant's motion to dismiss as Plaintiff-patient failed to fully comply with the Medical Negligence Statute prior to filing her Complaint.

Further, in *Bardo v. Liss*, 273 Ga. App. 103, 614 S.E. 2d 101 (2005), the Plaintiff-patient sustained injury while she attempted to step down from an examination table after being examined by the Defendant-physician. *See, Bardo*, 614 S.E.2d at 103. In her Complaint, the Plaintiff-patient alleged that, because of her medical condition, Defendant-physician's failure to provide assistance to the Plaintiff-patient as she stepped down from the examination table was both professional negligence and ordinary negligence. *See, Id.* The Defendant-doctor filed a Motion to Dismiss based upon the contention that Plaintiff-patient asserted a claim for professional negligence rather than ordinary negligence and that she did not attach an

accompanying expert affidavit to her Complaint as required by the applicable Medical Negligence Statute. *See, Id.* The trial court granted the Defendant-physician's motion and dismissed Plaintiff-patient's Complaint, from which the Plaintiff-patient filed an appeal. *See, Id.*

Upon review, the Georgia Appellate Court upheld the trial court's decision to dismiss Plaintiff-patient's complaint. *See, Id.* The Court stated that a complaint's characterization of the claims for professional or ordinary negligence does not control. *See, Id.* Rather, where the alleged negligence requires the exercise of professional skill and judgment to comply with a standard of conduct, the action sounds in professional negligence. *See, Id.* Applying this standard, the Georgia Court of Appeals reasoned that the alleged negligence constituted professional negligence because the "degree of physical assistance needed by a patient to prevent a fall in light of the patient's medical condition required the exercise of expert medical judgment." *See, Id.* at 103-104 (internal citations omitted).

Plaintiff's claims for the instant matter arise from "health care" services that allegedly were or should have been rendered while Mr. Minnich was a patient at MedExpress. As provided hereinabove, Mr. Minnich presented to MedExpress for the express purpose of medical evaluation and treatment. *See*, Plaintiff's Complaint at ¶ 12. Mr. Minnich suffered his alleged injuries after being evaluated and triaged by a health care provider, and while waiting to be *further evaluated and treated* by additional medical providers. Further, it is uncontroverted that Mr. Minnich's alleged injuries occurred in his capacity as a patient, in a patient examination room and during the continuity of care being provided.

Plaintiff maintains that, because Mr. Minnich's injury occurred between two medical/physical assessments for purposes of receiving medical treatment, the MPLA does not apply. This interpretation of the MPLA is incompatible with the Court's interpretation of the

MPLA in *Blankenship* and *Boggs*, which focuses on whether the injury occurred while rendering, or in the course of, health care services. Plaintiff fails to consider that, while administering health care services, a healthcare provider may require a patient to perform a variety of tasks, such as moving to and from an examination table, or that a patient may be evaluated by different medical providers during the same visit.

Based on facts of the instant claim developed through discovery, it is apparent that Mr. Minnich purportedly sustained any alleged injuries during the course of his medical treatment and/or confinement at MedExpress. *See, Blankenship, supra*. There is no dispute that plaintiff presented to the Defendant's facility for the purpose of receiving health care; that MedExpress and its employees are health care providers as recognized by the MPLA; and that Plaintiff's Complaint pertains to "health care services" rendered, or which should have been rendered by MedExpress. Just as in *Blankenship*, Plaintiff is not permitted to flout the application of the MPLA by artful or creative pleading. Accordingly, Plaintiff's claims are subject to the MPLA.

Implicit in Plaintiff's Response to the Defendant's Motion for Summary Judgment is that health care services had not been commenced at the time Plaintiff-decedent sustained the subject fall on January 24, 2013, at MedExpress. Plaintiff would have the Court recognize that health care is only involved, and commences, in instances where surgical or invasive procedures are undertaken, or when a health care provider is physically in the same room as a patient at the time an injury is occasioned. This would require the Court to recognize that the Medical Professional Liability Act (hereinafter "MPLA") does not apply to injuries occasioned during the continuity of care provided by health care providers such would be inconsistent with the definition of "health care" as provided by the MPLA. *See, W.Va. Code §55-7B-2(e)*.

Plaintiff mischaracterizes her complaint as simply involving MedExpress' purported failure to fully extend a foot-stool creating an unsafe environment for business invitees. See, Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment at P. 11. Of note, Plaintiff expressly asserts at ¶ 31 of Plaintiff's Complaint that the Defendant purportedly failed to: "provide assistance, supervision and attempt to take basic precautions and procedures to guard and protect the safety of its customers" to support its claims for negligence. See, Plaintiff's Complaint at ¶ 29. Further, Plaintiff asserts that it was:

reasonably foreseeable that directing an individual weakened by illness and only recently walking without assistance to get on an exam table without making certain that the retractable step is fully extended, without assisting him/her to get on the table and without observing him/her to get on the table and with observing him/her getting on the exam table would result in injury.

See, Plaintiff's Complaint ¶ 31. Plaintiff's Complaint, through the express allegations, suggests that MedExpress, and its health care providers, failed to exercise proper clinical judgment in evaluation of patients while providing health care. Further, Plaintiff's Complaint asserts claims for negligence based on individuals presenting as potential fall risks upon consideration and evaluation of their medical and clinical history, physical presentation, and failing to implement health care policies and procedures to address the same. Such allegations and suggestions clearly involve the administration of health care and professional judgment and decisions being undertaken and made by health care providers. Accordingly, Plaintiff's claims are in fact subject to the MPLA.

3. **The Foreign Case Authority Relied Upon By Plaintiff Is Misplaced And Distinguishable From The Instant Matter.**

Plaintiff asserts that Florida case authority regarding medical professional liability is highly persuasive in West Virginia. See, Footnote 4 of Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment. Plaintiff, however, misconstrues, and ignores,

relevant Florida case authority addressing the very issue which is the subject of the Defendant's Motion for Summary Judgment.

Plaintiff relies on Feifer v. Galen of Florida, Inc., 685 S.O.2d. 882 885 (Fla. App. 1996), a 1996 Opinion from the Florida Appellate Court, to support the Plaintiff's assertion that the instant matter is one only for claims of premises liability. As Plaintiff provides in her Response, in Feifer, the Plaintiff was told to walk to various areas of the building without assistance, down long corridors. See, Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment at P. 12. As provided by Plaintiff, the corridors in Feifer had no handrails or chairs for sitting. Id. The Plaintiff in Feifer occasioned a fall sustaining a hip fracture.

Feifer, is distinguishable from the instant matter. In Feifer, there is no reference to the Plaintiff having received any medical care at the Defendant facility prior to the subject fall. Further, the Court in Feifer acknowledged that the Defendant hospital employees involved with the Plaintiff were non-professional employees at the entrance of the health care facility and in the reception area of the hospital. The Plaintiff's claims in Feifer did not involve medical care but, rather, ordinary business procedures concerning entry of an individual upon a premises.

Plaintiff-decedent presented to MedExpress for the express purpose of receiving medical care. See, Plaintiff's Complaint at ¶ 12. Further, Plaintiff was undertaking and receiving medical care and evaluation at the time, and as part of the continuity of the health care process while at MedExpress on January 25, 2013.

More contemporary case law provided by Florida Courts, addressing falls occasioned by patients at health care providers, have recognized such claims as matters involving medical negligence. In Buck v. Columbia Hospital Corporation of South Broward, -SO.3d-, 2014 Westlaw 4426480 (Fla. App. 4 Dist.), a patient's estate asserted claims against the hospital-

Defendant that in the course of moving the patient from a gurney to an x-ray table, the hospital's employees dropped the patient onto the x-ray table surface causing the Plaintiff to sustain a fracture of her lumbar spine which ultimately, as alleged, caused the death of the patient. In Buck, the Plaintiff attempted to assert that the injuries sustained by the patient were claims for ordinary negligence. The Court held that the injuries occasioned by the Plaintiff-decedent *were* subject to Florida's Medical Professional Liability Act. Id. at *4.

Plaintiff also relies on Dawkins v. Union Hospital, Dist., 758 S.E.2d 501 (S.C. 2014) in asserting that the claims of Plaintiff-decedent are not subject to the MPLA. Dawkins involved a fall occasioned by a patient who presented to the emergency department of a hospital, while left unattended using the restroom. In arriving at its holding, the Court in Dawkins recognized that Plaintiff's claims were not subject to medical negligence based on *how* the Plaintiff's claims were plead. In arriving at its holding that the Plaintiff's claims were not for medical negligence, the Court in Dawkins stated: "Appellant's complaint makes clear that she had not begun receiving medical care at the time of her injury, nor does it allege the hospital's employees negligently administered medical care. Rather, the complaint states that appellant's injury occurred when she attempted to use the restroom unsupervised, prior to receiving medical care." See, Dawkins, 408 S.C. at 178-179, 758 S.E.2d at 504-505.

The Courts of West Virginia do not simply rely upon how claims are alleged in the Plaintiff's Complaint for purposes of determining application of the MPLA. *See, Syllabus Point 4, Blankenship v. Ethicon*, 221 W.Va. 700, 656 S.E.2d 451 (2007). Accordingly, not only are the facts in Dawkins distinguishable from the instant matter, but the West Virginia threshold for considering whether claims involve medical negligence differ from those as provided by the Court in Dawkins. Id.

D. Defendant Has Not Waived Its Right To Assert Plaintiff's Claims Being Subject To The MPLA.

At the time of the filing of Plaintiff's Complaint, Plaintiff was aware that MedExpress was a health care provider, and that there may be a question as to whether the injuries occasioned by the Plaintiff-decedent were occasioned during the course of administration of health care by a health care provider. In Gray v. Mena, 218 W.Va. 564, 625 S.E.2d 326 (2005), the Court warned Plaintiff's counsel providing: "we would strongly encourage litigants to err on the side of caution by complying with the requirements of the act if any doubt exists. . . we cannot assure future litigants to failing to comply with the requirements of the act that dismissal can be avoided." Id. at 571, 625 S.E.2d at 333. Plaintiff chose to specifically plead her claims as ones for premises liability.

Plaintiff asserts that MedExpress has waived its ability to assert a Motion for Summary Judgment based on Plaintiff's claims being subject to the MPLA. The Defendant timely filed its Motion for Summary Judgment consistent with the dispositive motion deadline as provided by the Scheduling Order for this matter. Further, Plaintiff has been undertaking a course of discovery specific to health care policies, procedures and evaluations.

Plaintiff will not be prejudiced if she is required to comply with the pre-suit filing requirements for asserting claims subject to the MPLA. Rather, Plaintiff would be required to amend her Complaint to assert a claim subject to the MPLA consistent with the operation and requirements of W.Va. Code §55-7B-1, *et seq.*

RULING:

WHEREFORE, for the reasons more fully set forth herein, this Court:

1. **HOLDS** that the claims asserted by, and/or on behalf of Andrew Minnich, are subject to the Medical Professional Liability Act, W.Va. Code §55-7B-1, *et seq.*

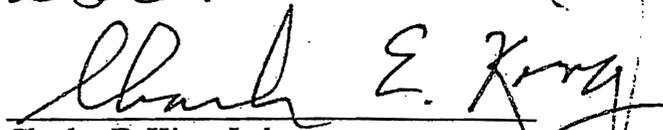
2. **HOLDS** that Andrew Minnich is provided a reasonable period of time to amend the Plaintiff's Complaint to asserts claims on behalf of Andrew Minnich consistent, and in compliance, with the requirements for claims subject to the Medical Professional Liability Act.

3. **HOLDS** that the trial for this matter is continued subject to Plaintiff complying with the time frames and requirements for asserting the claims of Andrew Minnich, deceased, consistent with the requirements and mandates of the Medical Professional Liability Act.

4. **HOLDS** that the parties are to conduct a Scheduling Conference with this Honorable Court within 30 days after entry of a Scheduling Order to establish a new trial date, conclusion of discovery, mediation deadline, dispositive motions, and any other deadlines and/or requirements which the parties and Court deem necessary for adjudication of this matter.

DATED this 1st day of Dec., 2014.

obj. are noted.


Charles E. King, Judge
Circuit Court, Kanawha County, WV

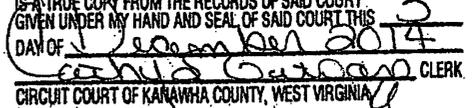
STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 3
DAY OF December 2014.
 CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

EXHIBIT 3

JOYCE E. MINNICH, AS EXECUTRIX vs. MEDEXPRESS URGENT CARE, INC.,

LINE DATE ACTION

1 08/14/13 # CASE INFO SHEET; COMPLAINT; ISSUED SUM & 2 CPYS; F FEE; RCPT
 2 # 506118; \$155.00
 3 08/21/13 # RE-ISSUED SUM & 2 CPYS AS TO FRANK ALDERMAN, M.D./MEDEXPRESS
 4 # URGENT CARE INC
 5 08/26/13 # LET FR SS DTD 8/22/13; SUM W/RET ON C & DISCOV (8/22/13 SS) AS
 6 # TO FRANK ALDERMAN, M.D./MEDEXPRESS URGENT CARE INC - WV
 7 09/05/13 # COS AS TO D'S INTERROG'S & REQ FOR PROD TO P; FAX COV LET
 8 09/11/13 # E-CERT FR SS AS TO MEDEXPRESS URGENT CARE INC. WV DTD 8/26/13
 9 # SIGNED BY B. BRADLEY
 10 09/24/13 O; MAILED TO J. TINNEY, JR. & A. SUNSERI (S9/23/13) NNF
 11 09/23/13 " O: PROTECTIVE ORDER/KING
 12 10/15/13 " COS AS TO D'S 2ND SET OF INTERROG'S & REQ'S FOR PROD OF DOC'S
 13 11/05/13 # COS AS TO P'S ANS TO D'S INTERROG'S & REQ FOR PROD TO P
 14 11/15/13 # COS AS TO D'S ANS', RESP'S & OBJ'S TO P'S 1ST REQ FOR PROD &
 15 # REQ FOR ADM'S TO MEDEXPRESS URGENT CARE; FAX COV LET
 16 11/20/13 # COS AS TO P'S ANS TO D'S 2ND INTERROG'S & REQ FOR PROD TO P
 17 01/16/14 # REQ TO CLK FOR ENTRY OF DJ; AFD
 18 02/05/14 # NOT OF HRG W/COS (2/25/14 @ 11:00 AM)
 19 02/26/14 O; MAILED TO J. CECIL & D. MUSHET (S2/25/14) NNF
 20 02/25/14 " O: SO: TD: 12/8/14 @ 9:30/KING
 21 03/07/14 # ENTRY OF DEFAULT
 22 04/25/14 # COS AS TO D'S 1ST SUPPLEMENT TO D'S ANS', RESP'S & OBJ'S TO
 23 # P'S 1ST INTERROG'S, REQ FOR PROD & REQ FOR ADM'S TO MEDEXPRESS
 24 # URGENT CARE - WV; FAX COV LET
 25 04/29/14 # D'S MOT TO SET ASIDE DEFAULT; BRIEF IN SUPP OF MOT W/EXH'S &
 26 # W/COS; FAX COV LET
 27 05/09/14 # NOT OF HRG W/COS (6/12/14 @ 10:00 AM); FAX COV LET
 28 05/14/14 # WIT LIST OBO MEDEXPRESS URGENT CARE-WV W/COS; FAX COV LET
 29 05/19/14 # P'S DESIGN OF FACT WIT'S W/COS
 30 05/28/14 # COS AS TO 2ND SUPPLEMENT TO D'S ANS', RESP'S & OBJ'S TO
 31 # P'S 1ST INTERROG'S, REQ FOR PROD & REQ FOR ADM'S; FAX COV LET
 32 06/06/14 # AMD NOT OF HRG W/COS (7/15/14 @ 10:30 AM); FAX COV LET
 33 06/26/14 SM COS AS TO NOT OF RULE 30(B)(6) & 30(B)(7) DEPO
 34 07/03/14 # P'S EXPERT WIT DISCL W/EXH'S & COS
 35 07/10/14 # P'S RESP IN OPPOS TO D'S MOT TO SET ASIDE DEFAULT W/EXH'S &
 36 # W/COS
 37 07/30/14 # NOT OF DEPO W/COS; NOT OF DEPO W/COS; FAX COV LET
 38 07/31/14 # COS AS TO P'S SUPP ANS TO D'S INTERROG'S & REQ FOR PROD
 39 08/01/14 # IDENTIFICATION OF EXPERT WIT'S OBO D W/COS; FAX COV LET
 40 08/27/14 # NOT OF DEPO W/COS; FAX COV LET
 41 09/03/14 KL O: MLD TO J. TINNEY JR, A. SUNSERI
 42 09/03/14 # COS AS TO P'S 2ND SUPP ANS TO D'S INTERROG'S & REQ FOR PROD
 43 09/03/14 *O: O & MEMO OPINION GRT D MOT TO SET ASIDE ENTRY OF DJ/KIN
 44 09/08/14 # CASE INFO SHEET; ANS OF D W/COS; FAX COV LET
 45 09/11/14 # NOT OF DEPO W/COS; FAX COV LET
 46 09/15/14 # COS AS TO AMD NOT OF DEPO
 47 09/15/14 # COS AS TO NOT OF DEPO
 48 09/15/14 # COS AS TO NOT OF DEPO
 49 10/06/14 # COS AS TO NOT OF DEPO
 50 10/10/14 # COS AS TO P'S 3RD SUPP ANS TO D'S INTERROG'S & REQ FOR PROD
 51 10/10/14 # COS AS TO AMD NOT OF DEPO
 52 10/15/14 SM COS AS TO NOT OF TELEPHONIC DEPO DT
 53 10/21/14 # COS AS TO 2ND AMD NOT OF DEPO
 54 10/24/14 # BRIEF IN SUPP OF MEDEXPRESS URGENT CARE'S BRIEF IN SUPP OF MOT

NOV. 16. 2015 1:5/PM

CIRCUIT CLERK

NO. 199

P. 2

JOYCE E. MINNICH, AS EXECUTRIX vs. MEDEXPRESS URGENT CARE, INC.,

LINE DATE ACTION

55 # FOR SJ W/COS; FAX COV LET
 56 10/29/14 # MEDEXPRESS URGENT CARE - WV'S MOT FOR CONT; MEMO IN SUPP
 57 # OF MOT W/EXH'S & COS; FAX COV LET
 58 11/06/14 # P'S RESP TO D'S MOT FOR CONT & P'S CROSS-MOT TO COMPEL
 59 # W/EXH'S & COS
 60 11/07/14 # NOT OF HRG W/COS (11/13/14 @ 11:30 AM); FAX COV LET
 61 11/10/14 # COS AS TO NOT OF DEPO
 62 11/12/14 # P'S RESP IN OPPOS TO D'S MOT FOR SJ W/EXH'S & COS
 63 11/12/14 # D'S REPLY TO P'S RESP TO MEDEXPRESS URGENT CARE INC. - SO.
 64 # CHAS' MOT FOR CONT W/EXH'S & COS
 65 11/12/14 # MEMO IN SUPP OF RESP W/EXH'S & COS
 66 11/12/14 # D'S REPLY TO P'S RESP IN OPPOS TO D'S MOT FOR SJ W/COS; FAX
 67 # COV LET
 68 11/26/14 # P'S MOT IN LIMINE W/EXH'S & COS
 69 12/01/14 # P'S MOT IN LIMINE W/EXH'S & COS
 70 12/01/14 KL O: MLD TO J. TINNEY JR, A. SUNSERI
 71 12/04/14 # LET FR ANTHONY SUNSERI TO JOHN TINNEY JR DTD 11/21/14
 72 12/04/14 # LET FR ANTHONY SUNSERI TO JUDGE KING DTD 11/21/14 W/ATTACH
 73 # PROPOSED O
 74 12/01/14 " O & MEMO OPINION GRNTG D'S MOT FOR SJ AS TO THE CLAIMS OF
 75 " ANDREW MINNICH/KING
 76 01/21/15 # LET FR JOHN TINNEY, JR. TO RORY PERRY DTD 1/16/15
 77 01/21/15 # PET FOR WRIT OF PROH FILED W/WVSCA W/COS; CERTIFICATION OF
 78 # CNSL; APPENDIX OF EXH'S W/COS
 79 02/19/15 # MEDEXPRESS URGENT CARE INC'S RESP TO PET FOR WRIT OF PROH
 80 # W/ATTACH'S & COS FILED W/WVSCA
 81 05/20/15 # MOT FOR RECONSID OF O & MEMO OPINION W/EXH'S & COS
 82 07/01/15 # NOT OF HRG W/COS (7/7/15 @ 11:30 AM)
 83 07/01/15 # NOT OF HRG W/COS (8/31/15 @ 11 AM); FAX COV LET
 84 08/05/15 # NOT OF SUPPLEMENTAL AUTHORITY IN SUPP OF P'S MOT FOR RECONSID
 85 # & MEMO OPINION W/EXH'S & COS
 86 08/26/15 # D'S RESP TO P'S MOT FOR RECONSID W/COS; FAX COV LET
 87 08/31/15 # REPLY IN SUPP OF P'S MOT FOR RECONSID OF O & MEMO OPINION
 88 # W/COS; FAX COV LET
 89 08/31/15 # REPLY IN SUPP OF P'S MOT FOR RECONSID & MEMO OPINION W/COS
 90 10/28/15 KL O: J. TINNEY JR, A. SUNSERI (S10/27/15)
 91 10/28/15 LK O: DENYING P'S MOT FOR RECONSID OF O & MEMO OPINION GRT
 92 LK D'S MOT FOR SJ S/10/27/KING

NOV. 16. 2015 1:5/PM

CIRCUIT CLERK

NOV 199 P. 3