

2007

# Jackson v. State of Utah : Unknown

Utah Court of Appeals

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Peggy E. Stone; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General.

Lawrence M. Jackson.

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## Recommended Citation

Legal Brief, *Jackson v. State of Utah*, No. 20070588 (Utah Court of Appeals, 2007).

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# Exhibit Y

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff

PLAINTIFF'S SECOND REQUEST  
FOR DISCOVERY

V.

Civil NO: 2007 0588-CA

THE STATE OF UTAH, et al.,  
Defendants.

Judge: Wallace A. Lee

I Come now the plaintiff in the above entitled Action and does hereby submit Plaintiff's Second Request for Discovery pursuant to Utah Rules of Civil Procedure Rule 26 (a), (b)(1), and (3).

The following are documents the plaintiff requires for the preparation of pleadings in anticipation of litigation

- 1). The defendant, Medical Technician, Lisa Soper's place of legal residence. Additionally, Lisa Soper's current place of employment.
- 2). Medical Technician, Lisa Soper's work record during the relevant times, i.e., from October, 2003 to the present date.
- 3). Medical Technician, Lisa Soper work schedule during relevant times, i.e., from October, 2003 to December, 2003.
- 4). Barbara Henniger, Physician's Assistant's work record, including her work schedule during relevant times i.e., Oct., 03 to Dec. 03.

## Exhibit Y

14). A list and identities of private workers who had entered The Northgate building and stood just inside the door and witness the officers bind the plaintiff.

15). A record log of the transport officer or his supervisor calling The Medical Department respecting the "double-cuff clearance", and who then spoke with regarding plaintiff's complaint of agonizing pain in shoulders, and what instructions the medical staff gave the transport officer on or about 4-13-06.

16). A medical record of what plaintiff's bloodsugar levels were on the evening of 4-13-06, and also a record of the amount of insulin given by the medical technicians.

17). A copy of the menu for the evening meal at 4-13-06, Utah State Prison, Uintah IV section - 2.

18). The name of both officers in the Northgate Building who participated in the preparation of plaintiff for transport on or about 4-13-06.

19). The identity of the transport officer who was present at the Moran Eye Clinic, who was also escorting a prisoner for an appointment at the same time plaintiff was present.

20). The name and location of the inmate the other transport officer escorted at the relevant times on 4-13-06.

21). The name of the Physician's Assistant, Nurse, or otherwise healthcare employee who conducted the preliminary examinations just prior to plaintiff requesting to leave due to being in "agony" on 4-13-06.

22). A copy of the medical record from that 4-13-06 consultation at the Moran Eye Clinic.

## Exhibit X

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff,

PLAINTIFF'S FIRST  
REQUEST FOR DISCOVERY

V.

Civil No: 040600383

THE STATE OF UTAH, et al., Judge, Wallace A. Lee  
Defendants

IN accordance with Utah Rules of Civil Procedure, Rule 26, the plaintiff hereby submit this Plaintiff's First Request for Discovery.

The plaintiff hereby request copies of records in accordance with Rule 26(3)(d). The following is a list of the documents the plaintiff requires in preparation for trial on the merits in the above entitled matter:

1). Plaintiff requests a copy of medical diagnosis of plaintiff's diabetic condition. From about January, 1999 to the present date.

2). A copy of the treating physicians (at Utah State Prison) of all medications prescribed for plaintiff's diabetes, including the dosages of the prescribed medication from about Jan. 1999 to Jan. 2006. This record must include any dietary food supplements.



## Exhibit X

- ✓ The specialist who diagnosed and treated the injured eye's diagnosed Glaucoma.
- 11). Plaintiff requires a copy of all bloodsugar levels log and record of dosage administrations made by defendant medical technician, "Lisa" from about Jan. 2003 through January, 2005.
- ✓ 12). A statement from the Prison's Administration, and/or the Department of Correction's reasons for transferring medical technician, Lisa, and Physician's Assistant, Barbara Hennigar
- 13). Detailed medical record of what procedures were performed by the Physician, Barbara Hennigar, and medical technician, Lisa, immediately after plaintiff passed out and fell, and injured the left eye
- ✓ 14). Any written, or other type of statement from both the Physician's Assistant, Barbara Hennigar, and medical technician, "Lisa" regarding the injury
- ✓ 15). A complete set of records from the Moran Eye Clinic, including initial contact through present date, also include dates for appointments for treatment, both tentative, and actualized.

Petitioner hereby request defendants provide the above enumerated records along with all others required by Rule 26 of the Utah Rules of Civil Procedure

Signed this 20<sup>th</sup> day of August, 2006.

Signature: \_\_\_\_\_  
Lawrence M. Jackson, Pro-Se.

Exhibit W

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson

Plaintiff,

MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGEMENT

v.

Civil No. 040600383

THE STATE OF UTAH, et al., Judge, Wallace A. Lee  
Defendants,

Comes now the plaintiff, pro-se, and does hereby respectfully submit this memorandum in support of a motion for summary judgment, pursuant to Utah Rules of Civil Procedure Rule 56(c).

In support of this memorandum, the plaintiff states the following:

#### PROCEDURAL HISTORY

- 1). The plaintiff filed a Complaint for Medical malpractice and Constitutional violations in the Sixth District Court on 11-17-04.
- 2). On 02-16-05, the defendants filed a motion to Dismiss pursuant to U.R.Civ.P. Rule 12(b)(6).
- 3). On 03-29-05, the plaintiff filed a motion to Amend the pleadings.

## EXHIBIT W

- 4). On January 6, 2006, the Court ruled on the State's Motion to Dismiss, ruling in part for the State, and in part for Plaintiff, and additionally ruled on Plaintiff's Motion to Amend the Complaint, and also directed Plaintiff to serve a copy upon all parties to the lawsuit.
- 5). On March 15, 2006, Plaintiff served Counsel for the defense a duplicate of the Amended Complaint.
- 6). On April 26, the Utah Attorney General's Office filed an Answer to the Amended Complaint.
- 7). Then on May 11, 2006, the defendants filed a Motion for Judgment on the Pleadings.

## ARGUMENT II

The Plaintiff is Entitled to Partial Summary Judgment, As To Some Material Facts Admitted By The Defendants.

The Utah Rules of Civil Procedure Rule 56(c) provides essentially that "Summary judgment is appropriate if the pleadings, depositions, affidavits, and admissions submitted in a case show that there is no issue of material fact and that the moving party is entitled to a judgment as a matter of law. See: Candler v. A.L. Williams & Assocs., Inc., 739 P.2d 634-637 (Utah Ct. App. 1987) ("In considering a summary judgment motion, the Court must evaluate all the reasonable inferences fairly drawn from the evidence in a light most favorable to the party opposing summary judgment."); see also: Frisbee v. K & K Const. Co., 676 P.2d 387, 389 (Utah 1984) ("Judgment should only be granted when it appears 'There is no reasonable probability that the party moved against could prevail.'").

The defendants, in their Answer to Plaintiff's Amended Complaint, admitted certain facts that in sum would reasonably lead to a factual conclusion that there is no issue of material fact in the following issues:

1). The State's liability, respecting the State's Duty to provide adequate and timely medical treatment.

1). In the defendants answers to "Plaintiff's Unnumbered factual Allegations," #1), The state admits that the "plaintiff is an insulin dependent diabetic." see: (Def. Answer to Amended Comp', pg. 3, para. 1).

2). The defendants admit that, "Plaintiff refused to take his insulin dosage on November 7, 2003 and on November 8, 2003."

(3). The state avers that "Plaintiff refused" at 7:59 am to take his insulin and that at 12:55 pm, Lisa reported to Physician's Assistant Barbara Hennagier that plaintiff was taking a sliding scale of insulin at a higher dosage than ordered. The State asserts that Hennagier recorded in Plaintiff's chart that he could only take the ordered dosage, and that if he believed he needed more he would have to put in a healthcare request (HCR) to see Dr. Burnham."

(4). That, "Upon information and belief, the state admits that Plaintiff either stopped eating altogether or ate very little during the period from November 7 through November 9, 2003.

(5). "The state admits that on or about November 9, 2003, Plaintiff fell and hit his face on a stool in his cell. The state admits that Plaintiff injured his eye when he fell."

In sum, the defendants' answer reveals that defendants knew I was an insulin dependent diabetic; that plaintiff refused to

## Exhibit W

take an insulin dosage, "other than the amount of insulin he believed he should have." (Def. pg 5; Count I); that medical personnel, including Ms. Barbara Hennagier was aware that I had refused taking an amount of insulin that I "believed". I should have, and made notation in plaintiff's chart respecting the alleged prescribed amount, but omitted telling plaintiff of decisions by medical personnel regarding my healthcare; Further that, medical personnel was aware that not only had I discontinued my insulin dosages, but had stopped eating as well, The defendants deny that plaintiff was off the insulin and food for (1) five days, but rather (2) two days, then, defendants admit that I fell and injured my eye, but did not expressly admit or deny that my being off the insulin and food was the causal connection to the injury.

Based on the foregoing, defendants have admitted all the essential facts to establish

## ARGUMENT II

The State's Actions and Omissions in Violation of State Statutes Regarding The Violation of Legally Binding Court Order Pursuant to Utah Judicial Code § 78-35-5 Supports a Finding of Constitutional Rights Violations

In the face of a legally binding Court Order, see: (Jackson v. Friel et al., 3rd Dist. Ct.; case #010904240; entered on: 9-11-01), the State had a legal duty imposed upon it, see: Utah Judicial Code § 78-35-5 this statute provides:

[Penalties for wrongful acts of Defendants] "If the defendant attempts to evade the service of the writ of Habeas Corpus, or if the defendant or any officer willfully fails to comply with the legal duties imposed upon him, or if he disobeys the Order of discharge, he is guilty of a class B misdemeanor and shall forfeit to the person aggrieved not more than \$5,000."

Any person knowingly aided in or abetting invalidation of this section is subject to the same punishment and forfeiture."

The State, and medical personnel knowingly violated this provision because they knew of the controversy and had the means to remedy it before it developed into deprivation of medical treatment. The record demonstrates the state's indifference is made manifest by their level III Grievance Response, (already provided a copy to the court attached to the original Complaint), wherein they asserted that they "could not make me take the insulin." When viewed against the backdrop of The State's Answer to The Amended Complaint, see: (Def. Answer; pg. 4, para. 1). The physician's Assistant, Barbara Hennagin, recorded in plaintiff's chart that he could only take the ordered dosage, and that if he believed he needed more he would have to put in a healthcare request (HCR) to see Dr. Burnham; yet, defendants do not say at anytime they told me what they had recorded, including that I would need to put in an (HCR) to address the dosage discrepancy. The state's answers thus establishes that medical unit personnel delayed access to a health care provider, and "willfully failed to comply with a legal duty imposed upon them," in violation of U.C.S 78-35-5; and the U.S. Constitution Amendment VIII; and Constitution of Utah Article I, Section 9, A flagrant violation.

### ARGUMENT III

The Defendants Foreknowledge of a Harmful Medical Situation Existed Prior to Actual Injury and Defendant's Inaction Supports a Finding of Deliberate Indifference and Unnecessary Rigor.

The defendant's Answer to The Amended Complaint reveals that defendants were actually apprised that there was a discrepancy of what my prescribed dose of insulin was. (Def. Answer; pg. 3 & 4, (pg. 5)

para. 1.). The record also reveals that the proper way to remedy the situation was to get in to see a healthcare provider, but did not tell plaintiff this at no time; Nor does the record show that an appointment was ever scheduled. The plaintiff has argued that the medical unit had, "adopted a policy to out wait the plaintiff which resulted in the injury alleged." see (Pl. Resp. to Mot. to Dis'm., pg. 12, para. 1). The defendant's Answer to Amended complaint supports this allegation of "deliberate indifference and unnecessary rigor." (Def. Answer to Amend. Comp'l.; pg. 4, para. 1). See: Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L.Ed. 2d 251 (1976).

The defendant's admission that although the medical staff made a note entry in plaintiff's medical charts, "that he could only take the ordered dosage, and that if he believed he needed more he would have to put in a healthcare request (HCR) to see Dr. Burnham," supports a finding that they, knowingly and willfully, violated the court order, thus committing a constitutional violation under The U.S. Constitution Amend. VIII and the violation was, "deliberate," within the meaning ascribed to within the Constitution of Utah Article 2, section 9.

Also, by virtue of their knowledge and practice in the medical profession, the medical unit, knowing that plaintiff was without insulin and food for what plaintiff contend was (5) days, and defendant claims it was only (2) two days. Under the language of the court order, even (2) two days is a violation of its provisions and proscriptions. The defendants did not attempt to ascertain who was right, me, or the medical technician, Lisa, by virtue of the inmate versus prison officials relationship, they assume that Lisa was right and that the plaintiff was wrong based solely upon her, (Lisa's) characterization of what amount I attempted to take, the medical unit knows only what Lisa said and based their conduct on her words. This was obduracy

Exhibit V

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**DISTRICT COURT, STATE OF UTAH  
COUNTY OF SANPETE**

160 North Main, P.O. Box 100  
Manti, Utah 84642

Telephone (435) 835-2131 Facsimile (435) 835-2135

<b>LAWRENCE M. JACKSON,</b>  Plaintiff,  vs.  <b>STATE OF UTAH, et. al.,</b>  Defendants.	<b>MEMORANDUM DECISION</b>   Case No. 040600383  Assigned Judge: <b>Wallace A. Lee</b>
---	---

Several motions filed by the plaintiff are pending before the Court in this case: (1) motion for enlargement of time in which to file an amended complaint; (2) affidavit of impecuniosity; (3) motion for official service of process; (4) records request pursuant to the Governmental Records Access Management Act, Utah Code Annotated §63-2-202(1)(a); and (5) petition for judicial review of denial of a (GRAMA) records requests. Each motion is considered by the Court in this decision.

**1. Motion for Enlargement of Time in Which to File and Amended Complaint**

On 6 January 2006, the plaintiff received this Court's decision, allowing him to amend the complaint. The plaintiff filed this motion on 9 January 2006 before his time to amend the complaint expired. The plaintiff requested an extension until 9 February 2006 to file an amended complaint. Pursuant to Rule 6(b) of the Utah Rules of Civil Procedure, the Court grants the



Exhibit V

plaintiff's motion. The plaintiff's amended complaint will be considered timely if filed on or before 9 February 2006.

**2. Affidavit of Impecuniosity**

The plaintiff is seeking a waiver of fees and costs associated with these proceedings due to his inability to bear such costs. The plaintiff's request is supported by a properly executed affidavit of impecuniosity, showing that the plaintiff's only source of income is prison employment which provides a monthly income of \$60.00 (sixty dollars).

Utah Code Annotated, Section 78-7-36(2) prescribes that

any person may institute, prosecute, defend, and appeal any cause in any court in this state without prepayment of fees and costs or security, by taking and subscribing, before any officer authorized to administer an oath, an affidavit of impecuniosity demonstrating financial inability to pay fees and costs or give security.

Under this section and based on the plaintiff's affidavit of impecuniosity, the plaintiff is entitled to a waiver of fees, costs, or security and such is ordered.

**3. Motion for Official Service of Process**

The plaintiff petitions this Court to order "official service of process" because of the plaintiff's inability to pay for the service of process. The amended complaint alleges claims against two defendants, the State of Utah and "Lisa.." The State of Utah has been served with the original complaint by the Clerk of the Court at the time this action was commenced. Therefore, the amended complaint may simply be mailed by the plaintiff to the Utah Attorney

Exhibit V

General's Office. It is not clear if the plaintiff has already done so because the certificate of service accompanying the amended complaint does not include the date on which the amended complaint was sent to the Office of the Utah Attorney General.

The defendant "Lisa," has never been served with the original complaint. The plaintiff's action against the defendant "Lisa" is a private cause of action for a personal injury. The Court sees no mechanism under the Utah Rules of Civil Procedure that would allow the Court to order official service of process on defendant "Lisa." The Court is aware that it may be difficult for the plaintiff to locate defendant "Lisa" and to properly serve her with the amended complaint. However, the Court cannot provide legal or procedural support or advice to the plaintiff. On this basis, the plaintiff will simply need to retain counsel to represent him or review Rule 4, Utah Rules of Civil Procedure, and find an appropriate mechanism under the rules to effect service of process.

The plaintiff's motion for official service of process is denied.

**4. Records Request Pursuant to the Governmental Records Access Management Act, Utah Code Annotated §63-2-202(1)(a)**

On 17 November 2005, the plaintiff filed a request with the Division of Institutional Operation, Central Utah Correctional Facility's Bureau of Medical Services for copies of his medical history. According to the plaintiff, the request has been only partially satisfied. The plaintiff says that he did not receive copies of several documents necessary for pursuing his cause of action. The plaintiff is asking for the Court's assistance in obtaining the documents and the

# Exhibit V

JACKSON V. UTAH, *et.al.*, Case No. 040600383

Memorandum Decision

Page 4

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waiver of fees associated with duplicating and mailing the documents to the plaintiff.

Under Utah Code Annotated, Section 63-2-203(4)(b) and (c), a governmental entity is encouraged to fulfill a record request without charge when it determines that “the individual requesting the record is the subject of the record or the requester’s legal rights are directly implicated by the information in the record, and the requester is impecunious.” Therefore, the governmental entity has discretion to determine whether the plaintiff’s fees and costs are waived. The statute does not give the Court any such power. The plaintiff may petition the governmental entity that is responsible for the release of records for a waiver of charges.

The Court may assist the plaintiff in obtaining the necessary documents by issuing an Order pursuant to Utah Code Annotated, Section 63-2-202(7)(a). This section provides in pertinent part: “a governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge ... provided that the record deals with a matter in controversy over which the court has jurisdiction.” However, the Court declines to execute the requested order at this time because the Court has not been provided with sufficient information concerning the governmental entity’s response to the plaintiff’s records request. Specifically, the plaintiff did not submit to the Court any verification of denial, partial denial, or approval of his request for medical records by the Utah Correctional Facility Bureau of Medical Services. No action will be taken regarding this motion until more information is provided by the plaintiff. Therefore, the motion is denied.

## **5. Petition for Judicial Review of Denial of a (GRAMA) Records Request**

Exhibit V

The plaintiff is also seeking judicial review of the denial of his request for medical records under Utah Code Annotated, Section 63-2-404(2)(ii). The plaintiff's petition should be denied because such review is not available to the plaintiff at this time, because the plaintiff has failed to exhaust his administrative remedies.

Judicial review is available under Section 63-2-404(2)(ii) only after the complainant appeals the decision of the governmental entity to the chief administrative officer of the governmental entity pursuant to Section 63-2-401(1)(a) and receives an unfavorable answer or no answer. See Utah Code Ann., §63-2-402(1)(b).

There is no evidence in this case that the plaintiff has previously filed an appeal with the chief administrative officer. The plaintiff did not submit any decision or order by the chief administrative officer concerning the release of the records. Therefore, judicial review is premature and there is nothing for the Court to review.

The plaintiff's petition for judicial review is denied.

DATED this 2nd day of March, 2006.



WALLACE A. LEE, Judge

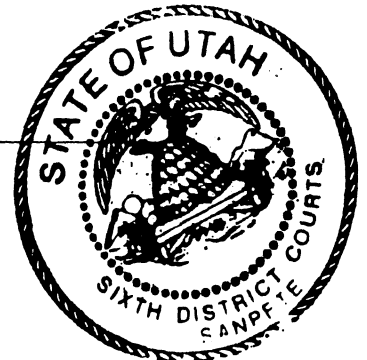


Exhibit U

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IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY  
STATE OF UTAH – MANTI DIVISION

---

LAWRENCE M. JACKSON,	:	<b>THE STATE'S MEMORANDUM IN</b>
	:	<b>OPPOSITION TO PLAINTIFF'S</b>
Plaintiff,	:	<b>MOTION TO STRIKE</b>
	:	<b>DEFENDANT'S JOINT MOTION</b>
vs.	:	<b>AND STIPULATION AND TO</b>
	:	<b>PLAINTIFF'S MOTION TO</b>
	:	<b>COMPEL DISCOVERY</b>
	:	
STATE OF UTAH, et al.	:	Case No. 040600383
	:	
Defendants.	:	Judge Wallace A. Lee
	:	

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Pursuant to Rule 7(c) of the Utah Rules of Civil Procedure, Defendant State of Utah files this memorandum opposing Plaintiff Lawrence Jackson's (1) Motion To Strike Defendant's Joint Motion And Stipulation, and his (2) Motion To Compel Discovery.

# Exhibit U

## INTRODUCTION

I, Plaintiff Lawrence Jackson's Motion to Strike the Joint Motion and Stipulation the parties previously filed cannot be granted because it is moot. First, the proposed order that would have implemented the joint stipulation was never signed by the Court. Second, the Court has addressed each issue raised in the stipulation either in its December 7, 2006 memorandum decision or during the telephonic conference on December 20, 2006. Thus, there is no order to strike and no remaining legal issues that striking the stipulation would affect.

II Jackson's motion to compel discovery is similarly moot. Jackson raised the issue of needing more medical records during the December 20, 2006, telephonic conference. The Court declined to allow Jackson additional discovery. Jackson has given no valid reason for the Court to reconsider its recent decision or to require the State to produce the various documents he has requested.

## RELEVANT FACTUAL BACKGROUND

I, 1. In November 2006, the parties reached an agreement to engage in limited discovery and to allow Jackson to supplement his complaint. The agreement also provided the State would assist Plaintiff in obtaining signatures for affidavits from other inmates. In exchange, Plaintiff agreed the State would not have to respond to Plaintiff's motion for summary judgment.

2. The agreement was formalized in a Joint Motion And Stipulation To Allow Limited Discovery And To Allow Plaintiff To Supplement The Pleadings (hereinafter "Joint Motion"), which Plaintiff signed. A copy of the Joint Motion and proposed order are attached as **Exhibit A.**

## Exhibit U

II. 3. Consistent with the agreement, on December 4, 2006, the State sent Jackson copies of Department of Corrections medical records from November 2003 through December 2004. The State also sent one of the signed affidavits Jackson had requested and returned two of the affidavits unsigned. The State explained in a letter that two of the inmates had declined to sign the affidavits. (*See* Letter of 12-4-06 from Zeller to Jackson, a copy of which is attached as Exhibit B.)

4. On or about December 4, 2006, Jackson filed a motion seeking to set aside the agreement the parties had reached, captioned, "Motion for Enlargement of Time to File Motion in Opposition To Alleged Agreement and Motion To Strike Agreement."

I. 5. On December 7, 2006, the Court issued a memorandum decision granting several motions Jackson had filed before the parties entered their agreement. (*See* Mem. Dec. of December 7, 2006.) The Court ruled that Jackson could amend his complaint and supplement the pleadings and also ordered that the State would be required to assist Jackson in obtaining affidavits from inmates. (*See id.* at 4-6.)

6. On December 20, 2006, the Court held a telephonic conference, which was requested by the State.

I 7. Jackson appeared pro se and the State was represented by counsel. Counsel for the State explained it had requested the telephonic conference with the Court because Jackson had moved to set aside the Joint Motion and counsel wanted to be sure there was a record on the State's position. (*See* Transcript of 12-20-06, a copy of which is attached as Exhibit C, at 1-2.)

## Exhibit U

I. 8. The State explained to the Court that it had followed through with its commitment on the agreement and did not wish to respond to Plaintiffs' pending motion for summary judgment until after it had responded to Plaintiff's supplemental pleading. The State explained that since filing the motion for summary judgment, Jackson had sought to obtain affidavits and discovery to support the motion and also had sought to add new claims. The State explained that it wished to respond to only one summary judgment motion with all claims and all evidence supporting those claims. (*See id.* at 2.)

9. Jackson argued that he needed more medical records in addition to the ones the State had sent him. The State responded that it had provided those records that they had received from the Department of Corrections and did not have any additional records. (*Id.* at 3.)

10. After hearing from Plaintiff, the Court agreed with the State that it should only be required to respond to one motion for summary judgment. (*Id.* at 3-4.)

11. The Court did not order the State to provide the additional medical records Jackson sought. (*See id.* at 4-5.)

12. Consistent with its December 7, 2006 order, the Court ruled the State would have 20 days from the date of that order to file a response to Plaintiff's supplemental pleadings. (*See id.* at 3-4.)

I 13. The Court further ruled that proceedings would be stayed, and that Jackson would have 30 days after the State filed its response to the supplemental pleadings to renew his motion for summary judgment, using the medical records and affidavits if appropriate, and to move for summary judgment on the new claims if Jackson so desired. (*Id.* at 4.)



# Exhibit U

14. Less than two weeks after the Court's rulings, on or about January 1, 2007 and January 3, 2007, Jackson filed the current motions seeking to set aside the Joint Motion and to compel discovery.

## ARGUMENT

### **I. JACKSON'S MOTION TO STRIKE THE STIPULATION SHOULD BE DENIED AS MOOT.**

Because the Court never signed the order implementing the parties' Joint Motion, Jackson's motion to strike the stipulation is moot. Both parties signed the Joint Motion, and it was filed with a proposed order on or about November 17, 2006. (*See* Exhibit A.) The Joint Motion expressly states that the parties requested an order implementing the Joint Motion. (*See id.* at 1.) However, the Court did not sign the order and without an order implementing the Joint Motion, there is no reason to set it aside.

Moreover, the Court has already ruled on the one agreement in the Joint Motion that Jackson's motion to set strike is aimed at—the agreement that the State would not have to respond to Jackson's pending motion for summary judgment. (*See e.g.*, Jackson's Mem in Supp. of Mo. to Strike at 4.) During the December 20, 2006 telephonic conference, the Court agreed with the State that it should not have to respond to the pending motion for summary judgment given that Jackson was seeking additional evidence to support that motion (the medical records and the affidavits) and given that Jackson was adding new claims. (*See* Exhibit C at 3-4.) The Court also ruled that Jackson could re-new his prior motions for summary judgment. (*See id.* at 3.) Thus Jackson suffers no prejudice if the State is not required to respond to the pending

## Exhibit U

motion for summary judgment since Jackson can re-new that motion (or file a new one if he wishes) based on the affidavits and medical records he has obtained.

In short, there is simply no reason for the Court to strike the Joint Motion. There was never an order signed implementing the Joint Motion, the Court has already ruled on the one stipulation Jackson seeks to have set aside, and Jackson suffers no prejudice if, as the Court has ruled, the State is allowed to defer responding to Jackson's motion for summary judgment. Jackson also seeks sanctions against counsel for alleged fraud. The Court should declare to award sanctions based on Jackson's unsupported allegations. There is no evidence of fraud in the record; the record in fact shows counsel complied with her obligations in the Joint Motion and immediately contacted the Court to resolve Jackson's request to set aside the Joint Motion.<sup>1</sup>

### **II. JACKSON'S MOTION TO COMPEL DISCOVERY SHOULD BE DENIED AS THE COURT HAS ALREADY HEARD AND REJECTED JACKSON'S ARGUMENT.**

During the December 20, 2006 telephonic conference, Jackson complained to the Court that the medical records he received did not include copies of records from the University of Utah Moran Eye Center, where he received treatment. (*See* Exhibit C at 3.) Counsel for the State explained that the State only has copies of its records maintained by the Utah Department of Corrections (DOC). DOC does not have copies of the Moran Eye Center records. (*Id.* at 4.) The Court did not order the State to take any action to obtain the medical records in question. Rather, the Court ordered proceedings stayed until the State answered Jackson's supplemental

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<sup>1</sup> Jackson also seeks sanctions against counsel for alleged fraud. The Court should decline to award sanctions based on Jackson's unsupported allegations. There is no evidence of fraud in the record; the record in fact shows counsel complied with her obligations in the Joint Motion and immediately contacted the Court to resolve Jackson's request to set aside the Joint Motion.

## Exhibit U

pleadings (and an answer to the amended complaint Jackson may file) and until Jackson filed a renewed motion for summary judgment. (*Id.* at 3-4.)

Jackson's motion to compel discovery should also be denied because he has asked the Court to order the State to produce medical records that Jackson can obtain on his own. For example, Jackson seeks "A complete set of records from the Moran Eye Clinic." Jackson can request these records himself through the DOC medical records custodian who, in turn, can request the records from the Moran Eye Center. The State is certainly not required to obtain and provide Jackson's own medical records, records he himself can request and obtain.

### CONCLUSION

Based on the foregoing, the State respectfully asks the Court to deny Jackson's motion to strike the Joint Motion and deny Jackson's motion to compel discovery.

DATED this 22<sup>nd</sup> day of January, 2007.

MARK L. SHURTLEFF  
Utah Attorney General

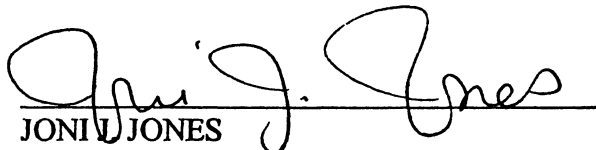
  
JONI V. JONES  
Assistant Utah Attorney General  
Litigation Division  
Attorneys for Defendants

Exhibit 1 (3)

FILED  
SANPETE COUNTY, UTAH

Lawrence M. Jackson #28879  
SSD-A-103-B  
Utah State Prison  
P.O. Box 250 Draper, Utah 84020

2007 APR 12 AM 11 14

SANDY NEILL  
SANPETE COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff,

PETITION FOR JUDICIAL  
REVIEW OF DENIAL OF GRAMA  
RECORDS REQUEST APPEAL

V.

Civil No: 040600383

THE STATE OF UTAH, et al,  
Defendants.

Judge, Wallace A. Lee

Pursuant to the provisions of the Governmental Records Access Management Act, (GRAMA), Utah Codes Annotated § 63-2-402 (1)(b), the plaintiff hereby Petition this Court for Judicial Review of A (GRAMA) Records Request Appeal.

In support of this petition the petitioner states the following:

1). The petitioner filed an Amended Complaint for Medical Mal practice and Constitutional Rights Violations on 1-16-07.

2). On December 20, 2006 the defendant's counsel requested a telephone conference between the parties and the Court. The defendant's counsel expressed dissatisfaction with the plaintiff's motions filings with the court. The defendant's stated: "I would like some sort of control over this case so there aren't constant motions, etc. that we're responding to." (defendants were requesting the control for themselves). see: Def. Trans. Teleph. Confer.; pg. 2; para. 3.

## Exhibit 1 (3)

3). Since that conference, the U.S. mail system has become at the least, very un dependable, and there is some evidence that the prison officials have since intercepted petitioner's legal mail to the court and diverted them to the office of the Utah Attorney General's Office, namely, Joni J. Jones, Assistant Attorney General.

4). In an effort to obtain further evidence I wrote a GRAMA Records Request for a record of all incoming and outgoing legal mail from and to the petitioner herein, Lawrence M. Jackson.

5). On 1-26-07 petitioner submitted a GRAMA Records Request regarding the missing or stolen legal documents placed in the prison mail system. Again, when there was no answer, on 2-8-07 I filed another GRAMA Records Request for a record of all incoming and outgoing legal mail by and for the petitioner since 12-20-06. Again, on 3-7-07 I filed yet another GRAMA Records Request. On 3-13-07 yet another GRAMA Records Request was submitted. All those requests were ignored by respondents.

6). On 3-20-07 petitioner filed a GRAMA Records Request Appeal on the mail issue and it too was ignored and otherwise not responded to.

7). Since the issue of mail tampering, rifling, and confiscation of legal mail from the U.S. Postal Service, petitioner has forwarded through the mail a letter on 1-26-07 to; Draper City Mail Post Office & Post Master General requesting a trace being placed in order to ascertain the fate of my legal mail to the Sixth District Court; petitioner also forwarded through the prison mail a letter regarding the missing legal mail to the Federal Bureau of Investigation, FBI, for an investigation of allegations of tampering with, and otherwise confiscating legal mail by prison officials and the office of the Utah Attorney General. These letters have fallen to the same fate as the missing legal mail.

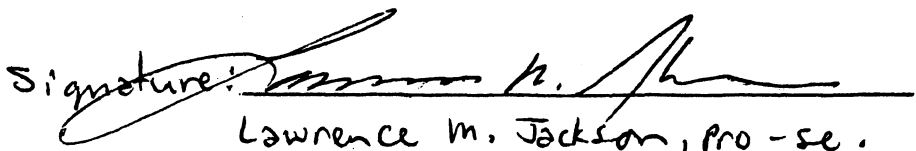
## Exhibit T (3)

8). Since the legal documents complained were part of petitioner's underlying Amended Complaint, petitioner is entitled to information as to the whereabouts of such legal documents because not only does the answer impact plaintiff's access to the court, but also tampering with U.S. mail, specifically legal mail to the courts and such tampering, confiscation and destruction of the same is intended to obstruct plaintiff's efforts for redress of wrongs perpetrated by the Utah State Government and its employees is, from plaintiff's understanding and belief, is a federal crime, and plaintiff has a fundamental constitutional right to have a legal remedy for criminal wrongs done by the state government and its employees.

WHEREFORE, petitioner prays the court review the denial of petitioner's GRAMA Records Request Appeal, and further grant the petitioner an Order directing the respondents/defendants to provide all requested documents, and all other documents relevant to the instant allegations of criminal and civil law violations perpetrated by the Utah State Government, and its employees, whether expressly requested herein or not, and all the court grant any and all remedies for which the plaintiff/petitioner is legally entitled.

The above statements are true and accurate to the best of my knowledge and belief.

Signed this 8<sup>th</sup> day of April, 2007.

Signature:   
Lawrence M. Jackson, Pro-se.

# Exhibit T(2)

FILED  
SANPETE COUNTY, UTAH

Lawrence M. Jackson #28879  
SSD-A-103-B  
Utah State Prison  
P.O. Box 250 Draper, Utah 84020

Original 2007 APR 4 PM 1 53

SANDY NEILL  
SANPETE COUNTY CLERK  
BY M. Lund DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff,

V.

THE STATE OF UTAH, et al.,  
Defendants

MOTION FOR ENLARGEMENT OF  
TIME TO RESPOND TO  
DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION TO  
COMPEL DISCOVERY AND  
MOTION TO FILE MARTINEZ  
REPORT

Civil No: 040600383

Judge, Wallace A. Lee

Comes now the plaintiff, pro-se, and does hereby make  
the Court for an Enlargement of Time in which to Respond to  
Defendant's Opposition to Plaintiff's Motion to Compel Dis  
covery AND Motion to File Martinez Report.

In support of this motion, the plaintiff states the follow  
ing:

- 1). The plaintiff recieved a copy of the above referenced  
motion and attached memorandum on 3-21-07.
- 2). The plaintiff is now attempting to access relevant case  
law and applicable statutes and rules of Civil Procedure  
in preparation of filing a response to defendant's motion.
- 3). The motion filed by defendant's should be addressed  
fully and finally, as these motions unjustly delays a judgement  
on the summary Judgment motion.

Exhibit T (2)

Lawrence M. Jackson #28879  
SSD-A-103-B  
Utah State Prison  
P.O. Box 250 Draper, Utah 84020

FILED  
SANPETE COUNTY T/H

2007 APR 12 AM 11:11

SANDY NEILL  
SANPETE COUNTY CLERK

BY 111 Lund DEPUTY  
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Petitioner,

PETITION FOR JUDICIAL  
REVIEW OF DENIAL OF GRAMA  
RECORDS REQUEST APPEAL

V.

Civil No: 040600383

THE STATE OF UTAH, et al.,  
Respondants.

Judge, Wallace A. Lee

Pursuant to the provisions of the Governmental Records Access Management Act, (GRAMA), Utah Codes Annotated § 63-2-402(1)(b), the plaintiff hereby petition this court for Judicial Review of A (GRAMA) Records Request Appeal.

In support of this petition the petitioner states the following:

1). The petitioner filed an Amended Complaint for medical mal practice and Constitutional Rights Violations on 1-16-07.

2). Plaintiff filed a Request for Discovery for a complete medical care records from the Moran Eye Clinic in Plaintiff's First Request for Discovery on 8-20-06.

3). Several months past and there was no response plaintiff then filed a motion to Compel Discovery on or about Dec. 31, 2006.



**Sanpete County Court House**  
**160 North Main**  
**Manti, Utah 84642**



Assessor:	Kenneth Benson
Attorney:	Ross C. Blackham
Auditor:	Ilene B. Roth
Clerk:	Sandy Neill
Recorder:	Reed D. Hatch
Sheriff:	Kevin Holman
Treasurer:	Earl D. Clark

Commissioners: Claudia Jarrett (Chair), Bruce Blackham, Mark Anderson

---

Exhibit T (2)

April 30, 2007

Lawrence M. Jackson

RE: Letter

Dear Mr. Jackson:

I received your letter requesting verification of receipt of the Second Petition. I have not received a Second Petition. I have attached the first page of all the filings received in April, 2007.

Sincerely,

Chad Roberts  
Deputy Court Clerk

# Exhibit T(2)

FILED  
SANPETE COUNTY, UTAH

2007 APR 27 AM 10 09

Lawrence M. Jackson #28879  
Oquirrh III-109-B  
Utah State Prison  
P.O. Box 250 Draper, Utah 84020

SANDY NEILL  
SANPETE COUNTY CLERK  
BY L. Roberts DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff,

V.

THE STATE OF UTAH, et al.,  
Defendants.

MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S MOTION THAT  
THE STATE BE ALLOWED TO  
FILE A MARTINEZ REPORT  
AND STAY OF PROCEEDINGS

Civil No: 040600383

Judge, Wallace A. Lee

Comes now the plaintiff, pro-se, in the above entitled matter and does hereby submit this memorandum in opposition of Defendant's motion that the State be allowed to file a Martinez Report and for a stay on proceedings until Martinez Report is filed.

In support of this memorandum the plaintiff states the following:

## PROCEDURAL HISTORY

(As Relating To The motions Including Discovery)

- 1). On 11-17-04 the plaintiff filed a Complaint for medical malpractice and Constitutional Rights violations
- 2). On 11-29-04 the plaintiff filed a "motion for Official Service of Process" and the issuance of a Summons thereon occurred.

Lawrence M. Jackson #28879

Oquirrh III-204-B

Utah State Prison

P.O. Box 250

Draper, Utah 84020

2-7-07

Exhibit T(1)

The Sixth District Court

In the Office of the Honorable, Wallace A. Lee

160 North main Street

P.O. Box 100

Manti, Utah 84642-0100

re: Jackson v. The State of Utah, et al., 6<sup>th</sup> Dist. Ct., Case # 040600383

Dear Judge, Lee

I am enclosing this letter in an effort to determine how I should proceed at this juncture. I don't know if you received my last letter or not. It seems that all my mailings since December 20, 2006 teleconference my legal mail is coming up missing. In January, 07 I sent a letter to the Court regarding the Supplemental Pleadings. On January 12, 2007, I sent a second Request for Discovery primarily on the allegations in the Supplemental Pleadings. On Monday, February 12, 2007 it will be one month since the second Request for Discovery. I don't know if the Certificate of Service reached your Court, because the last entry date on the recent Docket Event Statement is 1-16-07.

If your Court has not received the Certificate of Service for the Second Request for Discovery; or the Motion to Strike Defendants' "Joint Motion And Stipulation; The Motion to Compel Discovery; The Original Affidavits by: Percy Wilder, Inmate, USP; James M. Stills, Inmate, USP; Paul Nelson, Inmate U.S.P., and other letters I have sent to this Court since December 20, 2006.

If the above mentioned documents, including a letter explaining that I was engaged in attempting to obtain discovery items for the Supplemental Pleadings. If your office did not receive these items, I would greatly appreciate it if you would construe this letter as a motion

# Exhibit T

Lawrence M. Jackson #28879  
Oquirrh III-204-B  
Utah State Prison  
P.O. Box 250 Draper, Utah 84020

FILED  
SANPETE COUNTY, UTAH

2007 JAN 16 PM 12 36

KRISTINE FRISCHKNECHT  
SANPETE COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

Lawrence M. Jackson  
Plaintiff,

SUPPLEMENTAL PLEADINGS

v.

Civil No. 040600383

THE STATE OF UTAH, et al.,  
Defendants.

Judge, Wallace A. Lee

Comes now the plaintiff in the above entitled matter and does hereby submit this Supplemental Pleadings pursuant to Utah Rules of Civil Procedure Rule 15 (d).

In support of this pleading the plaintiff states the following:

## PROCEDURAL HISTORY

(Relating to subsequent acts and omissions)

1). On November 17, 2004, plaintiff filed a complaint for medical malpractice and Constitutional Rights Violations.

2). On February 16, 2006, the state filed a motion to Dismiss, together with a memorandum in support of motion to Dismiss.

3). On January 6, 2006, the court entered on the record, a memorandum Decision and Order granting in part and denying in part

# Exhibit T

Lawrence M. Jackson #28879  
Oquirrh - III - 204-B  
Utah State Prison  
P.O. Box 250 Draper, Utah 84020

FILED  
SANPETE COUNTY, UTAH

2007 JAN 16 PM 12 35

KRISTINE FRISCHKNECHT  
SANPETE COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff,

v.

THE STATE OF UTAH, et. al.,  
Defendants.

AMENDED COMPLAINT FOR  
MEDICAL MALPRACTICE AND  
CONSTITUTIONAL RIGHTS  
VIOLATIONS

Civil No: 040600383

Judge, Wallace A Lee

The plaintiff, in the above entitled matter does hereby submit this Amended Complaint for Medical malpractice And Constitutional Rights Violations.

In support of this Complaint the plaintiff states the following:

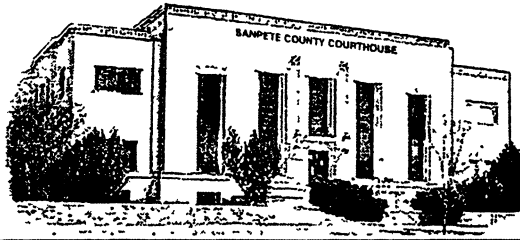
1). The plaintiff, Lawrence M. Jackson is an inmate who was housed in the Central Utah Correctional Facility, (CUCF), during the relevant times when the cause of action accrued.

2). The plaintiff now is housed at the Utah State Prison, Oquirrh III-204-B, P.O. Box 250 Draper, Utah 84020.

3). Jurisdiction is conferred upon this court as provided in the Utah Judicial Codes § 78-3-4.

4). Venue is proper, in that the acts and omissions giving rise to the cause of action were committed while housed at the Central Utah Correctional Facility, hereinafter, (CUCF).

**Commissioners:**  
**Claudia Jarrett, Chair**  
**Bruce Blackham**  
**Mark Anderson**



**Assessor: Kenneth Bench**  
**Attorney: Ross C. Blackham**  
**Auditor: Ilene B. Roth**  
**Clerk: Sandy Neill**  
**Recorder: Reed D. Hatch**  
**Sheriff: Kevin Holman**  
**Treasurer: Earl D. Clark**

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## Sanpete County Courthouse

160 N Main Manti, Utah 84642

Exhibit T

February 20, 2007

Lawrence M. Jackson

RE: Letter

Mr. Jackson, I have enclosed copies of the first page of everything filed in your case since January 16, 2007 as you requested. I would also like to inform you that Kristine Frischknecht is no longer the Sanpete County Clerk/Clerk of the Court as of January 1, 2007. Please direct all correspondents to Sandy Neill, P.O. Box 100, Manti, Utah 84642.

Thank you,

Chad Roberts  
Deputy Clerk

Exhibit T

FILED  
SANPETE COUNTY, UTAH

2007 JAN 16 PM 12 36

KRISTINE FRISCHKNECHT  
SANPETE COUNTY CLERK

BY Indund DEPUTY

1-11-07

Lawrence M. Jackson #28879

Oquirrh III - 204-B

Utah State Prison

P.O. Box 250

Draper, Utah 84020

Original

Sixth District Court

In The Office of Judge, Wallace A. Lee.

160 North main Street

P.O. Box 100

Manti, Utah 84642

re: Jackson v. The State of Utah, et. al., 6<sup>th</sup> Dist. Ct. #040600383

Dear Judge Lee:

I am writing this letter to explain that the understanding I came away from the teleconference of 12-20-06, was that I had (30) thirty days in which to file the enclosed Supplemental Pleadings, and Amended Complaint.

On or about 1-9-07 I recieved a copy of the State's Answer to the Supplemental Pleadings apparently in response to my memorandum in support of my motion to Supplement the Pleadings. I must therefore request that the court grant an additional amount of time in which to reply to the state's Answer.

I would ask that the court for an additional month so I can request some discovery based upon the State's Answer, and prepare a reply.

Thank you in advance for your continued patience and understanding in these matters I look forward to your reply in the near future.

Signed;

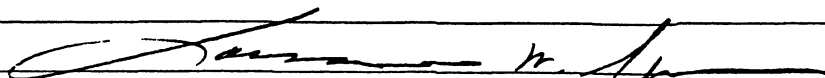


Exhibit T

FILED  
SANPETE COUNTY, UTAH  
2007 JAN 22 AM 11 48

SANPETE COUNTY CLERK  
BY Theresa DEPUTY

Lawrence M. Jackson #28879

Oquirrh III-204-B  
Utah State Prison  
P.O. Box 250  
Draper, Utah 84020

1-19-07

Original

Kristine Frischknecht  
Sanpete County Clerk  
1100 North main Street  
P.O. Box 100  
Manti, Utah 84642

re: Jackson v. The State of Utah, et al., 6<sup>th</sup> Dist. Ct.; case# 040600383

Dear Mrs. Frischknecht:

I am writing this letter to verify your receipt of an Affidavit of Impenun-  
osity, together with a letter from the Salt Lake Sheriff's Office, Civil Divis-  
ion. The letter is self explanatory, and requires the plaintiff to obtain  
approval from this court as to the determination of "Impenunosity"  
respecting plaintiff's ability to pay a process server to serve a Compl-  
aint and Summons upon Defendant, Medical Technician, Lisa Soper.  
If the court determines that the plaintiff is impecunious for the purposes  
of eligibility for service by the Sheriff's Office, the Sheriff's Office  
would then perfect service and Notice.

I would therefore respectfully request a docket event statement showing  
the Affidavit was filed with the court, and also verification of the filing  
of a 'Notice to Submit for Decision' respecting the above referenced Affidavit  
of Impenunosity; copy of Amended Complaint; summons, at your earliest  
convenience.

Thank you in advance for your prompt attention to this matter. I look forward  
to your reply in the near future.

signed;

Lawrence M. Jackson



Exhibit T

JONI J. JONES (7562)  
Assistant Utah Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
Attorneys for Defendants  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
Telephone: (801) 366-0100

FILED  
SANPETE COUNTY, UTAH

2007 JAN 25 AM 10 07

SANPETE COUNTY CLERK  
BY A. Roberts DEPUTY

---

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY  
STATE OF UTAH – MANTI DIVISION

---

LAWRENCE M. JACKSON,

Plaintiff,

vs.

STATE OF UTAH, et al.

Defendants.

: THE STATE'S MEMORANDUM IN  
: OPPOSITION TO PLAINTIFF'S  
: MOTION TO STRIKE  
: DEFENDANT'S JOINT MOTION  
: AND STIPULATION AND TO  
: PLAINTIFF'S MOTION TO  
: COMPEL DISCOVERY  
:

: Case No. 040600383  
:

: Judge Wallace A. Lee  
:

---

Pursuant to Rule 7(c) of the Utah Rules of Civil Procedure, Defendant State of Utah files this memorandum opposing Plaintiff Lawrence Jackson's (1) Motion To Strike Defendant's Joint Motion And Stipulation, and his (2) Motion To Compel Discovery.

Exhibit T

FILED  
SANPETE COUNTY, UTAH  
2007 JAN 31 AM 11 01

SANDY NEILL  
SANPETE COUNTY CLERK  
BY C. Roberts DEPUTY

JONI J. JONES (7562)  
Assistant Utah Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
Attorneys for Defendants  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
Telephone: (801) 366-0100

---

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY  
STATE OF UTAH – MANTI DIVISION

---

LAWRENCE M. JACKSON,	:	STATE OF UTAH'S ANSWER TO
Plaintiff,	:	SECOND AMENDED COMPLAINT
vs.	:	
	:	Case No. 040600383
STATE OF UTAH, et al.	:	Judge Wallace A. Lee
Defendants.	:	

---

Pursuant to the Court's order of December 7, 2006, the State of Utah hereby answers Plaintiff's [Second] Amended Complaint for Medical Malpractice and Constitutional Rights Violations (Amended Complaint, dated January 10, 2007) and asserts its defenses as follows:

**FIRST DEFENSE**

Plaintiff fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

The State responds to the allegations in the numbered paragraphs of Plaintiff's Second Amended Complaint as follows.

Exhibit T

FILED  
SANPETE COUNTY, UTAH

2007 FEB 16 PM 3 42

SANDY NEILL  
SANPETE COUNTY CLERK  
BY *M. Lund* DEPUTY

**DISTRICT COURT, STATE OF UTAH  
COUNTY OF SANPETE**

160 North Main, P.O. Box 100  
Manti, Utah 84642  
Telephone (435) 835-2131 Facsimile (435) 835-2135

**LAWRENCE M. JACKSON,**

Plaintiff,

vs.

**STATE OF UTAH, *et. al.*,**

Defendants.

**ORDER ON PLAINTIFF'S AFFIDAVIT  
OF IMPECUNIOSITY**

Case No. **040600383**

Assigned Judge: **Wallace A. Lee**

The plaintiff filed an Affidavit of Impecuniosity on 27 November 2006. The plaintiff requested this Court to approve his Affidavit on 28 December 2006.

Under Utah Code Annotated, Section 78-7-38(2)(a), the Court is required to obtain plaintiff's financial account statement for the past six months. The Court has done so. The plaintiff's account has carried a balance of \$0.28 for the past six months. The plaintiff's Affidavit also shows that he has no financial resources available to him.

Based on this information, the Court concludes that the plaintiff is impecunious.

# Exhibit 5

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

IN AND FOR SANPELE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff

v.

MEMORANDUM IN OPPOSITION  
TO DEFENDANT'S MOTION THAT  
THE STATE BE ALLOWED TO FILE A  
MARTINEZ REPORT AND FOR A  
STAY ON PROCEEDINGS UNTIL  
MARTINEZ REPORT IS FILED

Civil NO: \_\_\_\_\_

THE STATE OF UTAH, et al.,  
Defendants

Judge, Wallace A. Lee

Comes now the plaintiff, pro-se, in the above entitled matter and does hereby submit this memorandum in opposition of Defendant's Motion That The State Be Allowed To File A Martinez Report And For A Stay On Proceedings Until Martinez Report Is Filed.

In support of this memorandum the plaintiff states the following:

## Procedural History

(as related to the motions, including discovery)

1). On 11-17-04, The plaintiff filed a Complaint for Medical malpractice and Constitutional rights violations.

2). On 11-29-04 the plaintiff filed a "motion for Official service of Process, and the issuance of summons Thereup on occurred.

(Pg. 2)

## Exhibit 5

- 3). On 2-16-05, the defendants filed a motion together with a memorandum in support of Motion to Dismiss, Pursuant to U.R.Civ.P. Rule 12(b)(6).
- 4). The court entered a Memorandum Decision and Order denying the defendant's motion to Dismiss in part, and dismissing plaintiff's claims in part under U.R.Civ.P. Rule 12(b)(6).
- 5). The defendants were thereafter ordered to answer the Amended Complaint, and they did so on 4-28-06.
- 6). The defendants subsequently filed a motion under U.R. Civ. P. Rule 12(c), Motion for Judgment on the Pleadings, on 5-12-06.
- 7). On 7-13-06, however, the defendants filed a "Request to Submit for Decision, (on the motion for Judgment on the Pleadings), And a Motion for Stay on Briefing on Plaintiff's motion for Summary Judgment.
- 8). The court granted defendant's motion staying briefing on the motion for summary judgment, until the court rules on the defendant's in a Motion for a Judgment on the Pleadings.
- 9). On 12-13-06, the court entered a ruling on outstanding motions including: Motion for Service of Summons by Other Means pursuant to U.R.Civ.P. Rule 4(g); Motion for Reconsideration of Court's Ruling and for leave of the Amended Complaint; Motion for an Order Requiring Defendants to make Available a witness for signing an Affidavit and Grant a Continuance; and the Motion to Supplement the Pleadings. court
- 10). On 12-20-06 the court, and the parties attended a telephone conference where the court discussed the submission of the second Amended Complaint, and the Supplemental Pleadings, and the possibility of filing an amended motion for Summary Judgment.

pg 3) memo. In Sup. Det. Mot.  
for Martinez Rept. And  
Stay of proc.

## Exhibit S

11). On 1-2-07 the plaintiff forwarded through the U.S. mail  
(a). Motion to strike the "Joint Motion and Stipulation"; and  
(b). Motion to Compel Discovery, and two Affidavits:  
(1). Affid. of Paul Nelson and Percy Wilder; &

12). On 1-16-07 the plaintiff filed plaintiff's Second Amended  
Complaint for Medical Malpractice, and Constitutional Rights  
Violations, and on 1-4-07 the defendants answered  
the Supplemental Pleadings, and 1-31-07 the defendants  
answered the Plaintiff's Second Amended Complaint.

13). Then, on 3-21-07 the plaintiff received, through the  
U.S. Mail, the defendant's Motion Requesting That the State  
Be Allowed to File A Martinez Report And That All Proceedings  
Are Stayed Until The Martinez Report Is Filed. The Plaintiff  
herein responds to that motion.

## Relevant Facts

1). On 4-28-06 the State of Utah filed its Answer to the amended  
complaint. In its Answer, claiming sovereign immunity,

2). Then, on 5-12-06 the State filed a Motion for Judgment on  
The Pleadings. The State, therein, claimed "sovereign immu-  
nity" - meaning the defendants had no right to sue the  
State for alleged constitutional violations.

3). Because the state had admitted essential elements to an  
allegation of constitutional rights violations, and in respon-  
se to the state's Motion for Judgment on the Pleadings, the  
plaintiff moved for summary judgment which was filed  
on 6-8-06.

on 6-8-06, however, the State filed an "Ex Parte motion

(pg. 4)

## Exhibit 5

For Extension of Time to Respond to Plaintiff's Motion for Summary Judgment and Reply to Defendant's Motion for Judgment on the Pleadings."

5). ON 6-21-06 The Court granted defendant's motion for a Time Extension.

6). The defendants then, on 7-13-06 filed a "Request to Submit for Decision (Judgment on the Pleadings), and Request to Stay briefing on Plaintiff's Motion for Summary Judgment," until a ruling was made on the Judgment on the pleadings motion for

7). The Court granted the defendant's motion staying the Briefing on Summary Judgment motion, on 8-4-06. The Order, (drafted by defendants, and presented to the judge for signing), required that the defendants that if the motion for Judgment on the Pleadings is denied the defendants must file their motion opposing the motion for Summary Judgment within (30) thirty days after the ruling on the Judgment on Pleadings motion.

8). ON 9-28-06; the Court entered a Memorandum Decision denying the Motion for Judgment on the Pleadings, and the thirty day period in which to file the opposing memorandum on the motion for Summary Judgment began on 9-29-06, and was due on 10-29-06.

9). Having missed the date of filing a timely memorandum in opposition to Plaintiff's Summary Judgment motion, the state sought an Agreement and Stipulation on outstanding motions and to unrepentantly add a proviso, that the state would not be required to respond to the motion for Summary Judgment.

10). On 12-13-06, the Court entered a Memorandum Decision granting: (1). Motion for Reconsideration of Court's Ruling and for Leave of the court to Amend the Complaint; (2). Motion For An Order Requiring

pg. 5) memo. IN p. 10 let's 110.  
for Martinez Rept.  
and Stay of Proc.

## Exhibits

Defendants to make Available a Witness for Signing an Affidavit and Grant a Continuance; and Motion for Supplemental Pleadings. Thus, the offending "Joint Motion And Stipulation" was Negated.

11). On 12-20-06, the parties, and the court convened a telephone conference regarding the "Joint Motion and Stipulation". The plaintiff expressed grave concern that the defendants counsel was acting in bad faith in trying to extricate it's failed Opposition to the plaintiff's Motion for Summary Judgment by adding a proviso that the defendants did not have to respond to the motion for Summary Judgment even though the defendants were over a week late in filing memorandum in Opposition to the Motion for Summary Judgment. The court gave plaintiff time certain to submit Supplemental Pleadings, and to file an Amended Complaint, and for if the plaintiff wanted to file an Amended Summary Judgment Motion, and the defendants would then be allowed to respond thereto.

12). On 1-4-07, even before the plaintiff was to submit the Supplemental Pleadings, the defendants filed an Answer to the Supplemental Pleadings.

13). The plaintiff filed the Supplemental Pleadings on 1-16-07, together with the Amended Complaint.

14). The defendant filed: State of Utah's Answer to Second Amended Complaint on 1-31-07.

15). On Jan. 2, 2007, the plaintiff also filed a Motion to Strike the Joint Motion and Stipulation, but the motion, memorandum, and exhibits thereto, together with at least (2) two original Affidavits were intercepted from the U.S. mail and was apparently forwarded to the Utah Attorney General's Office to Ms. Joni J. Jones, Assistant Attorney General where the motion and everything same for two original Affidavits were destroyed.



16). ON 8-20-06 The plaintiff filed a "First Request for Discovery, and when defendants did not respond fully, plaintiff filed a motion to Compel Discovery on Jan 2, 2007. This Motion concerned matters alleged in the Amended Complaint.

17). ON 1-25-07 The State filed a Memorandum in Opposition to Plaintiff's Motion to Strike Defendant's Joint Motion and Stipulation and to Plaintiff's Motion to Compel Discovery.

18). The plaintiff, on 2-20-07 plaintiff's Memorandum in Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion to Strike Joint Motion and Stipulation, and also a Memorandum in Reply to Defendant's Answer to Plaintiff's Second Amended Complaint.  
filed

19). ON 7-2-07, the plaintiff forwarded to Defendants a "Second Request for Discovery," referencing the allegations in the Supplemental Pleadings.

20). When it became apparent that the State would not respond to the Second Request for Discovery, the plaintiff filed a second Motion for an order compelling Discovery.

### SUMMARY OF ARGUMENTS

I. The Plaintiff's Requests for Discovery As submitted Are Lawful And Defendant's Refusal to Respond As Prescribed By The Applicable Rule of Discovery Is Subject to Court's Sanctions as provided in The Rules of Discovery.

The Defendant's Argument That The Plaintiff "Should Not Be Allowed To Conduct Discovery, Because The Court Has Stayed Proceedings Should Be Rejected Since The Reasons For The Stay No Longer Exist, And Defendants Present No Authority for This Argument.

(pg. 11) memo. in p. 11  
For Martinez Rept.  
And Stay of Proc.

## Exhibit 5

III. The Defendants' Motion To Be Allowed To Submit A Martinez Report Is In Fact Another Thinly Veiled Attempt To Extricate Their Omitted Challenge To The Motion For Summary Judgment And Must Be Denied In Light Of The Applicable Summary Judgment Rules.

### Argument I.

The Plaintiff's Requests For Discovery As Submitted Are Lawful And Defendant's Refusal As Proscribed By The Applicable Rule Of Discovery Are Subject To Court's Sanctions As Provided In The Rules Of Discovery.

(A) The plaintiff forwarded the Plaintiff's First Request for Discovery to the defendants on or about 8-20-06. See: Exhibit A; Pl. 1st Req. Disc'y, dated: 8-20-06. When it became apparent the defendants were not going to respond to the First Request for Discovery, the plaintiff filed a motion for a Discovery Conference on 10-19-06. The state, finally sent some of the requested documents. See: Exhibit B; Cover Ltr.; Joni J. Jones, Asst. A.G.; dated: Dec. 4, 2006.

Although it took 4 months to receive them.

The items of discovery I had requested, but not received were: (1). "Plaintiff requests a copy of Medical diagnosis of plaintiff's diabetic condition from about January 1999 to the present date"; (the records the defendants sent were from 10-31-03 to 4-24-06). The records from January, 1999 were needed to show the prescribed amounts of insulin and thus establishing the amount plaintiff was to receive when defendant, Lisa Soper, Nurse at The Central Utah Correctional Facility, hereinafter (CUCF), refused to give plaintiff a prescribed amount of insulin. The court, in its Memorandum Decision and Order, entered: 1-6, 2006; pg. 6; para. 4. determined:

"[I]t is possible that the plaintiff can recover damages if he is able to prove that "Lisa" deprived him of his regular dose of insulin with the intent to harm him. The Court finds that the plaintiff alleged sufficient facts to minimally state his claim."

The plaintiff could establish that "Lisa" "deprived" plaintiff of his regular dose of insulin with intent to harm plaintiff, by showing, in the state's medical records that I had requested my prescribed dose of insulin and Lisa Soper, defendant refused plaintiff that dosage. Number (2) in the Plaintiff's first request for Discovery also goes to establishing what amount of insulin was prescribed before the cause of action accrued.

Number (4). Of the Plaintiff's First Request for Discovery was requested to demonstrate two points: (a). that the healthcare providers did not owe a prohibitive amount of inmate patients that would justify not taking on (1). one to (2). two minutes to end the controversy by declaring to both the defendant, Nurse, Lisa Soper, and inmate Jackson, Plaintiff were in —; and (b). to establish that the plaintiff did in fact go without food and insulin for at least (5) five days. (the defendant's overs that there were only (2) two days without food or insulin).

Number (6). Of Plaintiff's First Request for Discovery, the tally of the amount of insulin administered, including the implements of delivery, i.e., podermic needles from about Jan. 2004 through January, 2005, should have been from January, 2003 to Jan. 2005. This request for documents would also serve to establish the amount of days the plaintiff was without food or medicine. The Department of Corrections' Medical Department believed to keep records of how much insulin and needles used to deliver insulin thus demonstrating that during the relevant times, the medical unit used less insulin, and fewer hypodermic needles during the relevant times.

(pg. 9) memo. In pp. Def. Mot.  
for Marlin. Rept. and  
Stay of Proc.

## Exhibit 5

Number (8)., "Copy of diagnosis and treatment of plaintiff's injured eye both at (CUCF), and Moran Eye Clinic between November 1, 2004 to present day," is requested in order to show that the defendants unjustifiably delayed treatment thus causing permanent impairment. The Supreme Court has held that delaying an inmate medical treatment once the need for such treatment is established is actionable under The U.S. Constitution's Amendment VIII. See: Estelle v. Gamble, 429 U.S. at 104-05.

In number (9), the requested (O-Track log record) would record plaintiff's movements during the relevant times, and was sought to corroborate plaintiff's allegations of unjustifiable delay in rendering the appropriate medical attention under the same grounds as number (8) above.

Number (10). seeks also to corroborate plaintiff's contention that the defendants delayed medical care in violation of the strictures of the U.S. Constitution Amendment VIII and given meaning in Estelle, Supra. The logic is that the treating physician's billing for services and supplies would reflect the times that the healthcare was rendered, and also may reflect that the treating specialist had arranged for medical consultation, and what consultations were met, and those not met.

The record request number (12). is self explanatory. It is obvious that if the named employees were transferred, or their employment was terminated for the acts alleged in the Amended Complaint, or similar acts upon other inmates, it is believed that such information would be admissible evidence. See: Utah Rules of Evidence Rule 405-406.

In number (15) of plaintiff's First Request for Discovery, the plaintiff requests the entire medical record from the Moran Eye Clinic. The rationale here is that there will almost certainly be other evidence in the medical record that may support my allegations. Those other evidence - plaintiff

may not know exist due to plaintiff's ignorance of medical practice or inability to refer to specific parts of the medical record for relevant and admissible evidence.

The Utah Rules of Civil Procedure Rule 34 (a)(1) provides The following:

(a). "Any party may serve on any other party a request  
(1). to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect or copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom the request is served."

Clearly, the plaintiff acted in accordance with this rule, 34(a)(1) in requesting the above enumerated records request. See also: Rule 34 (c), which provides:

(b). Procedure. "The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts."

The defendants in this action has a duty to follow the procedures described this, Rule 34(b) and are as follows:

(Pg. 11) Memo. v. vpp. m. m.  
for Martinez Rept. And  
Stay of proc.

## Exhibit S

(b). "The party upon whom the request is served shall serve a written response within 30 days after service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated."

The requesting party, in the event of an objection to all or part thereof may seek an order compelling discovery.

"If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit inspection as requested."

Conversely, when the defendants failed to produce the requested documents are unlawful and subject to court sanctions under Ut. R. Civ. P. Rule 37 (a) (2), (3) and (4). See also: Evans v. Evans, 98 Utah 189, 98 P.2d 703 (1940) ("Order of arrest of witness who refused to produce corporate minute book before Notary authorized to take depositions, because witness deemed such book had no bearing on the transaction involved in the suit, held unlawful"); see also: W.W. & W.B. Gardner, Inc. v. Park W. Village, Inc. 568 P.2d 734 (Utah 1977).

The same rationale applies in Plaintiff's Second Request for Discovery. The Second Request for Discovery were made, for the most part, particular to the facts as alleged in the Supplemental Pleadings. There were some items added in the second Request that were not

see: Exhibit C; Pl. Sec. Rep for Discovery

provided in the first Request for Discovery. The defendants, in the "Memorandum In Opposition To Plaintiff's Motion to Compel Discovery And In Support Of Motion For Martinez Report, pg. 3, Argument II. asserts that: "This court should also deny Jackson's motion to Compel Discovery because Jackson has requested information that he is not legally entitled to have. For example, Jackson asks the court to require the state to provide him with Lisa Soper's "place of legal residence", and her current place of employment." Further that: "The court doubtless is aware that the Department of Corrections is prohibited by law from giving out the home address of its current or former employees." The defendants rely upon Utah Code Ann. § 63-2-302(1)(f) (2004).

The Second Request for discovery is in conformance with Utah Rules of Civil Procedure Rule 26(b)(1). This rule provides, in relevant part:

(b). Discovery Scope and Limits. "Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1). In General. "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

The plaintiff has the right under the above cited rule to the "identity and location of persons having knowledge of any discoverable matter!" Certainly, the defendant, Nurse, Lisa Soper is in possession of discoverable evidence.

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for Martinez Rept.  
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## Exhibit S

Supplement to Para. 2, pg. 13.

The plaintiff also believes that to deny the plaintiff the address of a defendant for the purpose of service of a summons and complaint so that the defendant can be brought under the jurisdiction of the court by restricting the information under the provisions of the Governmental Records Access Management Act, particularly where there are sufficient procedures to assure no violation of privacy interest in the info. see: 63-2-202 (7)(C) and §(2)(iii), (iv), and (v). See also: §63-2-207 (2)(b); and §63-2-404 (8)(a) and (b).

The plaintiff also believes to prevent the plaintiff from obtaining the information that could facilitate the notice requirement in order for a defendant to be brought under the jurisdiction of the courts may violate plaintiff's rights as secured under the Constitution of Utah Article I, section 11 [Open Courts - Redress of Injuries.] which provides:

"All courts shall be open, and every person, for an injury done to him in his person or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party."

This belief is somewhat backed up by the provisions of the (GRAMA) provisions see: §63-2-203 (4)(C) which provides:

(4) "A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that:

(C). the requester's legal rights are directly implicated by the information in the record and the requester is impecunious."

Plaintiff's legal rights are directly implicated in that until the court



has in personam jurisdiction over the defendant the plaintiff is barred from prosecuting the claim in the instant case against that defendant, (Lisa Soper, R.N.).

Fig. 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

## Exhibit S

Additionally, Ut. Codes Ann. § 63-2-201 (5) (b) provides that:

(b). "A governmental entity may disclose records that are private under Subsection 63-2-302 (2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines that there is no interest in restricting access to the record or that the interests favoring access outweighs interest favoring restriction of access."

Moreover, Subsection § 63-2-202 (7) (a) thru (e) and (8) which sets forth the availability of access to private or controlled records, and makes it clear that "the court has authority independent of this chapter to order disclosure." (please note: the plaintiff has, on 3-20-07, filed a (GRAMA) Records Request for the information of Nurse, Lisa Soper's address). See also: § 63-2-301 (1) (b). \*See Supplement Sheet\*

\*The defendants, in the instant memorandum quotes plaintiff, and asserts that "A copy of a list of inmate patients seen in the (CUCF) medical department between November 1, 2003 and November 20, 2003". The defendants misquotes, or misunderstands what plaintiff is requesting. The plaintiff sought only the number of inmate patients seen during the relevant time<sup>per day</sup> periods, and also the number of diabetic patients. The rationale goes to the allegation that plaintiff was without food or insulin for at least (5) five days, and also that the prison authorities denied plaintiff access to a healthcare provider who could quell the controversy of the prescribed dose of insulin, thus avoiding unnecessary pain and suffering, and permanent injury. Thus, the plaintiff is entitled to the information sought, and to an order by this court compelling discovery.

The defendants argue that, "the court ordered proceedings stayed until Jackson had moved for summary judgment on his new claims based upon the information the state had already provided him." see: "Def. Mot. "The state's Memo. IN Opp. to Pl. Mot. To Compel Discovery IN Supp. of Mot. For Martinez Rept.; pg. 2, para. 1. Here, the defendants intentionally skews the facts of the telephone conference.

The plaintiff's first Request for Discovery was filed on 8-20-07. The request was in reference to the allegations in the Amended Complaint. The defendants have failed to comply with the U.S. R. Civ. P. Rule 34(b). The defendants refused to provide documented evidence peculiar to the allegations in the underlying Amended Complaint. The plaintiff did not file the Motion to Supplement the Pleadings until 10-5-07. see: 6<sup>th</sup> Dist. Ct. Doc. Ev. Statmt, pg. 4. The plaintiff filed a Second Request for Discovery requesting some of the documents not reviewed in response to the first Request for Discovery, but was primarily to obtain documents peculiar to the allegations in the Supplemental Pleadings.

The defendants argue that: "The court ordered proceedings stayed until Jackson had moved for summary judgment on his new claims based on information the state had already provided him." Def. Memo. IN Opp. Pl. Mot. Compel Discovery and Martinez Rept.; pg. 2 para. 1.

The defendants provided a stack of medical data records at least 2 1/2" inches thick; numbered from pg. 306 thru pg. 1384. Of these documents, some 1,028 pages, only 25 pages made any reference to the facts of the case or had the appearance of being even remotely relevant to the case, and covered the dates between 11-7-03 through 1-17-04, just ten days from the date of the injury in question. Moreover, these documents do not provide a single page of medical information relevant to the allegations in the Supplemental claims.

'915.) memo. In Opp. Def. Mot.  
for Martinez Rep<sup>l</sup>. And  
stay of proceedings

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Yet, the defendants argue that the 25 pages of the prison's medical records are adequate to support plaintiff's claims in both the Amended Complaint and The Supplemental Pleadings.

The Utah Rules of Civil procedure Rule 26 (b)(1). provides, in relevant part:

In General. "The frequency or extent of use of the discovery methods set forth in Subdivision (a) shall be limited by the court if it determines that: (i). the discovery sought is unreasonably cumulative or duplicative, or is obtainable from other source that is more convenient, less burdensome, or less expensive; (ii). the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii). the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Subdivision (c)."

If the defendants, under Utah Rules of Civil Procedure Rule 34(b) made their objections in accordance with Subdivision (b) respecting any or all documentary records the court would be in a position to make a determination respecting the plaintiff's right to obtain the documentary evidence. Since the State simply refused to respond in the time prescribed in Rule 34(b), the plaintiff is entitled under these rules to move the court for an order compelling discovery. Nothing in these rules allow for a defendant, or non-moving party, to make that determination.

### Argument II.

The Defendants' Argument, That The Plaintiff, 'Should Not Be Allowed To Conduct Discovery,' Because The Court Has Stayed

Proceedings Should Be Rejected Since The Reasons For The Stay No longer Exist, And Defendants Presented No Authority For This Argument.

(a). The defendants' argument that, "During the December 20, 2006 telephonic conference, the court ordered proceedings stayed until the state answered Jackson's supplemental pleadings and amended complaint and until Jackson filed a renewed motion for summary judgment. The court recognized that Jackson would be able to move for summary judgment on the materials he had already been provided." This argument, however, should be rejected because the "First Request For Discovery" was submitted on or about August 30, 2006, some (5) five months before the court ordered proceedings stayed. see: 6th Dist. Ct. Docket Event Statement, #040600383; pg. 4. (cert. of Ser.). The defendants have not substantially responded by delivery of the items of discovery requested.

The defendants were in violation of the rules of discovery, particularly Ut. R. Civ. P. Rule 34(b) well before the December 20, 2006 telephone conference and the stay that the court put into place at that date does not alter the fact that the defendants did not comply with Rule 34(b). see: Ut. R. Civ. P. Rule 34(b) which provides in relevant part:

"The party upon whom the request is served shall serve a written response within 30 days after service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant."

Therefore, even if the stay would prevent enforcement of the above rule, once the stay is lifted, the court should then consider Plaintiff's motion to compel discovery, since the purpose for the stay no longer exists, the court is in a position to rule on the motion to compel.

(pg. 17) Memo. & Opp. Let. 11/10/11.  
for Martinez Rept. And  
Stay of proceedings.

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(b). In the defendant's transcripts of the December 20, 2006 telephone conference, pg. 3-4, of the stay on the proceedings the court said:

(1). Judge Lee: "Alright, Mr. Jones, how long do you propose that we stay things to see if Mr. Jackson will supplement the motion for summary judgment?"

(2). Judge Lee: "Okay, why don't we do this. I agree, that Mr. Jackson needs some time to supplement his pleadings. You need some time to answer that. And as you say, that's in January when all that will happen. And then Mr. Jackson, how much time you gonna need to supplement your motion for summary judgment, or to renew it?"

(3). Judge Lee: "Ok, so 30 days after you file your answer to the supplemental pleadings, then Mr. Jackson will renew his motion for summary judgment and supplement that with whatever discovery he's received and any other arguments he wants to make based thereon and then you can respond to that."

Clearly, the stay was put in place to allow for the plaintiff to file the Amended Complaint and to supplement the pleadings. The filing of a "supplemental summary judgment motion or a renewed summary judgment motion", was a question as to whether I would do anything with the pending summary judgment motion as indicated in the above excerpts of the December 20, 2006 telephone conference: "How long do you propose that we stay things to see if Mr. Jackson will supplement the motion for summary judgment?" (emphasis in the underlined).

The plaintiff does not feel compelled to aid in my own undoing. The

Court should not call upon the plaintiff to avert himself to treachery by the Office of the Utah Attorney General. The plaintiff will resist with every fiber of his being the mere suggestion that these people are trustworthy and uncorrupt.

It is clear that since the plaintiff filed the Amended Complaint and Supplemental Pleadings, and the defendants have filed their answer thereto, and since the plaintiff did not file a 'reviewed' or 'supplemented summary judgment motion', stay has served its purpose and the discovery process must therefore be resumed, including all efforts for compelling discovery.

### Argument III

The Defendant's Motion To Be Allowed To Submit A Martinez Report Is In Fact Another Thinly Veiled Attempt To Extricate Their Omitted Challenge To The Motion For Summary Judgment. AND TO Circumvent The Rules of Discovery AND Must Be Denied In light of the Applicable Rules of Civil Procedure Rules) 56(c) and 34(b).

The defendants, in their Memorandum In Opposition To Plaintiff's Motion To Compel Discovery And In Support of Motion For Martinez Report, pg. 3, Argument II argue, in relevant part:

"Jackson is not entitled to much of the information he has requested and the Court should deny his request. The State proposes that, rather than Jackson making motion after motion to compel discovery, which the State will doubtless oppose on various grounds, that the Court issue an Order staying all proceedings (including discovery requests) pending the State filing a Martinez Report." The federal district courts in Utah, which handle the majority of inmate lawsuits, routinely order Martinez reports as a method of controlling the litigation

for Martinez Rept. And  
Stay of Proc.

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and allowing the defendants to provide all relevant records in their possession and to move for summary judgment if appropriate, on the inmate's claims."

(a). What the defendants propose would circumvent the strictures of U.R. Civ. P. Rule 56(e). That rule provides, in relevant part:

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate shall be entered against him."

The plaintiff filed affidavits with the motion for summary judgment, and the state, without good cause failed to respond in accordance with U.R. Civ. Proc. Rule 56(e). The state contrives to now submit the affidavits required in Rule 56(e) above through the use of a "Martinez Report." The defendants, quoting Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991) ("noting Martinez Report is often necessary in pro-se inmate cases" to develop a record sufficient for the trial judge to ascertain whether there are any factual or legal bases for the prisoner's claims."); see also Martinez v. Aaron, 570 F.2d 317, 319 (10th Cir. 1978) (holding that report is necessary to determine "preliminary" issues including those of jurisdiction").

The defendants go on to argue that: "The focus in this case should be on whether Jackson has a meritorious claim. The state believes it can provide sufficient information, including copies of Jackson's medical records and affidavits from medical personnel, that will show Jackson's claims must fail as a matter of law."



This "information" the state now offers is not some dramatic new and damning evidence which the defendants could not have, with all due diligence present it in a timely challenge to the motion for summary judgment. In fact, the much touted "information" provided in response to the First Request for Discovery was known to the defendants well before they filed their first answer to the Amended Complaint.

filed on 4-12-05

The state, in its response to plaintiff's original complaint filed a motion to dismiss under U.R. Civ. P. Rule 12(b)(6). The defendants had a first opportunity to present such evidence. <sup>State's</sup> (Then, the defendants were required to answer to the Amended Complaint, and the defendants filed a motion for an extension of time to respond to plaintiff's second Amended Complaint. (filed on 4-3-06). see: 6th Dist. Ct. Dock. Event statint: pg. 3. The Prison Computer generated medical data and records was printed on 4-4-06. see: Exhibit 1; pg. 306 of U.S.P. Med. Dept. Med. Rec. and Computer data sheet. The defendants' Answer to the "Second Amended Complaint" was filed on 4-28-06. The defendants most certainly had the opportunity to make use of this information they now want to introduce. The defendants had at least (2) two more opportunities to come forward with the alleged "information" that would "show Jackson's claims must fail as a matter of law." The defendants, on 5-12-06 filed a motion for Judgment on the Pleadings. The defendants did not raise the "information" in that document, but instead plead sovereign immunity. The plaintiff filed a timely memorandum in response to defendant's Motion for a Judgment on the Pleadings, and in addition, plaintiff filed the pending motion for summary judgment on 6-8-06. The state filed first, an Ex Parte Motion for Extension of time to respond to Plaintiff's Motion for Summary Judgment and Reply to defendant's Motion for Judgment on the Pleadings. On 6-21-06, the Court granted that motion.

# Exhibit 5

## Supplement to pg. 20, para. 4

The State in its response to plaintiffs' original complaint filed a motion to Dismiss Under Ut. R. Civ. P. Rule 12(b)(6), filed on 4-12-05. The defendants actually had from the time the notice of intent to commence legal action was filed with the Utah Attorney General's Office on April 25, 2004 until their first document was filed on 4-12-05, "Defendants' motion to Dismiss Amended Complaint" to obtain and present the "information" they now attempt to present. see: 6<sup>th</sup> Dist. Ct. Memo. Dec. & Ord.; #040600383; entered on Jan. 6, 2006; pg. 5; para. 3:

"[T]he Court finds that the purpose of the Notice requirement of the Governmental Immunities Act is "to afford the responsible public authorities an opportunity to pursue a proper and timely investigation of the merits of a claim and to arrive at a timely settlement, if appropriate thereby avoiding the expenditure of public revenue for costly and unnecessary litigation." Nunez v. Alba, 53 F.2d 218 (Utah App. 2002), citing Stahl v. Utah Transit Auth. 618 P.2d 480, 482 (Utah 1980).

## Supplemental Sheet; pg. 22-23

Also, it seems inconsistent with fundamental fairness to, "allow the defendants to provide all relevant records in their possession;" or in reality, to determine what is relevant in this case and what is not. See: Def. Memo. In Opp. to Pl. Mot. to Compel Disc'y And In Supp. Mot. for Martinez Rept.; pg. 4; para. 1. The State has already claimed to not have any more records to provide. See: Def. Trans. of Dec. 20, 2006 tele. confer.; pg. 4; para 2. see also Ut. R. Civ. P. Rule 26(b)(1), "It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." see also: EVANS v. EVANS, 98 Utah 189, 98 P.2d 703 (1940).

U.S. Supreme Court App. of Det. Mot.  
for Martinez Rept And  
Stay of Proc.

## Exhibit S

The defendants had that time to review the "information" and prepare their Response to the Motion for Summary Judgment and Motion for Judgment on the pleadings. Right on the heels of the State's Ex Parte Motion for Extension of time to Respond, The defendants filed a Request to Submit for Decision, (on The Motion for Judgment on the Pleadings), and a Motion for a Stay of The Briefing on Plaintiff's motion for Summary Judgment on 7-13-06. The defendants prepared and attached a proposed order for The Court to sign in connection with The Motion for Staying Briefing on the Motion for Summary Judgment until The Court rules on the Motion for Judgment on the Pleadings. The defendants specified in the proposed order that, "If the State's Motion for Judgment on the Pleadings is denied, then the State must file its memorandum Opposing Plaintiff's Summary Judgment within thirty days of the Court's ruling." See: 6<sup>th</sup> Dist. Ct. Ord. Stay. Briefing on Pl. Mot. Sum. Judmt; case# 040600383; dated: August 2, 2006. The defendant had not only the time from the filing of the Request to Submit for Decision, (Judgment on the Pleadings), until a month after the Court ruled on the Judgment on the Pleadings to isolate and present this "information" to the court in a challenge to the Motion for Summary Judgment; but instead chose to rely on trickery and sleight of hand in an attempt to defeat the Motion for Summary Judgment. The defendants have had ample time in which to raise the "information" they now attempt to raise through the use of this Martinez Report, and their Motion for the same should be denied for the above reasons.

Additionally, The defendants propose to this court, in essence that:

"The state proposes that, rather than Jackson making motion after motion to compel discovery, which the state will doubtless oppose on various grounds, that the court issue an order staying ALL proceedings (including discovery requests) pending the state filing a Martinez Report."

The plaintiff has already shown above how if the court was to allow the defendants to file a Martinez Report that it would have the effect of allowing the defendants to circumvent the strictures of Utah Rules of Civil Procedure Rule 56(c); but it would also allow the defendants to narrow the scope and frequency of the use of the rules of Discovery. see: Ut. R. Civ. P. Rule 26 (b)(1). This narrowing, and "limiting" is within the sound discretion of the court and not the state. Under these rules, the defendants, if they object to the items, or class or category of the documents sought under the rules of discovery could, upon motion to the court seek and obtain protective orders. The protective order is sufficient to regulate what the plaintiff is entitled to. see also: Ut. R. Civ. P. Rule 34(b). The defendants, in an effort to overcome the motion to compel discovery and the attendant sanctions instead suggest to the court that a Martinez Report is what is needed to 'control the litigation, and allowing defendants to provide all relevant records in their possession and move for summary judgment, if appropriate on the inmates' claims.' They rely on, e.g., Hall v. Bellman, 735 F.2d 1106, 1109 (10th Cir. 1991). But see: Ellis v. Gilbert, 19 Utah 2d 189, 429 P.2d 39 (1967). ("The purposes of discovery rules are to make discovery as simple and efficient as possible by eliminating any useless ritual, undue rigidities or technicalities which may have become engrafted in the law, and to remove elements of surprise or trickery so that parties and the court can determine the facts and resolve the issues as directly, fairly and expeditiously as possible").  
Start Supp.

The purpose for the institution of the Martinez report, see: Martinez v. Aaron, 570 F.2d 317 (10th Cir. 1978), was resorted to by the U.S. District Court, (trial court) for the District of New Mexico; in relevant part: "[an] administrative record was thereby constructed to enable the trial court to [\*\*4] decide the jurisdictional issues and make a determination under section 1915(a)." id at \*319. Furthermore, the 10th Circuit Court of Appeals emphasized that: "[As indicated above, the trial court ordered before answer at the prison officials conduct an investigation of the incident to include an interrogation of those concerned." This demonstrates that the Martinez report was to be done "before answer," and was to be used to aid determination of a frivolous case, or for "sufficiency of the pleadings,"

(pg. 23) memo. for Martinez Rept. And Stay of proc.

## Exhibit 5

and this determination in the plaintiff's case was decided almost from the onset of litigation. see: 6<sup>th</sup> Dist. Ct. Memo. Decis. and Ord.; case # 040600383; entered on Jan. 6, 2006; and again, 6<sup>th</sup> Dist. Ct. Memo. Decis. And Ord.; case # 040600383; entered Sept. 28, 2006 stating: "[T]he Court finds the plaintiff's pleading sufficient to afford him an opportunity to demonstrate that he meets the requirements outlined in Spackman. Therefore the state's motion for judgment on the pleadings is denied."

The above ruling by the court places the case well beyond the "preliminary stage," and well after the state filed its answer to the complaint.

Additionally, the state again asks the court for yet another stay of proceedings even as the state asks the court to allow the state to curtail my motions. The history of this case shows dramatically what the state did with the first stay they asked for, see: 6<sup>th</sup> Dist. Ct. Dock. Event Stat'mt; pg. 3; entry date: 07-13-06. The state did exactly nothing, but frustrate the judicial process. The second time the state requested and received a stay was during the Dec. 6, 2007 telephone conference. Even then, the state misrepresented why they had requested the court allow them to respond to a "renewed motion for summary judgment", see: Def. trans. of Teleph. confer.; Dec. 20, 2006; pg. 2, para. 1 and through out, when in fact they were attempting to extricate a omitted challenge to the summary judgment motion and avoid providing the requested discovery items.

In sum, the requests for discovery has been finite and calculated to lead to discoverable evidence, and is worthy of the court's consideration under the applicable rules of discovery. Sooner than later, <sup>not</sup> after another stay, the state has had ample opportunity in which to present this "information" to the courts, but shirked on their burden to come forward with this information in a timely manner. The defendants cannot even claim that this information is new and could not have been presented with due diligence. The defendants have yet to even offer an excuseable

neglect argument. Nor did they even submit a belated challenge to the Summary Judgment motion, or approach the plaintiff with a request to not object or oppose a belated filing. Instead the defendants relied on trickery and sleight of hand to defeat the motion. This speaks volumes about their appraisal of their own case, and this latest motion is nothing more than a stall tactic for strategic advantage.

### Conclusion

This court must deny the state's motion for a procedure that is unprecedented in the state law system for illicit gains, (in this case to get back an opportunity to challenge the motion for summary judgment), especially since these ends were sought through trickery and deceit, and misrepresentation to the court. This court must also deny the defendants the opportunity to avoid the consequences of not complying with the U. R. Civ. P. Rule 34(b). Finally, this court must now rule on the motion for Compel Discovery, and the motion for summary judgment.

The above statements are true and accurate to the best of my knowledge and belief.

Signed this 5<sup>th</sup> day of April, 2007.

Signature: \_\_\_\_\_  
Lawrence M. Jackson, Pro-se.

Lawrence M. Jackson #28879

Exhibit R

Oquirrh III-204-B

Utah State Prison

P.O. Box 250 Draper, Utah 84020

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff,

v.

THE STATE OF UTAH, et al.,  
Defendants.

MEMORANDUM IN REPLY TO  
DEFENDANT'S MEMORANDUM IN  
OPPOSITION TO PLAINTIFF'S  
MOTION TO STRIKE JOINT  
MOTION AND STIPULATION

Civil No: 040600383

Judge, Wallace A. Lee

Comes now the plaintiff, pro-se in the above entitled matter and does hereby submit this memorandum in reply to defendant's memorandum in opposition to plaintiff's motion to strike joint motion and stipulation.

In support of this memorandum the plaintiff states the following:

PROCEDURAL HISTORY

(As related to the motion for summary judgment)

- 1). On 4-28-06, The State filed an Answer to the Amended Complaint.
- 2). The defendants then, on 5-12-06 filed a Motion for Judgment on the Pleadings.
- 3). Based upon the State's answer to the Amended Complaint, and the Motion for Judgment on the Pleadings, The plaintiff filed a motion for Summary Judgment on 6-8-06.

## Exhibit R

- 4). The defendants filed an Ex parte motion for Extension of time in which to Respond to Plaintiff's Motion for Summary Judgment and Reply to Defendant's Motion for Judgment on The Pleadings on 6-9-06.
- 5). On 6-21-06 The Court entered an Order on The record granting the State's Ex parte motion for Extension of Time.
- 6). The defendants then filed a Request to Submit for Decision and Request to Stay Briefing on Plaintiff's Motion for Summary Judgment until the Court rule on the Motion for Judgment on The Pleadings on 7-13-06.
- 7). On 8-4-06 The Court entered an Order Staying Briefing on plaintiff's Motion for Summary Judgment. The Order further required the defendants to file their answer to the motion for Summary Judgment, "within thirty days of the Court's ruling."
- 8). The Court entered a memorandum Decision on the record on 9-28-06 denying defendant's motion for Judgment on The Pleadings. The Court also directs the plaintiff to file a Notice to Submit for Decision all the out-standing motions plaintiff filed.
- 9). On 10-19-06 The plaintiff filed a Notice to Submit for Decision all the out-standing motions save the motion for Summary Judgment.
- 10). The Court, on 12-13-06 entered a memorandum decision on the record granting plaintiff's out-standing motions with exception of one: Motion for Service of a Summons by other means Pursuant to Utah Rules of Civil Procedure Rule 4(g). The Court additionally directs the plaintiff to file and serve upon defendants an Amended Complaint, and Supplemental Pleadings to the Amended Complaint. Plaintiff filed the Amended Complaint and Supplemental Pleadings on 1-16-07.



## Exhibit R

- 11). On or about 10-7-06 the defendants approached the plaintiff with a "Joint Motion And Stipulation," instead of filing a challenge to Plaintiff's Motion for Summary Judgment.
- 12). After the agreement was signed by the plaintiff, the plaintiff, because of items of the alleged agreement were not agreed to, the plaintiff filed a Motion to Strike the Agreement.
- 13). On 12-20-07, the attorney for the defendants, Ms. Joni J. Jones, Assistant Attorney General called for a telephone conference between the parties and the court. The court ruled that the plaintiff should file the Amended Complaint and Supplemental Pleadings. The state would then have 20 days in which to file an answer to the Supplemental Pleadings. The plaintiff then would have an opportunity to file an Amended Motion for Summary Judgment if the plaintiff wish to.
- 14). The plaintiff filed the Amended complaint and supplemental pleadings on 1-16-07.

## RELEVANT FACTS

- 1). On 6-8-06, the plaintiff filed a Motion for Summary Judgment.
- 2). The defendants subsequently filed an Ex parte Motion for Extension of Time In Which to Respond to Plaintiff's Motion for Summary Judgment And Reply to Defendant's Motion for Judgment on the Pleadings on 6-9-06.
- 3). Additionally, the defendants filed a Request to Submit for Decision, (the motion for Judgment on the Pleadings), and a Stay on Briefing Plaintiff's Motion for Summary Judgment. The defendants attached thereto a proposed order for the court to sign. The Order required the defendants, "IF the State's motion for Judgment on the Pleadings is denied, the state must file its memorandum opposing Plaintiff's

## Exhibit K

summary judgment within thirty days of the Court's ruling.<sup>4</sup>

4). On 6-21-06, The Court granted The State's Motion to Stay Briefing on Plaintiff's Motion for Summary Judgment.

5). The Court denied the defendants' Motion for Judgment on the Pleadings on 9-28-06.

6). The defendants' time in which to file a memorandum in Opposition to Plaintiff's Motion for Summary Judgment on 9-28-06, and the memorandum was due on 10-29-06. The defendants filed no response.

7). On November 7, 2006, the defendants approached the plaintiff with a, "Joint Motion And Stipulation." The plaintiff was amiable to the provisions of the proposed "Joint Motion And Stipulation", until it was discovered that the defendants had surreptitiously added an unbargained for agreement that "The state will not be required to respond to Jackson's Motion for Summary Judgment, filed on or about June 8, 2006."

8). The plaintiff filed a Motion for Enlargement of time in which to file a motion to Strike The "Joint Motion And Stipulation" on 12-6-06.

9). On 12-20-06, however, the defendants requested and received a telephon conference between the parties and the Court. The defendants distanced themselves from the offending provisions of the "Joint Motion and Stipulation, see: Def's "Joint Mot. And Stip. to Allow Its Disc'y And Allow Supp. Pl." (pg. 2; para. (c)), herein Exhibit A.

10). The second issue is that the plaintiff served by first class mail, Plaintiff's first request for Discovery on 8-20-06. The defendants sent a parcel of computer generated stack of medical data maintained by the State respecting the instant injury and claims there on on 12-4-06. These documents comprise only a portion of

## EXHIBIT K

information I sought to support my motion for Summary Judgment motion filed on 6-8-06.

11). Because the state did not comply with the discovery request, nor did they move the court for a protective order plaintiff filed a motion for a Discovery Conference. The motion was entered on the record on 10-19-06.

12). There has been no decision on that motion to date, so plaintiff filed a motion to Compel Discovery on January 2, 2007.

13). The two motions, (1). Motion to Strike Defendants' Joint Motion And Stipulation; and (2). Motion to Compel Discovery, together with an Affidavit by Paul Nelson, but as of 1-16-06 (which is the last entry on the Docket Event Statement, the documents referred to above were not filed.

## SUMMARY OF FACTS

- I. The Plaintiff's Motion To Strike Is Not Moot Because There are Other Issues Argued In The Motion Which Have Been Ignored By Defendants that Bore upon The Issue of The Summary Judgment motion.
- II. The Plaintiff Was Entitled To The Medical Records from The University of Utah Medical Center (Moran Eye Clinic) ON The Date The First Request For Discovery Was Filed AND The Plaintiff Is Still Entitled To The Requested Discovery.
- III. The Court's Docket Event Statement Indicates That The Motion To Strike Joint Motion And Stipulation has Not Been Forwarded To The Court Nor Filed Thus Creating Doubt That The Prison And Others Have Confiscated And/ or Destroyed The Documents so That The Court Cannot Rule on The Arguments Therein.

## ARGUMENT I

The Plaintiff's Motion To Strike is Not Moot Because There Are Other Issues Argued In The Motion Which Have Been Ignored By the Defendants That Bore Upon The Motion for Summary Judgment.

In the State's memorandum In Opposition to Plaintiff's motion to strike, beginning with the "Introduction", pg. 2; paragraph 1, the state said, in relevant part: "The court has addressed each issue raised in the stipulation either in its December 7, 2006 memorandum decision or during the telephonic conference on December 20, 2006. Thus, there is no order to strike and no remaining legal issues that striking the stipulation would affect." This argument is wrong, however, because one of the major issues raised in the motion to strike is that of timeliness of any belated challenge to the motion for Summary Judgment.

The plaintiff filed a motion for Summary Judgment on 6-8-06. The defendants first filed an Ex parte Motion for Enlargement of Time to respond to Plaintiff's Summary Judgment and Reply to Defendant's motion for Judgment on the pleadings on 6-9-06, see: Exhibit A; 6<sup>th</sup> Dist. Ct. Docket Event Stat., pg. 3. The court granted that motion on 6-21-06. Right on the heels of that motion, the defendants, after filing a motion for Judgment on the Pleadings filed a "Request to Submit for Decision, (on the Judgment on the Pleadings), and Request to stay Briefing on Plaintiff's motion for Summary Judgment on 7-13-06. This motion likewise was granted on 8-4-06. See: Exhibit A; 6<sup>th</sup> Dist. Ct. Dock. Event Stat. pg. 3. Attached to the motion was a proposed order for the court to sign, which the court did. see: Exhibit B, Ord. Stay, Brief. on Pl. Mot. Sum. Judgment, entered 8-4-06. That order stated, in relevant part: "[I]f the State's motion for Judgment on the Pleadings is denied, then the State must file its memorandum opposing Plaintiff's Summary Judgment within thirty days of the court's ruling." This order, including the attendant time limitation was drafted by the defendants

## Exhibit R

and presented to the court to sign. On 9-28-06, the court entered a Memorandum Decision denying defendants' motion for Judgment on the pleadings. The stated time for filing a memorandum challenging Plaintiff's Motion for Summary Judgment began on 9-29-06 and was due in the court on or before 10-31-06. The defendants missed the court ordered time limitation. See: Utah Rules of Civil procedure Rule 6 (a). The defendants also omitted filing an additional motion for enlargement of time, nor any argument of excusable neglect. Because the defendants did not file a timely memorandum in opposition to Plaintiff's motion for Summary Judgment, the Plaintiff is entitled to the ruling as a matter of law. See: Ut. R. Civ. P. Rule 56(c), which provides, in relevant part:

"When a motion for Summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him".

It is appropriate in this case for the court to rule in favor of the plaintiff, first because the State's Answer to the Amended Complaint, which is all the court has before it, is not sufficient to show that there is a genuine issue of material fact for trial. See: Thorneck v. Cook, 604 P.2d 934 (Utah 1979) ("A defendant cannot rely on the mere allegations or denials of her pleadings to avoid a summary judgment but must set forth specific facts showing that there is a genuine issue for trial").

Moreover, the defendants admitted that they knew before hand that the plaintiff was without the "vital medication" and food for at least (2) two days. The plaintiff since provided at least (4) four affidavits, three of which demonstrates personal knowledge that the plaintiff was without food or medicine for substantially more

## Exhibit R

than (2) two days. See: Affidavits of: James Mason Stills; Percy Wil-  
den; and Russell Allen. There was one inmate who stated he too  
had been refused medical treatment by Nurse, Lisa Soper. This  
inmate, Paul Nelson submitted an affidavit. The plaintiff has subm-  
itted evidence that the state knew there was a court order in place  
that enjoined them from doing exactly what they were doing when  
the injury occurred. The state demonstrated conclusively that  
they were aware of the situation, but did nothing to decide the  
controversy between Nurse, Lisa Soper and the plaintiff. See:  
State of Ut. Ans. to Amend. Compl.; pg. 3, para. 4. Also the plaintiff  
alleged that the defendants cancelled at least (2) medical appointments  
to the Ophthalmologist thereby causing permanent impairment.  
The state denied this allegation as well. See: State of Ut.'s Ans.  
Amend. Compl.; pg. 4, para. 7. But see: Exhibit: E(1) - E(5), espe-  
cially E-4, (Griev. Resp.; Ref. # 996-08-53397 the grievance respon-  
ses do not expressly deny that the prison cancelled medical appoi-  
ntments to the Moran Eye Clinic. There are abundant reasons that  
the court should grant the plaintiff's motion for Summary Jud-  
gment; the above are just a few.

Additionally the defendants did not seek any kind of finding of  
"excusable neglect. The court has demonstrated that the court is  
amiable to such a finding where a reason justifying not filing  
pleadings in a timely manner. See: Exhibit F; Sixth Dist. Ct. Memo.  
Decis. and Ord.; case # 050600333; pg. 2; para 1.

Then, the defendants after failing to timely file a memorandum  
in Opposition to Plaintiff's Motion for Summary Judgment, they  
attempt to obscure the fact by requesting that the court allow them  
to answer only one Motion for Summary Judgment containing  
the allegations from the amended complaint, (from which the  
pending motion for Summary Judgment was taken), and the alleg-  
ations in the Supplemental Pleadings. See: Def. Memo. In Opp.  
Pl. Mot. Strike; pg. 4, para. 7 - pg. 5 para. 5. The defendants  
state, in relevant part: 8). "The state explained to the court that  
it had followed through with its commitments on the agreement  
(pg. 8)

## Exhibit R

and did not wish to respond to Plaintiff's pending motion for Summary Judgment until after it had responded to Plaintiff's Supplemental Pleadings.

The records show that the motion to Supplement the Pleadings was filed in the court on 10-5-06. The defendant's copy of the motion was received in their office on 10-4-06. The defendant's memorandum in opposition to the Plaintiff's motion for Summary Judgment was due on or before 10-31-06. The defendant's had ample time to file a motion with the court seeking to combine the pending motion for Summary Judgment with a motion for Summary Judgment on the allegations of the Supplemental Pleadings, see: Exhibit A; 6<sup>th</sup> Dist. Ct. Docket Event Stat.; pg. 4, (Mot. Supp. Pl. 10-5-06); see also Exhibit G; copy of pl. mot. Supp. Pl. dated as received in Atty Gen. Off. on 10-4-06, before the memorandum in opposition of Plaintiff's motion for Summary Judgment became due.

The plaintiff had not discovered that the defendant's had exceeded the time limitation of the court's Order Staying Briefing on motion for Summary Judgment, (due in large part to illness and physical injuries I was receiving prescription medication for), until after the Joint Motion And Stipulation was being drafted and was for the most part without an explanation of the purpose for the telephone conference. The plaintiff did inform the court at the telephone conference that the motion to strike had already been drafted and was being copied by the prison's contract attorney, and was thus unable to traverse the issues in that motion. The timeliness issue was therefore not raised at the impromptu conference. The defendant's are attempting to parlay that fact into another chance to file a memorandum opposing the Summary Judgment by trying to convince the court that the Supplemental Pleadings should be combined with the missed response to the motion for Summary Judgment motion.

## Exhibit R

The solution to this contrivance is simple: The Utah Rules of Civil Procedure Rule 56 (a) provides the following:

(a). For Claimant. "A party seeking to recover upon a claim, counter-claim, or cross-claim or to obtain a declaratory judgment may at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof."

This court is in a position to rule in favor of the plaintiff on the motion for summary judgment against the state alone respecting the state's liability, leaving the other defendant, Nurse, Lisa Soper's liability for such time as the plaintiff can serve a summons and a copy of the Amended Complaint. See: Franklin Fin. v. New Empire Dev. Co., 659 P.2d 1040 (Utah 1983); Cowen & Co. v. Atlas Stock Transf. Co., 695 P.2d 109 (Utah 1984); Busch Corp. v. State Farm Fire & Cas. Co., 743 P.2d 1217 (1987) ("When a party opposes a properly supported motion for summary judgment and fails to file any responsive affidavits or other evidentiary materials allowed by subdivision (e), the trial court may properly conclude that there are no genuine issues of fact unless the face of the movant's affidavit affirmatively discloses the existence of such an issue"). The Supplemental Pleadings whose factual allegations has only a common case number with the original Amended Complaint. By the plain language of Ut. R. Civ. P. Rule 15, the "transactions or occurrences or events," which happened since the date of the pleading sought to be supplemented, Thus, the Supplemental Pleadings can be addressed after the court rules on the motion for summary judgment.

At the December 20, 2006 telephone conference the court was apparently unaware that the defendants had already defaulted on their opportunity to challenge the motion for summary judgment or the court would have better understood the plaintiff's position.



## Exhibit R

In the transcript the defendants attached to their memorandum in opposition to Plaintiff's motion to strike, the defendants Joint Motion and Stipulation, the defendants began by misrepresenting to the Court what the issue was regarding the motion for Summary Judgment. She said, "I would prefer that the court rule that I don't have to respond to that summary judgment and instead that Mr. Jackson can file a renewed motion for summary judgment based upon all this information that he's obtained." The court, in an effort to obtain a clear picture of what the defendants were proposing, fed back:

Judge Lee. "[O]kay, thank you. What you're suggesting is procedure that would add us in economy I suppose so that we're only responding to one; rather than, it sounds like if we do as Mr. Jackson is proposing, we'd have to respond to this one and then consider a renewed one possibly in the future. And you're trying to combine the two and move along. Is that right?" See: Def. memo. in Opp. Pl. Mot. to strike (transcript of Dec. 20, 2006 telephone conference; pg 2, para. 3-4.

To further illustrate the neglect the defendants exhibited, and the court's past handling of a timeliness issue, see: 6<sup>th</sup> Dist. Ct. memo. Decis; attached hereto as Exhibit H; case #040600383; entered on March 6, 2006; at 1, in relevant part: "[t]he Court grants the plaintiff's motion. The plaintiff's Amended Complaint will be considered timely if filed on or before February 9, 2006."

It is not hard to imagine what the court would have done if I neglected to either move for enlargement of time, or neglected to file the document. It is equally easy to conclude that the state would have pressed the issue of timeliness several times harder than the plaintiff has. The Attorney General's Office should be required to abide by the Utah Rules of Civil Procedure as I am required to do.

# Exhibit R

## ARGUMENT II

The Plaintiff Was Entitled To The Medical Records From The University of Utah Medical Center's (Moran Eye Clinic) On The Date The First Request for Discovery was filed And The Plaintiff Is Still entitled To The Requested Discovery.

The State tried to further obscure the fact that they had let the time limitation lapse for filing the memorandum in Opposition to Plaintiff's Motion for Summary Judgment by complaining, see: Def. Memo. In Opp. To Pl. Mot. To Strike Def's Joint Mot. and Stip., pg. 4, para. 9: "Jackson argued that he needed more medical records in addition to the ones the state had sent him. The state responded that it had provided those records that they had received from the Department of Corrections and did not have any additional records."

This argument is without merit for the following reasons: When the state said that "Jackson argued that he needed more medical records in addition to the ones the state had sent him", the truth again has to be wrested from defendants so the real facts are not obscured. The plaintiff has not asked for any more records than those requested in the plaintiff's first request for Discovery. see: Exhibit C; Pl. first. Req. for Disc'y; dated: 8-20-06. In that document, at para. 8, 10, / pg. 3, para. 15. The first time the Request for Discovery is mentioned by the defendants was November 7, 2006. Even then, they wanted to stipulate "limited Discovery", and with no indication as to what those limits would be. see: Def. Joint Mot. And Stip., pg. 2; para. D. The defendants sought to limit the discovery I could obtain from the state, but in the absence of a stipulated limit, the court, and not the parties determine what those limits might be. see: Ill. R. Civ. P. Rule 26(b)(1), which provides, in relevant part:

"The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (1). The discovery sought is unreasonably cumulative or  
(pg. 12)

## Exhibit R

duplicate, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii). The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii). The discovery is unduly burdensome or expensive, taking into account the needs of the case, amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Subdivision (c).

When The defendants did not respond to the first request for Discovery, see: Exhibit C which was first forwarded to them on 8-20-06, plaintiff submitted a motion for Discovery Conference on October 19, 2006. This motion has not been heard by this court, see: Exhibit A; 6<sup>th</sup> Dist. Ct. Doc. Event Stat'mt, pg. 4. The defendants still ignored the discovery request. At that point the defendants were in violation of Ut. R. Civ. P. Rule 34(b), which provides, in relevant part:

"The party upon whom the request is served shall serve a written response within 30 days after service of the request, except that the defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reason for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37 (a) with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit inspection as requested."

The provisions of Rule 34(b) above, in mandatory language requires the party upon whom the request for Discovery is made to serve

(pg. 13)

## Exhibit R

upon the party seeking discovery a, "written response within 30 days of the request." The party must either provide the requested discovery, or make an objection to the court specifying what parts with particularity are objectionable. The defendants also had the option under Ut. R. Civ. P. Rule 26(c) to seek a protective order from the court. The defendants now, in their memorandum in opposition to Plaintiff's motion to strike Defendants' Joint Motion And Stipulation, say: "Jackson's motion to compel discovery should also be denied because he asked the court to order the state to produce medical records that Jackson can obtain on his own. For example, Jackson seeks 'A complete set of records from Moran Eye Clinic.' Jackson can request those records himself through the DOE medical records custodian who, in turn, can request the records from Moran Eye Center." This argument, however, should have been made in September 20, 2006, in accordance with Ut. R. Civ. P. Rule 34(b). There is nothing in the record that demonstrates Ms. Joni J. Jones, Assistant Attorney General attempted to make any kind of response to the first Request for Discovery until she contrived to maneuver her way into a second chance at a response to the summary judgment motion through the "Joint Motion And Stipulation." The provisions of Ut. R. Civ. P. Rule 37(a)(2) provides that a party seeking discovery under Rule 34 may move for an order compelling discovery. The defendants, knowing that although the Office of the Utah Attorney General obtained a copy of the motion for an order to compel discovery, but the court had not, then hand delivered two affidavits to the prison, thinking then could make a belated delivery of discovery items even though the plaintiff had forwarded a motion to compel discovery to the courts, but then did not realize the prison would require me to sign for the affidavits. Those copies of the affidavits were from Inmate Percy Wilder; and Russell Allen. see: Exhibit (5) J, and J(1). Exhibit J is the envelope without postage from the Utah Attorney General's office, also Exhibit J(1); UDC Div. Inst. Operations privileged mail form. which shows that the affidavits were received on 1-17-06, well after the motion to compel discovery was forwarded and should have been filed with the court.

## Exhibit R

Such belated submissions cannot forestall the granting of an Order Compelling discovery, or sanctions as alluded to in Utah Rules of Civil Procedure Rule 37(d) referencing sanctions as provided for in (b)(2)(A), (B) or (C). See also: W.W. & W.B. Gardner, Inc. v. Park W. Village, Inc., 568 P.2d 734 (Utah 1977) ("once a motion for sanctions for failure to respond to discovery requests has been filed, the opposing party may not preclude the imposition of sanctions by making a belated response in the interim between the filing of the motion for sanctions and the hearing on the motion"). The same case allows for a default judgment for frustration of the judicial process.

### ARGUMENT III

The Court's Docket Event Statement indicates that the motion to strike joint motion and stipulation has not been forwarded to the court nor filed, thus creating doubt that the prison and others have confiscated and/or destroyed the documents so that the court cannot rule on the arguments therein.

On January 2, and 3, 2007 plaintiff forwarded through the U.S. mail system (2) two motions, and an affidavit by inmate Paul Nelson. About (3) three weeks later I had not received a response from defendants on the two motions (motion to strike joint motion and stipulation; and motion to compel discovery), so I wrote to the clerk of the court to obtain a docket event statement showing when the motions and affidavit was filed. To my surprise, and shock they had not been filed. The documents were sent out a month ago and for them to have not reached the court in at most (3) three days is cause for great concern. Since December 20, 2006, the telephone conference wherein attorney for the defendants stated, in relevant part: "so my purpose here is certainly to not prevent Mr. Jackson from pursuing his claims, but I would like some sort of control over the case so that there aren't constant motions, ect. that we're responding to." See: Def's transcript of 12-20-06 tele

## Exhibit R

phone conference; pg. 2; para. 3. (I might add, the transcript does not appear to be verbatim). Since that date, my mailings, including the two motions: Motion to Strike; and Motion to Compel Discovery; and Affidavit by Paul Nelson, seemed to have fallen into some kind of black hole. There are several other items of mail that shared the same fate, e.g., a letter sent to the Federal Bureau of Investigation, (regarding apparent confiscation of my legal mail from the U.S. mail system; letter to Postmaster General, Main Post Office, Draper, Utah and Private Attorneys, etc. All disappeared. The plaintiff believes the prison and defendant's Attorney may have caused the mail to be confiscated, delayed, or possibly even destroyed. The documents to the courts were originals and may prove next to impossible to obtain the equivalent. This type of conduct frustrates the judicial process, and I believe to be a criminal offense.

## CONCLUSION

The court must rule that the defendants have NOT filed a timely challenge to the motion for Summary Judgment thus failing to comply with the requirements of U.T. Civ. P. Rule 56 (e); The plaintiff is entitled to the summary judgment against the state as a matter of law. The plaintiff was in fact prejudiced by the state's conduct respecting the motion for Summary Judgment; Motion to Strike Joint Motion And Stipulation because the plaintiff could have a ruling in his favor on the Summary Judgment motion, or a date certain for trial on the merits. The court must also grant the motion to Compel Discovery because defendants did not comply with U.T. Civ. P. Rule 34 (b). The violation of which also prejudiced plaintiff in delaying the ruling on the motion for Summary Judgment. The court must award any and all damages and costs allowed by law.

The above statements are true and accurate to the best of my knowledge and belief.

Signed this 6<sup>th</sup> day of February, 2007.

Signature Lawrence M. Jackson, Pro-Se.

# Exhibit R

## CERTIFICATE OF SERVICE

I, Lawrence M. Jackson certify that on 2-4-07 I served a copy of the foregoing Memorandum In Reply To Defendant's Memorandum In Opposition To Plaintiff's Motion To Strike Joint Motion And Stipulation upon Joni J. Jones, Assistant Attorney General, Attorney for Defendants by sending it by first class mail to the following address:

Joni Jones (#7562)  
Assistant Attorney General  
Mark L. Shurtleff (#4666)  
Utah Attorney General  
Attorneys for Defendants  
160 East 300 South, 6<sup>th</sup> floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856

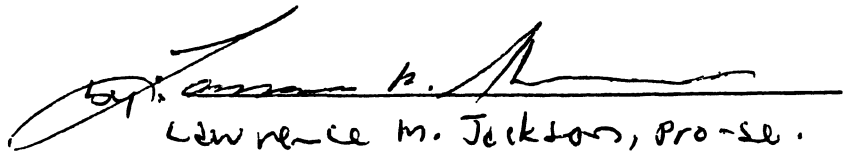
  
Lawrence M. Jackson, Pro-Se.

Exhibit P

JONI J. JONES (7562)  
Assistant Utah Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
Attorneys for Defendants  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
Telephone: (801) 366-0100

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IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY  
STATE OF UTAH – MANTI DIVISION

---

LAWRENCE M. JACKSON,	:	<b>MEMORANDUM IN SUPPORT OF</b>
Plaintiff,	:	<b>THE STATE’S MOTION FOR</b>
<b>vs.</b>	:	<b>JUDGMENT ON THE PLEADINGS</b>
	:	
	:	Case No. 040600383
STATE OF UTAH, et al.	:	Judge Wallace A. Lee
Defendants.	:	

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Pursuant to Rule 7(c) of the Utah Rules of Civil Procedure, Defendant State of Utah, Department of Corrections (the State) files this memorandum of points and authorities supporting its motion for judgment on the pleadings.

**INTRODUCTION**

Pro se plaintiff Lawrence M. Jackson (Jackson) is an inmate housed in Gunnison, Utah. Jackson initially sued the State alleging a medical malpractice claim, a claim under the Eighth Amendment of the Federal Constitution, and a claim under the Utah Constitution. The State filed a motion to dismiss Jackson’s complaint for failure to state a claim, and the Court dismissed all claims against the State except for the claim under the Utah Constitution and allowed Jackson



## Exhibit P

to file an amended complaint. Jackson did so, and the State has answer Plaintiff's amended complaint. The State now moves for dismissal on the ground that the State cannot be sued for money damages based on an alleged violation of the Utah Constitution.

### RELEVANT FACTS

1. Jackson's original complaint was filed with the Sixth District Court of Utah on or about November 17, 2004.
2. The Court only ordered a copy of the original complaint, directed at the State, to be served on the Attorney General for a response.
3. The State filed a motion to dismiss, and Jackson then filed a proposed amended complaint.
4. The State filed a motion to dismiss Jackson's amended complaint, and on January 3, 2006, the Court issued an order granting in part and denying in part the State's Motion to Dismiss. (*See* Mem. Dec. and Order of 1/3/06 at 12, a copy of which is attached as Exhibit A.)
5. The Court dismissed all of Jackson's claims against the State, except for Jackson's claim under Article I, Section 9 of the Utah Constitution. (*See* Mem. Dec. and Order at 9-11.)
6. In its January 3, 2006 order, the Court also granted Jackson's Motion for Leave to Amend his Complaint. (Mem. Dec. and Order at 11-12.)
7. Jackson served his amended complaint on counsel for the State, and the State filed an answer on April 28, 2006.
8. The State employee identified only in Jackson's amended complaint as medical technician "Lisa" has not been served.

# Exhibit P

## ARGUMENT

A motion to dismiss under Rule 12(c) should be granted if, accepting the factual allegations in the complaint as true, the plaintiff could not recover as a matter of law. *Arndt v. First Interstate Bank of Utah, N.A.*, 1999 UT 91, ¶ 2, 991 P.2d 584. Under this standard, Jackson's claim for alleged violation of the Utah Constitution is fatally flawed and should be dismissed with prejudice.

### **PLAINTIFF CANNOT RECOVER DAMAGES AGAINST THE STATE FOR ALLEGED VIOLATION OF THE UTAH CONSTITUTION.**

Jackson's claim against the State for alleged violation of the Utah Constitution must be dismissed because damages are not recoverable against the State. Jackson has asserted a claim under Article I, Section 9 of the Utah Constitution. (*See* Am. Compl. for Med. Mal. and Const. Rights Violations at 7-8.) That section provides, in relevant part: "Persons arrested or imprisoned shall not be treated with unnecessary rigor," and applies to the treatment of inmates. *State v. Schweitzer*, 943 P.2d 649, 654 n.2 (Utah App. 1997).

The Utah Constitution itself does not provide for damage remedies. *Spackman v. Bd. of Educ. of the Box Elder County Sch. Dist.*, 2000 UT 87, ¶ 20, 16 P.3d 533.<sup>1</sup> Accordingly, "there is no textual constitutional right to damages for one who suffers a constitutional tort." *Id.* In *Spackman* the Utah Supreme Court held that Utah courts' "ability to award damages for violation

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<sup>1</sup> The sole exception, inapplicable here, is for constitutional takings. *Id.* Utah Const. art. I, § 22.

## Exhibit P

of a self-executing constitutional provision rests on the common law.” *Id.*<sup>2</sup> Under the common law it was well settled that, absent a waiver of immunity, the state as a sovereign could not be sued for money damages. *See, e.g., Will v. Michigan*, 491 U.S. 58, 67 (1989) (“The doctrine of [state] sovereign immunity was a familiar doctrine at common law.”) Since damages were not available against the State under the common law, damages cannot be awarded against the State for an alleged violation of the Utah Constitution. The court’s analysis in *Spackman* bears this conclusion out.

Based on the common law, the *Spackman* court authorized, in certain circumstances, damages against individual state employees. *Id.* at ¶ 22. Damages are available only when the plaintiff can show: (1) a flagrant violation of an individual's rights; (2) no alternative remedy other than damages; and (3) inadequacy of equitable relief. *Id.* at ¶ 23. The Utah Supreme Court intended damages to be available against only state employees, since *Spackman* expressly provides that state employees are allowed “human frailties,” without having to fear being liable for damages: “The requirement that the unconstitutional conduct be ‘flagrant’ ensures that *a government employee* is allowed the ordinary ‘human frailties of forgetfulness, distractibility, or misjudgment without rendering [him or her]self liable for a constitutional violation.’” *Id.* (emphasis added) (alteration in original) (citations omitted). This passage contemplates recovery against an individual, not against the state itself.

---

<sup>2</sup> A self-executing constitutional provision is one that may be judicially enforced without implementing legislation. The Utah Supreme Court allows direct causes of action only for violation of self-executing constitutional provisions. *See Spackman*, 2000 UT at ¶ 7.

## Exhibit P

The rule that damages for alleged constitutional violations cannot be awarded against the sovereign has likewise been recognized in actions against the United States. In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the Supreme Court permitted a plaintiff's suit against six federal agents for allegedly violating his Fourth Amendment rights. In recognizing a direct action under the Constitution, the *Bivens* court authorized a suit for damages against the individual agents, not against the sovereign, the United States. *Id.* at 410. ("However desirable a direct remedy against the Government might be as a substitute for individual official liability, the sovereign still remains immune to suit.").

There simply is no authority for the proposition that damages are recoverable against the state for violation of a self-executing state constitutional provision. Damages were not allowed against the state at common law, and the common law is the basis for the court's authority to award damages under the Utah Constitution. Accordingly, Jackson's claims for alleged violation of Article I, Section 9 should be dismissed with prejudice.

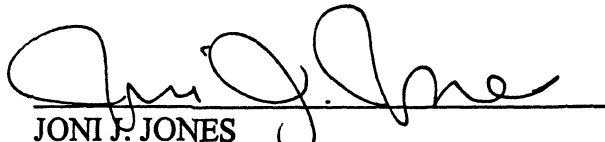
Exhibit P

**CONCLUSION**

Based on the foregoing, the State asks this Court to dismiss Jackson's suit against it with prejudice.

DATED this 19<sup>th</sup> day of May, 2006.

MARK L. SHURTLEFF  
Utah Attorney General

  
JONI F. JONES  
Assistant Utah Attorney General  
Litigation Division  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I certify that on this 11<sup>th</sup> day of May, 2006, I caused to be served by U.S. mail a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS** to the following:

Lawrence M. Jackson  
Inmate # 28879  
Cedar 2-214-B  
Central Utah Correctional Facility  
P.O. Box 550  
Gunnison, Utah 84634

  
\_\_\_\_\_

Lawrence M. Jackson #28829

Oquirrh III-210-B  
Utah State Prison  
P.O. Box 250  
Draper, Utah 84020

5-27-07

Exhibit O

The Sixth District Court

In the Office of Judge, Wallace A. Lee

Sandy Neill, Sanpete County Clerk

160 North Main, Room 202

P.O. Box 100

Manti, Utah 84642-0100

Triplicate

re: Jackson v. State of Utah, et al., 6th Dist. Ct.; No. 040600383

Dear Judge, Lee:

I am writing this letter to bring to the court's attention that the plaintiff has not received a copy of the court's ruling on Defendant's Motion Requesting That the State Be Allowed To File A Martinez Report And That All Proceedings Are Stayed until the Martinez Report is filed.

On 5-24-07 plaintiff received through U.S. mail a copy of defendant's Ex Parte Motion for Over-length memorandum, together with an unsigned order granting the motion for over-length memorandum. This motion is, according to the defendant, "seeks leave to file an over-length memorandum in support of its motion for summary judgment, based upon the state's Martinez Report." Doubtless, this motion is based upon a ruling by the court allowing the state to file a Martinez Report. The plaintiff filed a memorandum in opposition to state's motion to be allowed to file a Martinez Report, and for a stay on all proceedings until Martinez Report is filed on or about April 5, 2007.

If in fact the court ruled in favor of the defendant in this motion (for Martinez Report), the plaintiff is entitled to a signed memorandum Decision And Order, from which an appeal can be taken.

**JONI J. JONES (7562)**  
**Assistant Utah Attorney General**  
**MARK L. SHURTLEFF (4666)**  
**Utah Attorney General**  
**Attorneys for Defendants**  
**160 East 300 South, Sixth Floor**  
**P.O. Box 140856**  
**Salt Lake City, Utah 84114-0856**  
**Telephone: (801) 366-0100**

LAWRENCE M. JACKSON,

Plaintiff,

**VS.**

STATE OF UTAH, et al.

**Defendants.**

: **DEFENDANT'S MOTION**  
 : **REQUESTING THAT THE STATE**  
 : **BE ALLOWED TO FILE A**  
 : **MARTINEZ REPORT AND THAT**  
 : **ALL PROCEEDINGS ARE STAYED**  
 : **UNTIL THE *MARTINEZ* REPORT IS**  
 : **FILED**

**Case No. 040600383**

**Judge Wallace A. Lee**

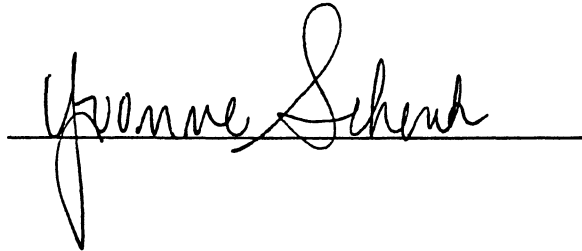
The State believes a *Martinez* report is necessary to determine whether Plaintiff's claims have a factual and legal basis. A stay is necessary to prevent Plaintiff from continuing to file various motions, including motions to compel discovery; such motion are often without legal

Exhibit N

**CERTIFICATE OF SERVICE**

I certify that on this 13<sup>th</sup> day of March, 2007, I caused to be served by U.S. mail a true and correct copy of the foregoing **THE STATE'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO MOTION TO COMPEL DISCOVERY AND IN SUPPORT OF MOTION FOR *MARTINEZ* REPORT**, to the following:

Lawrence M. Jackson  
Inmate # 28879  
Cedar 2-214-B  
Central Utah Correctional Facility  
P.O. Box 550  
Gunnison, Utah 84634

A handwritten signature in cursive script, reading "Yvonne Schenk", is written over a horizontal line.



JONI J. JONES (7562)  
Assistant Utah Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
Attorneys for Defendants  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
Telephone: (801) 366-0100

Exhibit N

---

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY  
STATE OF UTAH – MANTI DIVISION

---

LAWRENCE M. JACKSON,	:	<b>THE STATE'S MEMORANDUM IN</b>
	:	<b>OPPOSITION TO PLAINTIFF'S</b>
Plaintiff,	:	<b>MOTION TO MOTION TO COMPEL</b>
	:	<b>DISCOVERY AND IN SUPPORT OF</b>
	:	<b>MOTION FOR <i>MARTINEZ</i> REPORT</b>
vs.	:	
	:	Case No. 040600383
STATE OF UTAH, et al.	:	
	:	Judge Wallace A. Lee
Defendants.	:	
	:	

---

Pursuant to Rule 7(c) of the Utah Rules of Civil Procedure, Defendant State of Utah files this memorandum opposing Plaintiff Lawrence Jackson's Motion To Compel Discovery.

# Exhibit N

## INTRODUCTION

During a telephonic conference on December 20, 2007, the Court ordered proceedings stayed until Jackson had moved for summary judgment on his new claims based on the information the State had already provided him. (See Trans. of 12-20-06 hearing, attached as Exhibit A, at 3-4) Since then, Jackson has twice filed motions to compel discovery. (See Memo in Supp. of Motion to Compel Discover, dated 1/1/07.) The current motion to compel should be denied, because the Court has ordered proceedings stayed and Jackson is not entitled to the material he seeks.

## ARGUMENT

### **I. BECAUSE THE COURT HAS STAYED PROCEEDINGS, JACKSON SHOULD NOT BE ALLOWED TO CONDUCT DISCOVERY.**

During the December 20, 2006 telephonic conference, the Court ordered proceedings stayed until the State answered Jackson's supplemental pleadings and amended complaint and until Jackson filed a renewed motion for summary judgment. (See Order of 12-20-6 at 3-4.) The Court recognized that Jackson would be able to move for summary judgment on the materials he had already been provided:

Judge Lee: Alright, Ms. Jones, how long do you propose *that we stay things* to see if Mr. Jackson will supplement the motion for summary judgment?

....

Judge Lee: Okay, so 30 days after you [the State] file your answer to the supplemented pleadings, then Mr. Jackson will renew his motion for summary judgment and supplement that *with whatever discovery he's received* and any other arguments he wants to make based thereon and then you can respond to that."

# Exhibit N

(*Id.* at 4 (emphases added).) In addition, as set forth in the State's memorandum opposing Jackson's previous request for discovery, the State has already provided Jackson with Utah Department of Corrections medical records from November 2003 through December 2004. (See Memo in Opp. to Pl's Motion to Strike and Motion to Compel Discovery, filed 1-22-07, at 6-7 and Exhibit B.)

## **II. PLAINTIFF HAS NO LEGAL RIGHT TO OBTAIN MOST OF THE MATERIAL HE HAS REQUESTED.**

This Court should also deny Jackson's motion to compel discovery because Jackson has requested information that he is not legally entitled to have. For example, Jackson asks the Court to require the State to provide him with Lisa Soper's "place of legal residence" and her "current place of employment." (Ex A to Pl's Motion to Compel Discovery.) The Court doubtless is aware that the Department of Corrections is prohibited by law from giving out the home address of its current or former employees. See Utah Code Ann. § 63-2-302(1)(f) (2004). Many of Jackson's other requests are similarly improper. (See, e.g., Ex A to Pl's Motion to Compel Discovery, at 1 ("Medical Technician, Lisa Soper's work record during the relevant times, i.e., from October, 2003 to December 2003." "A copy of a list of inmate patients seen in the CUCF medical department between November 1, 2003 and November 20, 2003."))

Jackson is not entitled to much of the information he has requested and the Court should deny his request. The State proposes that, rather than Jackson making motion after motion to compel discovery, which the State will doubtless oppose on various grounds, that the Court issue an order staying ALL proceedings (including discovery requests) pending the State filing a

## Exhibit N

*Martinez* report. The federal district courts in Utah, which handle the majority of inmate lawsuits, routinely order *Martinez* reports as a method of controlling the litigation and allowing the defendants to provide all relevant records in their possession and to move for summary judgment, if appropriate, on the inmates claims. *See, e.g., Hall v. Bellmon*, 935 F.2d 1106, 1109 (10<sup>th</sup> Cir. 1991) (noting *Martinez* report is often necessary in pro se inmate cases “to develop a record sufficient [for the trial judge] to ascertain whether there are any factual or legal bases for the prisoner’s claims.”); *see also Martinez v. Aaron*, 570 F.2d 317, 319 (10<sup>th</sup> Cir. 1978) (holding that report is necessary to determine “preliminary issues including those of jurisdiction”).

The focus in this case should be on whether Jackson has a meritorious claim. The State believes it can provide sufficient information, including copies of Jackson’s medical records and affidavits from medical personnel, that will show Jackson’s claims must fail as a matter of law. However, with Jackson constantly sending letters and filing motions with the Court, the State’s time and resources in this case have been spent on responding to Jackson’s motions. The State’s, the Court’s, and Jackson’s time would be better spent if the parties focused on determining what evidence supports Jackson’s allegations. Accordingly, the State asks the Court to stay all proceedings pending the State filing a *Martinez* report, which must be filed within 60 days of any order the Court may issue allowing the State to file a *Martinez* report.

The State is filing a separate motion and proposed order concurrently.

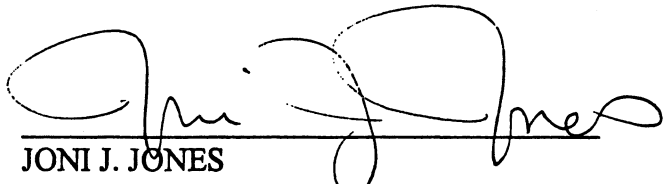
# Exhibit N

## CONCLUSION

Based on the foregoing, the State respectfully asks the Court to deny Jackson's motion to compel discovery and to issue an order in the form of the order attached to the State's Motion Requesting *Martinez* Report And A Stay On All Proceedings.

DATED this 13<sup>th</sup> day of March, 2007.

MARK L. SHURTLEFF  
Utah Attorney General



JONI J. JONES  
Assistant Utah Attorney General  
Litigation Division  
Attorneys for Defendants

FILED  
SANPETE COUNTY, UTAH  
2007 JAN 31 AM 11 01

SANDY NEILL  
SANPETE COUNTY CLERK  
BY C. White DEPUTY

1-25-07

Lawrence M. Jackson #28879

Quinn III-204-B  
Utah State Prison  
P.O. Box 250  
Draper, Utah 84020

Exhibit M

The Sixth District Court  
In the Office of Judge, Wallace A. Lee  
160 North Main Street  
P.O. Box 100  
Manti, Utah 84642-0100

Original →

re: Jackson v. The State of Utah, 6<sup>th</sup> Dist. Ct. #040600383

Dear Judge, Wallace A. Lee:

On 1-25-07, I recieved a copy of the docket event statement from this court. Upon receipt of this document from the court I was shocked to find that a document entitled: "Motion To Strike Defendant's Joint Motion And Stipulation And Otherwise Treat As A Complaint."

If you will recall, in the telephone conference between the court and the parties in this action I told the court that I had already prepared the above referenced motion, and had sent it to the Prison's Contract Attorney for copying. Further that the motion would be forwarded to the court as soon as I recieved it back from the Contract Attorney's Office. This teleconference took place on 12-20-06.

My records indicate that I sent the motion to the court on January 3, 2007. When I recieved the docket event statement I was shocked that there was no filing of the above referenced motion.

This case has now taken a scandalous turn. The State has now resorted to intercepting my mail to the court, and perhaps even my letters to the United States Department of Justice regarding the State's conduct.

There is no chance I could prevail in this case if the state is allowed

Lawrence M. Jackson #28879  
Quinn III-204-B  
Utah State Prison  
P.O. Box 250 Draper, Utah 84020

Filed: 1-2-07  
Exhibit L

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff,

v.

THE STATE OF UTAH, et. al.,  
Defendants.

MOTION TO STRIKE  
DEFENDANT'S JOINT MOTION  
AND STIPULATION AND  
OTHERWISE TREAT AS A  
COMPLAINT

Civil-No: 040600383

Judge, Wallace A. Lee

Comes now the plaintiff, pro-se in the above entitled matter and does hereby move the court to strike Defendant's "Joint Motion And Stipulation pursuant to Utah Rules of Civil Procedure Rule (8) 6; 8; 9; 12; and 56.

In support of this motion the plaintiff states the following:

- 1). The plaintiff filed a complaint for medical malpractice, and constitutional rights violations on 11-17-04.
- 2). The State filed a motion To Dismiss on 02-16-05, pursuant to U.R. Civ. P. Rule 12(b)(6).
- 3). On 01-06-06, the court entered a memorandum Decision, dismissing in part, and denying in part the state's motion under U.R. Civ. P. Rule 12(b)(6). Additionally, the court granted plaintiff's motion To Amend The Complaint.
- 4). On 02-09-06 the plaintiff filed The Amended complaint for medical -

## Exhibit 2

malpractice and Constitutional rights violations.

5). The Court ordered the state to answer the amended complaint, and the state did so on 04-28-06.

6). Additionally, the state filed a motion for judgment on the Pleadings on 05-12-06.

7). Based upon the state's answer to the Amended Complaint, and the state's motion for judgment on the Pleadings, the plaintiff filed a Motion for Summary Judgment respecting the state's answer to the amended complaint, and also a reply to state's motion for judgment on the pleadings.

8). On 07-13-06, the state filed a Request to Submit for Decision respecting the judgment on the Pleadings, and Request for a Stay on the Briefing on Plaintiff's Motion for Summary Judgment.

9). The Court granted the above referenced Request for submit for Decision and Stay on Briefing of Motion for summary judgment motion by plaintiff on 08-04-06. The Court required that: "IF the state's motion for judgment on the pleadings is denied, then the state must file its memorandum opposing plaintiff's summary judgment within thirty days of the court's ruling."

10). On 09-28-06, the Court entered on the record a memorandum Decision denying defendant's motion for judgment on the Pleadings.

11). The clock then started one day after the court's ruling of 09-28-06, and timely filing would thus be due on 10-30-06.

12). The State's Counsel, Mrs. Joni J. Jones contacted plaintiff on 11-10-06 and proposed various stipulations including:

(1). Stipulate to allow "limited discovery", (2). Stipulate to Allow



## Exhibit L

plaintiff to supplement the pleadings; (3). Provide Prison's policy, for rendering medical care for prisoners; (4). Stipulate to allow service upon defendant, medical Technician, Lisa Super by U.S. mail; (5). That plaintiff could incorporate the allegations in the Supplemental Pleadings into the existing Motion for Summary Judgment.

13). On November 13, 2006, I was contacted in person by a person identifying herself as an attorney from the Utah Attorney General's Office, who presented me with the written stipulations. The person discussed the stipulations with me. At that particular time I was under the influence of pain medications, and was also having vision problems. After looking over the document as best I could, I signed, especially with her explanation of what was being stipulated and agreed to, and why. (mostly to correct the lost or stolen affidavits. see: 6<sup>th</sup> Dist. Ct. Dock. Event Statute case #040600383; pg. 4; entry date: 09-18-06.

14). On or about 11-29-06 I received back a copy of the joint motion and stipulation and there had been added an agreement that the state will not be required to respond to Jackson's motion for Summary Judgment, filed on or about June 8, 2006."

15) The assistant Attorney General, and her para-legal committed fraud, and misrepresentation as to the provisions of the "Joint Motion and Stipulation, and several other acts that constitute deception.

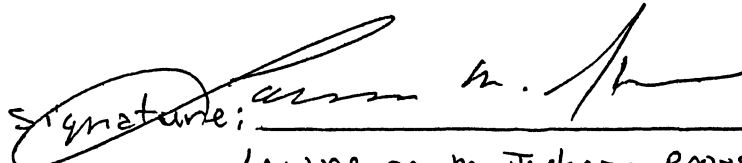
WHEREFORE, The plaintiff prays the court strike the "Joint Motion And Stipulation, and impose sanctions commensurate with the gravity of the acts and rule for the plaintiff on the motion for summary judgment for the reasons set forth more fully in the memorandum in support of this motion to strike the above referenced document.

And Stipulation

## Exhibit L

The above Statements are true and accurate to the best of my knowledge and belief.


Signed this 15<sup>th</sup> day of December, 2006.

Signature:   
Lawrence M. Jackson, Pro-se.

## CERTIFICATE OF SERVICE

I, Lawrence M. Jackson certify that on 12-14-06 I served an exact duplicate of the foregoing Motion To Strike Defendant's Joint Motion And Stipulation And Otherwise treat as Complaint Upon Joni J. Jones, Assistant Attorney General, Attorney for defendants by mailing it by first class mail to the following address:

Joni J. Jones #7562  
Assistant Attorney General  
Mark L. Shurtleff #4666  
Utah Attorney General  
Attorneys for Defendants  
160 East 300 South 6<sup>th</sup> floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856

by:   
Lawrence M. Jackson, Pro-se.

## Exhibit 2

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson  
Plaintiff,

Memorandum In Support of,  
Motion To Strike Defendant's  
Joint Motion And Stipulation,  
And otherwise treat as Complaint.

v.

Civil No:

THE STATE OF UTAH, et. al.,  
Defendants.

Judge, Wallace H. Lee

Come s now the plaintiff in the above entitled matter and  
moves hereby, Move the Court To Strike Defendant's Joint Mo-  
tion And Stipulation - in accordance with the Utah Rules of Civil  
Procedure Rule (5); 6; 8; 9; 12, and 56

In support of the motion the plaintiff states the  
following:

### PROCEDURAL HISTORY:

(As related to the above Joint Motion)

1). The plaintiff filed a Complaint for Medical malpractice, and  
Constitutional violations on 11-7-04.

2). The state filed a motion to dismiss on 2-16-05, pursuant  
to U.T.R. Civ. P. Rule 12(b)(6).

3). On 1-6-06, the court entered a Memorandum Decision, dismiss

issuing in part, and denying in part the States Rule 12(b)(6) motion.

4). ON 2-9-06 The plaintiff filed The Amended Complaint for Medical malpractice and Constitutional rights violations.

5). The Court ordered the state to answer The Amended Complaint, and the State did so on: 4-28-06.

6). Additionally, the State filed a motion for Judgment on The pleadings on: 5-12-06.

7). Based upon the state's Answer to the Amended Complaint, and the States Motion for Judgment on The Pleadings, The plaintiff filed a Motion for Summary Judgment respecting the state's Answer to The Amended Complaint, and also a Reply to State's motion for Judgment on The Pleadings on: 6-8-06.

8). On 7-13-06, The State filed a Request to Submit for Decision, And Request to Stay Briefing on Plaintiff's Motion for Summary Judgment.

9). The Court granted the above referenced Request for Judgment on the Pleadings and Stay on Motion for Summary Judgment motion by plaintiff on: 8-4-06. The Court required that, "If the state's motion for Judgment on the pleadings is denied, then the state must file its Memorandum Opposing plaintiff's Summary Judgment within thirty days of the Court's Ruling!"

10). On 9-28-06 The Court entered on the record a memorandum Decision and Order denying defendant's motion for Judgment on The pleadings.

## Exhibit L

### Relevant facts

- 1). The defendants filed an Answer to the Amended Complaint on 11-17-04. Wherein the State admitted that the plaintiff was deprived of insulin, (and also food), on at least (2) two days, although the plaintiff argued it was (5) five days. The defendants did not deny that the plaintiff had a court order Injunction mandating the provisions of "timely and regular doses of insulin and regular provisions of supplemental foodstuffs".
- 2). In the interim, the defendants filed a Motion for "judgment on the Pleadings". The State argued that the State enjoys "sovereign immunity, and therefore the plaintiff could not sue the state for monetary damages, and therefore the court should dismiss the Amended Complaint. The motion was filed on 5-12-06.
- 3). Based upon the State's Answer to the Amended Complaint, and the State's motion for judgment on the pleadings, the plaintiff filed a motion for Summary judgment and a reply to the State's motions for judgment on the pleadings.
- 4). Additionally, the State filed first, an Ex Parte Motion for extension of time to respond to plaintiff's summary judgment and reply to defendant's motion for judgment on the pleadings.
- 5). Then, on 7-13-06, defendants filed a Notice to Submit for decision, and stay briefing on plaintiff's motion for summary judgment, which was ~~was~~ granted by the court, and entered on: 8-4-06. The order entered stated in relevant part: "If the State's motion for judgment on the pleadings is denied, then the State must file its memorandum opposing Plaintiff's summary judgment within thirty days of the court's ruling." see: Exhibit A; 6<sup>th</sup> Dist Ct. Ord. Staying Pl. Mot. Summary Jud., dated: Aug. 4, 06.

## Summary of Arguments

- I. The Plaintiff Is Entitled To A Ruling On The Motion For Summary Judgment In His Favor Because The Defendants Failed To Answer or Otherwise Respond To The Averments.
- II. The Defendant's Joint Motion And Stipulation Should be Stricken because It failed to meet the requirements of U.R. Civ. P. Rule 56. No new defenses not proffered in Sum. Jud. opp.
- III. The Defendant's "Joint Motion And Stipulation" Was Untimely And Should be Dismissed By The Court There For.
- IV. The Defendant's Alleged "Joint Motion And Stipulation" Was Procured By Fraud, and Misrepresentation And Should be Dismissed By The Court.
- V. The Defendant's Alleged Joint Motion And Stipulation (Agreement) Fails Because of Lack of Consideration, or In The Alternative Failure of Consideration. The State also offered authentication of <sup>State</sup> records.
- VI. To The Extent That The Defendants would Claim That There Was A Mistake In The Joint Motion And Stipulation, The Plaintiff would Assert "mutual mistake"
- VII. Election of remedies U.R. Civ. P. Rule 8

## Argument I

The Plaintiff Is Entitled To A Ruling On The Summary Judgment In His Favor Because The Defendants Failed To Answer or Otherwise Respond To The Averments.

The plaintiff obtained a U.R. Civ. P. Rule 65 A Court Order, (injunction), in September 11, 2001. The defendants violated the court Order on a score of occasions.

## Exhibit L

IN one of such occasions, plaintiff was injured because he was being deprived of the prescribed dose of insulin, and by extension, food as well. see: Jackson v. Friel, 3<sup>rd</sup> Dist. Ct.; Order; case # 010904240; entered Sept. 12, 2001, attached hereto and labeled on its face as Exhibit D (1).

The plaintiff filed the instant case for the above injuries on 11-17-06. see: 6<sup>th</sup> Dist. Ct. Docket Event Statist case # 040600383. Ultimately, the court ruled in plaintiff's favor on a motion to dismiss pursuant to U.T. Civ. R. Rule 12(b)(6). In a Memorandum Decision, see: 6<sup>th</sup> Dist. Ct. Memo. Decis. on Ord.; case # 040600383; entered on: 01-06-06; pg. 9-10; Vol. 4. The court determined, in relevant part:

"[T]herefore, in this case, in order to establish a "flagrant violation" of his Constitutional rights under Utah's Constitution, the plaintiff must allege that he has a "clearly established right" and that a state employee, acting within the scope of state employment, understood that said employee's action would violate that right." *Id.* at 538. (citing Spackman v. Board of Education, 16 P.3d 533, 538-9 (Utah 2000)).

The state filed its Answer to the Amended Complaint on 4-28-06. see: Lawrence M. Jackson v. State of Utah, 6<sup>th</sup> Dist. Ct. # 040600383; State's Answer to Amended Compl.; pg. 3, para. 3 The state admits that they were aware that plaintiff had went (2) two days, although the plaintiff argues it was (5) days and pg. 4, para. 4, in state also admit that plaintiff had "either stopped eating altogether or ate very little from November 7, 2003 through November 9, 2003. There were several more issues the plaintiff identified in later pleadings.

The state subsequently filed a motion for a judgment on the pleadings, on 5-12-06. The state argued that the state enjoys "sovereign immunity and therefore could not be sued for monetary damages, and therefore, the court should dismiss the complaint altogether.

The petitioner, based upon the state's answer to the Complaint, and in reply to state's motion for judgment on the pleadings, filed a motion for summary judgment. See: 6<sup>th</sup> Dist. Ct. Docket # 06-8-06.

Defendants' Counsel moved the court first for an Ex Parte motion for Extension of time in which to answer motion for summary judgment. Additionally, the defendants filed a Notice to Submit for Decision, and a Stay on the Briefing on plaintiffs' motion for summary judgment, and the court granted the motion on 8-4-06. Attached to the Request to Submit for decision and request for Stay on Briefing on plaintiffs' motion for summary judgment, was a proposed order that was granted by the court on 8-4-06. The relevant portion stated: "[I]f the state's motion for judgment on the pleadings is denied, then the state must file its memorandum opposing plaintiff's motion for summary judgment within thirty days of court's ruling." This order, staying Briefing on Plaintiff's motion for summary judgment was drafted, and submitted to the court by the defendants.

of the motion for judgment on the pleadings of the court's ruling on the 3<sup>rd</sup> of the month.

On September 28, 2006, the court entered a Memorandum Decision denying the defendants' motion for judgment on the pleadings. The court determined, in relevant part:

(a). "[B]ased on this holding, (Spockman v. Board of Education, 16 P.3d 533 (Utah 2000), see also: Def. Memo. in Supp. of Mot. Jud. on Pl.; pg. 3-5.), the state argues that because the state retains its sovereign immunity at common law, the state is also immune from monetary damages Utah constitutional claim because such claim is based on common law. This court does not agree with this analysis."

(b). "[T]he court finds the plaintiff's pleading sufficient to afford him an opportunity to demonstrate that he meets the requirements outlined in Spockman. Therefore the state's motion for judgment on the pleadings is denied."



## Exhibit L

The court's ruling on the judgment for judgment on the pleadings was signed on: September 26, 2006. By the Order signed by this court, staying briefing on Plaintiff's motion for summary judgment, the defendant's (30) thirty days in which to meet the summary judgment started on September 26, 2006.

For the purposes of computation of time, the Utah Rules of Civil Procedure Rule 6(a) provides in relevant part:

(a). Computation. "In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of the court, or by any applicable statute, the day the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded."

Based upon the foregoing, the Order staying the briefing on the Plaintiff's motion for summary judgment was dated: September 26, 2006. Therefore, the (30) thirty days to file an answer to the Plaintiff's motion for summary judgment would have been: October 30, 2006. The State filed no answer within that time period.

Under the Utah Rules of Civil Procedure Rule 56(e) provides, in relevant part:

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial."

If he does not so respond, summary judgment, if appropriate, shall be entered against him." The plaintiff asserts that the following arguments will establish the appropriateness of the entry of summary judgment for plaintiff, and against the defendants.

## Argument II

The Defendants' Joint motion and Stipulation should be stricken because it failed to meet the requirements of U. R. Civ. P. Rule 56. No new defenses not proffered in the

In consideration of the fact that the defendants were required by order of the court, see: Exhibit A; Jackson v. State of Utah, 6th Dist. Ct.; case # 040600383; entered Aug. 4, 06, to file a memorandum opposing plaintiff's motion for summary judgment "within thirty days from the court's ruling", the state instead, defrauded the plaintiff into an agreement that was not negotiated, by hiding it in the pleading, thus making it a fraudulent agreement. See: Def. Joint Mot. And Stip., to Allow limited Disc. And Allow Pl. To Supp. Pl.; pg. 2; para (c).

The "Joint motion and stipulation" does not satisfy the criteria of subdivision (e) of Rule 56, because it does not set forth specific facts showing that there is a genuine issue for trial. Thorbeck v. Cook, 604 P.2d 934 (Utah 1979). See also: Pentecost v. Harward, 699 P.2d 696 (Utah 1985) ("where verified pleadings did not satisfy the criteria of subdivision (e), but neither party objected to the form or the content of the other's verified pleading and/or affidavit and the trial court apparently raised no objections, were deemed to be waived and the verified complaint was held sufficient to controvert the affidavit for purposes of avoiding summary judgment").

It is plain by the words used in the Proposed Order Granting Joint

Joint Motion And Stipulation To Allow Limited Discovery And To Allow The Plaintiff To Supplement The Pleadings, where on pg. 3 the proposed order states: "Approved as to Form and content, the defendant's intent was to foreclose any objection upon discovery of their fraudulent act. The Utah Rules of Civil Procedure Rule 56(e)'s requirement that "supporting and opposing affidavits shall be made on personal knowledge, and shall set forth such facts that would be admissible in evidence." Clearly this "Joint Motion And Stipulation" is untimely and sets forth no facts that would be admissible into evidence. Unlike the case Pentecost v. Harward, 699 P.2d 696 (Utah 1985), the plaintiff objects to this contrivance and did so the same day I received the copy of the "Joint Motion And Stipulation" back through the mail. See: Strange v. Ostlund, 594 P.2d 877 (Utah 1979); Hollemann Motors, Inc. v. Allred, 685 P.2d 544 (Utah 1984). ("Opposing party who does not move in a timely fashion to object to affidavits in opposition to his motion for summary judgment or to strike them and such affidavits are admitted, waives the right to complain that the affidavits do not comply with subdivision (e) of this rule").

### Argument III

The Defendants' "Joint Motion And Stipulation" was untimely And Should be dismissed By The Court therefor.

As argued in Argument I above, The defendants did not file an answer or otherwise oppose the Motion for Summary Judgment in a timely manner. See: Ut. R. Civ. P. Rule 9(f), which provides:

Time and place. "For the purposes of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments."

The plaintiff has no record that the defendants filed anything with in the time specified by the Order Staying Briefing on Plaintiff's Motion For Summary Judgment, see: Exhibit A; 6th Dist. Ct. Ord.; case # 040600383; entered on Aug. 4, 2006. The defendants did not even move the court for another extension of time, but failed to do so. The averment of untimeliness is a material averment in testing the sufficiency of the pleading. see: Def. "Joint Motion and Stipulation". see also: Ut. R. Civ. P. Rule 8(d). which provides:

(d). Effect of failure to deny. "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided." See also: Wasescha v. Terra, Inc., 528 P.2d 802 (Utah 1974) ("In action to rescind loan secured by mortgage, where defendant mortgagee failed to answer amended complaint within ten days after service thereof under Rule 15, but filed motion for permission to set forth accord and satisfaction one week before trial, refusal was not abuse of court's discretion"). This court, in accord with the above cited case, should refuse the defendant's Joint Motion And Stipulation because it failed to answer the motion for summary judgment and raises no defenses to Mt. Sum. J. Cham. Bank & Trust Co. v. Wilken, 668 P.2d 493 (Utah 1983) ("Defenses which have not been raised by the answer or by proper motion may not be raised in an affidavit in opposition to a motion for summary judgment").

Under the principal of "Election of Remedies," to the extent that a party may "elect remedies" for the failure of the defense to failure to plead, see: General Ins. Co. of Am. v. Carnicero Dynasty Corp., 545 P.2d 502 (Utah 1976); Parr v. Board of Educ., 564 P.2d 294 (Utah) ("Any matter that does not tend to controvert an opposing party's prima facie case must be pleaded specifically and is not put in issue by a denial made pursuant to subdivision (b)") of this rule; failure to so plead constitutes waiver of the defense pursuant to Rule 12(h).

#### Argument IV

The Defendant's alleged "Joint Motion And Stipulation" was procured by fraud, and was misrepresentation and should be dismissed by the court.



The provisions of the Utah Rules of Civil Procedure Rule 9 (3) (b) provides the following:

(b). "Fraud, mistake, condition of the mind. "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally."

The defendant's counsel called plaintiff, knowing that any responsive pleading that she would file in an attempt to defeat the plaintiff's motion for summary judgment would be deemed "untimely". In order to get a "leg up", she came, much as the Trojans of old, bearing her gifts of stipulations and assistance in obtaining "limited discovery, and assistance in service of the defendant, medical technicians, is a Soper, and stipulating to supplemental pleadings, but all the while the "stipulations" and agreements were pregnant with malicious, and fraudulent intent this fact is evident in the entitlement portion of the face of the document. There is no reference to an agreement to abandon the motion for summary judgment. Nothing she, Toni J. Jones, Assistant Attorney General offered was in any way a fair exchange, or "consideration" for the abandonment of the motion or summary judgment. Ironically, she relied on my poor eye sight, and state of awareness, brought on by the pain medications, to add the offending paragraph: (e) into the "Joint motion and Stipulation". See: Def. "Joint Mot. & Stip." case # 040600383; dated November 13, 2006.

The provisions of Utah Civ. P. Rule 9 (b) makes it plain that the circumstances constituting fraud should be stated with particularity. See: Williams v. State Farm Ins. Co., 656 P.2d 966 (Utah 1982) ("The requirement that circumstances constituting fraud should be stated with particularity is not limited to allegations of common-law fraud and reaches all circumstances where the pleader alleges the kind of misrepresentations, omissions, or other deceptions covered by the term "fraud" in its broadest dimensions").

## Exhibit L

See also: Norton v. Blackham, 669 P.2d 857 (Utah 1983), ("plaintiff's claim that defendant obtained a release from liability by fraud and misrepresentation was not properly pleaded where the complaint did not allege the release was obtained by fraud or misrepresentation, and the issue as to the validity of the release arose in plaintiff's affidavit in opposition to defendant's motion for summary judgment"). Unlike the above case, the plaintiff is alleging fraud, and misrepresentation, this element, misrepresentation arose where in the telephone conversation alluded to in defendant's "Joint Motion And Stipulation To Allow Limited Discovery And To Allow Plaintiff To Supplement The Pleadings; pg. 3, para. (4), plaintiff can recall no instance where Mr. Joni J. Jones specifically requested that the defendants not be required to respond to the motion for summary judgment.

Granted, this sort of trickery exposes the plaintiff's naïveté, but the plaintiff makes no claim to being on par with professionals, and not just professionals, but being the State's lawyers. This practice speaks volumes about the Office of the Utah Attorney General, it says, "win the case, no matter what you have to do, no matter how low you have to stoop. It also speaks volumes about the persona of the type of "professional" who would stoop so low. Counsel for the State of Utah must, each and every day, lay aside her integrity as she leaves out the door of her home to her job as an assistant attorney general. This court must reject the "Joint Motion And Stipulation" because of the fraud and misrepresentation in the procurement of this motion.

## Argument II.

Defendant's Alleged "Joint Motion And Stipulation" fails because of lack of consideration, or in the alternative, failure of consideration.

In the telephone conversation alluded to in the Defendant's

'Joint Motion And Stipulation,' see: Def. Mot. And Stip.; #040600383; dated: Nov. 13, 2006; pg. 3; para. (4), the defendants proffered: (1). To allow "limited discovery"; (2). To allow plaintiff to supplement the pleadings; (3). To aid plaintiff in obtaining the affidavits to support the motion for summary judgment; (4). To allow plaintiff to serve defendant, Lisa Sojka with summons by mail; (5). to provide authentication of records provided as discovery materials; and (6). to allow the plaintiff to incorporate the allegations in the supplemental pleadings into the existing motion or summary judgment. To date, I only recieved some medical history from prison, and three out of five affidavits. One signed to not.

. The plaintiff served the defendants with: "Plaintiff's First Request for Discovery, ON: 8-20-06. (A certification of service was forwarded to the Court, and was entered on the record on: 8-30-06. see: 6<sup>th</sup> Dist. Ct Dckt. Event starting; #040600383. The defendants omitted affidavits (9), nine sets - of documents requested in the first request for discovery.

. The Stipulation to allow plaintiff to Supplement the pleadings, The plaintiff is not clear that a stipulation superfluous, given that there was a motion before the Court to Supplement the pleadings, and that there was good cause for the Court to grant that motion.

. The plaintiff originally filed a motion with the court on 7-19-06, the plaintiff sought an Order from the Court requiring defendants to make available a witness for signing an affidavit.

Before the Court could rule on the motion, the defendant's attorney, Toni J. Jones, Assistant Attorney General made an offer to assist the plaintiff in obtaining the affidavit, by sending it to the Central Utah Correctional Facility, (CUCF), (where the affiant was being housed), in care of Captain Irons. The affidavit disappeared.

The plaintiff filed a complaint for acts constituting contempt of Court.



## Exhibit L

In the defendants' Joint Motion And Stipulation defendants again offered to aid in the acquisition of the (5) five affidavits I needed to be attached to the Motion for Summary Judgment. To date, The defendants delivered (1) one affidavit signed and Notarized, (2) unsigned affidavits, and there are still (2) two affidavits outstanding. Plaintiff has since spoken with Inmate James Mason stills, who did sign and notarize his affidavit, and he spoke to Inmate Percy Wilder who reported he signed and Notarized his affidavit over (2) two weeks ago. If that is true, The defendants are withholding those (2) two remaining affidavits.

4). Although The defendants offered to stipulate that Defendant, Medical Technician, Lisa Soper could be served summons and Amended complaint by mail, The agreement was not included in The "Joint Motion And Stipulation". Therefore, the defendant, Lisa Soper has not been served because plaintiff is unable to obtain her mailing address.

5). The defendants offered, respecting the motion to Supplement the pleadings; "that after discovery was provided by defendants, That the plaintiff, as well as the defendants could file for a motion for Summary judgment on the records provided respecting The acts and omissions complained of in the motion to Supplement the pleadings. To date, I have reviewed NO records respecting the acts, delaying and denying the court ordered supplemental foodstuffs; and Intentional infliction of unnecessary pain and suffering; see: 6<sup>th</sup> Dist. Ct. Dock. Event Statmt, entry date: 5-19-06; Notice of Intent to commence legal action.   
violating the medical clearance: "double"

Because of the above omissions, the "Joint Motion And Stipulation," (Agreement) is "Failed Consideration". The Utah Rules of Civil Procedure Rule 8 (C) Affirmative defenses provides the following:

(C). "In pleading to a preceding pleading, a party shall set forth affirmatively, accord and satisfaction, arbitration and award, assumption of risk, contributory Negligence, dis

charge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance of affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleadings as if there had been a proper designation."

See also: General Ins. Co. of Am. v. Carnicer Dynasty Corp., 545 P.2d 502 (Utah 1976); Pratt v. Board of Educ., 564 P.2d 294 (Utah). ("Lack of consideration means contract never existed; Failure of consideration means contract existed, but promised performance failed; lack of consideration negates element of plaintiff's case and must be pleaded under subdivision (b), but failure of consideration raises issue outside plaintiff's prima facie case and must be pleaded under subdivision (c).")

With respect to the defense of "lack of consideration, there was never an agreement respecting the defendants' obligation to respond to the plaintiff's motion for summary judgment.

The defendants undoubtedly recorded the "Telephonic conference" alluded to in defendants' Joint Motion and Stipulation, #040600383; signed on: November 13, 2006, pg. 3, and in the interest of wresting the truth in this matter, the recording would do much to support the contentions of either party.

Memor. Mot. Strike  
add on Teleconf.

## Exhibit L

Because the defendant's attorney, Joni J. Jones, Assistant Attorney General was so cryptic in her presentation of the matter of the supplemental pleadings, and her right to traverse the issues in the plaintiff's motion for summary judgment within (20) twenty days, and the fact that there was virtually NO understanding as to the issue of plaintiff abandoning the motion for summary judgment, a fair inference could be drawn that there was no "meeting of the minds." See: R. J. Daum Constr. Co. v. Child, 122 Utah 194, 247 P.2d 817 (1952) ("Where an action based on alleged contract, the parties have stipulated all the evidence, and the defendant moves for dismissal of the action on the ground that as a matter of law, the evidence shows no meeting of the minds, motion is really a motion for summary judgment, and can be granted only if there is no meeting of the minds").

The recording of the "telephonic conference," between the plaintiff and attorney Joni J. Jones would reveal that there was in fact no meeting of the minds. The court therefore should direct the defendants to produce the record so the controversy in this issue can be decided.

Subsequent to the drafting of this memorandum and motion the defendant's attorney requested a teleconference between the parties and the Honorable, Wallace A. Lee, Presiding Judge in this case. The subject matter was relating to the "Joint Motion And Stipulation."

During the above referenced teleconference, some additional reasons the court should consider it's decision to strike the alleged "agreement": The defendant's attorney, Mr. Joni J. Jones  
(pg. 17)

Jones indicated that she was not adverse to the court striking the "agreement", (Joint Motion And Stipulation).

Additionally, before there was any decision on the Joint Motion And Stipulation, (and the proposed Order was not signed), the court entered on the record a memorandum Decision, see: 6<sup>th</sup> Dist. Ct. Memo. Decis.; Case #040600383; entered on: Dec. 13, 2006. This decision effectively negated the alleged agreement because it granted plaintiff's motion for Reconsideration of the Court's Ruling and for leave of the court to Amend the Complaint; Motion For Order Requiring Defendants to make Available A witness for signing An Affidavit And Grant a Continuance; Motion to Supplement the Pleadings all the alleged stipulations and agreements were addressed in the court's memorandum Decision referred to above. The court should therefore strike the "Joint Motion And Stipulation", and proceed to rule on the Summary Judgment against the defendants because any response at this juncture, and also belated even the "Joint Motion and Stipulations for the purposes of timely filings in accordance with U.S. R. Civ. P. Rule 56(c), see also Exhibit A; 6<sup>th</sup> Dist. Ct. Ord.; Case #040600383; date: Aug. 04, 2006; Ord. Staying Briefing on Pl. Mot. Summary Judgment, are untimely.

### Conclusion

The court, for the reasons stated above should strike the alleged "Joint Motion And Stipulation" for the following reasons: (1). The defendants failed to answer, or otherwise oppose, or respond to the averments in the plaintiff's Motion for Summary Judgment; (2). The defendants' "Joint Motion and Stipulation" fails to meet the requirements of U.S. R. Civ. P. Rule 56, and Rule(s) 8(c); and (d); (3). The defendants' "Joint Motion and Stipulation" should be stricken in accordance with Utah Rules of Civil Procedure Rule 56 in as much as the defendant's "Joint Motion and Stipulation" is construed as an affidavit; (4) The

Memorandum, In Support of Motion to Strike  
Addendum Teleconfer.

## Exhibit 2

(4). The Defendants' Joint Motion And Stipulation should be dismissed for lack of consideration, and/or failure of consideration. The Court should therefore enter a decision for the plaintiff and against the defendants respecting any or all the above referenced reasons, and rule for the plaintiff on the Motion for Summary Judgment.

The above statements are true and accurate to the best of my knowledge and belief.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Signature: \_\_\_\_\_  
Lawrence M. Jackson, Pro-Se.

Certificate of service

Exhibit K

Bailiff: Sixth District Court is in session. Judge Wallace Lee presiding. Court come to order and bailiff be seated.

**Judge Lee:** Thank you Mr. Bailiff. Good morning to everybody. It's the 20<sup>th</sup> of December, and we're starting court just about 9:35 this morning. I think there are some parties on the telephone and I need to take them first. It takes precedence over everything else it seems like. Good morning, we're in the case of Lawrence Jackson vs. State of Utah and those that are on the telephone, if you'd please enter your appearance.

**Ms. Jones:** This is Joni Jones with the Utah Attorney General's Office representing the State of Utah.

**Judge Lee:** Thank you Ms. Jones

**Ms. Jones:** I also have with me my paralegal Sharon Zeller who is in the office.

**Judge Lee:** Thank you.

**Ms. Jones:** Mr. Jackson should be on the line as well. Mr. Jackson?

**Mr. Jackson:** Yes, this is Lawrence Jackson, plaintiff for the case.

**Judge Lee:** Thank you. Alright, the matter is scheduled on the calendar today for a telephone conference and I'm not sure what's pending so let me turn to Ms. Jones for an update.

**Ms. Jones:** Yes, your honor. I requested a telephonic conference today to address an issue that has come up. Mr. Jackson and I after a couple of phone calls entered into a stipulation to allow Mr. Jackson to proceed on some of the motions that he had filed. Specifically, he had filed with the court a request to have some affidavits completed and notarized. He also had filed a motion to supplement the pleadings. He also filed a motion for some discovery. And what I did, was attempt to work out with him, informally just between the two of us, resolutions of some of those matters because there has been quite a number of motions filed in this case, and one of the things that I requested from Mr. Jackson was that I not be required to respond to his pending motion for summary judgment. And the reason for that request, was that with Mr. Jackson supplementing the pleadings and requesting more evidence and obtaining affidavits, it was of course my assumption that he would want to use that information for, in support, of his motion for summary judgment, and the stipulation provided that once I provided all the information to him. For example, I've already sent over to him all of the medical records in his case in the relevant time period for the alleged injuries he sustained in

## Exhibit K

2003, I believe. So I sent over a stack of his medical records relating to that injury and the stipulation provided that either one of us could move for summary judgment based on this information. And Mr. Jackson has recently filed with the Court a motion to set aside the stipulation because he would like me to respond to the summary judgment. And I just wanted to be sure that we had a record on this issue. I have no problem with responding to the summary judgment, but to me it makes more sense if Mr. Jackson wants to use this evidence that he's obtained both the affidavits and the medical records, that he would do so and file a renewed motion for summary judgment. That would be my preference, rather than having to respond to two.

So, that was my purpose in requesting this conference today. I wanted there to be a record on my position on the stipulation that we entered into. Mr. Jackson never contacted me to ask me to set aside, or never tried to write to me directly, to discuss this. So, I don't object to that; however, I would prefer that the Court rule that I don't have to respond to that summary judgment and instead that Mr. Jackson can file a renewed motion for summary judgment based on all this information that he's obtained.

And one other thing your Honor, I just want to state for the record, I know that you have issued a memorandum decision recently in which you allowed Mr. Jackson to supplement the pleadings and amend the complaint and ordered that we assist in getting him access to the inmates to prepare the affidavits and have those notarized. I think it's important to know that the state has tried to cooperate in these matters. We have already, before you issued this order, assisted him with the affidavits. We've already returned two to him and my paralegal, Sharon Zeller, already has two more that she is returning to him. I had already agreed to allow him to supplement the pleadings. ~~So my purpose here is certainly to not prevent Mr. Jackson from pursuing his claims, but I would like some sort of control over this case so that there aren't constant motions etc. that we're responding to.~~ It would be my request that now that we've provided all this information and the affidavits, that there be a stay in the case pending either Mr. Jackson or me moving for summary judgment on all the information.

**Judge Lee:** Okay, thank you. What you're suggesting is procedure that would aid us in economy I suppose so that we're only responding to one; rather than, it sounds like if we do as Mr. Jackson is proposing, we'd have to respond to this one and then consider a renewed one possibly in the future. And you're trying to combine the two and move along. Is that right?

**Ms. Jones:** Yes, your Honor.

**Judge Lee:** Mr. Jackson, you understand Ms. Jones' position?

## Exhibit K

**Mr. Jackson:** I understand her assertions of. It's my position though that the summary judgment, or the agreement that she put into that joint motion and stipulation, stated in short terms that they didn't have to respond to the summary judgment other than what her answers were. My concern is that I've been reading a little bit on that summary judgment and her answer to the complaint from what I can read, she is to respond and that nothing new can be brought into that summary judgment other than what her answers were. And that's the way I read the statutes, but I mean the rules. But um, at first I didn't know if I was reading what she had wrote correctly or not. If she was just saying I don't need to respond to it, then that would mean she basically could go back and change her answer at some point. The way I read the rules and stuff that was not allowed.

**Judge Lee:** And I don't understand that as being her purpose. It sounds like she's giving you an opportunity to supplement your motion for summary judgment with the materials that she's provided and then she's asking that she just be able to respond to that, your supplemental motion for summary judgment rather than two of them. And that seems to make sense to me. You'd be allowed to supplement what you've got and she'd be allowed to answer the supplemented one.

**Mr. Jackson:** The other thing is the discovery that I had asked for in that first request for discovery, there was a number of things that I didn't get on there and basically what I got was a medical computer data sheets that showed some of my medical history and stuff like that and seems pretty biased for the government that there are specialists that did the surgery on my eye and everything and they had made comments to me about my injury and why I would be having permanent impairment and things like that and those things aren't reflected in any of the information that she sent me and I was concerned that there had been a failure of consideration which I think would be probably material in a decision where there's been an agreement or not or even a meeting of the minds so I was concerned about that and had made some motions and I was getting them copied and getting them ready to send to the court outlining what my difficulty was what she had proposed in the joint motion and stipulation. The way we had been talking was, she was going to be responding to, was what new she would respond to would be just those allegations in the supplemental pleadings.

**Judge Lee:** Alright, Ms. Jones, how long do you propose that we stay things to see if Mr. Jackson will supplement the motion for summary judgment?

**Ms. Jones:** Well, first of all your Honor, you did grant his request to supplement the pleadings and amend the complaint. And the time for me to respond to the supplemental pleadings expires in January so I would like an opportunity to do that first. And then, I don't know if Mr. Jackson needs 30 days or 60 days from then to renew his motion. He



## Exhibit K

can do a renewed motion on what he's already filed and then a motion on the rest of the matters. I don't know Mr. Jackson how much time you need.

Let me also say this. When I provided the medical records to Mr. Jackson, that's what we have. I can provide an affidavit from the DOC records manager stating that's what we have. I don't have direct access to some medical records that may be maintained independently at the University of Utah Hospital where I know Mr. Jackson received some care. But the medical records that we provided are what we have.

**Judge Lee:** Okay, why don't we do this. I agree that Mr. Jackson needs some time to supplement his pleadings. You need some time to answer that. And as you say, that's in January when that will happen. And then Mr. Jackson, how much time you gonna need to supplement your motion for summary judgment, or to renew it?

**Mr. Jackson:** Of course I'd like to be able to find out what she's saying about the supplemental pleadings. 30 days after that I guess:

**Judge Lee:** 30 days? Okay. That sounds reasonable. Does that sound reasonable to you Ms. Jones?

**Ms. Jones:** Yes, your Honor.

**Judge Lee:** Okay, so 30 days after you file your answer to the supplemented pleadings, then Mr. Jackson will renew his motion for summary judgment and supplement that with whatever discovery he's received and any other arguments he wants to make based thereon and then you can respond to that.

**Ms. Jones:** Right, and of course, your honor, I plan at that time that I oppose whatever motions that he might file and we would be presenting our own cross-motion for summary judgment.

**Judge Lee:** Understood. And then he'd have a chance to respond to that.

**Ms. Jones:** Of course.

**Mr. Jackson:** Okay, is there, can I get a specific ruling then basically on what her, I mean the Rules 56 in one of the annotations it states specifically they're only allowed to argue from their answer of that summary judgment. I'm concerned that a whole lot of other things would get brought up that should have been brought up at the time of her answer and that sort of stuff. I don't know if I'm readin' it correctly or not but that was a real concern of mine.

tribit k

**Judge Lee:** Well, she hasn't answered yet.

**Mr. Jackson:** I mean the answer to the complaint.

**Judge Lee:** Well, she'll have to answer the supplemental pleadings that you filed and she'll have to do that under the rules and you'll both have to deal with the rules regarding civil procedure. I haven't seen anything yet so I can't rule on that.

**Mr. Jackson:** Okay, alright.

**Judge Lee:** Okay, thank you and I appreciate both of you and your efforts.

**Ms. Jones:** Thank you your honor.

**Judge Lee:** Thank you.

STATE OF UTAH                    )  
  :ss  
COUNTY OF SALT LAKE    )

I, Yvonne Schenk, legal secretary to Joni J. Jones, hereby acknowledge that I have transcribed the above information from the telephonic conference cd on this 22<sup>nd</sup> day of January, 2007.

  
Yvonne Schenk

DATED this 22 day of January, 2007.

  
NOTARY PUBLIC



Exhibit J

FILED  
SANPETE COUNTY, UTAH

2006 DEC 13 AM 9 18

KRISTINE FRISCHKNECHT  
SANPETE COUNTY CLERK

**DISTRICT COURT, STATE OF UTAH  
COUNTY OF SANPETE**

BY \_\_\_\_\_ DEPUTY

160 North Main, P.O. Box 100  
Manti, Utah 84642  
Telephone (435) 835-2131 Facsimile (435) 835-2135

**LAWRENCE M. JACKSON,**

Plaintiff,

vs.

**STATE OF UTAH, *et. al.*,**

Defendants.

**MEMORANDUM DECISION**

Case No. **040600383**

Assigned Judge: **Wallace A. Lee**

On 19 October 2006, the plaintiff submitted the following motions for the Court's decision: (1) Motion for Service of Summons by Other Means Pursuant to Utah Rules of Civil Procedure, Rule 4(g); (2) Motion for Reconsideration of Court's Ruling and for Leave of the Court to Amend the Complaint; (3) Motion for an Order Requiring Defendants to Make Available a Witness for Signing an Affidavit and Grant a Continuance; and (4) Motion to Supplement the Pleadings.

The Court considers each motion in turn.

**1. Motion for Service of a Summons by Other Means Pursuant to Utah Rules of Civil Procedure, Rule 4(g)**

This motion was filed on 8 June 2006 and is unopposed by the Defendants. It is based on the following set of facts: The plaintiff has made some efforts to serve Lisa Bergess with a copy of the summons and complaint in this case. Specifically, the plaintiff tried to

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JACKSON v. UTAH, *et.al.*, Case No. 040600383  
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Corrections administrative department.<sup>1)</sup> All of his efforts have failed. The plaintiff also attempted to secure legal representation but was unable to do so.<sup>2)</sup> Finally, the plaintiff does not have the money to pay a process server.<sup>3)</sup> On the basis of these facts, the plaintiff asks the Court to order the Clerk of the Court to effectuate service by mail or other means.

Under Rule 4(d)(4)(A), the Court may order service by publication or by some other means in several instances: (1) “where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence;” (2) where “service upon all of the individual parties is impracticable under the circumstances;” or (3) where “there exists good cause to believe that the person to be served is avoiding service of process.” The plaintiff is required to submit an affidavit showing his efforts to identify, locate, or serve the parties.

The Court finds that in this case, the plaintiff has not established any of the required conditions under Rule 4(d)(4)(A). Therefore, the motion should be denied. First, the plaintiff knows the identity of the individual to be served. Second, his efforts to serve her were unsuccessful mostly because he is not able to hire a private process server. Third, the plaintiff did not show any reason to believe that Lisa Bergess is avoiding service of process. Therefore, the Court finds no sufficient grounds to order service by publication.

Similarly, the Court finds that the Clerk of the Court is not in a position to locate, identify, and serve parties to this action. This is a civil suit for damages resulting from

JACKSON v. UTAH, *et.al.*, Case No. 040600383  
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locate, identify, and serve all parties. The plaintiff simply has no more right than any other plaintiff in a civil suit to have the Court bear the cost or responsibility for service.

Therefore, the plaintiff's Motion for Service of Summons by Other Means Pursuant to Utah Rules of Civil Procedure, Rule 4(g) is denied.

**2. Motion for Reconsideration of Court's Ruling and for Leave of the Court to Amend the Complaint**

The plaintiff filed this motion on 19 July 2006. The State has responded, and the plaintiff replied. The plaintiff seeks to amend the complaint in this case by adding two additional claims: (1) a claim for violations of Title II of the Americans with Disability Act of 1990 ("ADA"), 42 U.S.C.S. §12131 *et seq.*; and (2) an Eighth Amendment claim against the State. The plaintiff originally asserted an Eighth Amendment claim in this case, but the claim was dismissed by this Court.

In support of his current motion, the plaintiff relies on the recent United States Supreme Court decision in *United States v. Georgia*, 546 US 151 (2006). The plaintiff reads *United States v. Georgia* to hold that the State's sovereign immunity is waived to permit an Eighth Amendment claim against the State because the Eighth Amendment is incorporated into the Fourteenth Amendment. Therefore, the plaintiff argues that the Court must reconsider its previous ruling in the Memorandum Decision issued on 6 January 2006, and allow the plaintiff to assert an Eighth Amendment claim against the State.

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The Court finds the plaintiff's interpretation of *United States v. Georgia* incorrect. The main holding of that case is that the State's immunity is waived only as long as the claim is brought under Title II of the ADA and thus, falls under the Fourteenth Amendment. *Id.* at 151. The Fourteenth Amendment incorporates the Eighth Amendment guarantee against cruel and unusual punishment. Therefore, claims under the Eighth Amendment may also be successfully asserted against the State. However, a clear prerequisite for waiver of immunity is that the claims must fall under Title II of the ADA.

For the plaintiff this means that he may assert an Eighth Amendment claim against the defendants under Title II of the ADA, but he cannot independently bring such claim. On this basis, the Court finds its previous ruling correct because the plaintiff did not assert his Eighth Amendment claim under the ADA.

The next question is whether the plaintiff should be permitted to amend his complaint to assert his claims under Title II of the ADA. Because a responsive pleading in this case has been served, the plaintiff "may amend his pleading only by leave of court . . . and leave shall be freely given when justice so requires." URCP, Rule 15(a). However, a party is not permitted to amend the complaint to add a claim that is legally insufficient or futile. See *Smith v. Grand Canyon Expeditions Co.*, 84 P.3d 1154, 1162 (Utah 2003); *Wright v. University of Utah*, 876 P.2d 380, 387 (Utah App. 1994); *Kasco Services Co. v. Benson*, 831 P.2d 86, 92-93 (Utah 1992).

# Exhibit J

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not a disability covered by the ADA. The State cites several cases to support its argument.

The Court has read the cited cases and concludes that the plaintiff's claim may not be futile if the plaintiff successfully proves that his diabetes constitutes a disability under the ADA. Indeed, the plaintiff's diabetes may be considered a disability if he shows that his medical condition "substantially limits one or more of [his] major life activities" in its treated state. *Epstein v. Kalvin-Miller International, Inc.*, 100 F. Supp 2d 222, 224 (US District Court for Southern District of New York, 2000); see also *Sutton v. United Air Lines*, 527 US 471, 482 (1999); *Moore v. City of Overland Park*, 950 F. Supp 1081, 1087 (US District Court for the District of Kansas, 1996). To reach such a conclusion, the Court would be required to analyze several elements to determine if plaintiff's diabetes qualifies as disability under the ADA. Thus, the plaintiff's proposed amendment is not futile, and the plaintiff should be allowed to amend his complaint.

The plaintiff's Motion for Reconsideration of Court's Ruling and for Leave of the Court to Amend the Complaint is partially granted and partially denied. The plaintiff is allowed to amend his complaint to add claims under the ADA.

### **3. Motion for an Order Requiring Defendants to Make Available a Witness for Signing and Affidavit and Grant a Continuance**

This motion is unopposed by the State and was filed on 10 July 2006. The plaintiff and one of his potential witnesses against the State have prepared an affidavit. Before the

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witness was able to sign the affidavit, the plaintiff was transferred to a different housing unit. The plaintiff has the unsigned affidavit in his possession, and he is asking this Court to order the State to make the witness available to sign the affidavit.

The Court orders the State to facilitate presentation of the affidavit to the plaintiff's witness and use of a notary public for that purpose.

#### **4. Motion to Supplement Pleadings:**

This motion was filed on 5 October 2006 and is also unopposed by the State. The plaintiff is seeking to supplement his complaint under Rule 15(d), Utah Rules of Civil Procedure.

The Court may permit service of a supplemental pleading "upon reasonable notice and upon such terms as are just." *Id.* In addition, the pleading must set forth "transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." *Id.*

In this case, the plaintiff advances new facts and events that allegedly occurred in April, 2006. The complaint in this case was filed on 17 November 2004. Therefore, the plaintiff should be permitted to supplement his pleadings. The defendants have twenty (20) days to respond to the supplemented pleadings.

The plaintiff's Motion to Supplement Pleadings is granted.



Exhibit J

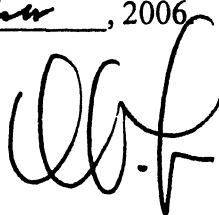
JACKSON v. UTAH, *et.al.*, Case No. 040600383

Memorandum Decision

Page 7

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DATED this 7<sup>th</sup> day of December, 2006



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WALLACE A. LEE, Judge

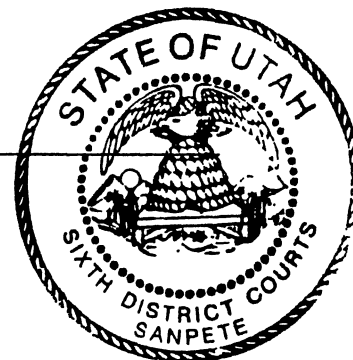


Exhibit J

JACKSON v. UTAH, *et.al.*, Case No. 040600383  
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Page 8

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**CERTIFICATE OF SERVICE**

On December 13, 2006 a copy of the above document was sent to the following by the method indicated:

Addressee

Method

☐ Lawrence M. Jackson  
Plaintiff  
Oquirrh III-204-B  
Utah State Prison  
P.O. Box 250  
Draper, Utah 84020

☒ Mail  
☐ Hand delivery  
☐ Fax  
☐ Courthouse box

☐ Joni J. Jones  
Assistant Attorney General  
Mark L. Shurtleff  
Utah Attorney General  
160 East 300 South, 6<sup>th</sup> Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856

☒ Mail  
☐ Hand delivery  
☐ Fax  
☐ Courthouse box

Kenneth Peterson

Exhibit I  
COPY

Exhibit I

DISTRICT COURT, STATE OF UTAH  
COUNTY OF SANPETE  
160 North Main, P.O. Box 100  
Manti, Utah 84642  
Telephone (435) 835-2131 Facsimile (435) 835-2135

LAWRENCE M. JACKSON,  
Plaintiff,

vs.

STATE OF UTAH, *et al.*,  
Defendants.

MEMORANDUM DECISION AND  
ORDER ON MOTION FOR JUDGMENT  
ON THE PLEADINGS

Case No. 040600383  
Assigned Judge: Wallace A. Lee

This case is before the Court on the State's Motion for Judgment on the Pleadings. The Court previously dismissed all of the plaintiff's claims against the State, except for the claim under Utah State Constitution Article I, Section 9. The State now moves to dispose of this claim under Utah Rules of Civil Procedure, Rule 12(c). This Motion has been submitted for a decision.

STANDARD OF REVIEW

A motion for judgment on the pleadings under Utah Rules of Civil Procedure, Rule 12(c), will be granted only if "as a matter of law, the plaintiff could not recover under the allegations." *Intermountain Sports, Inc. v. DOT*, 103 P.3d 716, 718 (Utah App. 2001). The *Interstate Bank of Utah, N.A.*, 991 P.2d 584, 585 (Utah 1999). The allegations in the complaint as true and draws all reasonable inferences favorable to the plaintiff. *Id.*

Exhibit I

JONI J. JONES (7562)  
 Assistant Utah Attorney General  
 MARK L. SHURTLEFF (4666)  
 Utah Attorney General  
 Attorneys for Defendants  
 160 East 300 South, Sixth Floor  
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 Salt Lake City, Utah 84114-0856  
 Telephone: (801) 366-0100

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY  
 STATE OF UTAH – MANTI DIVISION

LAWRENCE M. JACKSON,	:	JOINT MOTION AND
	:	STIPULATION TO ALLOW
Plaintiff,	:	LIMITED DISCOVERY AND TO
	:	ALLOW PLAINTIFF TO
	:	SUPPLEMENT THE PLEADINGS
vs.	:	
	:	Case No. 040600383
STATE OF UTAH, et al.	:	
	:	Judge Wallace A. Lee
Defendants.	:	
	:	

Defendant State of Utah and Plaintiff Lawrence M. Jackson jointly move the Court for an order allowing Jackson to supplement the pleadings and allowing the parties to exchange limited discovery. The parties jointly move the Court based on the following facts and stipulations.

1. Since Jackson filed his motion for summary judgment on June 8, 2006, he has filed numerous other motions, including a motion to supplement the pleadings and a motion for discovery conference, both of which were filed on or about September 20, 2006.

## Exhibit I

2. On Friday, November 3, 2006, counsel for the State contacted Jackson at the Utah State Prison and the parties held a telephonic conference to discuss Jackson's motions and the status of the case. The parties held a telephonic conference again on November 7, 2006.

3. As a result of the conferences, the parties reached the following agreements:

a. The parties agree that Jackson should be allowed to supplement the pleadings to add claims based on the factual allegations contained in Jackson's memorandum, filed with the Court on or about 9/20/06. A copy of Jackson's motion and memorandum are attached as Exhibit A.

b. The parties agree that, by stipulating to allow Jackson to supplement the pleadings, the State is not waiving any defenses it may have to the claims Jackson seeks to add.

c. The parties agree that the State has 20 days after Jackson serves a copy of the supplemental pleadings on counsel to file an answer or other response.

d. The parties agree that the State will provide Jackson with copies of medical records relevant to the claims in Jackson's amended complaint filed on or about February 9, 2006, and also provide copies of policies governing administration of medication to inmates.

e. The parties agree that the State will not be required to respond to Jackson's motion for summary judgment, filed on or about June 8, 2006.

FILED  
SAN PETE COUNTY, UTAH

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KRISTINE FRISCHNECHT  
SANPETE COUNTY CLERK

BY \_\_\_\_\_ DEPUTY

Exhibit H

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY

STATE OF UTAH – MANTI DIVISION

LAWRENCE M. JACKSON,

Plaintiff,

vs.

STATE OF UTAH, et al.

Defendants.

: ORDER STAYING BRIEFING ON  
: PLAINTIFF'S MOTION FOR  
: SUMMARY JUDGMENT

: Case No. 040600383

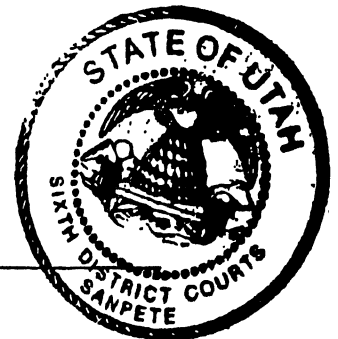
: Judge Wallace A. Lee

Pending resolution of the State's motion for judgment on the pleadings, this Court hereby STAYS briefing on Plaintiff's motion for summary judgment. If the State's motion for judgment on the pleadings is denied, then the State must file its memorandum opposing Plaintiff's summary judgment within thirty days of the Court's ruling.

SO ORDERED this 2nd day of <sup>August</sup> July, 2006

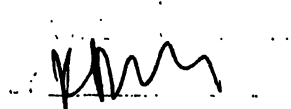
BY THE COURT

Honorable Wallace A. Lee  
District Court Judge



} Exhibit G

JAN 9 2013



**DISTRICT COURT, STATE OF UTAH**  
**COUNTY OF SANPETE**  
160 North Main, P.O. Box 100  
Manti, Utah 84642  
Telephone (435) 835-2131 Facsimile (435) 835-2135

**LAWRENCE M. JACKSON,**

Plaintiff,

**vs.**

**STATE OF UTAH, *et. al.*,**

Defendants.

**MEMORANDUM DECISION AND  
ORDER**

Case No. 040600383

Assigned Judge: Wallace A. Lee

This case is before the Court pursuant to the defendants' Motion to Dismiss Amended Complaint. The defendants filed a memorandum in support of their Motion. The plaintiff filed a responsive memorandum. No reply memorandum was filed by the defendants. After these memoranda were filed, the plaintiff also filed a Motion to Supplement the Pleadings and a Motion for Appointment of Counsel. The defendants have not responded to these latter motions. All of the motions are now ready for decision.

**DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT**

The Court will first consider the Motion to Dismiss Amended Complaint filed by the defendants. The Court notes that the plaintiff has never actually filed an amended complaint, but because Rule 15 allows the plaintiff to amend his Complaint once as a matter of right, the defendants have chosen to treat the plaintiff's Complaint as though it had already been amended,

# Exhibit G

JACKSON V. UTAH, *et.al.*, Case No. 040600383  
Memorandum Decision  
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and to respond to all of the plaintiff's claims, including those with which the plaintiff wishes to amend his Complaint. Both sides have fully briefed all of these issues. Accordingly, the Court will also treat all of these claims in this decision, and will refer to all claims as being embodied in an Amended Complaint.

1. **Standard of Review:** The defendants' Motion to Dismiss is based upon Rule 12(b)(6), Utah Rules of Civil Procedure. "A rule 12(b)(6) motion to dismiss admits the facts alleged in the complaint but challenges the plaintiff's right to relief based on those facts." Utah Rules of Civil Procedure (2005); *Oakwood Vill. L.L.C. v. Albertsons, Inc.*, 104 P.3d 1226, 1230 (Utah 2004); *Russell v. Standard Corp.*, 898 P.2d 263, 264 (Utah 1995); *St. Benedict's Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d 194, 196 (Utah 1991). The Court's "inquiry is concerned solely with the sufficiency of the pleadings, and not the underlying merits of the case." *Oakwood Vill. L.L.C. v. Albertsons, Inc.* at 1230, citing *Alvarez v. Galetka*, 933 P.2d 987, 989 (Utah 1997). In essence, the Court must determine "whether the ... [plaintiff] has alleged enough in the complaint to state a cause of action." *Alvarez v. Galetka* at 989.

A Motion to dismiss should be granted only if it is clear that the plaintiff can prove no set of facts in support of his claim. *Russell/Packard Dev., Inc. v. Carson*, 78 P.3d 616, 620 (Utah App. 2003); *Dansie v. Anderson Lumber Co.*, 878 P.2d 1155, 1156 (Utah App. 1994).

Finally, the Court notes that this is a pro se action. Accordingly, the plaintiff's pleadings



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should be construed liberally. *Boag v. MacDougall*, 454 US 364, 365 (1982); *Haines v. Kerner*, 404 US 519, 520-21 (1972).

2. **Personal Injury and Medical Malpractice Claims:** The plaintiff alleges personal injury and medical malpractice claims against the State of Utah, and also against a medical technician known only as “Lisa” and Warden Jerry Jorgensen. The Court will consider the plaintiff’s claims against each of the defendants.

A. **Claim against the State of Utah:** With regard to the plaintiff’s claim against the State of Utah, the Court finds that even if the plaintiff’s allegations in the Amended Complaint are considered true for the purposes of analysis of the defendants’ Motion to Dismiss, the State of Utah is immune from the plaintiff’s medical malpractice and personal injury claims because the plaintiff’s injuries arose out of, in connection with, or resulted from his incarceration in a state prison. See Utah Code Annotated, Section 63-30-10(10) (2003)<sup>1</sup>. See also, *Malcolm v. State of Utah*, 878 P.2d 1144 (Utah 1994); *Madsen v. State*, 583 P.2d 92 (Utah 1978); *Lancaster v. Utah State Prison*, 740 P.2d 261 (Utah 1987). On this basis, the defendants’ Motion to Dismiss is granted as to the State of Utah on the negligence and medical malpractice claims, and those claims are dismissed with prejudice.

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<sup>1</sup> This section has been repealed and replaced by §63-30d-301(5)(j). However, this case is governed by the old section because the plaintiff’s injuries occurred before July 1, 2004. Transition Clause of §63-30d-301 provides that “[i]t is the intent of the legislature that: (1) injuries alleged to be caused by a governmental entity that occurred before July 1, 2004, be governed by the provisions of Title 63, Chapter 30, Utah Governmental Immunity Act.”

## Exhibit G

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2. **Claims against state employees:** The analysis is slightly different concerning the plaintiff's claims against the state employees, Jorgensen and "Lisa." Utah Code Annotated, Section 63-30-4(3)(b)(i)<sup>2</sup> waives governmental immunity for conduct of state employees acting within the scope of their employment or under color of authority if such employees "acted or failed to act through fraud or malice." Therefore, the plaintiff can recover against Jorgensen and "Lisa" only if he has adequately alleged that they acted, (or failed to act) maliciously in denying him a proper dose of insulin. Analysis of that issue requires examination not only of the Amended Complaint, but also the Notice of Claim.

The Utah Governmental Immunity Act requires that a person having a claim for injury against a government employee file a written notice of claim with the governmental entity before maintaining an action. The notice of claim must be served within a year after the claim arises. Utah Code Ann. §§63-30-11(2)<sup>3</sup> and 63-30-12<sup>4</sup>.

The notice of claim must contain a brief statement of facts, the nature of the claim, and the damages if known. Id. §63-30-11(3)<sup>5</sup>. The notice must also include allegations of malice if

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<sup>2</sup> This section has been repealed and replaced by §63-30d-202(3)(c)(i). See also footnote 1.

<sup>3</sup> This section has been repealed and replaced by §63-30d-401(2). See also footnote 1.

<sup>4</sup> This section has been repealed and replaced by §63-30d-402. See also footnote 1.

<sup>5</sup> This section has been repealed and replaced by §63-30-401(3)(a). See also footnote 1.

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the subsequent complaint frames the action in terms of malice. *Straley v. Halliday*, 997 P.2d 338, 342 (Utah App. 2000).

In this case, on 25 April 2004, the plaintiff filed a Notice of Intent to Commence Legal Action with the Utah Attorney General. The plaintiff named "Lisa" in the notice and the Court finds that the assertions in the claim are sufficient to allege malice against her. (Notice of Intent to Commence Legal Action, Page 6).

Conversely, Jorgensen is not specifically named in the notice and nothing is alleged against him. The failure to specifically name Jorgensen in the notice requires further analysis of the issue of whether the notice of claim is sufficient as to Warden Jerry Jorgensen.

The Court finds that the purpose of the notice requirement of the Governmental Immunity Act is "to afford the responsible public authorities an opportunity to pursue a proper and timely investigation of the merits of a claim and to arrive at a timely settlement, if appropriate, thereby avoiding the expenditure of public revenue for costly and unnecessary litigation." *Nunez v. Albo*, 53 P.3d 2, 8 (Utah App. 2002), citing *Stahl v. Utah Transit Auth.*, 618 P.2d 480, 482 (Utah 1980).

In this case, the plaintiff's notice of claim does refer to the Order issued by the Third District Court that directed Warden Clint Friel of the Utah State Prison to provide the plaintiff with insulin and foodstuffs. (Notice of Intent, Page 2; Response to Defendant's Motion to

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Dismiss, Exhibit 1(b)). However, this is the only reference to any potential liability of Warden Jorgensen.

The Court finds that even if this reference may constitute a sufficient notice of claim, the plaintiff failed to allege malice against Jorgensen as required by *Straley*. 997 P.2d 338. The plaintiff cannot remedy this omission by filing a second notice of claim because the one year statute of limitations under Utah Code Annotated §63-30-12 has run<sup>6</sup>.

On this basis, the defendants' Motion to dismiss is granted as to Warden Jerry Jorgensen. Jorgensen is not a party to this suit, and this Court declines to order service of the Amended Complaint on him.

With regard to the medical technician known as "Lisa," the Court finds that in order to survive the State's motion to dismiss, the plaintiff must have alleged that "Lisa" acted maliciously in refusing to give him the correct dose of insulin. In his Amended Complaint, the plaintiff alleged that he asked for a proper dose of insulin, and that "Lisa" maliciously refused to give it to him. (Complaint for Medical Malpractice, Pages 6, 7).

It is possible that the plaintiff can recover damages if he is able to prove that "Lisa" deprived him of his regular dose of insulin with the intent to harm him. The Court finds that the plaintiff alleged sufficient facts to minimally state his claim. On this basis, the defendants'

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<sup>6</sup> Plaintiff filed a notice of claim on 25 April 2004. Therefore, his injuries occurred some time before that date. The statute of limitations has expired some time before 25 April 2005.

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Motion to Dismiss the plaintiff's claims against "Lisa" for negligence and medical malpractice is denied. The plaintiff is ordered to serve summons and a copy of the Amended Complaint on "Lisa" in accordance with the requirements of Rule 4, Utah Rules of Civil Procedure.

3. **Eighth Amendment Claim:** The plaintiff has alleged a claim under the Eighth Amendment to the Constitution of the United States alleging cruel and unusual punishment. Again, the legal analysis varies in this case with the allegations against each of the defendants, and the Court will treat each defendant separately.

A. **Claim against the State of Utah:** The Court will first consider the plaintiffs allegations against the State of Utah. In order to claim redress for a violation under the Eighth Amendment, the plaintiff is required to proceed under United State Code, Title 42, Section 1983. *Wilson v. Meeks*, 52 F.3d 1547, 1552 (10<sup>th</sup> Cir. 1995). The Court finds the defendants' contention that the State of Utah is not a "person," subject to suit under 42 U.S.C. Section 1983, is well taken. Under 42 U.S.C. Section 1983, neither the State of Utah nor the Utah Department of Corrections is a "person" subject to suit. *Harris v. Champion*, 51 F.3d 901 (10<sup>th</sup> Cir. 1995); *Will v. Michigan*, 491 U.S. 58 (1989); *Watson v. University of Utah Medical Center*, 75 F.3d 569 (10<sup>th</sup> Cir. 1996).

Therefore, even if the plaintiff's allegations are considered true, they are simply insufficient to state a claim against the State of Utah under the Eighth Amendment. The

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defendants' Motion to Dismiss based on the Eighth Amendment claim against the State of Utah is granted, and that claim is dismissed with prejudice.

**B. Claim against Warden Jerry Jorgensen:** As stated above, Warden

Jorgensen is not a party to this lawsuit. In addition, the Court finds that Jorgensen cannot be held strictly liable for damages under the Eighth Amendment claim because he is not sued for any deliberate acts of his own but only as a supervisor of an employee who allegedly violated the plaintiff's rights. *Jenkins v. Wood*, 81 F.3d 988, 994 (10<sup>th</sup> Cir. 1996); *Ruark v. Solano*, 928 F.2d 947, 950 (10<sup>th</sup> Cir. 1991); *Woodward v. City of Worland*, 977 F.2d 1392, 1399 (10<sup>th</sup> Cir. 1992).

On this basis, the defendants' Motion to Dismiss the plaintiff's Eighth Amendment Claim against Jorgensen is granted and all claims founded upon the Eighth Amendment asserted against Warden Jorgensen individually, are dismissed with prejudice.

**C. Claim against "Lisa":** The Court finds that in order to successfully pursue a constitutional claim founded on the Eighth Amendment against "Lisa," the plaintiff is required to show that "Lisa" engaged in a deliberate and intentional act to violate plaintiff's constitutional rights. *Jenkins v. Wood* at 994.

The plaintiff has alleged in his Amended Complaint that "Lisa" maliciously and intentionally refused to give him a required dose of insulin. (Complaint, Pages 6, 7). The Court finds that the allegations of the plaintiff's complaint are sufficient to state a cause of action

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against “Lisa” under the Eighth Amendment. Therefore, the defendants’ Motion to Dismiss the Eighth Amendment Claims against “Lisa” is denied.

4. **State Constitutional Claims:** The Court finds that the Utah Governmental Immunity Act does not render the State of Utah immune from a constitutional claim based upon Article I, Section 9 of Utah’s Constitution. *Bott v. DeLand*, 922 P.2d 732, 736 (Utah 1996).

In *Bott*, the Utah Supreme Court explained that governmental immunity “constitutes unreasonable regulation of [the plaintiff’s] article I, section 9 right to be free of ‘unnecessary rigor.’” *Id.* The Court further noted that “[c]onstitutional rights serve to restrict government conduct ... [and they] would never serve this purpose if the state could use governmental immunity to avoid constitutional restrictions.” *Id.* at 736-7.

Nevertheless, in order to successfully proceed with a private lawsuit on a state constitutional claim for monetary damages, a claimant must establish three required elements: (1) that he suffered a “flagrant” violation of his constitutional right; (2) that the existing remedies do not redress his injuries; and (3) that equitable relief was and is wholly inadequate to protect his rights or redress his injuries. *Spackman v. Board of Education*, 16 P.3d 533, 538-9 (Utah 2000).

Therefore, in this case, in order to establish a “flagrant violation” of his constitutional rights under Utah’s Constitution, the plaintiff must allege that he has a “clearly established right” and that a state employee, acting within the scope of state employment, understood that said

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employee's actions would violate that right. *Id.* at 538.

The plaintiff's Amended Complaint alleges that the plaintiff has the right to receive regular doses of vital medication. (Complaint, Pages 6-7; Motion to Amend the Pleadings, Pages 2-3). The plaintiff further alleges that a state employee, medical technician "Lisa," acting within the scope of her state employment, refused to administer the required medication to him, knowing, by virtue of her position as a medical technician, that withholding the correct dosage of insulin would be detrimental to the plaintiff's health. *Id.*

The Court finds that these basic allegations are sufficient to minimally state a cause of action for a "flagrant" violation of the plaintiff's constitutional rights, under Article I, Section 9, of the Utah Constitution.

The Amended Complaint also indirectly alleges that the existing remedies available to the plaintiff (the Order of the Third District Court) were not sufficient to protect the plaintiff's right to receive timely and proper medication. In addition, the Court in the *Bott* case held that "if prisoners' rights under article I, section 9 are violated, injunctive relief may not be adequate to remedy prisoners' injuries." 922 P.2d 732, 739.

On this basis, the Court finds that the allegations of the plaintiff's Amended Complaint are sufficient to state a cause of action for violation of the plaintiff's right under Article I, Section 9 of the Constitution of the State of Utah to be free from "unnecessary rigor."



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Therefore, the defendants' motion to dismiss the state constitutional claim is granted as to Warden Jerry Jorgensen because he is not a party to this suit. However, the motion is denied as to the State of Utah and medical technician "Lisa."

### **MOTION TO SUPPLEMENT THE PLEADINGS**

Under Rule 15(d) of the Utah Rules of Civil Procedure, a party may serve supplemental pleadings if new transactions and occurrences or events have happened since the date of the pleadings sought to be supplemented. In this case, the Court finds that no new transactions or occurrences have happened in this case. The plaintiff is simply seeking to further amend the pleadings. Therefore, the plaintiff's Motion to Supplement the Pleadings will be treated herein as a Motion to Amend.

This is the plaintiff's second motion to amend the pleadings. Therefore, further amendment may be accomplished only through leave of Court. URCP, Rule 15(a). Such leave "shall be freely given when justice so requires." Id.

The Court finds that justice requires further amendment of the plaintiff's Complaint in this case. However, leave is granted only as to the limited amendments mentioned in this Memorandum Decision and Order. Specifically, the plaintiff is granted leave to further amend his Complaint to name "Lisa" as a defendant. The plaintiff is also granted leave to further amend

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the Complaint to clarify language regarding malice in connection with assertion of the plaintiff's negligence and medical malpractice claim against "Lisa," and to assert his State Constitutional claim against the State of Utah and "Lisa."

With regard to Warden Jerry Jorgensen, the Court finds that the plaintiff's Motion to Amend would be futile because of the fatal defects in his notice of claim mentioned earlier in this decision. Therefore, leave is not granted for further amendment to name Warden Jorgensen as a party to the suit, or to include any claims against Jorgensen.

## **MOTION FOR APPOINTMENT OF COUNSEL**

The right to an attorney exists only in criminal cases under Rule 8 of the Utah Rules of Criminal Procedure. (2005) Plaintiff's Motion for Appointment of Counsel is denied because this is a civil case and a private cause of action seeking remedy for alleged medical malpractice and alleged violation of state and federal constitutional rights. There is simply no mechanism that would allow the Court to appoint counsel to represent the plaintiff in this case.

## **ORDER**

1. The defendants' Motion to Dismiss Amended Complaint is partially granted and partially denied as follows:

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**JACKSON V. UTAH, *et.al.*, Case No. 040600383**  
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A. With regard to the negligence and medical malpractice claims against the State of Utah, the defendants' Motion is granted. The plaintiff's claims against the State of Utah for negligence and medical malpractice are accordingly dismissed with prejudice.

B. With regard to the negligence and medical malpractice claims against Warden Jerry Jorgensen, the defendants' Motion is granted. Warden Jerry Jorgensen is not a proper party to this lawsuit and the Court declines to order service of process upon him. To the extent any claims for negligence or medical malpractice are asserted in the Amended Complaint against Warden Jerry Jorgensen all such claims are dismissed with prejudice.

C. With regard to the negligence and medical malpractice claims asserted against medical technician "Lisa," the defendants' Motion is denied.

D. With regard to the claim against the State of Utah based upon the Eighth Amendment to the Constitution of the United States, the defendants' Motion is granted. The Eighth Amendment Claim against the State of Utah is dismissed with prejudice.

E. With regard to the claim against Warden Jerry Jorgensen based upon the Eighth Amendment to the Constitution of the United States, the defendants' motion is granted. The Eighth Amendment Claim against Warden Jerry Jorgensen is dismissed with prejudice.

F. With regard to the claim against medical technician "Lisa," based upon the Eighth Amendment to the Constitution of the United States, the defendants' Motion is denied.

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G. With regard to the claim against the State of Utah based upon Article I, Section 9 of the Constitution of the State of Utah, the defendants' Motion is denied.

H. With regard to the claim against Warden Jerry Jorgensen based upon Article I, Section 9 of the Constitution of the State of Utah, the defendants' motion is granted. All state constitutional claims asserted against Warden Jerry Jorgensen are dismissed with prejudice.

I. With regard to the claim against medical technician "Lisa," based upon Article I, Section 9 of the Constitution of the State of Utah, the defendants' Motion is denied.

2. The plaintiff's Motion to further amend the Complaint is partially granted and partially denied as follows:

A. The plaintiff is granted leave to amend the Complaint to name medical technician "Lisa" as a defendant.

B. The plaintiff is granted leave to amend the Complaint to clarify language regarding malice in connection with assertion of the plaintiff's negligence and medical malpractice claim against "Lisa,"

C. The plaintiff is granted leave to amend the Complaint to assert a claim under Article I, Section 9 of the Constitution of the State of Utah against the State of Utah and "Lisa."

D. The Motion to Amend is denied as to any amendments which seek to add Warden Jerry Jorgensen as a defendant or to assert any claims against Warden Jerry Jorgensen.

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3. The plaintiff is ordered to file an Amended Complaint in accordance with the terms of this Memorandum Decision and Order.

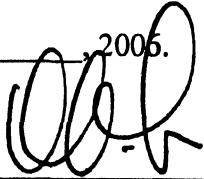
4. The plaintiff is ordered to serve the Amended Complaint upon the State of Utah in accordance with the terms of Rule 15, Utah Rules of Civil Procedure.

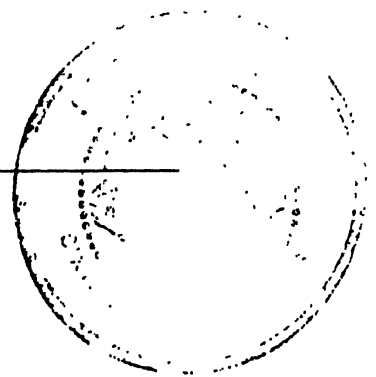
5. The defendant, State of Utah, is ordered to file an Answer to the allegations of the Amended Complaint relating to the plaintiff's state constitutional claims under Article I, Section 9, within 10 days after service of the plaintiff's Amended Complaint in accordance with the terms of Rule 15, Utah Rules of Civil Procedure.

6. The plaintiff is ordered to serve summons and a copy of the Amended Complaint upon medical technician "Lisa," in accordance with the requirements of Rule 4, Utah Rules of Civil Procedure.

7. The plaintiff's Motion for Appointment of Counsel is denied.

DATED this 3rd day of January, 2006.

  
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WALLACE A. LEE, Judge



SIXTH JUDICIAL DISTRICT-MANTI  
SANPETE COUNTY, STATE OF UTAH

LAWRENCE M #28879 JACKSON vs. STATE OF UTAH

CASE NUMBER 040600383 Malpractice

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CURRENT ASSIGNED JUDGE  
WALLACE A LEE

Exhibit F

PARTIES

Plaintiff - LAWRENCE M #28879 JACKSON

Defendant - STATE OF UTAH  
Represented by: JONI J JONES

ACCOUNT SUMMARY

CASE NOTE

PROCEEDINGS

11-17-04 Filed: Complaint  
11-17-04 Judge MCIFF assigned.  
11-17-04 Filed: Affidavit of impecuniosity  
11-29-04 Filed: Motion for official service of summons  
11-29-04 Issued: Summons  
Clerk denan  
01-20-05 Filed order: order re: notice to be served  
Judge kmciff  
Signed January 20, 2005  
2-16-05 Filed: Defendant's Motion to Dismiss  
2-16-05 Filed: Memorandum in Support of Motion to Dismiss  
3-08-05 Filed: Motion for enlargement of time to file reply memo  
3-29-05 Filed: Motion to amend the pleadings  
3-29-05 Filed: response to defendant's motion to dismiss  
4-12-05 Filed: Defendant's Motion to Dismiss Amended Complaint  
4-12-05 Filed: Memorandum in Support of Motion To Dismiss Amended  
Complaint  
4-26-05 Filed: Reply to defendants motion to dismiss  
4-28-05 Filed: Motion to Supplement the Pleadings  
5-06-05 Filed: Notice to Submit for Decision  
5-06-05 Tracking started for Under advisement. Review date Jul 05,  
2005.  
5-17-05 Filed: Motion for appointment of counsel  
0-28-05 INTENT TO DISMISS scheduled on November 23, 2005 at 09:30 AM in  
West Courtroom with Judge LEE.

Exhibit F

10-28-05 Filed: Notice of intent to dismiss  
11-08-05 Filed: Notice to Submit Second Request to Submit for Decision  
11-08-05 Tracking started for Under advisement. Review date Jan 07, 2006.  
11-23-05 Minute Entry - Minutes for INTENT TO DISMISS  
Judge: K L MCIFF  
Clerk: kriso  
PRESENT

Defendant's Attorney(s): JONI J JONES

Audio

Tape Number: cd-dc-66 Tape Count: 9:33-9:36

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HEARING

TAPE: cd-dc-66 COUNT: 9:33-9:36

Case is before the court on a intent to dismiss. Judge takes the case under advisement.

01-06-06 Filed order: Memorandum decision and order  
Judge wlee  
Signed January 03, 2006  
01-18-06 Filed: Motion for enlargement of time in which to file an amended complaint  
02-09-06 Filed: Affidavit of impecuniosity  
02-09-06 Filed: Motion for official service of process  
02-09-06 Filed: Amended complaint for medical malpractice and constitutional rights violation  
02-09-06 Filed: Records request pursuant ot the governmental records access management act Uca  
02-09-06 Filed: Petition for judicial review of denial of a (grama) records requests  
03-06-06 Filed order: Memorandum Decision  
Judge wlee  
Signed March 02, 2006  
03-21-06 Filed: Letter  
03-29-06 Filed: Records Request Pursuant To Governmental Records Access Management Act 63-2-202 (1) (a)  
04-03-06 Filed: State of Utah's motion for an order requiring plaintiff to serve counsel with copies of all pleadings and correspondence to the court and imposing sanctions for future violations  
4-03-06 Filed: Memorandum in support of state of Utah's motion for an order requiring plaintiff to serve counsel with copies of all pleadings and correspondence to the court and imposing sanctions for future violations  
4-03-06 Filed: Affidavit of Joni J Jones  
4-03-06 Filed: State's motion for extension of time to respond to

plaintiff's second amended complaint

04-03-06 Filed: Memorandum in support fo state's motion for extension of time to respond to plaintiff's second amended complaint

04-11-06 Filed: Letter

04-13-06 Filed: Notice to Submit

04-13-06 Tracking started for Under advisement. Review date Jun 12, 2006.

04-18-06 Tracking ended for Under advisement.

04-18-06 Tracking ended for Under advisement.

04-19-06 Filed: Motion (Letter from Jackson)

04-28-06 Filed: State of Utah's answer to amended complaint  
STATE OF UTAH

05-08-06 Filed: Reply Memorandum in support of state of utah's motion for an order requiring plaintiff to serve counsel with copies of all pleadings and correspondence to the court and imposing sanctions for future violations

05-12-06 Filed: State Of Utah's Motion For Judgment On The Pleadings

05-12-06 Filed: Memorandum In Support Of The State's Motion For Judgment On The Pleadings

05-19-06 Filed: Notice of appeal of the denial of (Gramma) records request

05-19-06 Filed: Notice of intent ot commence legal action

05-19-06 Filed: Memorandum in response to defendant's motion for an order requiring the plaintiff to serve counsel with copies of correspondence to court and impose sanctions

06-08-06 Filed: Motion For Service Of A Summons By Other Means Pursuant To UT.R.CIV.P. Rule 4 (g)

6-08-06 Filed: Affidavit

6-08-06 Filed: Amended Complaint For Medical Malpractice And Constitutional Rights Violations

6-08-06 Filed: Memorandum In Response To Defendant's Motion For A Judgment On The Pleadings

6-08-06 Filed: Motion For Summary Judgment

6-08-06 Filed: Memorandum In Support Of Motion For Summary Judgment

6-08-06 Filed: Affidavit In Support Of Motion For Summary Judgment

6-09-06 Filed: State's Ex Parte Motion for Extension of Time to Respond to Plaintiff's Motion for Summary Judgment and Reply to Defendant's Motion for Judgment on the Pleadings.

6-21-06 Filed order: Order granting the state's ex parte motion for extension of time  
Judge wlee  
Signed June 19, 2006

7-13-06 Filed: Request to submit for decision and request to stay briefing on plaintiff's motion for summary judgment

7-13-06 Tracking started for Under advisement. Review date Sep 11, 2006.

7-13-06 Tracking ended for Under advisement.

7-19-06 Filed: Motion For Reconsideration Of Court's Ruling And For



# Exhibit F

CASE NUMBER 040600383 Malpractice

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Leave To Amend The Complaint

07-19-06 Filed: Memorandum In Support Of Motion For Reconsideration Of Court's Ruling And For Leave To Amend The Complaint

07-19-06 Filed: Motion For An Order Requiring Defendants To Make Available A Witness For Signing An Affidavit And Grant A Continuance

07-19-06 Filed: Memorandum In Support Of Motion For An Order Requiring Defendants To Make Available A Witness For Signing An Affidavit And Grant A Continuance

08-01-06 Filed: Affidavit of Plaintiff

08-01-06 Filed: Letter (Jackson)

08-04-06 Filed order: Order Staying Briefing On Plaintiff's Motion For Summary Judgment  
Judge wlee  
Signed August 02, 2006

08-07-06 Filed: Memorandum In Response To Defendant's Request To Submit For Decision And Motion To Stay Briefing On Plaintiff's Motion For Summary Judgment

08-07-06 Filed: The State's Memorandum In Opposition To Plaintiff's Motion To Amend

08-14-06 Filed: Reply memorandum in response to plaintiff's opposition memorandum to defendant's request to submit for decision and motion for stay briefing on plaintiff's motion for summary judgment

08-18-06 Filed: Affidavit of Petitioner

08-30-06 Filed: Motion For An Order Requiring Defendants To Make Available Inmate/Witness For Statements

08-30-06 Filed: memorandum In Support Of Motion For An Order Requiring Defendants To Make Available Inmate/Witness Statements

08-30-06 Filed: Certificate Of Service

09-05-06 Filed: Memorandum In Reply To Defendant's Objection To Plaintiff's Motion For Reconsideration Of Courts Ruling & For Leave Of The Court To Amend Complaint

09-05-06 Filed: Complaint For Acts And Omissions That Constitute Contempt Of Court

09-18-06 Filed: Motion for Enlargement of time to file a motion to supplant the pleadings

09-28-06 Filed order: Memorandum decision and order on motion for judgment on the pleadings  
Judge wlee  
Signed September 26, 2006

09-28-06 Tracking ended for Under advisement.

09-29-06 Filed: Second Request to Submit for Decision on Defendant's Motion for Judgment on the Pleadings.

10-05-06 Filed: Motion to supplant the pleadings

10-16-06 Filed: Letter

10-19-06 Filed: Motion for discovery conference

10-19-06 Filed: Notice to Submit for Decision

10-19-06 Tracking started for Under advisement. Review date Dec 18,

2006.  
10-25-06 Judge LEE assigned.  
10-27-06 Filed: Amended Complaint for Medical Malpractice and Constitutional Rights Violations  
10-27-06 Filed: Affidavit of Impecuneosity  
11-17-06 Filed: Joint Motion and Stipulation to Allow Limited Discovery and to Allow Plaintiff to Supplement the pleadings  
12-04-06 Filed: Letter  
12-04-06 Filed: letter to Ms Jones  
12-06-06 Filed: Motion for Enlargement of Time to File Motion in Opposition to Alleged Agreement and Motion to Strike Agreement  
12-13-06 Tracking ended for Under advisement.  
12-13-06 Filed order: Memorandum decision  
Judge wlee  
Signed December 07, 2006  
12-18-06 Filed: Request to Submit for Decision  
12-18-06 Tracking started for Under advisement. Review date Feb 16, 2007.  
12-19-06 TELEPHONE CONFERENCE scheduled on December 20, 2006 at 09:30 AM in West Courtroom with Judge LEE.  
12-20-06 Minute Entry - Minutes for TELEPHONE CONFERENCE  
Judge: WALLACE A LEE  
Clerk: kerap  
PRESENT

Plaintiff(s): LAWRENCE M #28879 JACKSON

Defendant's Attorney(s): JONI J JONES

Audio

Tape Number: DC CD 93 Tape Count: 9:35-9:49

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HEARING

TAPE: DC CD 93 COUNT: 9:35

Parties appear by phone. Ms. Jones discusses a stipulation between the State and the defendant regarding responding to the motions for summary judgments.

COUNT: 9:42

Mr. Jackson responds.

Court orders that the Plaintiff be given time to submit his supplemental proceedings and the defendants have time to respond. The Plaintiff will have 30 days after supplemental proceedings are filed to file a renewed summary judgment and the State can respond to this.

12-28-06 Filed: Letter  
12-28-06 Filed: Notice to Submit For Decision  
12-28-06 Tracking started for Under advisement. Review date Feb 26, 2007.

01-04-07 Filed: State Of Utah's Answer To Plaintiff's Supplemental Claims

STATE OF UTAH

01-16-07 Filed: letter

01-16-07 Filed: Amended Complaint for Medical Malpractice and Constitutional Rights Violations

01-16-07 Filed: Supplemental Pleadings

01-22-07 Filed: Letter from L. Jackson

01-25-07 Filed: The State's Memorandum in Opposition to Plaintiff's Motion to Strike Defendant's Joint Motion and Stipulation and to Plaintiff's Motion to Compel Discovery

01-31-07 Filed: State of Utah's Answer to Second Amended Complaint

STATE OF UTAH

January 31, 2007

01-31-07 Filed: Letter From Lawrence M. Jackson

02-05-07 Tracking ended for Under advisement.

02-05-07 Tracking ended for Under advisement.

02-12-07 Filed: Account Transaction History

02-16-07 Filed order: Order on Plaintiff's affidavit of Impecuniosity  
Judge wlee

Signed February 16, 2007

02-20-07 Filed: Memorandum in Reply to Defendant's Answer to Plaintiff's Supplemental Pleadings

~~02-26-07~~ Filed: Memorandum in Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion to Strike Joint Motion and Stipulation

02-26-07 Filed: Memorandum in Reply to Defendant's Answer to Plaintiff's Second Amended Complaint

03-01-07 Filed: Motion for an Order Compelling Discovery

Filed by: JACKSON, LAWRENCE M #28879

03-01-07 Filed: Memorandum in Support of Motion for an Compelling Discovery

03-09-07 Filed: Affidavit of Percy Wilder

03-09-07 Filed: Affidavit of James Stills

03-09-07 Filed: Affidavit of Paul D Nelson

03-09-07 Filed: Affidavit of Russell Allen.

03-15-07 Filed: Defendant's Motion Requesting that the state be allowed to file a martinez report and that all proceedings are stayed until the martinez reprot is filed

Filed by: JONES, JONI J

03-15-07 Filed: The State's Memorandum in Opposition to Plaintiff's Motion to Motion to Compel Discovery and in Support of Motion for Martinez Report

03-20-07 Filed: Notice to Submit for Decision

03-20-07 Tracking started for Under advisement. Review date May 19, 2007.

03-26-07 Filed: Letter from Mr. Jackson

03-28-07 Filed order: Order Allowing the State to File Martinez Report

and Staying all Proceedings

Judge wlee

Signed March 28, 2007

- 03-28-07 Tracking ended for Under advisement.
- 04-04-07 Filed: Motion for Enlargement of Time to Respond to Defendant's Opposition to Plaintiff's Motion to compel discovery and Motion to file Martinez Report  
Filed by: JACKSON, LAWRENCE M #28879
- 04-12-07 Filed: Petition for Judicial Review of Denial of Grama Records Request Appeal
- 04-27-07 Filed: Memorandum in Opposition to Defendant's Motion that the State be Allowed to File a Stay of Proceedings
- 05-04-07 Filed: Petition for Judicial Review of Denial of Grama Records Request Appeal
- 05-04-07 Filed: Notice to Submit for Decision
- 05-04-07 Tracking started for Under advisement. Review date Jul 03, 2007.
- 05-18-07 Filed: Response to Plaintiff's Attempt to File Petition for Judicial Review of GRAMA Denial
- 05-24-07 Filed: Ex Parte Motion for Overlength Memorandum
- 05-25-07 Filed order: Order Granting Ex Parte Motion for Overlength Memorandum

Judge wlee

Signed May 24, 2007

- 06-01-07 Filed: Defendants' Martinez Report
- 06-01-07 Filed: Affidavit of Katie Healy
- 06-01-07 Filed: Affidavit of Austin Smith
- 06-01-07 Filed: Affidavit of Sergeant Thomas Laursen
- 06-01-07 Filed: Affidavit of Peggy Monson
- 06-01-07 Filed: Affidavit of Mary Ann Reding
- 06-01-07 Filed: Affidavit of Lt. Rusty Phelps
- 06-01-07 Filed: Affidavit of Lael Askew
- 06-01-07 Filed: Affidavit of Renee Springman
- 06-01-07 Filed: Affidavit of Dr. Richard Garden
- 06-01-07 Filed: Affidavit of Cathy Davis
- 06-14-07 Filed: Affidavit of Billie Casper
- 06-18-07 Filed: Affidavit of Cathy Davis
- 07-02-07 Tracking ended for Under advisement.
- 07-03-07 Filed order: Memorandum Decision

Judge wlee

Signed July 03, 2007

- 07-11-07 Filed: Notice of Appeal
- 07-18-07 Filed: letter from Lawrence Jackson

# Exhibit E

Level I Grievance Ref. # 990853397, 3-4-04.

University of Utah Hospitals and Clinics  
Salt Lake City, UT

Exhibit D

## Operative Report

JACKSON, LAWRENCE M - 12425326

Result Type: Operative Report  
Service Date: Friday, March 19, 2004 00:00  
Result Status: Unauth  
Result Title: Operation Report  
Authored By: Patel, Bhupendra on Friday, March 19, 2004 00:00

166308

### Operation Report

Operation Report: Proc Date: 03/19/04  
SURGEON: DR. BHUPENDRA PATEL  
ASSISTANT:

PREOPERATIVE DIAGNOSES: Left orbital floor and medial wall fractures with entrapment of tissues causing double vision and restriction of gaze, together with enophthalmos measuring 2 mm.

POSTOPERATIVE DIAGNOSES: Same.

OPERATION PERFORMED: 1. Left anterior orbitotomy.  
2. Left release of orbital floor and medial wall fracture entrapment of soft tissues.  
3. Repair of floor and medial wall with Medpor implant.

ANESTHESIA: General.

INDICATIONS: This patient sustained a blunt injury to the left side of the face and a left orbital floor and medial wall fracture. There has been considerable scarring over the last few weeks, and there is restriction of gaze in upgaze. He has enophthalmos and double vision in upgaze. These are being corrected by surgery. The patient fully understands that some degree of enophthalmos will remain. He also understands that double vision cannot be completely relieved because of the length of time that has passed between the injury and the surgery. He also understands that some permanent double vision is very likely to persist, but in the primary field of gaze the double vision should certainly improve.

PROCEDURE: A fully informed consent was obtained from the patient prior to the surgery. The patient was taken to the operating room and identified by the attending surgeon, Dr. B.C.K. Patel. The patient was cleaned and draped in the usual sterile fashion once general anesthesia had been administered.

A transconjunctival incision was made through the conjunctiva and lower lid retractors down to the inferior orbital rim, and the periosteum was elevated anteriorly and posteriorly into the apex of the orbit. The orbital contents were then released, and the entrapped tissues were identified affecting the orbital floor and the medial wall of the orbit. Adequate hemostasis was achieved by the careful use of cautery, and a careful release of the entrapped tissues was achieved.

Forced duction tests were carried out throughout the operation to ensure

Printed by: Blackburn, Tawnya R  
Printed on: 3/29/2004 15:50

Page 1 of 2  
(Continued)

University of Utah Hospitals and Clinics  
Salt Lake City, UT

Exhibit D

Operative Report

JACKSON, LAWRENCE M - 12426326

that an adequate release of the entrapped tissues had been achieved.

Medpor implants were cut to an appropriate shape and size and inserted along the floor and medial wall to correct exophthalmos and to correct the defects. Further forced duction tests were carried out to ensure that there was no residual entrapment of the tissues.

Closure was carried out using 6-0 plain catgut sutures, and postoperatively, the vision was examined and was noted to be normal. The patient was then taken to the recovery area in excellent condition. DD: 03/21/04

Dictated by: BHUPENDRA PATEL

DT: 03/21/04

TL927/JOB: 284253

Printed by: Blackburn, Tawnya R  
Printed on: 3/29/2004 15:50

Page 2 of 2  
(End of Report)

# EXHIBIT D

4/21/04

V. 6/30  
20/40

NVA = OD  
OS

Pupils:

Motility:

Visual Fields:

Lids

Lacrimal glands

Lacrimal drainage

Orbits

Preauricular lymph nodes

RE

WNL

☐

☐

☐

☐

☐

☐

☐

☐

SLE

CONJ

CORNEA

SENS

A.C.

IRIS

LENS

VITREOUS

TEARS/B.U.T.

LE

WNL

☐

☐

☐

☐

☐

☐

☐

☐

RE

WNL

☐

☐

☐

☐

☐

☐

☐

☐

FUNDUS

ON

VESSELS

MACULA

PERIPHERY

C/D

LE

WNL

☐

☐

☐

☐

☐

☐

☐

☐

MRD OD:  
OS:

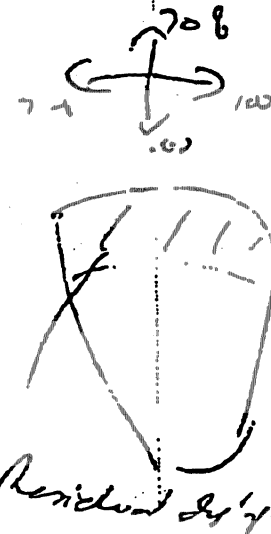
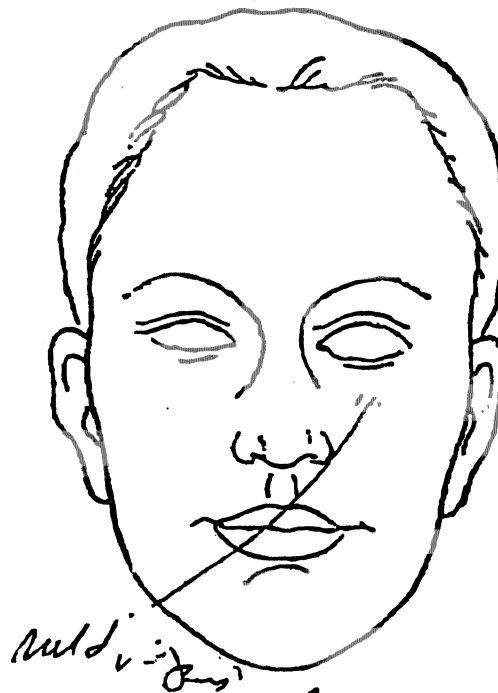
LC OD:  
OS:

LF OD:  
OS:

IPF OD:  
OS:

HERTEL (base mm)

OD:  
OS:



DIAGNOSIS

Prox

ASSESSMENT, CONCLUSION OR IMPRESSION

Extragenital

PLAN:

1.

2.

3.

☐ Discussed  
☐ Observe

☐ Booklet/Pamphlet  
☐ FP/FA/ICG

☐ Laser  
☐ Surgery

☐ Labs

☐ Visual Field

☐ Scan

☐ Letter

✓ = normal

MD



ENCOUNTER REPORT 11/9/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON,LAWRENCE (M) 51 Years (5/11/54)  
TESTS  
CNAY1 ELECTROLYTES [Ordered to be done on 11/9/2003]  
\*11/9/2003

PAGE :

ENCOUNTER REPORT 11/9/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON,LAWRENCE (M) 51 Years (5/11/54)

11/9/2003 14:39 SITE GUNNISON TYPE PA OR NP SICK CALL CLINIC VISIT  
HENNAGIR,BARBARA L,PA entered by:HENNAGIR,BARBARA L,PA

DIAGNOSES/PROBLEMS

BLKJ7 MULTIPLE SYSTEM COMPLAINT <Subjective, RFV, 11/9/2003>  
ADDENUM

PHYSICAL EXAM

CAEF1 BLOOD PRESSURE 110/79 LARGE CUFF 118/84 LYING 125/86 LYIN  
AFTER 400CC LR.

ENCOUNTER REPORT 11/9/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON,LAWRENCE (M) 51 Years (5/11/54)

11/9/2003 14:40 SITE GUNNISON TYPE PA OR NP SICK CALL CLINIC VISIT  
HENNAGIR,BARBARA L,PA entered by:HENNAGIR,BARBARA L,PA

DIAGNOSES/PROBLEMS

BLKJ7 MULTIPLE SYSTEM COMPLAINT <Subjective, RFV, 11/9/2003>  
ADDENUM

THERAPIES

ISAY2 AM INSULIN

START: 11/9/2003 STOP :2/9/2004  
~~DISCONTINUED: 2/5/2004~~ Renewing order  
ADMINISTRATION INFO. : 30N/15R/+SS Rx#509105

ISAF3 PM INSULIN

START: 11/9/2003 STOP :2/9/2004  
DISCONTINUED: 2/5/2004 Renewing order  
ADMINISTRATION INFO. : 20N/7R/+SS Rx#509106

SAQ1 REGULAR INSULIN

1 IM ANPH

QID START: 11/9/2003 STOP :11/19/2003  
ADMINISTRATION INFO. : SLIDING SCALE QID Rx#509107

ADMINISTRATIVE

PRIVATE

RNR4

PM INSULIN:AM INSULIN: DISCONTINUED MEDICATION

1234

# Exhibit C (16)

ENCOUNTER REPORT 8/13/2002 USP NUMBER:428879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

8/13/2002 09:20 SITE OUTSIDE FACILITY TYPE LAB RESULTS ROBERTS,SIDNEY G,MD  
entered by:BLEAZARD,ALWYNN,CMA

## TESTS

EPHB2 *	HEMOGLOBIN A1	6.3
WNCD2	RANDOM URINE CREATININE	39.5
WNCZ8	RANDOM URINE MICROALBUMIN 149997	8.15

ENCOUNTER REPORT 8/14/2002 USP NUMBER:428879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

8/14/2002 08:22 SITE OQUIRRH TYPE SICK CALL JOHNSON,BRADY,EMT  
entered by:SAME;

## PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 10/20

## TESTS

CNCR2-PB \* GLUCOMETER POST BREAKFAST 210

ENCOUNTER REPORT 8/14/2002 USP NUMBER:428879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

8/14/2002 12:37 SITE WASTACH TYPE CHART REVIEW CLINIC VISIT  
ROBERTS,SIDNEY G,MD entered by:ROBERTS,SIDNEY G,MD

## THERAPIES

MTAP5	BENAZEPRIL 40MG 2 PO A QD START: 8/14/2002 STOP :2/9/2003 DISCONTINUED: 10/22/2002 Inactivated. SPRINGMAN,RENEE S,RHIT ADMINISTRATION INFO. : 40MG PO Bid *SC Rx#437712
XSDZ2-B	BP CHECKS A QD START: 8/14/2002 STOP :9/12/2002 ADMINISTRATION INFO. : RECORD IN CHARTS Rx#437713

## ADMINISTRATIVE

ARNR4

BENAZEPRIL DISCONTINUED MEDICATION

ARNJ3

BENAZEPRIL RENEWED MEDICATION

Exhibit C (16)

ENCOUNTER REPORT 8/14/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

3/14/2002 15:58 SITE OQUIRRH TYPE SICK CALL JOHNSON,BRADY,EMT  
entered by:SAME;

PROCEDURES

3XMM5 MEDICATION ISSUE I BENAZEPRIL

ENCOUNTER REPORT 8/14/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

3/14/2002 15:58 SITE OQUIRRH TYPE SICK CALL JOHNSON,BRADY,EMT  
entered by:SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 5/20

ENCOUNTER REPORT 8/15/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

3/15/2002 08:19 SITE OQUIRRH TYPE SICK CALL BRICKSON,JARED,EMT  
entered by:SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT R3/N22

TESTS

CNCR2-PB GLUCOMETER POST BREAKFAST 110

ENCOUNTER REPORT 8/15/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

8/15/2002 10:52 SITE WASTACH TYPE MD SICK CALL CLINIC VISIT  
TUBBS,KENNON C,MD entered by:TUBBS,KENNON C,MD

DIAGNOSES/PROBLEMS

BLDJ8 DOCTOR ASSESSMENT  
THERAPUTIC A1C ON LAB REVIEW TODAY DIABETES STABLE CONT  
CURRENT DOSING REGIMINE

Exhibit (15)

TESTS

NCR2-AS \* GLUCOMETER BEFORE SUPPER

241 10 U REG, 20 U NPH

N-COUNTER REPORT 11/4/2003 USP NUMBER:628879  
ACKSON,LAWRENCE (M) 51 Years (5/11/54)

PRINTED: 4/4/2006

1/4/2003 22:05 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

PROCEDURES

XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

N-COUNTER REPORT 11/5/2003 USP NUMBER:628879  
ACKSON,LAWRENCE (M) 51 Years (5/11/54)

PRINTED: 4/4/2006

1/5/2003 08:05 SITE GUNNISON TYPE SICK CALL DAVIS,CATHY L,RN  
entered by:SAME;

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 11/5/2003  
MEDICATION ISSUE 1 AMPTRIPTYLINE/AM DOSE GIVEN

TESTS

NCR2-B \* GLUCOMETER BREAKFAST

N-COUNTER REPORT 11/5/2003 USP NUMBER:628879  
ACKSON,LAWRENCE (M) 51 Years (5/11/54)

PRINTED: 4/4/2006

1/5/2003 15:49 SITE GUNNISON TYPE SICK CALL DAVIS,CATHY L,RN  
entered by:SAME;

PROCEDURES

XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

TESTS

NCR2-S GLUCOMETER SUPPER

REFUSED

UNTER REPORT 11/6/2003 USP NUMBER:628879  
ACKSON,LAWRENCE (M) 51 Years (5/11/54)

PRINTED: 4/4/2006

PRIVATE

1/6/2003 10:00 SITE GUNNISON TYPE SICK CALL TUBET ANGELIKA C RN

1029

Exhibit C (15)

9/18/2002 07:00 SITE OQUIRRH TYPE SICK CALL SALING, MITCHELL W, EMT  
entered by: SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 10R 25N

ENCOUNTER REPORT 9/18/2002 USP NUMBER: 428879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

9/18/2002 16:26 SITE OQUIRRH TYPE SICK CALL SALING, MITCHELL W, EMT  
entered by: SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 10R 22N

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER 158

ENCOUNTER REPORT 9/19/2002 USP NUMBER: 428879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

9/19/2002 08:38 SITE OQUIRRH TYPE SICK CALL MOOK, MARK, EMT  
entered by: SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 15R 30N

TESTS

CNCR2-PB GLUCOMETER POST BREAKFAST 142

ENCOUNTER REPORT 9/19/2002 USP NUMBER: 428879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

9/19/2002 16:08 SITE OQUIRRH TYPE SICK CALL MOOK, MARK, EMT  
entered by: SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 25N

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER 143

CNCR2-PB \* GLUCOMETER POS. BREAKFAST

11

ENCOUNTER REPORT 10/1/2002 USP NUMBER:428879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

10/1/2002 16:23 SITE OQUIRRH TYPE SICK CALL MOOK,MARK,EMT  
entered by:SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 35N

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER

118

ENCOUNTER REPORT 10/2/2002 USP NUMBER:428879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

10/2/2002 08:14 SITE OQUIRRH TYPE SICK CALL SALING,MITCHELL W,EMT  
entered by:SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 35N

TESTS

CNCR2-AB GLUCOMETER BEFORE BREAKFAST

ENCOUNTER REPORT 10/2/2002 USP NUMBER:428879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

10/2/2002 15:53 SITE OQUIRRH TYPE SICK CALL SALING,MITCHELL W,EMT  
entered by:SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT R REFUSED

ENCOUNTER REPORT 10/3/2002 USP NUMBER:428879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

10/3/2002 None SITE OQUIRRH TYPE REORDER ABBOTT,CHRIS,PAC

THERAPIES

EX1517 C 100

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 20N

ENCOUNTER REPORT 10/12/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/12/2002 16:32 SITE OQUIRRH TYPE SICK CALL HEWITT,MICHELLE R,EMT  
entered by:SAME;

PHYSICAL EXAM

CAEF1 BLOOD PRESSURE REFUSED

ENCOUNTER REPORT 10/13/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/13/2002 07:36 SITE OQUIRRH TYPE SICK CALL ROSKELLEY,WADE K,EMT  
entered by:SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 45R 20N

TESTS

CNCR2-AB \* GLUCOMETER BEFORE BREAKFAST

ENCOUNTER REPORT 10/13/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/13/2002 16:20 SITE OQUIRRH TYPE SICK CALL ROSKELLEY,WADE K,EMT  
entered by:SAME;

PROCEDURES

EXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 5R 20N

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER 160

ENCOUNTER REPORT 10/13/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/13/2002 16:20 SITE OQUIRRH TYPE SICK CALL ROSKELLEY,WADE K,EMT  
entered by:SAME.



EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

CNCR2-AB \* GLUCOMETER BEFORE BREAKFAST

173 10 R 30 NPH

ENCOUNTER REPORT 6/30/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

6/30/2003 16:00 SITE GUNNISON TYPE SICK CALL SEGO,DANIEL,RN  
entered by:SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER

201 10 U REG, 20 U NPH

ENCOUNTER REPORT 6/30/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

6/30/2003 20:52 SITE GUNNISON TYPE SICK CALL HANSEN,SHARON,RN  
entered by:SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 7/1/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

7/1/2003 06:28 SITE GUNNISON TYPE SICK CALL  
entered by:SAME;

FITZGERALD,STEVEN S,RN

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

CNCR2-AB \* GLUCOMETER BEFORE BREAKFAST

173 15 R 30 NPH

ENCOUNTER REPORT 7/1/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

7/1/2003 15:46 SITE GUNNISON TYPE SICK CALL SEGO,DANIEL,RN

JACKSON, LAWRENCE (M) 52 Years (5/11/54)

7/13/2003 06:22 SITE GUNNISON TYPE SICK CALL DAVIS, GABRIEL, D, PA  
entered by: SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 10R/20N  
3XMM5 MEDICATION ISSUE 1 ELAVIL/AM DOSE GIVEN

CNCR2-B \* GLUCOMETER BREAKFAST

ENCOUNTER REPORT 7/13/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

7/13/2003 16:04 SITE GUNNISON TYPE SICK CALL TUFT, ANGELIKA G, RN  
entered by: SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 10R/20N

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER 188 REPORTED

ENCOUNTER REPORT 7/13/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

7/13/2003 18:22 SITE GUNNISON TYPE SICK CALL TUFT, ANGELIKA G, RN  
entered by: SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN 33851

ENCOUNTER REPORT 7/14/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

7/14/2003 11:38 SITE GUNNISON TYPE PA OR NP SICK CALL CLINIC VISIT  
MITTEN, BARBARA L, PAC entered by: MITTEN, BARBARA L, PAC

DIAGNOSES/PROBLEMS

ELAJ6 ENDOCRINE SYSTEM COMPLAINT <Subjective, RFV, 7/14/2003>  
FTKA

PROCEDURES

7/19/2003 19:50 SITE GUNNISON TYPE SICK CALL PETERSEN, HOLLIE  
entered by: SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 7/20/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

7/20/2003 08:36 SITE GUNNISON TYPE SICK CALL BLACK, JOHN K, RN  
entered by: SAME;

CNCR2-AB \* GLUCOMETER BEFORE BREAKFAST

173 REG-15U NPH-30U

ENCOUNTER REPORT 7/20/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

7/20/2003 13:24 SITE GUNNISON TYPE SICK CALL BLACK, JOHN K, RN  
entered by: SAME;

PROCEDURES

BXMM5 MEDICATION ISSUE I ELAVIL/AM 50 MG TAAB GIVEN.

ENCOUNTER REPORT 7/20/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

7/20/2003 15:49 SITE GUNNISON TYPE SICK CALL SEGO, DANIEL, RN  
entered by: SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER

191 13 U REG, 20 U NPH

ENCOUNTER REPORT 7/20/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

7/20/2003 20:29 SITE GUNNISON TYPE SICK CALL PETERSEN, HOLLIE  
entered by: SAME;

PROCEDURES

PROCEDURES

XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 8/10/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

8/10/2003 07:00 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

PROCEDURES

3XMM5 MEDICATION ISSUE I ELAVIL/50MG

ENCOUNTER REPORT 8/10/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

11:22 SITE GUNNISON TYPE SICK CALL  
entered by:SAME;

EXBM8-D

CNCR2-AB \* GLUCOMETER BEFORE BREAKFAST

ENCOUNTER REPORT 8/10/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

8/10/2003 16:34 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER 140 10R 20N

ENCOUNTER REPORT 8/10/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

8/10/2003 19:45 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

8/16/2003 07:39 SITE GUNNISON TYPE SICK CALL SANDALL, TRUDEE D, LPN  
entered by: SAME;

PROCEDURES

BXMM5 MEDICATION ISSUE I AMITRIPTYLINE/75MG

ENCOUNTER REPORT 8/16/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

8/16/2003 07:46 SITE GUNNISON TYPE SICK CALL SANDALL, TRUDEE D, LPN  
entered by: SAME;

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

CNCR2-AB \* GLUCOMETER BEFORE BREAKFAST

ENCOUNTER REPORT 8/16/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

8/16/2003 15:19 SITE GUNNISON TYPE SICK CALL SANDALL, TRUDEE D, LPN  
entered by: SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER 170 10R 20N

ENCOUNTER REPORT 8/16/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

8/16/2003 21:17 SITE GUNNISON TYPE SICK CALL SANDALL, TRUDEE D, LPN  
entered by: SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 8/17/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

Exhibit (11)

12:25 SITE GUNNISON TYPE SICK CALL  
entered by: SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT  
BXMM5 MEDICATION ISSUE I AMITRIPTYLINE/AM DOSE GIVEN

CNCR2-B \* GLUCOMETER BREAKFAST

ENCOUNTER REPORT 8/18/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

8/18/2003 15:46 SITE GUNNISON TYPE SICK CALL SEGO, DANIEL, RN  
entered by: SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER 244 15 U REG, 20 U NPH

ENCOUNTER REPORT 8/18/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

8/18/2003 21:25 SITE GUNNISON TYPE SICK CALL SOPER, LISA W, RN  
entered by: SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 8/19/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

8/19/2003 11:00 SITE GUNNISON TYPE SICK CALL DAVIS, CATHY L, RN  
entered by: SAME;

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 10/30  
XMM5 MEDICATION ISSUE I AMITRIPTYLINE/AM DOSE GIVEN

TESTS

CNCR2-B \* GLUCOMETER BREAKFAST

EXHIBIT (13)

ENCOUNTER REPORT 8/19/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

8/19/2003 16:47 SITE GUNNISON TYPE SICK CALL DAVIS, CATHY L, RN  
entered by: SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 2/7

TESTS

CNCR2-S \* GLUCOMETER SUPPER 158

ENCOUNTER REPORT 8/19/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

3/19/2003 21:03 SITE GUNNISON TYPE SICK CALL PETERSEN, HOLLIE  
entered by: SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 8/20/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

8/20/2003 06:32 SITE GUNNISON TYPE SICK CALL [REDACTED]  
entered by: SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 2/7  
EXMM5 MEDICATION ISSUE I AMITRIPTYLINE/AM DOSE GIVEN

TESTS

NCR2-B \* GLUCOMETER BREAKFAST 188

ENCOUNTER REPORT 8/20/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

/20/2003 15:42 SITE GUNNISON TYPE SICK CALL SEGO, DANIEL, RN  
entered by: SAME;

PROCEDURES

ENCOUNTER REPORT 9/21/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

07:46 SITE GUNNISON TYPE SICK CALL  
entered by:SAME;

BLACK,JOHN K,RN

NCR2-AB \* GLUCOMETER BEFORE BREAKFAST

ENCOUNTER REPORT 9/21/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

9/21/2003 10:22 SITE GUNNISON TYPE SICK CALL BLACK,JOHN K,RN  
entered by:SAME;

PROCEDURES

3XMM5 MEDICATION ISSUE I AMITRIPTYLINE/75MG GIVEN.

ENCOUNTER REPORT 9/21/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

9/21/2003 15:22 SITE GUNNISON TYPE SICK CALL RICH,DAVID entered by:SAME;

PROCEDURES

3XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 10 REG 20 NPH

TESTS

NCR2-AS GLUCOMETER BEFORE SUPPER

109

ENCOUNTER REPORT 9/21/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

9/21/2003 19:34 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

PROCEDURES

3XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 9/22/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

9/22/2003 06:42 SITE GUNNISON TYPE SICK CALL FITZGERALD STEVEN S RN



ENCOUNTER REPORT 9/24/2003 USP NUMBER:628879 PRINTED: 3/26/2007 PAGE 2

JACKSON, LAWRENCE (M) 52 Years (5/11/54)

TESTS

ENCV9 PROSTATIC SPECIFIC ANTIGEN [NO DISPLAY, to be done on 9/29/2003]  
\*9/29/2003  
QBA1 STOOL OCCULT BLOOD NEGATIVE

#### ADMINISTRATIVE

ARNZ5 COPAY

ENCOUNTER REPORT 9/24/2003 USP NUMBER:628879 PRINTED: 3/26/2007

JACKSON, LAWRENCE (M) 52 Years (5/11/54)

9/24/2003 21:04 SITE GUNNISON TYPE SICK CALL SOPER, LISA W, RN  
entered by: SAME;

#### PROCEDURES

EXBM8-DL INSULIN GIVEN DRAWN AND ADMINISTERED BY PT SACK LUNCH GIVEN  
15 UNITS REG./20 UNITS NPH

#### TESTS

ENCR2-H \* GLUCOMETER HS 251 TESTED IN FRONT OF ME

ENCOUNTER REPORT 9/25/2003 USP NUMBER:628879 PRINTED: 3/26/2007

JACKSON, LAWRENCE (M) 52 Years (5/11/54)

9/25/2003 08:30 SITE GUNNISON TYPE SICK CALL DAVIS, GABRIEL, RN  
entered by: SAME;

#### PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 15  
EXMM5 MEDICATION ISSUE I AMITRIPTYLINE/AM DSOE GIVEN

#### TESTS

ENCR2-B \* GLUCOMETER BREAKFAST

ENCOUNTER REPORT 9/25/2003 USP NUMBER:628879 PRINTED: 3/26/2007

JACKSON, LAWRENCE (M) 52 Years (5/11/54)

9/25/2003 15:19 SITE GUNNISON TYPE SICK CALL SEGO, DANIEL, RN  
entered by: SAME;

#### PROCEDURES

XMM5 MEDICATION ISSUE I HYTRIN  
XMK8 MEDICATION ISSUE II DIPROLENE CREAM

= x15, + (15)

ENCOUNTER REPORT 10/10/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/10/2003 15:14 SITE GUNNISON TYPE SICK CALL SOPER,LISA W,RN  
entered by:SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT  
13 UNITS REG./20 UNITS NPH

TESTS

INCR2-AS \* GLUCOMETER BEFORE SUPPER 199 STATED

ENCOUNTER REPORT 10/10/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/10/2003 22:09 SITE GUNNISON TYPE SICK CALL WALLACE,JEANNIE,LPN  
entered by:SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 10/11/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

0/11/2003 06:00 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

NCR2-AB \* GLUCOMETER BEFORE BREAKFAST 199 STATED

ENCOUNTER REPORT 10/11/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

0/11/2003 06:20 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

PROCEDURES

XMM5 MEDICATION ISSUE I AMITRIPTYLINE

.X1517 (15)

EXBM8-DL INSULIN GIVEN DRAWN AND ADMINISTERED BY PT SACK LUNCH GIVEN

TESTS

CNCR2-H \* GLUCOMETER HS

209 IM RPT 15 REG, 20 N

ENCOUNTER REPORT 10/25/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/25/2003 07:46 SITE GUNNISON TYPE SICK CALL DAVIS,CATHY L,RN  
entered by:SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 5/30  
BXMM5 MEDICATION ISSUE I AMITRIPTYLINE/AM DOSE GIVEN

TESTS

CNCR2-B \* GLUCOMETER BREAKFAST

191

ENCOUNTER REPORT 10/25/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/25/2003 15:17 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

PROCEDURES

EXBM8-DL INSULIN GIVEN DRAWN AND ADMINISTERED BY PT SACK LUNCH GIVEN 10R/20N

TESTS

CNCR2-AS \* GLUCOMETER BEFORE SUPPER

132

ENCOUNTER REPORT 10/26/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/26/2003 09:49 SITE GUNNISON TYPE SICK CALL DAVIS,CATHY L,RN  
entered by:SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 5/30  
XMM5 MEDICATION ISSUE I AMITRIPTYLINE/AM DOSE GIVEN

TESTS

CNCR2-B \* GLUCOMETER BREAKFAST

191

# Exhibit C (15)

ENCOUNTER REPORT 10/26/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/26/2003 15:32 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

## PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 10R/20N

## TESTS

INCR2-AS \* GLUCOMETER BEFORE SUPPER 139

ENCOUNTER REPORT 10/26/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/26/2003 20:01 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

## PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 10/27/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/27/2003 07:48 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

## PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 15R/30N  
XMM5 MEDICATION ISSUE I AMITRIPTYLINE

## TESTS

NCR2-AB \* GLUCOMETER BEFORE BREAKFAST

ENCOUNTER REPORT 10/27/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/27/2003 15:57 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

## PROCEDURES

EXBM8-DL INSULIN GIVEN DRAWN AND ADMINISTERED BY PT SACK LUNCH GIVEN 10R/20N

Exhibit C (f)

TESTS

NCR2-AS \* GLUCOMETER BEFORE SUPPER

161

ENCOUNTER REPORT 10/28/2003 USP NUMBER:628879  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

01/28/2003 07:39 SITE GUNNISON TYPE SICK CALL  
entered by: SAME;

TUFT, ANGELIKA G, RN

PROCEDURES

XBM8-D

INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 15R/10N

TESTS

NCR2-AB \* GLUCOMETER BEFORE BREAKFAST

161

ENCOUNTER REPORT 10/28/2003 USP NUMBER:628879  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

0/28/2003 07:39 SITE GUNNISON TYPE SICK CALL  
entered by: SAME;

TUFT, ANGELIKA G, RN

PROCEDURES

XMM5 MEDICATION ISSUE I AMITRIPTYLINE

ENCOUNTER REPORT 10/28/2003 USP NUMBER:628879  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

0/28/2003 15:29 SITE GUNNISON TYPE SICK CALL  
entered by: SAME;

SEGO, DANIEL, RN

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

NCR2-AS GLUCOMETER BEFORE SUPPER

81 5 U REG, 20 U NPH

ENCOUNTER REPORT 10/28/2003 USP NUMBER:628879  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

0/28/2003 21:39 SITE GUNNISON TYPE SICK CALL  
entered by: SAME.

WALLACE, JEANNIE, LPN

xibit C (IS)

/15/2003 06:35 SITE GUNNISON TYPE SICK CALL FITZGERALD, STEVEN S, RN  
entered by: SAME;

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT  
XMM5 MEDICATION ISSUE I AMITRIPTYLINE/50 MG

TESTS

NCR2-AB \* GLUCOMETER BEFORE BREAKFAST 152 10 R 30 NPH

N-COUNTER REPORT 1/15/2003 USP NUMBER: 528879 PRINTED: 3/26/2007  
ACKSON, LAWRENCE (M) 52 Years (5/11/54)

/15/2003 15:43 SITE GUNNISON TYPE SICK CALL FITZGERALD, STEVEN S, RN  
entered by: SAME;

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

NCR2-AS \* GLUCOMETER BEFORE SUPPER 152 10 R 30 NPH

N-COUNTER REPORT 1/15/2003 USP NUMBER: 528879 PRINTED: 3/26/2007  
ACKSON, LAWRENCE (M) 52 Years (5/11/54)

/15/2003 23:55 SITE GUNNISON TYPE SICK CALL DAVIS, CATHY L, RN  
entered by: SAME;

PROCEDURES

XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

N-COUNTER REPORT 1/15/2003 USP NUMBER: 528879 PRINTED: 3/26/2007  
ACKSON, LAWRENCE (M) 52 Years (5/11/54)

/15/2003 23:55 SITE GUNNISON TYPE SICK CALL DAVIS, CATHY L, RN  
entered by: SAME;

PHYSICAL EXAM

AEF1 BLOOD PRESSURE 135/90 RIGHT ARM STANDING LARGE CUFF  
ADA1-N PULSE NORMAL 93 32823

ENCOUNTER REPORT 8/13/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

/13/2003 19:59 SITE GUNNISON TYPE SICK CALL DAVIS,CATHY L,RN  
entered by:SAME;

PROCEDURES

XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 8/14/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

/14/2003 06:44 SITE GUNNISON TYPE SICK CALL FITZGERALD,STEVEN S,MD  
entered by:SAME;

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT  
XMM5 MEDICATION ISSUE I AMITRIPTYLINE/50 MG

TESTS

NCR2-B \* GLUCOMETER BREAKFAST

ENCOUNTER REPORT 8/14/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

/14/2003 16:14 SITE GUNNISON TYPE SICK CALL DAVIS,CATHY L,RN  
entered by:SAME;

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 10/20

TESTS

NCR2-S \* GLUCOMETER SUPPER 117

ENCOUNTER REPORT 8/14/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

/14/2003 19:12 SITE GUNNISON TYPE SICK CALL DAVIS,CATHY L,RN  
entered by:SAME;

PROCEDURES

XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

EXIBIT (15)

ENCOUNTER REPORT 10/21/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

10/21/2003 09:14 SITE GUNNISON TYPE SICK CALL  
entered by:SAME;

SOPER,LISA W,RN

PROCEDURES

EXBM8-D

INSULIN GIVEN DRAWN AND ADMINISTERED BY PT  
15 UNITS REG./30 UNITS NPH

177

NCR2-AB \* GLUCOMETER BEFORE BREAKFAST

209 STATED

ENCOUNTER REPORT 10/21/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

10/21/2003 10:45 SITE GUNNISON TYPE PPD FITZGERALD,STEVEN S,RN  
entered by:SAME;

PHYSICAL EXAM

EXDN1-N HISTORICAL PPD TESTING NEGATIVE  
5/30/03

PROCEDURES

XCL8-G PPD GIVEN OR ADMINISTERED L#NONE\PARKE-DAVIS 0.1ML\LFA\

ENCOUNTER REPORT 10/21/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007

10/21/2003 16:22 SITE GUNNISON TYPE SICK CALL SOPER,LISA W,RN  
entered by:SAME;

PROCEDURES

XBM8-DL INSULIN GIVEN DRAWN AND ADMINISTERED BY PT SACK LUNCH GIVEN  
13 UNITS REG./20 UNITS NPH

TESTS

NCR2-AS \* GLUCOMETER BEFORE SUPPER

177 STATED

ENCOUNTER REPORT 10/22/2003 USP NUMBER:628879  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

PRINTED: 3/26/2007



Exhibit C (15)

Exhibit 1 (14)

10/31/2002 15:31 SITE GUNNISON TYPE SICK CALL BLACK,JOHN K,RN  
entered by:SAME;

TESTS

INCR2-AS \* GLUCOMETER BEFORE SUPPER 140 REG-2U NPH-12U

ENCOUNTER REPORT 10/31/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/31/2002 15:31 SITE GUNNISON TYPE SICK CALL BLACK,JOHN K,RN  
entered by:SAME;

TESTS

INCR2-AS \* GLUCOMETER BEFORE SUPPER 155 NPH-20U

ENCOUNTER REPORT 10/31/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

10/31/2002 19:26 SITE GUNNISON TYPE SICK CALL FITZGERALD,STEVEN S,RN  
entered by:SAME;

PROCEDURES

XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 11/1/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

11/1/2002 07:33 SITE GUNNISON TYPE SICK CALL SEGO,DANIEL,RN  
entered by:SAME;

ENCOUNTER REPORT 11/1/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

11/1/2002 07:33 SITE GUNNISON TYPE SICK CALL SEGO,DANIEL,RN  
entered by:SAME;

PROCEDURES

XMM5 MEDICATION ISSUE I AMITRIPTYLINE/ONE DOSE GIVEN

ENCOUNTER REPORT 11/1/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

3) END DATE> 1-31-03 (1, 31/2003)

Exhibit C (13)

ENCOUNTER REPORT 10/21/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

0/21/2002 10:47 SITE WASTACH TYPE CLINIC VISIT STURDY, PAULINE D  
entered by: STURDY, PAULINE D

#### THERAPIES

AAB8 INFLUENZA VACCINE  
0.5CC 1 IM FLU SHO T0.5 ML IM X 1  
SPECIAL START: 10/21/2002 STOP :11/10/2002  
Rx#447608 VERBAL: NOTED BY: GARDEN, RICHARD, MD

ENCOUNTER REPORT 10/21/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

0/21/2002 16:45 SITE OQUIRRH TYPE SICK CALL BOREN, COREY V, EMT  
entered by: SAME;

#### PROCEDURES

XBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 5R-22N

#### TESTS

NCR2-AS \* GLUCOMETER BEFORE SUPPER 177

ENCOUNTER REPORT 10/21/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

0/21/2002 16:54 SITE INFIRMARY TYPE NURSING SICK CALL CLINIC VISIT  
BAILEY, LEWIS P, RN entered by: BAILEY, LEWIS P, RN

#### THERAPIES

3AY2 AM INSULIN

START: 6/21/2002 STOP :12/18/2002  
ADMINISTRATION INFO: 15R, AND 30N  
Rx#447830 TRANSCRIPTION: TUBBS, KENNON C, MD

3JW1 AMITRIPTYLINE  
50MG 1 PO A  
QD START: 10/3/2002 STOP :12/31/2002  
DISCONTINUED: 12/27/2002 Renewing order  
ADMINISTRATION INFO. : GIVE 50MG QD. \*SC Rx#447831

3AF3 PM INSULIN

START: 8/6/2002 STOP :2/2/2003  
DISCONTINUED: 12/27/2002 Renewing order

( 5x16' + C (12) )

/6/2002 10:32 SITE OQUIRRH TYPE SICK CALL MILLER,WENDY entered by:SAME;

PROCEDURES

XBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 3R/8N

TESTS

VCR2-PB \* GLUCOMETER POST BREAKFAST 178

VCOUNTER REPORT 8/6/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

/6/2002 15:37 SITE WASTACH TYPE MD SICK CALL CLINIC VISIT  
TUBBS,KENNON C,MD entered by:TUBBS,KENNON C,MD

DIAGNOSES/PROBLEMS

LAW1-1 DIABETES TYPE 1 [Major]  
LDJ8 DOCTOR ASSESSMENT  
STABLE DIABETES AND TAKING MEDS PRN NOT ON A REGULAR  
DOSING SCALE ENCOURAGED TO GET A A REGULAR SCHEDULE OF  
INSULIN BUT HE REFUSED. HE WANTS TO SELF MEDICATE BASED  
ON HIS SUGARS.

THERAPIES

3JW1 AMITRIPTYLINE  
50MG 1 PO A  
QD START: 8/6/2002 STOP :10/12/2002  
DISCONTINUED: 10/3/2002 Renewing order \*SC Rx#436676  
3AF3 PM INSULIN

START: 8/6/2002 STOP :2/2/2003  
DISCONTINUED: 10/22/2002 Inactivated. SPRINGMAN,RENEE S,RHIT  
ADMINISTRATION INFO. : 7R/20N SLIDING Rx#436677

TESTS

VCE7-F FASTING LIPID PROFILE [NO DISPLAY, to be done on 8/13/2002]  
\*8/13/2002  
PHB2 HEMOGLOBIN A1 [NO DISPLAY, to be done on 8/13/2002]  
\*8/13/2002  
VCZ8 RANDOM URINE MICROALBUMIN 149997  
[NO DISPLAY, to be done on 8/13/2002]  
\*8/13/2002

ADMINISTRATIVE

RNR4 PM INSULIN;AMITRIPTYLINE; DISCONTINUED MEDICATION  
RNJ3 PM INSULIN;AMITRIPTYLINE; RENEWED MEDICATION

INAF2-F FASTING AUTOMATED CHEM PANEL [NO DISPLAY, to be done on 6/24/2002]

ENCOUNTER REPORT 6/20/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

5/20/2002 16:10 SITE OQUIRRH TYPE SICK CALL MOOK,MARK,EMT  
entered by:SAME;

#### TESTS

INCR2-AS \* GLUCOMETER BEFORE SUPPER 155

ENCOUNTER REPORT 6/20/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

5/20/2002 16:10 SITE OQUIRRH TYPE SICK CALL MOOK,MARK,EMT  
entered by:SAME;

#### PROCEDURES

IXBM8-P INSULIN GIVEN DRAWN BY STAFF INJECTED BY PATIENT 22N

ENCOUNTER REPORT 6/21/2002 USP NUMBER:428879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

6/21/2002 12:04 SITE WASTACH TYPE MD SICK CALL CLINIC VISIT  
TUBBS,KENNON C,MD entered by:TUBBS,KENNON C,MD

#### THERAPIES

SAY2 AM INSULIN

START: 6/21/2002 STOP :12/18/2002  
DISCONTINUED: 10/22/2002 Inactivated. SPRINGMAN,RENEE S,RHIT .  
ADMINISTRATION INFO. : 15R, 30N Rx#430313

SAF3 PM INSULIN

START: 6/21/2002 STOP :12/18/2002  
DISCONTINUED: 8/6/2002 Renewing order  
ADMINISTRATION INFO. : 13R 26N Rx#430314

#### ADMINISTRATIVE

RNR4 PM INSULIN;AM INSULIN; DISCONTINUED MEDICATION

RNJ3 PM INSULIN;AM INSULIN; RENEWED MEDICATION

XMM5

MEDICATION ISS. I AMITRIPTYLINE/ONE DOSA

COUNTER REPORT 11/2/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

1/2/2003 15:19 SITE GUNNISON TYPE SICK CALL RICH, DAVID entered by: SAME;  
PROCEDURES

KBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

VCR2-AS \* GLUCOMETER BEFORE SUPPER 203 PT RPT. 15 REG 20 NPH

COUNTER REPORT 11/2/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

1/2/2003 22:17 SITE GUNNISON TYPE SICK CALL WALLACE, JEANNIE, LPN  
entered by: SAME;

PROCEDURES

KBM8-L INSULIN GIVEN SACK LUNCH GIVEN

COUNTER REPORT 11/3/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

1/3/2003 08:00 SITE GUNNISON TYPE SICK CALL SOPER, LISA W, RN  
entered by: SAME;

PROCEDURES

KBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT  
15 UNITS REG./30 UNIT SNPH

TESTS

VCR2-AB \* GLUCOMETER BEFORE BREAKFAST 178 STATED

COUNTER REPORT 11/3/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

1/3/2003 08:00 SITE GUNNISON TYPE SICK CALL SOPER, LISA W, RN  
entered by: SAME;

PROCEDURES

Jackson 308

PRIVATE

MM5 MEDICATION ISS I AMITRIPTYLINE/ONE DOSA

COUNTER REPORT 11/3/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

11/3/2003 16:24 SITE GUNNISON TYPE SICK CALL SOPER, LISA W, RN  
entered by: SAME;

PROCEDURES

BM8-DL INSULIN GIVEN DRAWN AND ADMINISTERED BY PT SACK LUNCH GIVEN  
7 UNITS REG./20 UNITS NPH

TESTS

ICR2-AS GLUCOMETER BEFORE SUPPER REFUSED REFUSED TO TEST

COUNTER REPORT 11/4/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

11/4/2003 07:00 SITE GUNNISON TYPE SICK CALL RICH, DAVID entered by: SAME;

PROCEDURES

18-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

CR2-AB \* GLUCOMETER BEFORE BREAKFAST 208 PT RPT. 15 REG 30 NPH

COUNTER REPORT 11/4/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

11/4/2003 07:00 SITE GUNNISON TYPE SICK CALL RICH, DAVID entered by: SAME;

PROCEDURES

MM5 MEDICATION ISSUE I AMITRIPTYLINE/75MG

COUNTER REPORT 11/4/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

11/4/2003 16:22 SITE GUNNISON TYPE SICK CALL SEGO, DANIEL, RN  
entered by: SAME;

PRIVATE

PROCEDURES

BM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

entered by: SAM

PROCEDURES

18-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 15R/30N  
M5 MEDICATION ISSUE I AMITRIPTYLINE

TESTS

NCR2-AB \* GLUCOMETER BEFORE BREAKFAST 198

NCOUNTER REPORT 11/6/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
ACKSON, LAWRENCE (M) 51 Years (5/11/54)

1/6/2003 15:38 SITE GUNNISON TYPE SICK CALL SEGO, DANIEL, RN  
entered by: SAME;

PROCEDURES

BM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

ICR2-AS \* GLUCOMETER BEFORE SUPPER 185 10 U REG, 20 U NPH

UNTER REPORT 11/7/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
CKSON, LAWRENCE (M) 51 Years (5/11/54)

/7/2003 07:59 SITE GUNNISON TYPE SICK CALL SOPER, LISA W, RN  
entered by: SAME;

PROCEDURES

BM8-O INSULIN GIVEN  
REFUSED TO TAKE INSULIN WHEN ADVISED HE CAN ONLY TAKE  
THE PRESCRIBED AMOUNT OF INSULIN PLUS SLIDING SCALE. HE  
WANTED TO TAKE 15 15 UNITS REG./30 UNITS NPH AND HAS 7  
UNITS REG./30 UNITS NPH ORDERED. ON SLIDING SCALE HE  
COULD ONLY TAKE 4 EXTRA UNITS OF REGULAR (TOTAL OF 11  
UNITS REG).

TESTS

IR2-AB \* GLUCOMETER BEFORE BREAKFAST 177 STATED

COUNTER REPORT 11/7/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
KSON, LAWRENCE (M) 51 Years (5/11/54)

PRIVATE

7/2003 12:55 SITE GUNNISON TYPE PA OR NP SICK CALL CLINIC VISIT  
HENNAGIR, BARBARA L, PA entered by: HENNAGIR, BARBARA L, PA



- 11517 244

DIAGNOSES/PROBLEMS

ELAJ6 ENDOCRINE SYSTEM COMPLAINT <Subjective, RFV, 11/7/2003>  
CHART REVIEW RN SOPER REPORTS TO ME THAT MR LAWRENCE IS  
TAKING SLIDING SCALE INSULIN AT A HIGHER DOSE THAN  
ORDERED. HE IS NOT ALLOWED ONLY WHAT IS ORDERED, IF HE  
FEELS HE NEEDS MORE INSULIN, HE NEEDS TO PUT IN HCR AND  
SEE DR BURNHAM TO EXPLAIN WHY HE NEEDS MORE.

ENCOUNTER REPORT 11/7/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

11/7/2003 15:29 SITE GUNNISON TYPE SICK CALL TUFT, ANGELIKA G, RN  
entered by: SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

TESTS

CNCR2-AS GLUCOMETER BEFORE SUPPER REFUSED  
REFUSED TO TELL ME WHAT HIS BS WAS OR TO CHECK IT HERE  
IN THE CLINIC. ALSO REFUSES TO TAKE ANY INSULIN. HAS  
NOT HAD ANY INSULIN TODAY. WOULD NOT LISTEN TO REASON  
OR TO WHAT MEDICAL IS BOUND BY LAW W/REGARDS TO THE AMT  
OF INSULIN WE CAN ALLOW HIM TO TAKE. WANTED TO ARGUE AND  
POINT OUT IN DRAPEL THEY ALLOWED ME TO TAKE WHAT I  
BEEN TAKING FOR 15 YEARS, NOW ALL OF A SUDDEN YOU CHANGE  
IT W/O TELLING ME. TRY AS I MIGHT, I COULD NOT GET HIM  
TO LISTEN W/O INTERRUPTING ME WITH HIS OWN IDEAS AND  
OPINIONS.

ENCOUNTER REPORT 11/8/2003 USP NUMBER:628879 PRINTED: 4/4/2006  
JACKSON, LAWRENCE (M) 51 Years (5/11/54)

11/8/2003 06:57 SITE GUNNISON TYPE SICK CALL SOPER, LISA W, RN  
entered by: SAME;

DIAGNOSES/PROBLEMS

LMX4 NURSING NOTE  
INMATE CAME TO PILL LINE THIS AM. COLOR IS  
GRAYISH..ADAMANTLY REFUSING TO TEST HIS BLOOD SUGAR AND  
TAKE INSULIN. DID TAKE HIS ELAVIL THIS AM.

PROCEDURES

BM8-O INSULIN GIVEN REFUSED INSULIN THIS AM  
5 MEDICATION ISSUE I AMITRIPTYLINE/ONE DOSE

PRIVATE

TESTS

CR2-AB GLUCOMETER BEFORE BREAKFAST

6/13/2003 06:49 SITE GUNNISON TYPE SICK CALL FITZGERALD, STEVEN S, RN  
entered by: SAME;

PROCEDURES

IXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT  
IXMM5 MEDICATION ISSUE I ELAVIL/50 MG

TESTS

INCR2-B \* GLUCOMETER BREAKFAST 148 10 R 30 NPH

ENCOUNTER REPORT 8/13/2003 USP NUMBER: 628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

6/13/2003 08:39 SITE GUNNISON TYPE MD SICK CALL CLINIC VISIT  
BURNHAM, BRUCE O, MD entered by: BURNHAM, BRUCE O, MD

DISPOSITIONS

ACQ1 DISPOSITION APPOINTMENT IN 175 DAYS WITH PHYSICIAN  
RENEW CC MEDS FOR DIABETES, HYPERTENSION, PANIC  
DISORDER

DIAGNOSES/PROBLEMS

ILCE3 NEUROLOGIC SYSTEM COMPLAINT <Subjective, RFV, 8/13/2003>  
C/O RECURRENCE OF NECK PAIN AND ELECTRIC SHOCK FEELINGS.  
PAIN R SIDE. SHOCK FEELS INSIDE HEAD. ALREADY ON ELAVIL  
50 AND IBU. NOT MUCH MORE TO DO. THIS HAS BEEN GOING ON  
FOR YEARS. WILL INCREASE ELAVIL TO 75 MG. RENEW ALL  
OTHER MEDS, FOR IDDM, PAXIL FOR PANIC DISORDER. STABLE.

PHYSICAL EXAM

AEF1 \* BLOOD PRESSURE 142/96

THERAPIES

SAY2 AM INSULIN  
START: 8/13/2003 STOP: 2/9/2004  
DISCONTINUED: 11/9/2003 Renewing order ADMINISTRATION INFO. : RENEW  
Rx#494809  
SJW1 AMITRIPTYLINE  
25MG 3 PO A  
QD START: 8/13/2003 STOP: 2/9/2004  
DISCONTINUED: 2/5/2004 Renewing order  
ADMINISTRATION INFO. : RENEW, INCREASE DOSE \*SC Rx#494811  
SAF3 PM INSULIN  
START: 8/13/2003 STOP: 2/9/2004  
DISCONTINUED: 11/9/2003 Renewing order ADMINISTRATION INFO. : RENEW  
Rx#494810  
WBQ6-9 SPECIAL DIET DIABETIC PM SACK

3) END DATE> 10-31-03 (10/31/2003) *Exhibit C (8)*

ENCOUNTER REPORT 5/6/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

5/6/2003 08:35 SITE WASTACH TYPE CHART SPLIT CLINIC VISIT  
SPRINGMAN, RENEE S, RHIT entered by: SPRINGMAN, RENEE S, RHIT

DIAGNOSES/PROBLEMS

HAQ1 DERMATITIS  
LHJ6 PANIC DISORDER  
GFN4 JOINT PAIN

ENCOUNTER REPORT 6/16/2003 USP NUMBER:628879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

6/16/2003 13:46 SITE GUNNISON TYPE NURSING SICK CALL CLINIC VISIT  
RICH, DAVID entered by: RICH, DAVID

DISPOSITIONS

ACQ1 DISPOSITION APPOINTMENT IN 28 DAYS WITH NP/PA  
8/14 F/U CHRONIC CARES AND MEDS

DIAGNOSES/PROBLEMS

LKJ7 MULTIPLE SYSTEM COMPLAINT <Subjective, RFV, 6/16/2003>  
REORDER MEDS AND LABS FOLLOWING CHART SPLIT.

THERAPIES

SAY2 AM INSULIN

START: 2/21/2003 STOP :8/20/2003  
\* DISCONTINUED: 8/13/2003 Renewing order  
ADMINISTRATION INFO. : 30 NPH 7 REG CHART SPLIT  
Rx#485867 VERBAL: NOTED BY: BURNHAM, BRUCE O, MD

SJW1-1 AMITRIPTYLINE (ELAVIL)  
50MG 1 PO A

QD START: 5/6/2003 STOP :8/20/2003  
DISCONTINUED: 8/13/2003 Renewing order  
ADMINISTRATION INFO. : WATCH SWALLOW. CHART SPLIT  
\*RETAIN \*CRITICAL Rx#485869 VERBAL: NOTED BY: MITTEN, BARBARA L, PAC

SAF3 PM INSULIN

START: 2/21/2003 STOP :8/20/2003  
DISCONTINUED: 8/13/2003 Renewing order  
ADMINISTRATION INFO. : 20NPH 7 REG CHART SPLIT Rx#485870  
WBQ6-29 DIABETIC SPECIAL DIET DIABETIC PM SACK

START: 5/6/2003 STOP :8/20/2003  
DISCONTINUED: 8/13/2003 Renewing order  
ADMINISTRATION INFO. : MEAL AND SACK. Rx#485871

ENCOUNTER REPORT 1/9/2003 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

1/9/2003 11:33 SITE GUNNISON TYPE PA OR NP SICK CALL CLINIC VISIT  
MITTEN,BARBARA L,PAC entered by:MITTEN,BARBARA L,PAC

#### DISPOSITIONS

\ACQ1 DISPOSITION APPOINTMENT IN 14 DAYS WITH NP/PA  
DISCUSSED MEDICATIONS  
\F/U HTN AFTER STARTING MAXIDE

#### DIAGNOSES/PROBLEMS

THAB1-U HYPERTENSION UNSTABLE [Major]  
STILL HIGH ON CURRENT MEDS, CXR PENDING TO R/O CHF. LEGS  
WITH 1-2+ PITTING EDEMA. WILL ADD MAXIDE FOR BP AND  
EDEMA, WILL RECHECK IN COUPLE WEEKS  
HLAW1-S DIABETES STABLE [Major]  
MUCH IMPROVEMENT ON BS'S. NO CHANGES AT THIS TIME,  
BLKJ7 MULTIPLE SYSTEM COMPLAINT <Subjective, RFV, 1/9/2003>  
HERE FOR F/U ON DM AFTER RENEWING HIS INSULIN, ON EDEMA  
OF BOTH LEGS, AND HT. ALSO WOULD LIKE LOTION FOR ITCHY  
DRY SKIN, STATES IS INDIGENT.

#### PHYSICAL EXAM

AEF1 \* BLOOD PRESSURE 167/94 SITTING  
ADA1-A PULSE 66  
AKH1 WEIGHT 244

#### THERAPIES

TAE2-1 TRIAMTERENE 75 MG AND HCTZ 50 MG (MAXIDE)  
1TAB 1 PO A  
QD START: 1/9/2003 STOP :2/8/2003 ADMINISTRATION INFO. : QD  
\*SC Rx#460162  
AAN3 EUCERIN LOTION  
30GM 1 TOPICAL A  
QD START: 1/9/2003 STOP :4/9/2003 ADMINISTRATION INFO. : 1 BT/MO  
\*SC Rx#460163

#### TESTS

PHB2 HEMOGLOBIN A1  
[Ordered to be done on 1/9/2003\*4/9/2003\*7/8/2003\*10/6/2003]  
\*1/9/2003\*4/9/2003\*7/8/2003\*10/6/2003

ENCOUNTER REPORT 1/9/2003 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

1/9/2003 15:20 SITE GUNNISON TYPE SICK CALL BLACK,JOHN K,RN  
entered by:SAME;

DISCONTINUED: 2/11/2003 Renewing order  
ADMINISTRATION INFO. : 30N/7R/+SS Rx#458153  
SJW1 AMITRIPTYLINE  
50MG 1 PO A  
QAM START: 12/27/2002 STOP :6/25/2003  
DISCONTINUED: 5/6/2003 Renewing order  
ADMINISTRATION INFO. : Q AM..WATCH SWALLOW \*RETAIN Rx#458157  
SAF3 PM INSULIN  
START: 12/27/2002 STOP :6/25/2003  
DISCONTINUED: 2/11/2003 Renewing order  
ADMINISTRATION INFO. : 20N/7R/+SS Rx#458154  
WBQ6-29 DIABETIC SPECIAL DIET DIABETIC PM SACK  
START: 12/27/2002 STOP :6/25/2003  
DISCONTINUED: 5/6/2003 Renewing order  
ADMINISTRATION INFO. : MEAL AND SACK Rx#458156  
TAP5 BENAZEPRIL  
40MG 1 PO AP  
BID START: 12/27/2002 STOP :6/25/2003  
DISCONTINUED: 2/11/2003 Renewing order ADMINISTRATION INFO. : BID  
\*SC Rx#458160  
SDZ2-B BP CHECKS  
AP  
BID START: 12/27/2002 STOP :1/10/2003  
ADMINISTRATION INFO. : BP & P BID Rx#458162  
TQS2-1 METOPROLOL (LOPRESSOR)  
50MG 0.5 PO AP  
BID START: 12/27/2002 STOP :6/25/2003  
DISCONTINUED: 2/11/2003 Renewing order  
ADMINISTRATION INFO. : 25MG BID \*SC Rx#458164  
TQA1 IBUPROFEN  
800MG 1 PO ANH  
TID START: 12/27/2002 STOP :3/27/2003  
ADMINISTRATION INFO. : TID PRN W/FOOD \*SC Rx#458165

PROCEDURES

XJH4 PULSE OXIMETER 96% ON RA

ADMINISTRATIVE

RNZ5 COPAY  
RNR4

TREATMENTS; BENAZEPRIL; AMITRIPTYLINE; SPECIAL DIET; PM INSULIN;  
DISCONTINUED MEDICATION

RNJ3 TREATMENTS; BENAZEPRIL; AMITRIPTYLINE; SPECIAL DIET; PM INSULIN;  
RENEWED MEDICATION

ENCOUNTER REPORT 12/26/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

12/26/2002 16:08 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 10R/20N

TESTS

INCR2-AS \* GLUCOMETER BEFORE SUPPER 250 REPORTED

ENCOUNTER REPORT 12/27/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

12/27/2002 06:34 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

PHYSICAL EXAM

IAEF1 \* BLOOD PRESSURE . 154/100 LEFT ARM STANDING  
IADA1-A PULSE 86

PROCEDURES

IXMM5 MEDICATION ISSUE I AMITRIPTYLINE

ENCOUNTER REPORT 12/27/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

12/27/2002 15:51 SITE GUNNISON TYPE PA OR NP SICK CALL CLINIC VISIT  
MITTEN,BARBARA L,PAC entered by:MITTEN,BARBARA L,PAC

DISPOSITIONS

ACQ1 DISPOSITION APPOINTMENT IN 13 DAYS WITH NP/PA  
DISCUSSED MEDICATIONS  
\F/U HTN DM, NEW MEDS

DIAGNOSES/PROBLEMS

HAB1-U HYPERTENSION UNSTABLE [Major]  
POOR CONTROL, WILL ADD SOPRESSOR. CARDIAC RRR, NO MURMUR, NO BRUIT  
LAW1-U DIABETES UNSTABLE [Major]  
REVIEW OF FLOWCHART SHOING POOR BS CONTROL. WILL RENEW  
MEDS AND ADJUST AS NEEDED. PT WAS ORDERED AM INSULIN OF  
30N/15R, BUT STATES HE FEELS BS GO TO LOW AT THAT DOSE.  
TAKES ONLY 20N AND SS R. DISCUSSED WITH PT, THAT HE  
NEEDS TO START WITH THE 20NPH AND REG THAT IS ORDERED,  
NEEDS TO INCREASE 3 UNITS OF NPH EVERY 3-5 DAYS UNTIL

3LKJ7

REACHING 30 U NPH OR STABLE BS. WILL LEAVE PM INSULIN  
DOSE SAME FOR NOW  
MULTIPLE SYSTEM COMPLAINT <Subjective, RFV, 12/27/2002>  
HERE REQUESTING TO RESTART HIS AM INSULIN. STATES SINCE  
IT RAN OUT HIS SUGARS HAVE BEEN INCREASING. STATES ALSO  
NEEDS MULTIPLE OTHER MEDS RENEWED. STATES WAS DX'D WITH  
DM AT AGE 32. STATES WAS FIRST STARTED ON INSULIN D/T  
BAD OUT OF CONTROL BS. STATES ORAL MEDS WERE SHORTLY  
ADDED. STATES DOES WELL ON COMBINATION. ALSO HAVING MILD  
SWELLING AND DISCOMFORT TO HIS LEFT KNEE. STATES HAS HAD  
"ARTHRITIS" FOR ALONG TIME. STATES HX OF CARDIAC WORK UP  
DUE TO CHEST PAIN, BUT NOT SURE WHAT HIS DX IS. STATES  
KEEPS NITRO SL FOR CP WHICH INOW IS MORE THAN 3 MONTHS  
OLD. STATES HAS HX OF HTN.

7GFN4

JOINT PAIN

LEFT KNEE MILD EDEMA, GUARDED ROM. WILL GIVE IBU AND  
RECHECK NEXT VISIT

#### PHYSICAL EXAM

AEF1 *	BLOOD PRESSURE	160/99 SITTING
ADA1-A	PULSE	82

#### THERAPIES

ISAY2

AM INSULIN

START: 12/27/2002 STOP: 6/25/2003

PHYSICAL EXAM

'AEF1 \* BLOOD PRESSURE 172/104 RIGHT ARM SITTING  
'ADA1-A PULSE 86  
IM STILL RATHER ANGRY ABOUT NOT GETTING AM INSULIN/BP  
MAYBE REFLECTING THAT ANGER!

PROCEDURES

XMM5 MEDICATION ISSUE I AMITRIPTYLINE

NCOUNTER REPORT 12/22/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/22/2002 07:58 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

PROCEDURES

XMM5 MEDICATION ISSUE I AMITRIPTYLINE

NCOUNTER REPORT 12/22/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/22/2002 16:14 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT  
7R/20N IM THREATENING TO SHOW "COURT ORDER" WHICH  
APPARENTLY STATES THAT HE CAN NOT BE DENIED INSULIN IN  
THE AM! ATTEMPTED TO MAKE IM UNDERSTAND CUCF'S POLICY  
ON REFUSING MEDICAL APPT. TO GET ORDER RENEWED BUT  
HE ESSENTIALLY REFUSED TO SEE IT OUR WAY! CONT. TO WANT  
ME TO EXPLAIN "WHY THE INSULIN IN THE AM IS DIFFERENT  
THAN THE INSULIN IN THE PM" AND DESPITE MY BEST EFFORTS,  
I FEEL I WAS UNABLE TO MAKE HIM UNDERSTAND THAT IT HAS  
NOTHING TO DO WITH "DIFFERENT INSULIN" BUT DIFFERENT  
ORDERS! HE THEN WENT INTO COMPLAINTS OF BEING "IN  
DRAPER FOR YEARS AND NEVER HAD THIS PROBLEM, NO PROBLEMS  
WITH GETTING BOTTOM BUNKS, INSULIN WHEN NEEDED AND  
PROPER MEDICAL TREATMENT" AGAIN I ATTEMPTED, PROBABLY  
TO NO AVAIL, TO TELL IM THAT ACCORDING TO POLICY, MEDS  
NEED TO BE RENEWED PERIODICALLY AND THAT IM'S NEED TO BE  
SEEN BY PROVIDER TO UPDATE RECORDS AND THAT IT IS  
BASICALLY HIS CHOICE TO REFUSE MEDICAL BY REFUSING HIS  
SCHEDULED APPT. HE STATES "IT'S ALL PUNISHMENT" WHICH  
SUPPOSIDLY IS AGAINST HIS COURT ORDER. PUTTING THE ISSUE  
BACK IN IM'S HANDS I SUGGESTED HE GO THROUGH PROPER  
CHANNELS AND GRIEVE IT IF HE FEELS SO STRONGLY ABOUT IT  
BUT NO GUARENTEES THAT HE WILL RECIEVE THE RESOLUTION HE  
DESIRES TO IT W/O KEEPING APPT WITH PROVIDER. HE THEN



ASKED "HOW MANY DOCTORS ARE THERE HERE" - INFORMED HIM  
2 AND 1 PART TIME. TO WHICH HE WANTED TO KNOW WHY HE  
HAD TO SEE ONLY ONE DOCTOR THEN? I TOLD HIM THAT IT IS  
POLICY THAN THE IM'S CAN NOT CHOOSE WHICH PROVIDER THEY  
ARE SCHEDULED TO SEE. AT THIS TIME, IM LEFT CLINIC AREA  
BASICALLY IN SAME MOOD AS HE ARRIVED IN/NOT GETTING IT  
HIS WAY!

#### TESTS

NCR2-AS \* GLUCOMETER BEFORE SUPPER

205 REPORTED

NCOUNTER REPORT 12/22/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/22/2002 20:32 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

#### PROCEDURES

XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

NCOUNTER REPORT 12/23/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/23/2002 15:23 SITE GUNNISON TYPE SICK CALL FITZGERALD,STEVEN S,RN  
entered by:SAME;

#### PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

#### TESTS

NCR2-AS \* GLUCOMETER BEFORE SUPPER

247 PT RPT. 13 REG 20 NPH

NCOUNTER REPORT 12/23/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/23/2002 15:48 SITE GUNNISON TYPE NURSING SICK CALL CLINIC VISIT  
FITZGERALD,STEVEN S,RN entered by:FITZGERALD,STEVEN S,RN

#### DIAGNOSES/PROBLEMS

LAJ6 ENDOCRINE SYSTEM COMPLAINT <Subjective, RFV, 12/23/2002>  
REQUEST TO HAVE INSULIN RENEWED.

#### ADMINISTRATIVE

RLT9 HEALTH CARE REQUEST 1 ADDRESSED 028671  
RMD3-CM MEDICAL HEALTH CARE REQUEST RECEIVED CUCF

- 1517 (4)

ENCOUNTER REPORT 12/20/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

12/20/2002 07:38 SITE GUNNISON TYPE SICK CALL SOPER,LISA W,RN  
entered by:SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT 5 UNITS REG./20 UNITS NE  
3XMM5 MEDICATION ISSUE I AMITRIPTYLINE/ONE DOSE

TESTS

INCR2-AB GLUCOMETER BEFORE BREAKFAST 94

ENCOUNTER REPORT 12/20/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

12/20/2002 16:51 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

INCR2-AS GLUCOMETER BEFORE SUPPER 79 7R 20N

ENCOUNTER REPORT 12/20/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

12/20/2002 19:31 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 12/21/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

12/21/2002 07:06 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

DIAGNOSES/PROBLEMS

LMX4 NURSING NOTE  
INMATE TOAM DIABETIC PILL LINE THIS AM. INMATE INFORMED

HE NO LONGER HAS AM INSULIN ORDER. IT HAS EXPIRED AND HE  
REFUSED HIS APPOINTMENT TO HAVE IT RENEWED. INMATE  
BECAME ANGRY. STATED HE HAS A COURT ORDER. I INFORMED  
INMATE JACKSON I HAVE TO HAVE A MD ORDER. AS PER DR  
BURNHAMS NOTE ON 12/10/02 HE NEEDS TO SUBMIT A HCR TO  
HAVE HIS MEDS REORDERED. I TOLD INMATE JACKSON THAT HIS  
PM INSULIN ORDER WAS STILL CURRENT AND HE NEEDED TO COME  
TO PM DIABETIC PILL LINE FOR INSULIN. INMATE JACKSON  
TOLD ME TO TAKE THE INSULIN AND KEEP IT. SGT CHRISTENSEN  
WITNESSED THIS ENCOUNTER.

ENCOUNTER REPORT 12/21/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/21/2002 15:24 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

PROCEDURES

IXBM8-O INSULIN GIVEN REFUSED

TESTS

INCR2-AS GLUCOMETER BEFORE SUPPER REFUSED  
SPECIAL INVITATION ISSUED INMATE REFUSED

ENCOUNTER REPORT 12/21/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/21/2002 19:28 SITE GUNNISON TYPE SICK CALL SANDALL,TRUDEE D,LPN  
entered by:SAME;

DIAGNOSES/PROBLEMS

LMX4 NURSING NOTE  
INMATE INITIALLY REFUSED INSULIN. AFTER HE TALKED WITH  
CPT. IRONS INMATE CONSENTED TO TAKE HIS INSULIN.

PROCEDURES

IXBM8-LD INSULIN GIVEN SACK LUNCH GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

INCR2-H \* GLUCOMETER HS 223 13R 20N

ENCOUNTER REPORT 12/22/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/22/2002 07:35 SITE GUNNISON TYPE SICK CALL TUFT,ANGELIKA G,RN  
entered by:SAME;

( Exhibit C (3) )

ENCOUNTER REPORT 12/10/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/10/2002 08:05 SITE GUNNISON TYPE SICK CALL FITZGERALD,STEVEN S,RN  
entered by:SAME;

PROCEDURES

IXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

INCR2-AB GLUCOMETER BEFORE BREAKFAST 85 5 R 20 NPH

ENCOUNTER REPORT 12/10/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/10/2002 09:43 SITE GUNNISON TYPE MD SICK CALL CLINIC VISIT  
BURNHAM,BRUCE O,MD entered by:BURNHAM,BRUCE O,MD

DIAGNOSES/PROBLEMS

HLAJ6 ENDOCRINE SYSTEM COMPLAINT <Subjective, RFV, 12/10/2002>  
HERE FOR ROUTINE CC AND RENEWAL OF MEDS FOR IDDM. IM,  
REFUSES TO BE SEEN. STATES THIS IS BEING TREATED AGAINST  
HIS WILL. HIS AM INSULIN RUNS OUT IN ONE WEEK. ON 12/18,  
PM INSULINE AND ORAL AGENTS FOR DIABETES ARE GOOD FOR  
SEVERAL MOREW WEEKS. WILL ALLOW AM TO EXPIRE, WHEN HE  
WANTS IT BACK HE CAN SUBMIT HCR.

ENCOUNTER REPORT 12/10/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/10/2002 15:53 SITE GUNNISON TYPE SICK CALL FITZGERALD,STEVEN S,RN  
entered by:SAME;

PROCEDURES

IXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

INCR2-AS GLUCOMETER BEFORE SUPPER REFUSED 7 R 20 NPH

ENCOUNTER REPORT 12/10/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
JACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/10/2002 22:29 SITE GUNNISON TYPE SICK CALL FITZGERALD STEVEN S RN

Exhibit C (2)

PROCEDURES

XBM8-L INSULIN GIVEN SACK LUNCH GIVEN

NCOUNTER REPORT 11/12/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

1/12/2002 07:22 SITE GUNNISON TYPE SICK CALL FITZGERALD,STEVEN S,RN  
entered by:SAME;

PROCEDURES

XBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

NCR2-B GLUCOMETER BREAKFAST 99 5 R 20 NPH

NCOUNTER REPORT 11/12/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

1/12/2002 13:48 SITE GUNNISON TYPE MD SICK CALL CLINIC VISIT  
BURNHAM,BRUCE O,MD entered by:BURNHAM,BRUCE O,MD

DIAGNOSES/PROBLEMS

LDQ4 MUSCULOSKELETAL SYSTEM COMPLAINT <Subjective, REFV, 11/12/2002>  
WANTS BB CLEARANCE AND CERVICAL PILLOW. JUST CAME DOWN  
FROM DRAPER. HAD BB CL THERE. HIS MED PROBS ARE OLD  
SURGERY FOR DISC LUMBAR SPINE AND CERVICALDISC PROBS. I  
DONT SEE THAT HE MEETS CRITERIA FOR BOTTOM BUNK  
CLEARANCE. AGE 48, ON INSULIN SINCE 1984, ON ORAL AGENTS  
ALSO. WILL ISSUE CERVICAL PILLOW.

PHYSICAL EXAM

AEF1 \* BLOOD PRESSURE 152/94

THERAPIES

WBC8-AP CLEARANCE APPROVED RECOMMEND APPROVAL - PRINT CLEARANCE  
CLEARANCE FOR ONE YEAR FOR CERVICAL PILLOW, HAS HX OF  
LONG TERM CERVICAL DISC PAIN.

ADMINISTRATIVE

RNZ5 COPAY  
RLT9 HEALTH CARE REQUEST 1 ADDRESSED 027833

NCOUNTER REPORT 11/12/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

Exhibit (2)

1/12/2002 13:52 SITE GUNNISON TYPE MD SICK CALL CLINIC VISIT  
BURNHAM, BRUCE O, MD entered by: BURNHAM, BRUCE O, MD

DIAGNOSES/PROBLEMS

LDQ4 MUSCULOSKELETAL SYSTEM COMPLAINT <Subjective, RFV, 11/12/2002>  
DOESNT MEET CRITERIA FOR BB CL.

THERAPIES

WBC8-D CLEARANCE DENIED  
DENIED FOR BB CLEARANCE. DOESN'T MEET CRITERIA

ENCOUNTER REPORT 11/12/2002 USP NUMBER: 528879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

1/12/2002 16:01 SITE GUNNISON TYPE SICK CALL FITZGERALD, STEVEN S, RN  
entered by: SAME;

PROCEDURES

EXBM8-D INSULIN GIVEN DRAWN AND ADMINISTERED BY PT

TESTS

ENCR2-AS GLUCOMETER BEFORE SUPPER 103 5 R 20 NPH

ENCOUNTER REPORT 11/12/2002 USP NUMBER: 528879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

1/12/2002 20:11 SITE GUNNISON TYPE SICK CALL DAVIS, CATHY L, RN  
entered by: SAME;

PROCEDURES

EXBM8-L INSULIN GIVEN SACK LUNCH GIVEN

ENCOUNTER REPORT 11/13/2002 USP NUMBER: 528879 PRINTED: 3/26/2007  
JACKSON, LAWRENCE (M) 52 Years (5/11/54)

11/13/2002 09:15 SITE GUNNISON TYPE SICK CALL BLACK, JOHN K, RN  
entered by: SAME;

TESTS

ENCR2-AB GLUCOMETER BEFORE BREAKFAST 79 REG 5U NPH-20U

Exhibit C (1)

NCOUNTER REPORT 12/5/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/5/2002 16:09 SITE GUNNISON TYPE PA OR NP SICK CALL CLINIC VISIT  
MITTEN,BARBARA L,PAC entered by:MITTEN,BARBARA L,PAC

DISPOSITIONS

ACQ1 DISPOSITION APPOINTMENT IN 5 DAYS WITH NP/PA  
APPOINTMENT IN 5 DAYS WITH PHYSICIAN  
\\DIABETIC NOT SEEN IN CLINIC RECENTLY, NEEDS NEW ORDERS  
AND EVALUATION/ \\EITHER PROVIDER (PA OR MD)

DIAGNOSES/PROBLEMS

LAJ6 ENDOCRINE SYSTEM COMPLAINT <Subjective, RFV, 12/5/2002>  
CHART REVIEW

NCOUNTER REPORT 12/5/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/5/2002 16:22 SITE GUNNISON TYPE SICK CALL BLACK,JOHN K,RN  
entered by:SAME;

TESTS

NCR2-AS \* GLUCOMETER BEFORE SUPPER 206 REG-10U NPH-22U

NCOUNTER REPORT 12/5/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

2/5/2002 18:26 SITE GUNNISON TYPE SICK CALL PETERSEN,HOLLIE  
entered by:SAME;

PHYSICAL EXAM

BAN8-1 PERCENTAGE OF MED COMPLIANCE COMPLIANT - 75 PERCENT OR GREATER

PROCEDURES

XMM5 MEDICATION ISSUE I METFORMIN  
XMK8 MEDICATION ISSUE II BENAZEPRIL  
XMS9 MEDICATION ISSUE III GLIPIZIDE

NCOUNTER REPORT 12/5/2002 USP NUMBER:528879 PRINTED: 3/26/2007  
ACKSON,LAWRENCE (M) 52 Years (5/11/54)

SEP 12 2001

BY Handwritten Signature  
SALT LAKE COUNTY  
Deputy Clerk

Exhibit B

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

LAWRENCE M. JACKSON.

Petitioner,

vs.

UTAH STATE PRISON,  
WARDEN CLINT FRIEL.

Respondent.

ORDER

Civil No. 010904240

Judge Timothy Hansen

COMES NOW the Third Judicial Court in and for Salt Lake County, State of Utah, and hereby directs Respondent Clint Friel, Warden of the Utah State Prison, to administer regular and timely medical treatment to Petitioner herein, LAWRENCE JACKSON, by means of providing him with regular doses of insulin, and to administer to Petitioner timely and regular foodstuffs in accordance with all orders of the treating physician or medical staff providing his care while incarcerated at the Utah State Prison. IT IS SO ORDERED.

DATED this 12 day of September, 2001.

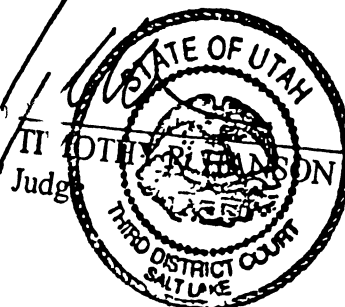




Exhibit A

FILED  
SANPETE COUNTY, UTAH  
2007 JUL 3 PM 3 39

SANDY NEILL  
SANPETE COUNTY CLERK  
BY *M. Lund* DEPUTY  
**DISTRICT COURT, STATE OF UTAH**  
**COUNTY OF SANPETE**  
160 North Main, P.O. Box 100  
Manti, Utah 84642  
Telephone (435) 835-2131 Facsimile (435) 835-2135

**LAWRENCE M. JACKSON,**

Plaintiff,

vs.

**STATE OF UTAH, et. al.,**

Defendants.

**MEMORANDUM DECISION**

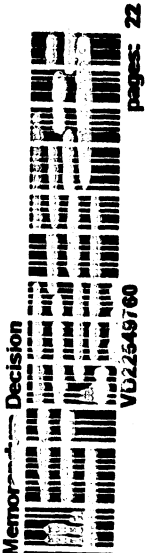
Case No. 040600383

Assigned Judge: Wallace A. Lee

**INTRODUCTION**

On 4 May 2007, the plaintiff filed a Notice to Submit for Decision. The plaintiff submitted the following motions for a decision: (1) Plaintiff's Motion to Strike Defendants' Joint Motion and Stipulation allegedly filed on 2 January 2007; (2) Motion to Compel Discovery allegedly filed on 2 January 2007; (3) Supplemental Pleadings filed on January 16, 2007; (4) Motion for an Order Compelling Discovery filed on 1 March 2007; (4) Petition for Judicial Review of Denial of GRAMA Records Request Appeal filed on 12 April 2007; and (5) Motion for Summary Judgment filed on 8 June 2006.

On 15 March 2007, the defendant submitted a request to file a *Martinez* Report. This request was granted on 28 March 2007. The defendant filed its *Martinez* Report on 1 June 2007. The defendant asks the Court to consider this report as a motion for summary judgment. The plaintiff did not respond to the *Martinez* Report, and the time to do so has expired.



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The Court considers all of the above motions including the defendant's *Martinez* Report at this time.

## DECISION

The defendants' Motion for Summary Judgment (*Martinez* Report) should be granted. The plaintiff's Motion for Summary Judgment should be denied. The plaintiff's Motion to Strike Defendants' Joint Motion and Stipulation should be denied. The plaintiff's Motion to Compel Discovery and Motion for an Order Compelling Discovery should both be denied. The plaintiff's Supplemental Pleadings should not be considered because they are properly framed before the Court as a motion. The plaintiff's Petition for Judicial Review of Denial of GRAMA Records Request Appeal should be denied.

## ANALYSIS

### 1. Plaintiff's Motion to Strike Defendants' Joint Motion and Stipulation

This Motion has not been filed with the Court. The Court was unable to locate it in the file. As nearly as the Court can tell the defendant received the Motion and responded to it. The defendant's response is in the file dated 25 January 2007.

In the file, there is also a letter dated 4 December 2006 wherein the plaintiff explains his understanding of the stipulation reached with the defendant. In the letter, the plaintiff explains his main concern is that by entering into the stipulation he may have inadvertently set aside his

# Exhibit A

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Motion for Summary Judgment filed on 8 June 2006.

The stipulation was reached on 17 November 2006. In the stipulation, the parties agreed to allow the plaintiff to file supplemental pleadings. This agreement has since become moot because on 13 December 2006 the Court granted the plaintiff's Motion to Supplement Pleadings. The remainder of the stipulation concerns the plaintiff's Motion for Summary Judgment. The parties agreed the defendant was not required to respond to this Motion. The defendant also agreed to provide additional discovery materials. Either of the parties could then move for summary judgment. Again, it appears the plaintiff's main concern is that his Motion for Summary Judgment would not be considered because of this stipulation.

The Court does not find that the parties agreed to set aside the plaintiff's Motion for Summary Judgment. The Court recognizes the Motion for Summary Judgment is still pending before the Court and will be considered later in this decision.

The plaintiff's Motion to Strike Defendants' Joint Motion and Stipulation is denied because some of the issues agreed upon have become moot and there is no disagreement on other issues.

## **2. Motion to Compel Discovery and Motion for an Order Compelling Discovery**

The Court is unable to locate the plaintiff's Motion to Compel Discovery in the file. However, there is a motion titled "Motion for an Order Compelling Discovery" in the file. This

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latter Motion does not specify what information or materials the plaintiff is seeking. The Motion refers to the Second Request for Production which the defendant failed to answer. The Court cannot order any relief because it is not clear which documents the defendant should be compelled to produce.

Additionally, the State has filed a *Martinez* Report. This report contains all the information and materials the defendant has in its possession. The report was intended to satisfy the plaintiff's discovery requests.

Therefore, the plaintiff's Motion to Compel Discovery and Motion for an Order Compelling Discovery are denied.

**3. Supplemental Pleadings**

The document entitled Supplemental Pleadings is not a motion. It is intended to supplement the Complaint. Any issues concerning this document are not properly framed and presented to the Court for decision.

**4. Petition for Judicial Review of Denial of GRAMA Records Request Appeal**

The plaintiff sought to obtain information concerning Lisa Soper's physical address from the State of Utah. The plaintiff filed a GRAMA request with the Utah Department of Corrections, which was denied. He appealed this denial to the Executive Office of the Utah Department of Corrections. The plaintiff's request was again denied based on Utah Code

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Annotated, Section 63-2-302(1)(f).

Section 63-2-302(1)(f) classifies employment records of former state employees that disclose the home address of such an employee as private. It appears the plaintiff's records request was denied because he asked for information classified as private.

This Court has authority to review this decision and order the government to disclose otherwise protected information if the Court finds "the interest favoring access outweighs the interest favoring restriction of access." Utah Code Annotated, Section 63-2-404(8)(a).

The Court has examined the policies underlying this statute. Section 63-2-102(1) explains the intent of the Legislature in enacting the Government Records Access and Management Act. The purpose of this Act is to protect two important constitutional rights: (1) the right of the public to access information concerning the conduct of the public's business and (2) the right of privacy in relation to personal data collected by the government.

The Court finds that in this case the right of privacy outweighs the plaintiff's interests. A former government employee is entitled to have assurance that his or her personal information will not be released. This applies especially to employees who work within high-risk facilities such as prisons. A prison employee's personal information must be protected from access by inmates the employee knew and encountered in the course of employment.

In addition, the plaintiff's interest here is not to obtain information regarding the conduct

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of the public's business but to obtain the home address of a former governmental employee in order to sue her.

On this basis, the plaintiff's Petition for Judicial Review of Denial of GRAMA Records Request Appeal is denied.

**5. State's Martine: Report and Plaintiff's Motion for Summary Judgment**

\_\_\_\_\_ The Court considers these two motions together to determine whether there are any genuine issues of material fact which would preclude granting summary judgment in this case. See Utah Rules of Civil Procedure, Rule 56(c). The Court finds the defendants have adequately supported their position with appropriate affidavits. The plaintiff has failed to present affidavits to counter the defendant's affidavits and to raise genuine issues of material fact. Therefore, the Court finds the facts essentially undisputed and concludes that there is no genuine issue of material fact.

The plaintiff's claims against the State of Utah are based on Utah State Constitution, Article 1 §9 and Title II of the Americans with Disability Act of 1990 ("ADA"), 42 U.S.C.S. §12131 *et seq.* The Court proceeds with analysis of each.

**A. Utah State Constitution, Article 1 §9 claims**

Article 1 §9 of Utah's Constitution provides, in pertinent part that "[p]ersons arrested or imprisoned shall not be treated with unnecessary rigor." To prevail on his claims for monetary

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damages, the plaintiff must show a flagrant violation of this constitutional right. See *Spackman v. Board of Education*, 16 P.3d 533, 538-39 (Utah 2000). This means he must show that prison employee(s) acted with deliberate indifference or inflicted unnecessary abuse upon him. See *Bott v. Deland*, 922 P.2d 732, 740 (Utah 1996).

Deliberate indifference is further defined as “unnecessary and wanton infliction of pain” as opposed to inadvertent misconduct. *Id.* Some examples of deliberate indifference include: choosing easier and less efficacious treatment or intentionally denying or delaying access to medical care. *Id.* Unnecessary abuse is defined as “needlessly harsh, degrading, or dehumanizing” treatment. *Id.* With this standard in mind, the Court examines the facts of this case.

## **1. Refusal to Take Insulin and Subsequent Injury**

The plaintiff’s first claim is based on the events of 7 November through 9 November of 2003. On 7 November, the plaintiff refused to take insulin at the pill line because he disagreed with a nurse about the amount of insulin prescribed for him. On 8 November, the plaintiff refused to take any insulin and stopped eating. On 9 November, the plaintiff fell while in his cell and struck a metal stool causing injury to his face. See Plaintiff’s Amended Complaint for Medical Malpractice and Constitutional Rights Violations filed on 16 January 2007.

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The defendant submitted the Affidavit of Renee Springman, Records Manager for Clinical Services at the Utah State Prison. This Affidavit contains copies of the plaintiff's medical records. The Court examined entries made by the prison's medical staff on 7 November through 9 November of 2003.

On 7 November 2003 at 7:59 a.m. the following entry was made by Lisa Soper:

Refused to take insulin when advised he can only take the prescribed amount of insulin plus sliding scale. He wanted to take 15 units reg./ 30 units NPH and has 7 units reg./ 30 units NPH ordered. On sliding scale he could only take 4 extra units of regular (total of 11 units reg).

Affidavit of Renee Springman, Jackson 311.

The affidavits of Cathy Davis and Dr. Richard Garden explain the term "sliding scale." An inmate's physician prescribes a dosage of insulin. Garden Affidavit, ¶7. A dosage includes two amounts: one for regular insulin and one for "NPH" insulin. *Id.* The "NPH" insulin amount remains constant unless changed by a physician. Davis Affidavit, ¶¶14, 16. The regular insulin amount is modified or adjusted depending on the inmate's blood sugar level as individually tested by the inmate before the inmate appears at the pill line. *Id.* ¶¶7, 8. The nurse on duty follows the sliding scale to determine the correct regular dose of insulin depending on the



# Exhibit A

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inmate's blood sugar level. Id. ¶14. The sliding scale is attached to the Davis Affidavit.

On 7 November 2003, at 12:55 p.m, Physician's Assistant, Barbara Hennagir, made the following entry:

... RN Soper reports to me that Mr. Lawrence<sup>1</sup> is taking sliding scale insulin at a higher dose than ordered. He is to be allowed only what is ordered, if he feels he needs more insulin, he needs to put in HCR<sup>2</sup> and see Dr. Burnham to explain why he needs more.

Id., Jackson 312.

The next entry on 7 November 2003 was made at 3:29 p.m. by Angelica Tuft. Id. She wrote that Mr. Jackson refused to check his blood sugar and refused to take any insulin. Id. She noted that Jackson did not have any insulin all day and argued that when he was housed in Draper he was allowed to take a different dose. Id.

The first entry on the next day (8 November 2003) was made at 6:57 a.m. by Lisa Soper. She wrote: "Inmate came to pill line this am. Color is grayish. Adamantly refusing to test his blood sugar and take insulin." Id. The plaintiff also refused to take insulin at the afternoon pill

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<sup>1</sup>It is clear that though Ms. Hennagir refers to "Mr. Lawrence" in this entry, she is actually taking about the plaintiff because this entry is included in the defendant's medical records. The plaintiff's given name is Lawrence.

<sup>2</sup>HCR stands for health care request.

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line on that day. *Id.*, Jackson 313.

The entry on 9 November 2003 at 3:19 a.m. describes the incident when plaintiff fell and injured his face. *Id.*

The Court also found the following entry concerning the plaintiff's prescribed amount of insulin. This entry was made on 5 February 2004 by Dr. Burnham. He wrote: "[n]o change on the 30 and 15 am, and 20 and 10 pm dosage." Affidavit of Renee Springman, Jackson 1528.

Another important fact for purposes of this analysis is found in in Dr. Garden's Affidavit. Dr. Garden testified that taking too much insulin can be dangerous to a diabetic because "an overdose can cause insulin shock, which can be fatal." ¶11.

The plaintiff filed several affidavits in support of his Motion for Summary Judgment: (1) Affidavit in Support of Motion for Summary Judgment filed on 8 June 2006 concurrently with the Motion for Summary Judgment; (2) Affidavit of Russell Allen; (3) Affidavit of Paul D. Nelson; (4) Affidavit of James Stills; and (5) Affidavit of Percy Wilder<sup>3</sup>. There are really only two (2) important facts contained in these affidavits: (1) there is a court order directing prison staff to provide insulin and regular foodstuffs to the plaintiff. Affidavit in Support of Motion for Summary Judgment, ¶5; and (2) the plaintiff discontinued his use of insulin and stopped eating when he was offered what he considered an improper dose of insulin. *Id.*, ¶6.

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<sup>3</sup> Affidavits (2) through (5) were filed on 9 March 2007.

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The rest of the affidavits simply do not supply any additional facts but merely corroborate the plaintiff's testimony that the plaintiff was not taking insulin and was not eating<sup>4</sup> at the time he fell and was injured.

The Affidavit of Paul D. Nelson describes Lisa's personality and the environment that she created. See ¶¶10-13. Mr. Nelson describes several encounters that he personally had with Lisa. *Id.* However, he does not supply any facts concerning Lisa's behavior at the pill line where the plaintiff refused to take insulin. Therefore, this affidavit is not helpful in reconstructing the events of 7 November 2003.

Thus, the facts are essentially undisputed about what **happened** on 7 November 2003. There is no genuine issue of material fact. It is established that the plaintiff was given a certain amount of insulin. The nurse believed it was the correct amount. Even if she was wrong, she did not refuse to give it to him. The plaintiff himself refused to take the offered insulin because he believed it was the wrong amount. The plaintiff continued to refuse insulin and food for two days until he fell and injured his eye.

It is impossible for the Court to determine which dose was the right dose. The only entry by Dr. Burnham concerning the prescribed dose is the entry dated 5 February 2004, which was several months after the injury. It is not clear when the plaintiff's dosage was originally

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<sup>4</sup> Affidavit of Russell Allen, ¶¶c, d; Affidavit of James Stills, ¶¶b, c; Affidavit of Percy Wilder, ¶¶c, d.

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prescribed. However, this issue does not create a genuine issue of material fact because even if the nurse offered the plaintiff an incorrect dose, she did not refuse him medical treatment. Indeed, the plaintiff made a personal decision and determined to refuse to take the medication.

With no genuine issue of material fact, the Court must next consider whether the acts by the defendants amount to “unnecessary and wanton infliction of pain.” The Court finds they do not. There is no proof that the defendants acted with deliberate indifference to the plaintiff’s condition. To the contrary, entries on 8 November 2003 show the medical staff attempted to persuade the plaintiff to take his insulin. Of course, they could not force him to take it. In fact, the Court finds the prison staff acted in the plaintiff’s best interest by not giving him the higher dose of insulin he requested because it might have been dangerous to him.

## 2. Delay in Medical Treatment of the Wound

The plaintiff next claims that after he sustained the injury to his eye, medical staff deliberately delayed access to appropriate medical care. The basis for this claim is the Operative Report prepared by Dr. Bhupendra Patel who performed surgery on the plaintiff. The Report is a part of the Affidavit of Renee Springman numbered as Jackson 1569. It was prepared on 19 March 2004, the day the surgery was done.

Dr. Patel wrote that the patient understands that “double vision cannot be completely relieved because of the length of time that has passed between the injury and the surgery.” The

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plaintiff claims the surgery was intentionally delayed by the State.

The plaintiff also claims he was told by an ophthalmologist at the Moran Eye Center that prison officials waited too long to bring the plaintiff for treatment and that as a result, he would have permanent impairment of his injured eye. Affidavit in Support of Motion for Summary Judgment, ¶10.

The affidavits of Russell Allen and Percy Wilder corroborate the plaintiff's claim that he waited several months to have surgery and that two of his appointments with his ophthalmologist were cancelled. Affidavit of Russell Allen, ¶¶ g,h; Affidavit of Percy Wilder, ¶¶ f, g.

The State submitted copies of the plaintiff's medical records to show what post-traumatic medical care the plaintiff received. These records indicate that on the date of the injury the plaintiff was admitted into the prison infirmary and the wound was treated with steri strips and ice. See Affidavit of Renee Springman, Jackson 313. The wound was checked approximately every two hours. *Id.*, Jackson 315-18. No apparent drainage was noted. *Id.*, Jackson 315, 317, 323.

The next day, 10 November 2003, the plaintiff was seen by Dr. Burnham. *Id.*, Jackson 324. Dr. Burnham examined the wound and ordered the continued use of ice. *Id.*

On 11 November 2003, at the pill line, the plaintiff complained of a headache and asked to see the physician's assistant. *Id.*, Jackson 325. The plaintiff was directed to fill out a health

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care request. Id. He was given Tylenol and advised to use ice. Id. The plaintiff left the pill line without filling out a health care request. Id. It is prison policy for inmates to fill out health care requests before they can be scheduled to see a medical provider. See Affidavit of Lael Askew, Jackson 2736. The plaintiff was familiar with this policy. Id., Jackson 2718.

The plaintiff filled out a health care request on 15 November 2003. Affidavit of Renee Springman, Jackson 329. He complained that his eye was swollen and uncomfortable and was given eye drops. Id.

On 17 November 2003, the plaintiff was seen by Dr. Burnham. Id., Jackson 330-31. Dr. Burnham noted redness in the left eye, but no corneal abrasion or anterior chamber bleeding. Id. He prescribed “naphazoline ophth” drops to ease swelling and pain in the eye. Id.; Dr. Garden’s Affidavit, ¶13.

On 1 December 2003, the plaintiff filled out another health care request. Affidavit of Renee Springman, Jackson 343. He complained about having problems with his left eye. Id. On 4 December 2003, the plaintiff was seen by Barbara Hennagir. Id., Jackson 346. The plaintiff complained he was having problems with his vision. Id. Ms. Hennagir thought it was a temporary muscle or nerve injury that should heal with time, but told the plaintiff he should also be seen by the doctor. Id., Jackson 347.

On 15 December 2003, the plaintiff was seen by Ms. Hennagir again to receive clearance

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for a cervical pillow. Id., Jackson 357. At the appointment, he complained about “nerve pain” in his face. Id.

On 17 December 2003, the plaintiff was seen at the Moran Eye Center for glaucoma and possible facial fracture. Id., Jackson 359. The specialist at the Moran Eye Center thought there was a fracture and recommended CT scans and surgery. Id., Jackson 360. CT scans were ordered by Dr. Burnham on 19 December 2003. The scans were performed on 29 December 2003. Id., Jackson 370.

On 5 February 2004, the plaintiff was seen by Dr. Burnham. Id., Jackson 404. Dr. Burnham reviewed the scans and discovered they were mistakenly done on the sinuses. Id., Jackson 405. The scans were reordered. Id. The surgery was performed on 19 March 2004. Id., Jackson 442.

The Court finds there is no genuine issue of material fact. The facts, which are not disputed by the plaintiff, clearly show that the prison medical staff made every effort to care for plaintiff’s injury. If there were some medical mistakes made, mere medical malpractice does not qualify for “unnecessary and wanton infliction of pain.” See *Bott* at 740. The Court finds no deliberate delay or refusal to provide plaintiff with necessary medical care.

### **3. Delay in Providing Plaintiff Snack Boxes When he was Temporarily Housed at Uintah-IV in Draper**

The plaintiff filed a supplemental claim alleging he was delayed his diabetic snack boxes

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for several hours until approximately 12:30 a.m when he was temporarily housed at Uintah-IV in Draper pending his appointment at the Moran Eye Center in April of 2006.

The plaintiff claims he called the control room several times and asked officers on “skin count” about diabetic snack boxes. He received his snack boxes every day but he received them late. On one day (13 April 2006), he suffered hypoglycemic reaction because he did not receive his snack box on time. He also claims he received a nutritionally inadequate supper that day. See Amended Complaint for Medical Malpractice and Constitutional Rights Violations filed on 16 January 2007.

The State submitted the Affidavit of Sergeant Thomas Laursen, an officer employed at Uintah-IV. He testified about the procedure for obtaining a diabetic snack box for someone temporarily housed at Uintah-IV. He indicated that officers on “skin counts” would not be able to accommodate such requests immediately. Laursen’s Affidavit, ¶¶16. These officers might also not remember the request at the time they finish with the count. *Id.* It is the responsibility of an inmate with a special dietary need to inform the housing officer about the need. Affidavit of Peggy Monson, ¶7. The officer then checks to see if there is a medical order on file for a diabetic snack box. Laursen’s Affidavit, ¶14.

Uintah-IV does not receive any extra diabetic snack boxes. *Id.*, ¶15. Thus, upon receiving an inmate request for a snack box, an officer would have to go to Uintah-III to obtain it. *Id.* If an



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officer has other inmates or incidents to attend to, he may not be able to immediately go to Uintah-III to obtain the box. *Id.*, ¶17.

There is no genuine issue of material fact on this issue. The question here, again, is whether, based on these facts, the prison staff acted with deliberate indifference and inflicted unnecessary and wanton pain on the plaintiff. The Court concludes the prison staff made reasonable efforts to accommodate the plaintiff's needs. The delay may have been caused by the plaintiff's temporary status at Uintah-IV and the necessity to go to Uintah-III to obtain the snack boxes. The Court finds no flagrant violation of the plaintiff's constitutional right under Utah State Constitution, Article I, §9.

#### **4. Restraints**

The plaintiff claims that on 13 April 2006, he was transported from the prison facility in Draper to the Moran Eye Center. Officer Austin Smith was responsible for the transportation. Officer Smith placed handcuffs on the plaintiff. The plaintiff felt the handcuffs were too tight. He also told Officer Smith that he had a double-cuff clearance because of injuries to his shoulder. Officer Smith refused to adjust his handcuffs.

The plaintiff was placed in a prison vehicle. When the plaintiff and Officer Smith arrived at the North Gate of the prison, Officer Smith went asked Sergeant Katie Healy about the handcuffs. Sgt. Healy checked for double-cuff clearance on the computer and found none.

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However, the cuffs were adjusted so the plaintiff's palms faced each other. Officer Smith also added a second set of cuffs.

The plaintiff claims these adjustments did not relieve his pain and discomfort. When he arrived at the Moran Eye Center to see the doctor, he felt he could not handle the pain any more and asked to be transported back to the prison rather than proceed with his appointment. The plaintiff further claims that Officer Smith was indifferent to his complaints about the pain and did nothing to adjust the cuffs. Finally, the plaintiff alleges Officer Smith made several unnecessary stops on the way back to the prison to prolong the plaintiff's pain and suffering. These facts are taken from the plaintiff's Supplemental Pleadings filed on 16 January 2007.

The State submitted the Affidavit of Officer Austin Smith and the Affidavit of Sergeant Katie Healy. Both of these affiants agree that at the North Gate of the prison, they tried to deal with the plaintiff's reported discomfort by adjusting the handcuffs. According to both affiants, the cuffs were adjusted so the plaintiff's palms were facing each other and they were checked for tightness. Affidavit of Austin Smith, ¶¶18-20; Affidavit of Katie Healy, ¶¶6, 8, 9. Further, Officer Smith reportedly used two sets of cuffs to accommodate the plaintiff's large size in order to make him more comfortable. Affidavit of Austin Smith, ¶12; Affidavit of Katie Healy, ¶7.

Officer Smith testified that according to the transportation order<sup>5</sup>, he was required to have

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<sup>5</sup> Transportation order is attached to Affidavit of Austin Smith.

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the plaintiff fully restrained. Affidavit of Austin Smith, ¶10. Attached to the Affidavit of Austin Smith are copies of several pages from the Institutional Operations Division Manual concerning transportation of inmates. Provision FFr16/03.01 (A) reads: “during the transportation of inmates the primary goal is to ensure adequate security to prevent escapes and to prevent harm to officers and other persons.”

Officer Smith also testified that all the stops he made on the way back to prison were necessary stops. Id., ¶¶28-30.

Again, the plaintiff has failed to demonstrate any genuine issue of material fact. Based on these undisputed facts, the Court concludes the plaintiff was not treated with unnecessary rigor. The need for restraints in this situation was of primary concern because plaintiff was taken to a public hospital. The Court finds it was reasonable for Officer Smith not to tamper with or adjust the restraints while at the hospital.

Officer Smith and Sergeant Healy made every effort to accommodate plaintiff within the prison policy guidelines. The cuffs were adjusted and checked; a second pair of cuffs was used. This holding is in accord with *Samuel v. First Correctional Medical*, 463 F. Supp.2d 488 (D. Del. 2006), where a prisoner sued for injuries arising out of restraint during a dental appointment. The prisoner in that case sued under Federal Constitution’s Eight Amendment which is substantially similar to Utah State Constitution, Article I, §9.

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## **5. Conclusion**

The defendants' Motion for Summary Judgment is granted on all Utah State Constitution, Article I, §C claims. The plaintiff's Motion for Summary Judgment is denied because there is no genuine issue of material fact and the plaintiff is not entitled to a judgment as a matter of law that the defendants treated him with "unnecessary rigor."

### **B. ADA Claims**

The plaintiff brings his claims of refusal to provide the correct amount of insulin and delay in medical care after the injury under the ADA. To succeed, he must show that he was excluded by the State from certain services or activities because of his disabilities. Claimants are expressly prohibited from using the ADA as an avenue to assert medical malpractice claims. *Fitzgerald v. Corr. Corp. Of Am.*, 403 F.3d 1134, 1144 (10<sup>th</sup> Cir. 2005).

The plaintiff's claims in this case are in the nature of medical malpractice. Therefore, they do not fall under the ADA. On this basis, the defendants' Motion for Summary Judgment on the plaintiff's ADA claims is also granted.

## **CONCLUSION**

The defendants' Motion for Summary Judgment (*Martinez* Report) is granted. Counsel for the defendant is appointed to draft an appropriate implementing order. The plaintiff's Motion for Summary Judgment is denied. The plaintiff's Motion to Strike Defendant's Joint Motion and

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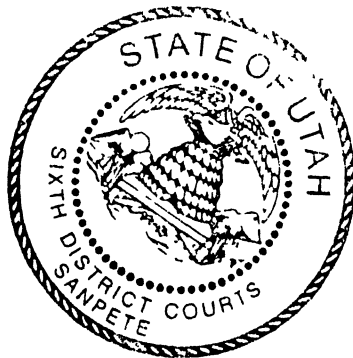
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Stipulation is denied. The plaintiff's Motion to Compel Discovery and Motion for an Order Compelling Discovery are denied. The plaintiff's Supplemental Pleadings are not be considered because this document is not a motion and not properly framed for decision. The plaintiff's Petition for Judicial Review of Denial of GRAMA Records Request Appeal filed on 12 April 2007 is likewise denied.

DATED this 3rd day of July, 2007.



Wallace A Lee

WALLACE A. LEE, Judge

Digitally signed by Wallace A Lee  
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## CERTIFICATE OF SERVICE

On July 2, 2007, a copy of the above document was sent to the following by the method indicated:

### Addressee

### Method

☒ Lawrence M. Jackson  
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☒ Joni J. Jones  
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*Melissa Lund*