

Document # 11

Report of Dr. Neil Scott, M.D., D.D.S.
8/15/06

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARMEN BRITT and LULA BAITY,

Plaintiffs,

vs.

BUFFALO MUNICIPAL HOUSING AUTHORITY,
et al.,

Defendants.

AFFIRMATION OF
EXPERT WITNESS

Index No. 06-CV-0057

I, **NEIL SCOTT, MD, DDS**, a dentist duly licensed to practice my profession in the State of New York, under the pain and penalty of perjury, hereby affirm as follows:

1. Based upon review of the dental records obtained by Ms. Baity's counsel from McClure Dental Services, P.C. and Grace Manor Health Care Facility, Inc., respectively, I have been requested by plaintiffs' counsel to address and render an opinion on the issue of patient informed consent or lack thereof in reference to the extraction of Ms. Baity's teeth #1, 10 and 26, which surgical procedure was performed on November 7, 2003 during the time that she was confined at Grace Manor.

2. In preparing this affirmation, I have studied the following documentation:

- (i) A copy of all dental records of Lula Baity of services performed at Grace Manor as provided by McClure Dental Services, P.C. (**Exhibit "A"**).
- (ii) A copy of correspondence from McClure Dental Services, P.C. to Plaintiff Carmen Britt confirming that no x-rays (radiographs) were taken pertaining to Lula Baity's dental treatment. (**Exhibit "B"**)
- (iii) A copy of all dental records of Lula Baity of services performed at Grace Manor as provided by Grace Manor Health Care Facility. (**Exhibit "C"**)

- (iv) A copy of [McClure Dental Services'] "Request for Medical Clearance" for extraction of Ms. Baity's teeth #1, 10 and 26; and "Clearance granted" upon the express written authorization and consent of Nelda, Lawler, M.D., dated November 6, 2003. (Exhibit "D")
- (v) A copy of affidavit of Plaintiff Carmen Britt, dated July 4, 2006. (Exhibit "E")

3. As a practicing dentist of 20 years standing and, further, being familiar with the ethical rules of practice of general dentistry in the community, I am cognizant of the strict procedural requirements of health provider "informed consent" and patient "consent". As such, I state to a reasonable degree of dental certainty that the failure of a dental care practitioner to give requisite informed consent and obtain written patient consent therefrom *prior* to providing treatment to that patient constitutes malpractice and a gross departure from good and accepted dental practice in the community.

4. As a considered source for the preparation of this instant report, I have consulted with my own dental insurance carrier, MLMIC, and, more specifically, have conferenced the requirements of giving informed consent and obtaining written patient consent therefrom with one Mr. George Hall. Mr. Hall opined, and I concur, that a consent form *must* be executed and signed by the patient *only* or, alternatively, by a guardian if that patient is unable to care for himself/herself. As such, it is my professional opinion to a reasonable degree of dental/medical certainty that a dentist or physician, may not, upon his or her own accord, personally proceed to sign a consent form in the place and stead of the patient.

5. It is my opinion to a reasonable degree of dental certainty that, in the absence of a life threatening emergency situation, Dr. Lawler, as Ms. Baity's health care provider, was wholly unauthorized to place her own signature upon, and personally execute, a consent form approving a surgical extraction procedure in the place and stead of her patient, Ms. Baity, such conduct, clearly and unequivocally, constituting malpractice and a gross departure of the standard good and acceptable practice in the community.

6. Consistent and consonant with the American Dental Association's laws, by-laws, rules and/or regulations, it was incumbent upon Grace Manor Health Care Facility and its health care providers to make a record explanatory of the basis to support the November 7, 2003 dental extraction procedure performed on Ms. Baity. This, Grace Manor and its health care providers did not do.

7. I further conclude to a reasonable degree of dental certainty that, in the absence of a factual basis to support the November 7, 2003 dental extraction procedure and the concomitant failure of *written consent* by Ms. Baity for same, the executed "Clearance grant" of approval for the extraction of Ms. Baity's three teeth: "1", "10" and "26", respectively, upon the express written signature of Dr. Lawler, herself (**Exhibit "D"**), constituted gross negligence and malpractice attributable to Dr. Lawler.

8. I duly note, upon review of the provided McClure Dental Services, P.C. and Grace Manor Health Care Facility dental records, respectively, (see **Exhibits "A" and "C"**), that there existed no signature by Ms. Baity, herself, on any consent form, whatsoever, such as to permit and/or otherwise sanction the dental extraction procedure.

9. Conversely, according to the July 4, 2006 affidavit executed by plaintiff Carmen Britt (**Exhibit "E"**), Ms. Baity as a patient/resident, refused to consent to treatment, while Ms. Britt, in fact, specifically and expressly forbade Grace Manor Health Care Facility from extracting Ms. Baity's teeth in question. As such, Grace Manor Health Care Facility and its health care provider, Dr. Lawler, lacked requisite authority to proceed with the dental extractions.

10. Significantly, there was no substantiating record documentation to establish that the three extracted teeth, # "1", "10" and "26", were carious, broken, abscessed or periodontally involved to such extent as to cause and/or potentially be causative of any discernable risk to the health or welfare of Ms. Baity.

11. It is to be duly noted that confirmatory correspondence reflects that no x-rays (radiographs) of the subject teeth in question were ever taken by McClure Dental Services, P.C. (**Exhibit "B"**).

12. There thus exists no discernible objective data to support Dr. Lawler's considered medical/dental decision to authorize consent, via a "Clearance grant" (**Exhibit "D"**) for the surgical extraction to be performed on Ms. Baity, in the first instance.

13. To the contrary, the primary diagnosis, as repeatedly noted in Ms. Baity's dental records per the 10/24/2003, 11/7/2003 and 11/14/2003 written entries of Priscilla J. Adams, DDS, simply reads: "all tissues appear healthy/WNL within normal limits". See **Exhibit "A" and "C"**.

14. Based upon the foregoing, I reiterate that it is my professional opinion to a reasonable degree of dental certainty that, given the particular facts and circumstances

as presented in this instant record, including, critically, Ms. Baity's refusal and non-consent to the treatment, the express forbiddance of the extraction procedure by plaintiff Carmen Britt, the total absence in the records of any objective facts to support an emergency basis for the routine November 7, 2003 dental surgical procedure, the express grant of written consent, per se, memorialized by the signature of Dr. Nelda Lawler, herself, constituted an act of gross negligence and malpractice.

15. I further state that, in the preparation of this affirmation, I have thoroughly compared, on a document-by-document and date-by-date basis, a copy of each written instrument comprising the dental record of services performed at Grace Manor as provided by McClure Dental Services (**Exhibit "A"**) with a copy of its written instrument counter-part of the identical record of services performed at Grace Manor as provided by Grace Manor Health Care Facility. (**Exhibit "C"**)

16. Based thereon, upon a thorough comparison between the McClure Dental Services, P.C. written Instruments and Grace Manor Dental Services – provided written instruments of the identical record of dental services rendered at Grace Manor (**Exhibit "A" and "C"**), it is my considered professional opinion to a reasonable degree of dental certainty that material patient information pertaining to Ms. Baity in each and every one of the original written instruments, dated 10/24/2003, 11/7/2003 and 11/14/2003, respectively, as provided by McClure Dental Services, P.C. (**Exhibit "A"**), all were altered and materially falsified in identical manner in the respective instruments as subsequently provided by Grace Manor Health Care Facility (**Exhibit "C"**) as follows:

(i) the typed patient information box in the McClure Dental Services, P.C. records which states: "**Cooperation Level: limited cooperation ****" (**Exhibit "A"**), was retyped and **altered** to state: "**Cooperation Level: cooperative**" (**Exhibit "C"**).

(ii) the typed patient information box in the McClure Dental Services, P.C. dental records which states: "**Care Acceptance: indifferent**" (**Exhibit "A"**) was retyped and **altered** to state: "**Care Acceptance: desirous**" (**Exhibit "C"**).

17. Tellingly, only one (1) single written instrument, dated 12/5/2003, provided by McClure Dental Services, P.C. as attested to by Ms. Lynn Kabel (**Exhibit "A"**) remains identical in material form and content with only minor typographical changes in comparison to its 12/5/2003 written instrument counterpart provided by Grace Manor Health Care Facility (**Exhibit "C"**).

18. Based on the above, and, inasmuch as the identical written instruments comprising the dental records of Lula Baity as submitted by McClure Dental Services (**Exhibit "A"**) and Grace Manor Health Care Facility (**Exhibit "C"**) have been **altered** and rendered materially and factually inconsistent to the degree that one of them is necessarily false, it is my inescapable professional opinion to a reasonable degree of dental certainty that Ms. Baity's original written instruments comprising records of dental services rendered at Grace Manor as submitted by McClure Dental Services, P.C. (**Exhibit "A"**), appear to have been knowingly, intentionally, dishonestly and fraudulently **altered** by Grace Manor Health Care Facility and/or its employees for whose acts Grace Manor would appear to bear professional responsibility. Such serious perceived professional misconduct invites follow-up scrutiny, inquiry and accountability on all appropriate levels.

19. I have been retained by plaintiffs in the above captioned action as a dental expert witness. The total compensation to be remitted for my study and testimony in this case is \$2,500.00, to be paid as follows: \$500.00 for initial report and \$2,000.00 for trial preparation and testimony.

20. I attest that I have had no prior acquaintance with either Ms. Baity and/or Ms. Britt or their legal representatives. I further state that, in such instance, I am not persuaded in one direction or another as to rendering a just and fair professional opinion regarding this case.

I, **NEIL SCOTT MD, DDS**, a dentist duly licensed in the State of New York, and authorized by law to practice in the state, not being a party to this action, hereby subscribe and affirm, pursuant to CPLR 2106, that the statements herein are true under the penalties of perjury. My Curriculum Vitae is attached to this report which is listed as **Exhibit "F"**.


NEIL SCOTT MD, DDS,

Affirmed this 15 day of August, 2006

Exhibit "A"



McClure Dental Services, PC
8950 Gowanda State Road
Eden, NY 14057-9537
716-992-3495 or 800-430-6811
fax: 716-992-3199 or 800-963-7329

Carmen Britt
59 Ericson Ave.
Buffalo, NY 14215

Dear Ms. Britt,

Enclosed is a copy of all dental records of Lula Baity as you requested. If you have any questions please feel free to call.

Sincerely

A handwritten signature in cursive script that reads "Lynn R. Kabel".

Lynn R. Kabel, RDH



McClure Dental Services, PC
 8950 Gowanda State Road
 Eden, NY 14057
 (716) 992-3495
 (716) 992-3199 (fax)

Grace Manor Health Care Facility
 10 Symphony Circle
 Buffalo NY 14201

Name: Baity, Lula
 SSNum: 219225322
 Room Number: 224d
 Next Annual Exam: 10/23/2004

Date of Service: 7/22/2006
 Provider: Lynn R Kabel RDH
 Primary Diagnosis:
 Secondary Diagnosis:
 Tertiary Diagnosis:
 Referral:
 Order Form Dispensed:
 Treatment: per mail: submitted reprints of all records to Carmen Britt, per her written request.
 Comments: reason unknown.

X=Extract, R=Root Tip, C=Carious, M=Missing, F=Fractured, L=Loose W=Watch	Upper Arch	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
		(m)	(m)	(m)	(m)	(m)	(m)				(m)	(m)	(m)	(m)	(m)	(m)	(m)
	Lower Arch	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
		(m)	(m)	(m)	(C)			(m)	(m)							(m)	(m)

Upper denture:	None	Cooperation level:	limited cooperation **
Lower denture:	None	Care Acceptance:	Indifferent
ID Intact?:		Care giver caution:	Ordinary caution **
Medical Alerts:	NKA; hypertension; confusion; aggressive behavior; debility; anemia	Oral Hygiene needs:	brush bid
		Staff Participation:	Monitor daily

Patient Comments: **Hx of aggressive behavior.

Next Treatment:	initial exam-2nd admit	Tooth		Surface	
	aval per family: has peg tube	Tooth		Surface	
	can she still chew?	Tooth		Surface	

As Transcriptionist, I attest that the above services were performed as stated by the provider indicated.

L.R. Kabel
 Signature Date: 7/22/2006

* Mrs Baity passed away before this appt was scheduled. *L.R.K.*



McClure Dental Services, PC
 8950 Gowanda State Road
 Eden, NY 14057
 (716) 992-3495
 (716) 992-3199 (fax)

Grace Manor Health Care Facility
 10 Symphony Circle
 Buffalo NY 14201

Name: Baity, Lula
 SSNum: 219225322
 Room Number: 224d
 Next Annual Exam: 10/23/2004

Date of Service: 10/24/2003
 Provider: Priscilla J Adams DDS
 Primary Diagnosis: all tissues appear healthy/WNL within normal limit
 Secondary Diagnosis:
 Tertiary Diagnosis:
 Referral:
 Order Form Dispensed: None
 Treatment Comments: Rx: Extraction of teeth 1, 10 and 26 followed by an adult prophy with medical clearance and treatment approval requested.

Treatment: Initial comprehensive exam Tooth: Surface:

X=Extract, R=Root Tip, C= Carious, M=Missing, F=Fractured, L=Loose W=Watch	Upper Arch	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	Lower Arch	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17		
		m	m	m	m	m	m					m	m	m	m	m	m	m	m
		m	m	m	C			m	m							m	m	m	m

Upper denture: None
 Lower denture: None
 ID Intact?:
 Medical Alerts: NKA; hypertension; confusion; aggressive behavior; debility; anemia
 Cooperation level: limited cooperation **
 Care Acceptance: indifferent
 Care giver caution: Ordinary caution **
 Oral Hygiene needs: brush bid
 Staff Participation: Monitor daily

Patient Comments: **Hx of aggressive behavior.

Next Treatment: extract #1, 10, 26 Tooth: Surface:
 periodic cleaning Tooth: Surface:
 Tooth: Surface:

As Transcriptionist, I attest that the above services were performed as stated by the provider indicated.

Priscilla J Adams DDS
 Signature

Date: 7/22/2006
 reprint of original *PKA*



McClure Dental Services, PC
 8950 Gowanda State Road
 Eden, NY 14057
 (716) 992-3495
 (716) 992-3188 (fax)

Grace Manor Health Care Facility
 10 Symphony Circle
 Buffalo NY 14201

Name: Baily, Lula
 SSNum: 219225322
 Room Number: 224d
 Next Annual Exam: 10/23/2004

Date of Service: 11/7/2003
 Provider: Priscilla J Adams DDS
 Primary Diagnosis: all tissues appear healthy/WNL within normal limit
 Secondary Diagnosis:
 Tertiary Diagnosis:
 Referral:
 Order Form Dispensed: Post-Op Orders
 Treatment Comments: Routine extraction of teeth 1, 10 and 26 with no complications noted, hemostasis observed. Will follow-up next visit.

Treatment:	extraction of tooth-routine	Tooth:	1	Surface:	
Treatment:	extraction of tooth-routine	Tooth:	10	Surface:	
Treatment:	extraction of tooth-routine	Tooth:	26	Surface:	

X=Extract, R=Root Tip, C= Carious, M=Missing, F=Fractured, L=Loose W=Watch	Upper Arch	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	Lower Arch	R	m	m	m	C			m	m							m	m	L
			32	21	30	29	28	27	26	25	24	23	22	21	20	19	18	17	

Upper denture: None
 Lower denture: None
 ID Intact?:
 Medical Alerts: NKA; hypertension; confusion; aggressive behavior; debility; anemia
 Cooperation level: limited cooperation **
 Care Acceptance: indifferent
 Care giver caution: Ordinary caution **
 Oral Hygiene needs: brush bid
 Staff Participation: Monitor daily

Patient Comments: **Hx of aggressive behavior.

Next Treatment:	post op #1, 10, 26	Tooth:		Surface:	
	periodic cleaning-has med clearan	Tooth:		Surface:	
		Tooth:		Surface:	

As Transcriptionist, I attest that the above services were performed as stated by the provider indicated.

Priscilla Adams
 Signature

Date: 7/22/2006
 REPRINT OF ORIGINAL CLARK



McClure Dental Services, PC
 8950 Gowanda State Road
 Eden, NY 14057
 (716) 992-3495
 (716) 992-3199 (fax)

Grace Manor Health Care Facility
 10 Symphony Circle
 Buffalo NY 14201

Name: Baily, Lula
 SSNum: 219226322
 Room Number: 224d
 Next Annual Exam: 10/23/2004

Date of Service: 11/14/2003
 Provider: Priscilla J Adams DDS
 Primary Diagnosis: all tissues appear healthy/VNL within normal limit
 Secondary Diagnosis:
 Tertiary Diagnosis:
 Referral:
 Order Form Dispensed: None
 Treatment: Patient healing well from extraction of teeth #1, 10 and 26. Will schedule with RDH for prophylaxis at her next visit. No pathology noted.
 Comments:

Treatment: post-op exam Tooth: 1, 10, 26 Surface:

X=Extract, R=Root Tip, C= Carious, M=Missing, F=Fractured, L=Loose W=Watch	Upper Arch	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16		
	Lower Arch	R	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	L

Upper denture: None
 Lower denture: None
 ID Intact?:
 Medical Alerts: NKA; hypertension; confusion; aggressive behavior; debility; anemia
 Cooperation level: limited cooperation **
 Care Acceptance: indifferent
 Care giver caution: Ordinary caution **
 Oral Hygiene needs: brush bid
 Staff Participation: Monitor daily

Patient Comments: **Hx of aggressive behavior.

Next Treatment: periodic cleaning Tooth: Surface:
 -has med clearance Tooth: Surface:
 Tooth: Surface:

As Transcriptionist, I attest that the above services were performed as stated by the provider indicated.

Priscilla Adams
 Signature

Date: 7/22/2006
 REPRINT OF ORIGINAL *(Signature)*



McClure Dental Services, PC
 8950 Gowanda State Road
 Eden, NY 14057
 (716) 992-3495
 (716) 992-3199 (fax)

Grace Manor Health Care Facility
 10 Symphony Circle
 Buffalo NY 14201

Name: Baily, Lula
 SSNum: 219225322
 Room Number: 224d
 Next Annual Exam: 10/23/2004

Date of Service: 12/5/2003
 Provider: Amy Merhib, RDH
 Primary Diagnosis: dry tissues
 Secondary Diagnosis: NAD: No apparent discomfort
 Tertiary Diagnosis:
 Referral:
 Order Form Dispensed: Instruction orders-see comments
 Treatment: presents w/very dry, cracking lips. Recommend staff keeps her lips lubricated w/vaseline or comparable. Allowed only limited scaling. Will maintain 4 month recare for as long as patient can tolerate
 Comments:

Treatment: periodic cleaning Tooth: Surface:

X=Extract, R=Root Tip, C= Carious, M=Misling, F=Fractured, L=Loose W=Watch	Upper Arch	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
		m	m	m	m	m				m	m	m	m	m	m	m	m
	Lower Arch	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
											m	m	C	m	m	m	m

Upper denture: None Cooperation level: limited cooperation **
 Lower denture: None Care Acceptance: indifferent
 ID Intact? Care giver caution: Ordinary caution **
 Medical Alerts: NKA; hypertension; confusion; aggressive behavior; debility; anemia Oral Hygiene needs: Brush bid
 Staff Participation: Monitor daily

Patient Comments: **Hx of aggressive behavior.

Next Treatment: 4/04 periodic cleaning Tooth: Surface:
 Tooth: Surface:
 Tooth: Surface:

As Transcriptionist, I attest that the above services were performed as stated by the provider indicated.

[Signature]
 Signature

Date: 7/22/2006

REPRINT OF ORIGINAL *[Signature]*

Exhibit "B"



McClure Dental Services, PC
8950 Gowanda State Road
Eden, NY 14057-9537
716-992-3495
716-992-3199 fax

Carmen Britt
59 Ericson Ave.
Buffalo, NY 14215

Dear Ms. Britt,

As indicated in the dental records that were previously sent to you, there were no x-rays (radiographs) taken. You have all the dental records from the services performed at the nursing home.

Sincerely,

A handwritten signature in cursive script that reads "Lynn R. Kabel".

Lynn R. Kabel

Exhibit "C"



**GRACE MANOR
HEALTH CARE FACILITY**

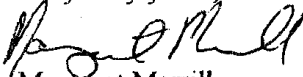
Mr. Rogers Hicks
Post Office Box 242
Buffalo, NY 14201

Re: Lula Baity

Dear Mr. Hicks:

Enclosed are the medical records for Ms. Lula Baity as requested in your letter dated February 3, 2004.

Very truly yours,


Margaret Merrill
Medical Records Director

CC: D. Gentner

MM/

Enclosures



McClure Dental Services, PC.
 8950 Gowanda State Road
 Eden, NY 14057
 (716) 992-3495
 (716) 992-3199 (fax)

M

Grace Manor Health Care Facility
 10 Symphony Circle
 Buffalo NY 14201

Patient: Baily, Lula
 SSNum: 219225322
 Room Number: 303-1 c
 Next Annual Exam: 10/23/2004

Date of Service: 10/24/2003
 Provider: Priscilla J Adams DDS
 Primary Diagnosis: all tissues appear healthy/WNL within normal limit
 Secondary Diagnosis:
 Tertiary Diagnosis:
 Referral:
 Order Form Dispense: None
 Order Form Dispensed:
 Treatment Comments: Rx: Extraction of teeth 1, 10 and 26 followed by an adult prophy with medical clearance and treatment approval requested.

Treatment: initial comprehensive exam Tooth: Surface:

X=Extract, R=Root Tip, C= Carious, M=Missing, F=Fractured, L=Loose	Upper Arch	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
		X	m	m	m	m	m				X	m	m	m	m	m	m
	Lower Arch	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
										X	m						

Upper denture: None
 Lower denture: None
 ID Intact?:
 Medical Alerts: NKA; hypertension; confusion; aggressive behavior; debility; anemia

Cooperation level: cooperative
 Care Acceptance: desirous
 Care giver caution: Ordinary caution
 Oral Hygiene needs: brush bid
 Staff Participation: Monitor daily

Patient Comments: Hx of aggressive behavior.

Next Treatment: extraction of tooth 1, 10 & 26 Tooth: Surface:
 periodic cleaning Need approval Tooth: Surface:
 Tooth: Surface:

I attest that the above services were performed as stated by the provider indicated.
 Signature: *Priscilla J Adams*
 Date: 10/24/2003

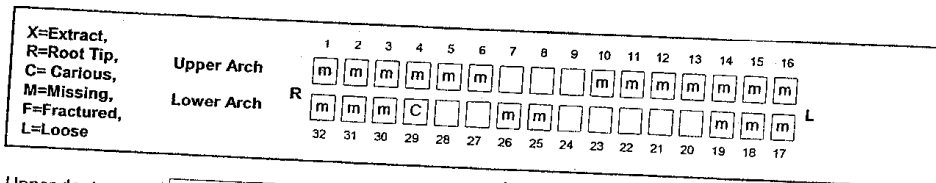


McClure Dental Services, PC.
 8950 Gowanda State Road
 Eden, NY 14057
 (716) 992-3495
 (716) 992-3199 (fax)

Grace Manor Health Care Facility
 10 Symphony Circle
 Buffalo NY 14201

Patient: Baity, Lula
 SSNum: 219225322
 Room Number: 303-1 c
 Next Annual Exam: 10/23/2004

Date of Service: 11/7/2003
 Provider: Priscilla J Adams DDS
 Primary Diagnosis: all tissues appear healthy/WNL within normal limit
 Secondary Diagnosis:
 Tertiary Diagnosis:
 Referral:
 Order Form Dispense: Post-Op Orders
 Order Form Dispensed:
 Treatment Comments: Routine extraction of teeth 1, 10 and 26 with no complications noted, hemostasis observed. Will follow-up next visit.
 Treatment: extraction of tooth-routine Tooth: 1 Surface:
 Treatment: extraction of tooth-routine Tooth: 10 Surface:
 Treatment: extraction of tooth-routine Tooth: 26 Surface:



Upper denture: None
 Lower denture: None
 ID Intact?:
 Medical Alerts: NKA; hypertension; confusion; aggressive behavior; debility; anemia
 Cooperation level: cooperative
 Care Acceptance: desirous
 Care giver caution: Ordinary caution
 Oral Hygiene needs: brush bid
 Staff Participation: Monitor daily

Patient Comments: Hx of aggressive behavior.

Next Treatment: post-op exam Tooth: Surface:
 #1, 10 and 26 Tooth: Surface:
 periodic cleaning Tooth: Surface:

I attest that the above services were performed as stated by the provider indicated.
 Signature: *Priscilla J Adams*
 Date: 11/10/2003

McClure Dental Services, PC
8950 Gowanda State Road
Eden, NY 14057-9537
716-992-3495 716-992-3199 (fax)

POST SURGICAL INSTRUCTIONS FROM THE DENTAL DEPARTMENT

*Upper R posterior, Upper left anterior
Lower anterior*

DATE: 11/17/03

RESIDENT NAME: Lula Bailey ROOM # 303-1c

RESIDENT MAY BE BITING ON GAUZE TO CONTROL BLEEDING, PLEASE KEEP GAUZE IN PLACE FOR APPROXIMATELY ½ HOUR AND MONITOR CLOSELY DURING THAT TIME. IT MAY BE NECESSARY TO REPLACE GAUZE FOR ANOTHER ½ HOUR IF BLEEDING CONTINUES.

AFTER 2 HOURS PATIENT CAN EAT SOFT FOOD. PATIENT MAY NOT SMOKE, RINSE, SPIT, DRINK HOT LIQUIDS OR DRINK THROUGH A STRAW FOR THE REST OF THE DAY!

AFTER 24 HOURS, PATIENT MAY RINSE GENTLY WITH WARM SALT WATER, IF ABLE, FOR THE NEXT SEVERAL DAYS.

FOR ANY DISCOMFORT, YOU MAY DISPENSE ANY NON-ASPIRIN PAIN RELIEVER APPROVED BY THE RESIDENT'S PHYSICIAN.

IF YOU HAVE ANY QUESTIONS OR PROBLEMS, PLEASE CONTACT US AT THE ABOVE NUMBER.

THANK YOU!

Boadwin





McClure Dental Services, PC.
 8950 Gowanda State Road
 Eden, NY 14057
 (716) 992-3495
 (716) 992-3199 (fax)

Grace Manor Health Care Facility
 10 Symphony Circle
 Buffalo NY 14201

Patient: Baily, Lula
 SSNum: 219225322
 Room Number: 303-1 c
 Next Annual Exam: 10/23/2004

Date of Service: 11/14/2003
 Provider: Priscilla J Adams DDS
 Primary Diagnosis: all tissues appear healthy/WNL within normal limit
 Secondary Diagnosis:
 Tertiary Diagnosis:
 Referral:
 Order Form Dispense: None
 Order Form Dispensed:
 Treatment Comments: Patient healing well from extraction of teeth #1, 10 and 26. Will schedule with RDH for prophylaxis at her next visit. No pathology noted.

Treatment: post-op exam Tooth: 1, 10, 26 Surface:

X=Extract, R=Root Tip, C= Carious, M=Missing, F=Fractured, L=Loose	Upper Arch	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
		m	m	m	m	m	m				m	m	m	m	m	m	m
	Lower Arch	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17
		m	m	m	C				m	m					m	m	m

Upper denture: None
 Lower denture: None
 ID Intact?:
 Medical Alerts: NKA; hypertension; confusion; aggressive behavior; debility; anemia

Cooperation level: cooperative
 Care Acceptance: desirous
 Care giver caution: Ordinary caution
 Oral Hygiene needs: brush bid
 Staff Participation: Monitor daily

Patient Comments: Hx of aggressive behavior.

Next Treatment: periodic cleaning-has clearance
 Tooth: Surface:
 Tooth: Surface:
 Tooth: Surface:

I attest that the above services were performed as stated by the provider indicated.

Priscilla J Adams
 Signature

Date: 11/17/2003



McClure Dental Services, PC.
 8950 Gowanda State Road
 Eden, NY 14057
 (716) 992-3495
 (716) 992-3199 (fax)

Grace Manor Health Care Facility
 10 Symphony Circle
 Buffalo NY 14201

Patient: Baily, Lula
 SSNum: 219225322
 Room Number: 303-1 c
 Next Annual Exam: 10/23/2004

Date of Service: 12/5/2003
 Provider: Amy Merhib, RDH
 Primary Diagnosis: dry tissues
 Secondary Diagnosis: NAD: No apparent discomfort
 Tertiary Diagnosis:
 Referral:
 Order Form Dispense: instruction orders-see comments
 Order Form Dispensed:
 Treatment Comments: presents w/very dry, cracking lips. Recommend staff keeps her lips lubricated w/vaseline or comparable. Allowed only limited sclaing. Will maintain 4 month recare for as long as patient can tolerate

Treatment: periodic cleaning Tooth: Surface:

X=Extract, R=Root Tip, C= Carious, M=Missing, F=Fractured, L=Loose	Upper Arch	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	
		m	m	m	m	m	m				m	m	m	m	m	m	m	m
	Lower Arch	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1

Upper denture: None
 Lower denture: None
 ID Intact?:
 Medical Alerts: NKA; hypertension; confusion; aggressive behavior; debility; anemia

Cooperation level: limited cooperation **
 Care Acceptance: indifferent
 Care giver caution: Ordinary caution **
 Oral Hygiene needs: brush bid
 Staff Participation: Monitor daily

Patient Comments: **Hx of aggressive behavior. 4 month recare

Next Treatment: periodic cleaning-4/04 Tooth: Surface:
 Treatment: Tooth: Surface:
 Treatment: Tooth: Surface:

I attest that the above services were performed as stated by the provider indicated.

 Signature

Date: 12/8/2003

Exhibit "D"

faxed 11/7 @ 11



McClure Dental Services, PC

8950 Gowanda State Road
Eden, NY 14057-9537
716-992-3495 716-992-3199 (fax)

MW

Grace Manor Health Care Facility
10 Symphony Circle
Buffalo NY 14201

10/24/2003

Request for Medical Clearance for Treatment

Dental Provider Priscilla J Adams DDS

Resident Name: Baity, Lula
Room Number: 303-1 c

Service: extraction of tooth 1, 10 & 26
Service: periodic cleaning

***Staff: please complete the below history section and forward to physician for review and signature:

- Heart Valve Disorder
- Behavioral Issues
- Joint Replacement Surgical date: _____
- Other: HTN, A-fib
- Renal Failure/Dialysis
- Anticoagulant or ASA

Priscilla Adams
Signature of person completing this section

11/2/03
Date

MD: Please review and complete below as indicated:

Clearance granted: Clearance denied:

MD: Please indicate any medical order indicated prior/post dental service: _____

MW
MD Signature

11/2/03
Date

**Attn Facility staff: Please fax this form back to 716-992-3199 after MD has signed and returned it; then place in patient medical record in the dental section. Thank You!

Exhibit “E”

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARMEN BRITT and LULA BAITY,

Plaintiffs,

vs.

AFFIDAVIT

Index No. 06-CV-0057

BUFFALO MUNICIPAL HOUSING AUTHORITY,
ELAINE GARBE, Supervisor, Buffalo Municipal
Housing Authority, JERI GIWA, Case Manager,
Buffalo Municipal Housing Authority,
GRACE MANOR HEALTH CARE FACILITY, INC.,
DAVID J. GENTNER, President/CEO,
Grace Manor Health Care Facility, Inc.,
MARY STEPHAN, Registered Nurse and
Facility Representative, Grace Manor Health
Care Facility, Inc.,
KATHY RANDALL, Director of Social Work,
Grace Manor Health Care Facility, Inc.,
TIFFANY MATTHEWS, Social Worker,
Grace Manor Health Care Facility, Inc.,
NELDA LAWLER, M.D., Grace Manor Health
Care Facility, Inc.,
TERESA CHAU, M.D., Grace Manor Health
Care Facility, Inc.,
JESUS A. LIGOTT, M.D., Erie County Medical Center,
PHILLIP J. RADOS, M.D., Erie County Medical Center,
JESSICA W. BLUME, M.D., Erie County Medical Center,
EDWARD GIAMMINS, Erie County Medical Center,
CARLA MAILLEAX, R.N., Erie County Medical Center,
JOHN DOES 1-5, JANE DOES 1-5,
CRISIS SERVICES EMERGENCY OUTREACH SERVICES,
ROBERT ROE #1 and ROBERT ROE #2

Defendants.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

CARMEN BRITT, being duly sworn, deposes and says:

1. I am a plaintiff in the above-captioned case and make this affidavit in support of the Plaintiffs' Notice of Motion for Leave to File First Amended Complaint. This affidavit is made upon my own personal knowledge.
2. I have had an opportunity to review Defendants' affidavits (i.e., Dr. Lawler, Dr. Chau and Dr. Rados) made in opposition to Plaintiffs' motion to amend complaint. I strongly disagree with Defendants' contentions that the motion should be denied because it is futile.
3. I am the niece of plaintiff, Lula Baity. On October 8, 2003, my aunt authorized me to act as her power-of-attorney and a durable New York State Power of Attorney Form was executed.
4. On October 1, 2003, my aunt was involuntarily and forcibly removed from her apartment by named defendants and transported by ambulance to the Erie County Medical Center ("ECMC"). On that day, upon learning of the incident, I immediately went to ECMC where, upon talking with my aunt, I discovered that she did not consent to any entry into her home and subsequent involuntary movement to the hospital. Thus, my aunt and I insisted to the defendant doctors that she be immediately released. Nonetheless, over the adamant objections of my aunt and my insistence that she be released, defendant doctors refused our requests. All treatment rendered by defendant doctors at ECMC was without my aunt's express consent.
5. Thereafter, the ECMC defendant doctors, over the adamant objections of my aunt and I, and without my aunt's express consent, on October 10, 2003, transferred my aunt to Grace Manor Nursing Home.
6. Upon my aunt's arrival by ambulance to Grace Manor, my aunt insisted that she be released and objected to the involuntary admission. I, myself, was threatened with arrest if I

continued with my insistence that my aunt be released or if I attempted to remove her from the nursing home.

7. At no time was my aunt ever declared by any court of law to be mentally incompetent and unable to make her own decisions. Further, at no time did any defendant provide due process safeguards or otherwise petition any court in an effort to have the mental competency of my aunt explored.

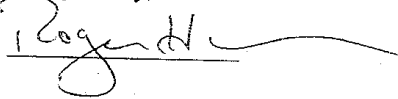
8. My aunt refused and objected to her confinement. She also objected to receiving any treatment that was ultimately rendered by the defendant doctors named in this lawsuit. In addition, I, at various times during the periods that I visited with my aunt at both ECMC and Grace Manor, was requested by those facilities (defendants and other staff) to consent to my aunt to receive various treatment procedures, including the dental extraction of three (3) teeth, which I refused and forbade Grace Manor to do on the basis: (i) my aunt at all times was capable of making her own decisions with respect to treatment decisions; (ii) I would not interfere with my aunt's decision to refuse treatment, and; (iii) I had no legally authority, having not been appointed by any court, to act as my aunt's legal representative in any capacity.

9. I state that at no time did my aunt, or I, at any time, consent to the involuntary detention, nor to any and all treatment given to my aunt by defendant doctors. All was performed without the *informed consent* of my aunt. Nor did I, or could I, give defendants legal consent to provide treatment to my aunt, plaintiff Lula Baity. To the contrary, my aunt and I hired legal counsel and Defendants' actions were challenged in State Court by way of *habeas corpus*.

10. Absent any informed consent, defendant doctors provided various treatments to my aunt. In addition, defendant Dr. Lawler authorized, by her *own* written consent, over my objection and without my aunt's informed consent, that three (3) of my aunt's teeth be removed, which, non-consensual dental surgical procedure, was performed on November 7, 2003.


CARMEN BRITT

Sworn to before me this
4th day of July, 2006



ROGERS HICKS
COMMISSIONER OF DEEDS
In and for Buffalo, Erie County, NY
Commission Expires December 31, 2006

CURRICULUM VITAE

Country Dentistry
Neil Scott MD, DDS
3250 Countryside Lane
Hamburg, NY 14075
(716) 648-1030

Educational Background:

Undergraduate – CW Post College, LIU, NY 9/70 – 5/74 with a BA in Biology and Chemistry

Medical School at the Autonomous University of Guadalajara, Jalisco, Mexico from 8/75 – 6/79

New York Medical College, Valhalla, NY 1980-1981 – 5th Pathway Program

Dental School at SUNY at Buffalo, NY from 8/83 – 5/86

Working experiences:

<u>Dates</u>	<u>Hospital or location</u>	<u>Position Held</u>
10/87-present	Country Dentistry Hamburg, NY	General Dentist
1/87-9/97	G.B. Scruggs Clinic Buffalo, NY	Associate Dentist
6/87-11/87	Niagara County Dental Ass. Lockport, NY	Associate Dentist
8/86-2/87	Dental Health Associates Cheektowaga, NY	Associate Dentist
9/86-10/86	Bertrand General Hospital Springville, NY	Emergency Room MD
9/86-10/86	Deaconess Hospital Buffalo, NY	Emergency Room MD
6/86-7/86	Millard Fillmore Hospital Buffalo, NY	Emergency Room MD
6/84-7/85	Astoria General Hospital Astoria, NY	Emergency Room MD
3/83-6/83	Parkway Hospital Forest Hills, NY	House Physician

2/83-7/83	Physicians Hospital Jackson Heights, NY	E.R./House Physician
10/82-12/83	Terrace Heights Hospital Hollis, NY	House Physician
7/81-6/82	New Britain General Hospital New Britain, CT	PGY-1 General Surgery Residency
3/81-6/81	Long Island Jewish Hospital New Hyde Park, NY	Extern - Neurosurgery
2/81-5/81	CW Post College Greenvale, LI, NY	Professor Pathophysiology
11/80-12/80	VA Hospital Montrose, NY	5 th Pathway Program in Psychology
9/80-10/80	Metropolitan Hospital New York, NY	5 th Pathway Program in OBGYN
1/80-9/80	Yonkers General Hospital Yonkers, NY	5 th Pathway Program Surgery, Int. Med.& Peds.
8/79-12/79	Jamaica Hospital Jamaica, NY	Extern in Emergency Room and internal medicine
10/78-11/78	U.S.P.H.S. Hospital Staten Island, NY	Extern in Departments of Cardiology and Pulmonary
3/78-4/78	Northwestern Memorial Hospital Chicago, IL	Extern in Dept of Pathology
<u>Dates</u>	<u>Hospital or location</u>	<u>Position Held</u>
6/77-7/77	New York University Hospital New York, NY	Extern in Department of Reconstructive Plastic Surgery
6/76-7/76	New York University Hospital New York, NY	Extern in Department of Dermatopathology
6/74-8/74	Brooklyn Jewish Hospital	Extern in Dept. of Cardiology

Any other additional information required, please call the office at the above phone number.