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IN THE SUPREME COURT

OF THE STATE OF UTAH

STATE OF UTAH, by and through Utah State Department of Social Services,

Plaintiff & Respondent,

v.

D. JOHN MUSSELMAN and LINDA ANN CORAM,

Defendants & Appellant.

Case No. 18161

BRIEF OF APPELLANT

Appeal from the Judgment of
the Third District Court for Salt Lake County
Honorable G. Hal Taylor, Judge

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FILED

MAR - 5 1982

Clerk, Supreme Court, Utah

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the denial by the lower court of Defendant's Motion to Set Aside Default and Default Judgment in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable G. Hal Taylor presiding.

DISPOSITION IN THE LOWER COURT

The Court below entered its order denying the Defendant's Motion to Set Aside Default and Default Judgment.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal as a matter of law of the denial of the Defendant's Motion to Set Aside Default and Default Judgment and a remand to the lower court for a trial on the merits.

STATEMENT OF THE FACTS

Between April 8, 1977 and May 23, 1978, Linda Ann Coram received various medical treatments and supplies and incurred expenses therefor in the alleged amount of $82,522.22, which sums were paid on her behalf by the State of Utah pursuant to Section 55-15a-3, Utah Code Annotated 1953, as amended. In 1978, Mrs. Coram engaged the services of an attorney, D. John Musselman, to represent her in prosecuting a medical malpractice claim against a medical doctor, claiming professional negligence on the part of said doctor and praying

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for money damages. During February 1981, Linda Ann Coram's case was settled with the insurance carrier for the doctor in the sum of $150,000.00. The State of Utah claims the right to recover in subrogation for the amount expended on behalf of Mrs. Coram.

On June 4, 1981, the Plaintiff/Respondent, State of Utah, caused to be served upon the Defandant/Appellant, D. John Musselman a summons and complaint (Record pp. 2-7) praying for judgment in the amount of $82,522.22 under two separate causes of action. Between June 4, 1981 and June 26, 1981, there were telephone conversations between the Defendant/Appellant and Mr. Leon A. Halgren of the Utah State Attorney General's office with regard to a possible settlement of the State's alleged claim through conciliation and compromise. In the latter part of June 1981, the Defendant/Appellant became suddenly and seriously ill and was admitted on an emergency basis as an inpatient at the Utah Valley Hospital in Provo, Utah under an initial diagnosis of gastro intestinal bleeding. See Appendix A. After approximately one week of diagnostic testing in the hospital, the Defendant/Appellant was released from the Utah Valley Hospital as an inpatient on or about July 4, 1981 but continued under the care and treatment of Kirk R. Anderson, M.D. The Defendant/Appellant was not able to return to work at his office until approximately two weeks after release from the

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hospital. See Appendix B. During the week preceding July 14, 1981, the Defendant/Appellant, although still unable to return to work and resume his duties, attempted to contact Leon A. Halgren but was unable to reach Mr. Halgren. The purpose for the attempted contacts was to advise the Plaintiff/Respondent of the sudden illness of the Defendant/Appellant and to obtain sufficient additional time to answer the Plaintiff/Respondent's complaint. On or about July 14, 1981, during the afternoon hours, the Defendant/Appellant did reach Mr. Halgren and was informed that Default had been entered on July 9, 1981 and judgment had been taken earlier that same day, the 14th of July 1981. (Record pp. 8-9).

On or about August 13, 1981, the Defendant/Appellant caused to be filed his Motion to Set Aside Judgment (Record p. 32) supported by his tendered answer to the complaint of the Plaintiff/Respondent (Record pp. 29-31), his Affidavit (Record pp. 26-28), and his Notice of Motion declaring August the 18th, 1981 at the hour of 2:00 p.m. to be the time for hearing on the motion (Record p. 25). On August 18, 1981 at the hour of 2:00 p.m., the Third Judicial District Court of Salt Lake County, State of Utah, the Honorable G. Hal Taylor presiding, declined to hear the Motion to Set Aside Judgment (Record P. 33). The Motion to Set Aside Judgment was continued and heard on November 3, 1981 at the hour of 2:00 p.m. in the Third Judicial

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District Court in and for Salt Lake County, State of Utah, the Honorable G. Hal Taylor presiding. (Record p. 75). On the same date a hearing was held on an Order to Show Cause of the Plaintiff/Respondent. The reporter's transcript of the proceedings on November 3, 1981 has been designated and filed as part of the Record on Appeal.

During the hearing on the Defendant's Motion to Set Aside Judgment, both sides presented arguments touching on the issue of excusable neglect as it relates to the entry of Default and Default Judgment in this case. After both sides submitted the matter, the trial judge made his ruling as follows:

> Well, I've read your proposed answer and I don't think it states any defense. The Motion to Set Aside the default is denied. (Transcript pp. 20-21)

The formal Order Denying Motion to Set Aside Default Judgment was made and entered on November 18, 1981 by Judge G. Hal Taylor (Record p. 87). The Court entered no specific findings with respect to its denial of Defendant/Appellant's motion. The Defendant/Appellant filed his Notice of Appeal on December 10, 1981. (Record p. 90).

POINT I

DEFENDANT/APPELLANT DEMONSTRATED AN UNCONTROVERTED SHOWING OF INADVERTENCE AND EXCUSABLE NEGLECT.

In Rule 60(b)(1), Utah Rules of Civil Procedure, this Court has provided as follows:

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> On motion and upon such terms as are just, the Court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons (1) mistake, inadvertence, surprise, or excusable neglect; . . . The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than three months after the judgment, order, or proceeding was entered or taken. . . .

It has been consistently held by this Court that the purpose for Rule 60(b)(1) is to relieve against harshness of enforcing a judgment resulting from procedural difficulties, wrongs of opposing parties, or misfortunes preventing presentation of a claim or a defense. Warren v. Dickson Ranch Co., et. al., 260 P.2d 741, 123 U. 416 (1953). This Court recited in the case of Board of Education of the Granite School District v. Cox, 384 P.2d 806, 14 U. 2d 385 (1963) that the Court "will generally grant relief in doubtful cases so that a party may have a hearing." Cox, supra at 807. The Court went on to say that, "It is an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification for the defendants' failure to appear and answer." While the Court ruled against setting the default aside as to Mrs. Cox, nevertheless, the principles enunciated in Cox are those that must guide the court in the instant case. The Court in Cox did note with approval the setting aside of the default as to Mrs. Cox due to illness. Serious illness is the basis of excusable neglect in the present case. Cox, supra. at 807.

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It is a generally established principle of this Court that granting of relief from default judgments is favored "where there is any reasonable excuse, unless it will result in substantial prejudice or injustice to the adverse party." Westinghouse Electric Supply Co. v. Paul W. Larsen Contractors, Inc., 544 P.2d 876, 879 (1975). Emphasis added. Heathman v. Fabian & Clendenin, 377 P.2d 189, 14 U.2d 60 (1962); Utah Commerical & Savings Bank v. Trumbo, 53 P.1033, 17 U. 198 (1898).

In this case, the Defendant/Appellant clearly demonstrated through his affidavit to the district court that his reason for not timely answering the complaint of the Plaintiff/Respondent was his sudden illness and subsequent hospitalization. Non-disabling illness, on its face, may not be sufficient to justify a finding of abuse of discretion on the part of the trial court. However, illness of the disabling and incapacitating nature and severity as is present here, requiring hospitalization for approximately a week certainly constitutes a reasonable excuse for failure to appear and answer at least until a reasonable recovery sufficient to so enable a party. See Appendicies A and B.

It is noteworthy that the trial court made no specific finding as to excusable neglect. The trial court, however, was quite specific in its ruling denying the motion solely on the ground of failing to state a defense. (Transcript pp. 20-21). Indeed, it is therefore implicit in the trial court's ruling that excusable

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neglect was shown, in that the Court's denial for Defendant/Appellant's Motion was based on the issue of whether a meritorious defense was stated. The Trial Court would have had no reason to address the issue of a meritorious defense unless it believed excusable neglect had already been established. As stated in Cox, supra. at page 808:

> This latter question [that of a meritorious defense] arises only after consideration of the first question [that of excusable neglect] and a sufficient excuse therefrom being shown.

No contradiction whatsoever is contained in the record as to the Defendant/Appellant's statement of fact concerning his serious illness, his hospitalization, and his subsequent recovery. Indeed, there could be none.

In order to reverse the lower court's denial of a motion to set aside default, this Court must find an abuse of discretion. Interstate Excavating, Inc. v. AGLA Development Corp., 611 P.2d 369 (1980); Olsen v. Cummings, 565 P.2d 1123 (1977). The parameters of the lower court's discretion are defined and have long been established. In the early case of Cutler v. Haycock, 90 P. 897, 32 U. 354 (1907) this court set forth those guidelines as follows:

> "It is equally elementary that this discretion is to be applied to the facts as they appear in each case, and, in the exercise of this discretion, the aim and object should be the promotion and furtherance of justice and the protection of the rights of all concerned. As has

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> been well said in all doubtful cases the general rule of courts is to incline towards granting relief from the default, and to bring about a judgment on the merits." Cutler at p. 900, Emphasis added. See also Hurd v. Ford, 276 P. 908 at 912, 74 U. 46 (1928).
>
> "Law and Courts alike abhor a result that condemns a party unheard, and, unless the law unavoidably requires and justice demands it, where a party has not by his own inexcusable neglect deprived himself of the right, the courts should, and will, where equity permits, afford relief, to the end that a party may be given a hearing." Cutler at p. 901, Emphasis added.

This Court has consistently held that the policy of the law is to accord litigants the opportunity for a hearing on the merits where that can be done without serious injustice to the other party. Further where there is doubt about whether a default judgment should be set aside, that doubt should be resolved in favor of doing so. In particular, Olsen, supra at p. 1124 reaffirmed the established rule that "It is uniformly regarded as an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse for the defendant's failure to appear, and timely application is made to set it aside." Citing Mayhew, infra.

A leading Utah case on the issue of excusable neglect is the case of Mayhew v. Standard Gilsonite Co., 376 P.2d 951, 14 U.2d 52 (1962) wherein the Utah Supreme Court set forth the guiding principals as follows:

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> It is undoubtedly correct that the trial court is endowed with considerable latitude of discretion in granting or denying such motions. [Motions to set aside default judgments] However, it is also true that the court cannot act arbitrarily in that regard, but should be generally indulgent toward permitting full inquiry and knowledge of disputes so they can be settled advisably and in conformity with law and justice. To clamp a judgment rigidly and irrevocably on a party without a hearing is obviously a harsh and oppressive thing. It is fundamental in our system of justice that each party to a controversy should be afforded an opportunity to present his side of the case. For that reason it is quite uniformly regarded as an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse for the defendant's failure to appear, and timely application is made to set it aside. Mayhew at p. 952. Emphasis added.

The record firmly establishes justification of the conduct of Defendant/Appellant that clearly constitutes excusable neglect.

POINT II

DEFENDANT/APPELLANT HAS TENDERED A MERITORIOUS DEFENSE AND THE DEFAULT JUDGMENT MUST BE SET ASIDE TO PREVENT CLEAR AND MANIFEST INJUSTICE

This Court has stated, notwithstanding the rule of liberality in granting motions to set aside judgment in appropriate circumstances, as for example when excusable neglect is shown, the moving party should tender a defense of sufficient merit to justify the procedure. Mason v. Mason, 597 P.2d 1322 (1979); Downey State Bank v. Major-Blakeney Corp., et al, 545 P.2d 507 (1976); and Atkinson v. Atkinson, 134 P. 595, 43 U. 53 (1913).

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> . . .[W]e are in accord generally with the doctrine urged by defendant that the courts should be liberal in granting relief against judgments taken by default to the end that controversies may be tried on the merits. The other side of this coin is that the rights of the party moved against must also be safeguarded and that the courts should not be occupied with the trial of cases unless some useful purpose is to be served thereby. Therefore, notwithstanding the rule of liberality in granting motions to set aside judgments in appropriate circumstances, that should not be done unless the moving party tenders a defense of sufficient merit to justify that procedure. Mason at p. 1323. Emphasis added.

The issue of a meritorious defense arises only after a finding of excusable neglect by the lower court. Cox, supra at 808. While no specific finding is to be found in the record of the trial court nonetheless, excusable neglect can be inferred from the lower court's ruling which was based solely on the issue of whether a meritorious defense was shown. The lower court concluded that no defense was stated. This ruling by the Court is manifest error. The tender of a meritorious defense does not mean the proof thereof. It is only required that a good defense on its face be alleged. Cutler, supra at p. 899.

Defendant/Appellant tendered to the lower court his proposed answer simultaneous with filing his Motion to Set Aside Default and Default Judgment, which tendered answer may be found in the trial court record at pages 29-31. The answer proffered by Defendant/Appellant alleges the following defenses.

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1. Pursuant to Section 55-15d-8, Utah Code Annotated, 1953, as amended, which provides for recovery of medical assistance payments made by the State, any recovery to which the Plaintiff/Respondent may be entitled is reduced by 25 percent. Plaintiff/Respondent's default judgment was for the full amount of medical assistance payments without the required statutory reduction.

2. The Plaintiff/Respondent failed to comply with the provisions of Section 55-15d-10, and is thus not entitled to any recovery at all. The State failed to file a verified lien statement with the Court in which Linda Coram's medical malpractice action was filed, thus, the State failed to perfect its asserted lien. See Appendix C.

3. The Plaintiff/Respondent failed to comply with other statutory requirements of Title 55, Utah Code Annotated 1953, as amended, and the Plaintiff/Respondent therefore has no right of recovery.

4. The Plaintiff/Respondent based its right of recovery upon Chapter 55-15d of the Utah Code Annotated 1953, as amended, which Chapter had been previously repealed by the 1981 legislature. The effective date of repeal was May 12, 1981, and this date preceded the filing of Plaintiff/Respondent's complaint. The Plaintiff/Respondent will undoubtedly assert that the recovery provisions of

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Chapter 55-15d were re-enacted elsewhere in the Utah Code. While this is so, it does not obviate the absolute fact that the complaint on its face failed to state a claim for relief. This Court has implicitly held that where a complaint, on its face, fails to state a claim for relief, a default judgment cannot be permitted to stand. Sovereen v. Meadows, 595 P.2d 852, 854 (1979).

5. The Plaintiff/Respondent has no right of recovery under Title 55, Utah Code Annotated 1953, as amended, inasmuch as Chapter 55-15d providing for recovery of medical assistance payments was not enacted into law until 1979, which was subsequent to the payment of benefits for and on behalf of Linda Coram, said payments having been made in 1978 and earlier.

6. The Plaintiff/Respondent's recovery, if any, is limited by virtue of the fact that the defendant Linda Coram has not been made whole in spite of the settlement of her lawsuit. Equitable considerations mandate that the Plaintiff/Respondent reduce its alleged claim pursuant to the equitable provisions of Section 55-15d-6 which provides for the reduction of any recovery to prevent "undue hardship upon the person who suffered the injury" for which medical assistance payments were made.

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All of the foregoing are real and meritorious defenses and each involves a factual determination as well as application of appropriate law. Each fits the judicial definition of a "meritorious defense" supplied in the case of Beren Corp. v. Spader, 255 N.W.2d 247, 198 Neb. 677, in which a "meritorious defense" was held to be one that is worthy of judicial inquiry because it rasies a question of law deserving some investigation and discussion or because a real controversy as to the essential facts exists.

The ruling in the lower court that no defense was stated is clearly without merit and is an obvious abuse of discretion mandating an appeal to the equitable conscience of this Court and requiring a reversal of the order denying the Defendant/Appellant's Motion to Set Aside Default and Default Judgment.

The Plaintiff/Respondent has never attempted service on the Defendant Linda Ann Coram and therefore has never litigated its claims against her. All of the issues and defenses contained in the tendered answer by Defendant/Appellant are also the defenses and claims of the Defendant Linda Ann Coram which are yet to be litigated between her and the Plaintiff/Respondent. The unserved defendant Linda Coram asserts that the subject funds claimed by the State are hers. Should Linda Coram prevail, she would be entitled to the funds.

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Such a result would place Defendant/Appellant in the unjust position of owing a judgment to Plaintiff/Respondent for funds to which Plaintiff/Respondent was never entitled.

Without question, a controversy containing claims as substantial as those of Plaintiff/Respondent matched against the defenses as real and substantial as those of Defendant/Appellant must be litigated and can only be resolved on the merits. In this case, to permit the Plaintiff/Respondent's default judgment to stand, reduces justice to a footrace and determines important substantive rights through procedural technicality as never intended by the Utah Rules of Civil Procedure. To deny Defendant/Appellant his day in court is a rejection of the standard of essential fairness upon which our entire system of law is based.

CONCLUSION

Defendant/Appellant respectfully submits that the record in this case clearly establishes an abuse of discretion by the lower court in refusing to grant the Motion to Set Aside Default and Default Judgment in that excusable neglect was clearly shown and a meritorious defense was tendered. Defendant/Appellant submits that his appeal is well-taken and the judgment of the lower court must be reversed to prevent clear and manifest injustice.

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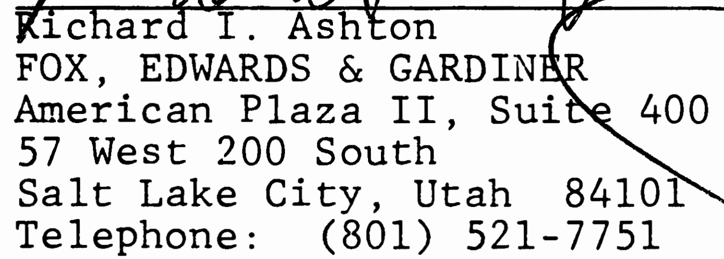
Respectfully Submitted



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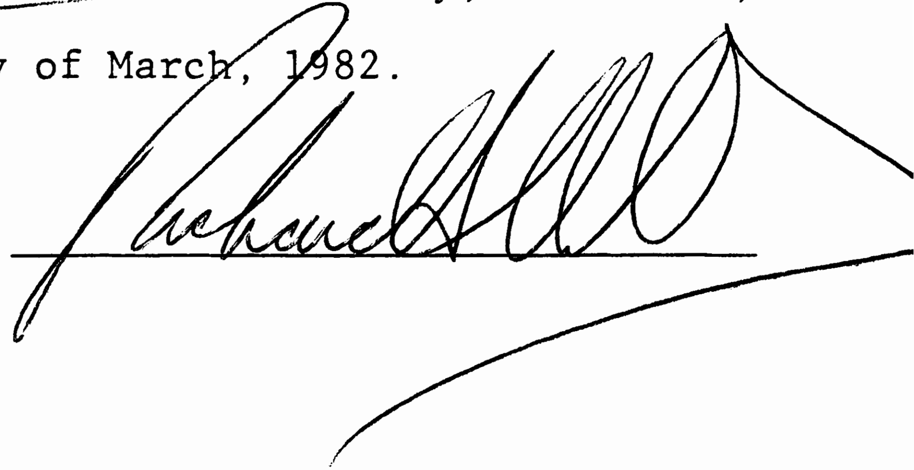
MAILING CERTIFICATE

This is to certify that a true and correct copy of the foregoing Brief of Appellant was mailed to Leon A. Halgren, 150 West North Temple, Suite 234, Salt Lake City, UT 84103, postage prepaid, this 5th day of March, 1982.



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APPENDIX A

UTAH VALLEY HOSPITAL RECORD

D. JOHN MUSSELMAN

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NAME		SEX	AGE	SMOKE	TYPE HOSP. SERVICE	PATIENT NUMBER
SSELMAN, JOHN D.	512	M X F	34	YES ___ NO X	MED 5A	113971-6

ADDRESS OF PATIENT	MARITAL STATUS S M W D SEP	BIRTH DATE	BIRTHPLACE	CODING
75 WEST 1050 NORTH	MARRIED	9-3-46	ILLINOIS	22C

CITY, STATE, ZIP CODE	PHONE	DATE LAST ADMITTED TO UTAH VALLEY HOSP.	UNDER WHAT NAME?
PROVO, UTAH 84601	375-9499		SAME

PHYSICIAN	NAME OF HOSPITAL LAST ADMITTED TO	DATE
DR. BRYAN TERRY		7/10/81

ADMITTING DATE	HOUR	RELIGION	WARD OR PARISH	DISCHARGE DATE
30-81	8:15 PM	LDS	DO NOT CALL	7/4/81

SPOUSE'S NAME	EMPLOYER	EMPLOYER'S ADDRESS	INSURANCE
LIE MUSSELMAN	UTC		YES

PATIENT'S OCCUPATION	EMPLOYER	EMPLOYER'S ADDRESS	INSURANCE
TORNEY	SELF		

NAME OF RESPONSIBLE PARTY	RELATIONSHIP	ADDRESS	PHONE
LIE MUSSELMAN	WIFE	1475 W 1050 N PROVO, UTAH	375-9499

(OTHER MARRIED NAME)	ADDRESS	PHONE
RIAN MUSSELMAN	PROVO, UTAH	

NAME	ADDRESS	PHONE
HN MUSSELMAN	SAME	

IN CASE OF EMERGENCY	RELATIONSHIP	ADDRESS	PHONE
HN MUSSELMAN	FATHER		375-5051

INDUSTRIAL	AUTO ACCIDENT	OTHER	DATE OF ACCIDENT
NO X			

INSURANCE	SECOND INSURANCE
IA	NONE
ADDRESS	ADDRESS

GROUP NO	INDIVIDUAL	POLICY NUMBERS	GROUP NO	INDIVIDUAL	POLICY NUMBERS
2041622	528 78 5075	DIST 128		4 da	

GROUP WITH	PHONE	GROUP WITH	PHONE
AH TECHNICAL COLLEGE		med	
ADDRESS: OREM, UTAH		ADDRESS: cons - K. Anderson	

POLICYHOLDER	POLICYHOLDER	ADMITTING CLERK
LIE MUSSELMAN		NJ

ADMITTING DIAGNOSIS: BLEEDING

~~15-25-63~~

DIAGNOSIS AND SUMMARY RECORD

	CODE NO.
DIAGNOSIS: 1. abd pain + diarrhea - prob viral gastroenteritis	9.0
2. Rectal Bleeding 2° to hemorrhoids	558.9
OPERATIONS: 3. ↑ Indirect Bilirubin - probable Gilbert's Syndrome	~~008.8~~
	569.3
COMPLICATIONS: ∅	455.6
	277.4
INFECTIONS: ∅	
MEDICAL	
POST PARTUM	
POST OPERATIVE	
SUMMARY: Dict 7/8/81	

CONDITION ON DISCHARGE: RECOVERED ☐ IMPROVED ☐ NOT IMPROVED ☐ NOT TREATED ☐ EXPIRED ☐ RELEASED AGAINST ADVICE ☐ AUTOPSY ☐

06 1981

I HAVE EXAMINED AND APPROVED THIS COMPLETE MEDICAL RECORD

SIGNED [signature] M.D.

ATTENDING PHYSICIAN

AD-01

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DISCHARGE SUMMARY

Kirk Anderson, M.D. CC: Dr. Bryan G. Terry

MUSSELMAN, JOHN D.

Admitted 6-30-81
Discharged 7-4-81

The patient is a 34 year old white male admitted for abdominal pain, diarrhea and bloody stools. Previously in good state of health, has no history of peptic disease in the past. Has not been having abdominal complaints until two days prior to admission he had fairly sudden onset of epigastric abdominal pain followed by watery diarrhea. The pain persisted through the night into the next day. The diarrhea became blood tinged. At that time he presented himself to the emergency room where he was admitted by Dr. Bryan Terry and I will refer you to Dr. Terry's note for details. I was consulted the following day for workup. The patient states that the pain has subsided somewhat in the epigastrium and has moved more to the right lower quadrant.

PAST MEDICAL HISTORY: Of no consequence. The patient has not been on medications. He is a non-smoker, is only a social drinker. Has not recently been drinking frequently or more heavily.

REVIEW OF SYSTEMS: Negative.

PHYSICAL EXAMINATION: Revealed a well tanned white male in no acute distress. His BP was 130/75 without orthostatic change. His heart rate was 80 and regular. The rest of his examination was normal except the abdomen which revealed some mild epigastric tenderness and some right lower quadrant abdominal tenderness without guarding or rebound. No masses were found. Rectal exam revealed an external hemorrhoid which extended up through the anal canal and is palpable up into the rectum. No masses are felt. There was some grossly bloody appearing fluid on the tip of the examination glove.

ADMITTING LABORATORY: Was significant in that hematocrit was 52 on admission, and on the day I saw the patient had fallen to 49 after rehydration.

HOSPITAL COURSE: The patient's hematocrit fell further to 43 and then was stable. Blood loss per bowel ceased the day after admission. Upright and flat plate of the abdomen revealed no free air in the abdomen. Upper GI series was negative. Sigmoidoscopy and barium enema was negative. Stool culture was negative. Stool for ova and parasite was negative. The diarrhea spontaneously resolved and at the time of discharge the patient was feeling well. It is presumed that the diarrhea likely represented a viral gastroenteritis and that the blood loss was on the basis of hemorrhoidal bleeding.

FINAL DISCHARGE DIAGNOSIS:
1. Abdominal pain and diarrhea, likely representing viral gastroenteritis.
2. Rectal bleeding representing most likely hemorrhoidal bleeding.
3. Elevated indirect bilirubin which resolved, likely representing Gilbert's Syndrome.

The patient was to follow up with me as needed in the future. He was discharged on no medications.

KA/gjr
Dict: 7-8-81
Trans: 7-8-81

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HISTORY AND PHYSICAL

SSELMAN, John
 years old

5/2

dmitted:

ISTORY: This 34 year old Attorney was in good health until yesterday the evening of June 29, 1981 when he developed epigastric pain which became rather severe and constant. He also began to have watery diarrhea during the night. The patient's symptoms continued to last all during the night until early morning when he began to vomit. Several hours after vomiting he began to pass fairly bright blood per rectum. He has passes 5 or 6 bloody stools today and this evening June 30, 1981. His wife who is a Nurse brought him to the ER for evaluation.

The patient's pain is midepigastric, constant and nonradiating and rather severe. There is no prior history of pain although he does admit to some upper abdominal distress on occasion. There is no PH of GI bleeding. There is no history of use of analgesics such as aspirin.

PH: Medical- No medical illnesses. Surgery- The patient has had an appendectomy, tonsillectomy. Medications- The patient takes Chlor-Trimeton only. Allergies- Sulfa.

PE: General, the patient is a tan, healthy appearing male in no distress at this time. He has just had an injection of Demerol.

HEAD: Normocephalic.

EYES: Pupils are small and constricted. EOM's are conjugate. Fundoscopic examination was not done.

NOSE & ORAL PHARYNX: Normal to examination. There is no sign of vascular malformation in the oral pharynx.

NECK: Supple. No thyromegaly or lymph adenopathy.

CHEST: Lungs clear to A&P.

HEART: S1 and S2 are normal. Rhythm is regular. No murmurs. No gallops.

ABD: Soft, with mild epigastric tenderness only. No bowel sounds heard. There is no guarding or marked tenderness anywhere else in the abdomen. External genitalia normal to examination.

RECTAL: Examination reveals no stool present in the ampulla. No blood recovered.

EXTREM: Normal to examination.

SKIN: Normal.

IMP: GI bleed, etiology undetermined.

PLAN: The pati[illegible]tted to the hospital this evening for

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MEDICAL CONSULTATION

MUSSLEMAN, JOHN D.

PAGE 2

PHYSICAL EXAMINATION:

ABDOMEN: The abdomen is not distended. Bowel sounds are present. The epigastriu is mildly tender to palpation without masses or rebound or guarding. Th is fairly remarkable right lower quadrant abdominal pain, but this is wi guarding or rebound.

GENITALIA: Unremarkable.

RECTAL: Reveals an external hemorrhoid, which extends up through the anal canal ar is palpable up into the rectum. No masses are felt. There is no tenderne There is a grossly bloody fluid on the tip of the examination gloove, howe

EXTREMITIES: Normal.

NEUROLOGICAL: Normal.

LABORATORY DATA:

To date, the HCT is 52 on admission, and has recently fallen to 49. The white bloo cell count is elevated with a slight left shift. Other lab data are not present at the time of dictation.

IMPRESSION:

1. Abdominal pain,diarrhea, and bloody stools. The differential diagnosis in this instance includes bleeding peptic ulcer disease, lower GI bleeding with the character of the stools, it is possible that the diarrhea is nonbloody, but the patient has had diarrhea that has caused hemorrhoidal bleeding, possibility of infectious diarrhea with his abdominal complaints and elevated white blood cell count. The remote possibilities of pancreatitis. With the change in pain from epigastrium to right lower quadrant, one wonders about the possibility of perforated peptic ulcer disease.

2. Elevated bilirubin and slightly elevated alkaline phosphatase, undetermined etiology. May represent hepatitis in an early stage, Gillbare's disease, stone disease, other obstructive disease. No evidence that this is prehepatic in ori

3. Hemorrhoids. It may be that the intestinal blood loss is a hemorrhoidal source, although one can not say this with confidence and the patient needs GI studies to rule out other bleeding sources.

PLAN:

1. GI work up will be obtained. Initially we will start with a flat plate upright of the abdomen and if there is no free air noted, then we will proceed with an upper GI x-ray. If the upper GI is normal, we will need to do a barium enema and proctoscopic examination.

2. Will follow his vital signs and blood count in order to assess the amount of blood loss.

3. Work up the elevated bilirubin with fra ... ct that th

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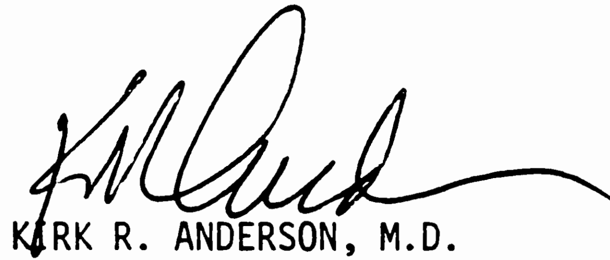
PLAN:

3. represents Gillbares disease, but must rule out other etiologies.

Thank you for inviting this consultation. I will see if the studies are taken care of and will follow up each day.

KRA/ko
7-1-81--dictated & typed



KIRK R. ANDERSON, M.D.

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MEDICAL RECORDS NO 15 25 63

22C 129

Phys Hooker / Terry

HOSP 76
EC 77
X-R 78

UTAH VAL[LEY]
1034 NORTH 500 WEST
PROVO,

EMERGENCY CENTER RECORD

BLUE CROSS #3

BILLING NO. 4575

PLEASE CITE BILLING NO WITH PA[YMENT]

PATIENT

PATIENT NAME (LAST, FIRST, MIDDLE)	AGE	BIRTH DATE	SEX	MAR STAT	ADM DATE	ADM TIME
Musselman John D	34	3 Sept XXMAX 46	M	marr	30 Jun 81	1630

PATIENT ADDRESS / CITY, STATE, ZIP CODE	HOME PHONE	WORK PHONE	ALLERGIES
1475 W 1050 N Provo Utah 84601	375 9499		sulpha

COMPLAINT-IF ACCIDENT STATE DATE AND TIME	HOME	ON JOB	AUTO	OTHER	BROUGHT IN BY	MANNER RECEIVED
abdominal pain rectal bleeding 30 Jun 81 0400	XX	☐	☐	☐	wife	walked

SPOUSE NAME	FATHER'S NAME	MOTHER'S NAME	PARENT'S ADDRESS	PHONE	DATE LAST ADM. TO UVH	UNDER WHAT NAME
Julie						

GUAR.

GUARANTOR'S FULL NAME	ADDRESS	PHONE	SOC SEC NO
wife Julie Musselman			

GUARANTOR'S EMPLOYER	EMPLOYER'S ADDRESS	PHONE	MEDICARE NO
UTC Provo			

MED INSURANCE

IND/LIAB CARRIER NAME	ADDRESS	PHONE	WELFARE NO

BLUE CROSS-BLUESHIELD	ID #	GR #	COMMERCIAL INSURANCE NAME	ADDRESS	POLICY NO
			EMIA 528 78 5075 2041622		

OTHER INSURANCE — ADDRESS
COMPANY none

512

FINAL DIAGNOSIS	DIS	ADM ROOM	DEC	PHYSICIAN'S SIGNATURE
	☐	☒	☐	

TIME	MEDICATION	DOSE	SITE	SIGNATURE
1720	Demerol	25 mg	IM	[signature]
1720	Phenergan	25 mg	IM	[signature]
1740	Tagamet	300 mg	IV	[signature]
1800	Demerol	25 mg IV	IVP	[signature]

VITAL SIGNS

TIME	B/P	P	R	T
1640	132/84	68	20	98

TREATMENTS

50
05c
1000

NURSES NOTES TIME: 1630 as above

c/o epigastric pain x 24° also states has been passing red to dark red blood rectally approx ½ cup x 4. Started this am [signature] Dr Hooker. Lab drawn. IV NG to low Gomco. Admitted to floor

Seen by Dr Hook TIME: 2000
CLOTHING AND VALUABLES: WITH PT. ☒ HOME ☐
SIGNATURE: [signature]

PHYSICIAN'S REPORT

HISTORY: BRB per rectum
Gen ABD

PHYSICAL:

TREATMENT

IV - D5 LR

IV { 25 Demerol
25 Phenergan
300 Tagamet

NG - begin Nec

X-RAY:

LAB: CBC SMA 6-12 TXM 4 U

CONDITION ON DISCHARGE	IMPROVED	NOT IMPROVED	ADM RM	NOT TREATED	EXPIRED	DISCHARGE INSTRUCTIONS GIVEN ON AFTERCARE FORM	FOLLOW UP REFER TO
	☐	☐	☐	☐	☐	☐	

DIAGNOSIS:

CODE

PHYSICIAN'S SIGNATURE

NOTICE AND AUTHORIZATION FOR TREATMENT AND PAYMENT: I hereby authorize any medical, surgical and anesthetic procedure which the physician may consider necessary for the above named patient. I also assume financial responsibility to the physician/hospital. Accounts not paid in 30 days will be charged a monthly **FINANCE CHARGE OF 1.5%** (min charge 50c) which is an **ANNUAL PERCENTAGE RATE OF 18%**. In the event of default I agree to pay costs and a reasonable attorney fee in any account balance after default is placed with an attorney for collection. This account to be paid in Provo, Utah.

AUTHORIZATION FOR NARCOTIC MEDICATIONS: If deemed medically advisable, I hereby consent to the attending physician or his associate physicians to prescribe administer or dispense a narcotic drug to a minor child.

AUTHORIZATION TO PAY INSURANCE BENEFITS: I hereby authorize the above named physician/ ... e of my examination or treatment to my insurance company. I also hereby authorize payment directly to the above ... but not to exceed the charges accrued during this period of hospitalization and treatment.

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APPENDIX B

AFFIDAVIT OF KIRK R. ANDERSON, M.D.

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AFFIDAVIT OF DR. KIRK R. ANDERSON

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

Dr. Kirk R. Anderson having been first duly sworn deposes and states that:

1. I am a medical doctor licensed to practice medicine within the State of Utah.

2. During June, July, and August of 1981, I was a treating physician of Mr. D. John Musselman.

3. Mr. Musselman was admitted to the Utah Valley Hospital as an inpatient on or about June 29, 1981 with a possible stomach ulcer.

4. His admission to the hospital was through the emergency room; Mr. Musselman was in a very great deal of pain, and upon his admission he was immediately started on certain pain medications, administered I-V as well as I-M.

5. One of the pain medications administered to Mr. Musselman periodically during his stay in the hospital was that of demerol which is considered to be a more potent type of pain medication and which would have made it extremely difficult for Mr. Musselman to have remained aware of his personal or business demands.

6. Also while in the hospital, Mr. Musselman underwent a rigorous series of tests and examinations,

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including an upper GI series, a lower GI series, and a sigmoidoscopy.

7. On July 4, 1981, Mr. Musselman was released from the Utah Valley Hospital under my direction to further recuperate at home.

8. It is my professional opinion that Mr. Musselman's illness and recuperation would have prevented him from returning to his normal daily activities for at least an additional two weeks following his release from the hospital.

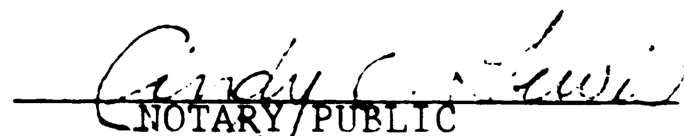
9. Mr. Musselman remained under my care and treatment following his release from the hospital and was not completely released by me until a follow up visit and examination on ~~August~~ JULY 16, 1981.

FURTHER affiant sayeth not.

DATED this 4th day of March, 1982

KIRK R. ANDERSON, M.D.

SUBSCRIBED AND SWORN to before me this 4th day of March, 1982.



NOTARY PUBLIC

Residing In Salt Lake City

My Commission Expires:
4-3-84

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APPENDIX C

AFFIDAVIT OF PAUL C. BADGER

CLERK OF THE UNITED STATES

DISTRICT COURT

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MAR 1 1982

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

LINDA CORAM, Plaintiff, vs. A. A. BOSTON, R. D. BIRCH, d/b/a JUAB MEDICAL CLINIC, Defendants.	)	AFFIDAVIT OF CLERK RE VERIFIED LIEN STATEMENT C-78-0405W

STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

I, Paul L. Badger, Clerk of the United States District Court for the District of Utah, having been first duly sworn on oath, deposes and says that at the request of D. John Musselman, Esq., attorney for the plaintiff in the above-referenced cause of action, I have caused a diligent search to be made of the docket and files comprising the official record of the said cause now on file in this court, and that no verified statement of lien such as that required to be submitted pursuant to § 55-15d-10, Utah Code Annotated, has been found among the records of said cause now on file in this court, and that no other document purporting to be a verified statement of lien has been found among such records.

WITNESS my hand and the seal of this court subscribed hereto on the 1st day of March, 1982.

Paul L. Badger, Clerk

UNITED STATES OF AMERICA) SS
DISTRICT OF UTAH)

I, THE UNDERSIGNED CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SAID CLERK

WITNESS MY HAND AND THE SEAL OF SAID COURT THIS 1st DAY OF March 1982

PAUL L. BADGER, CLERK

BY Paul L. Badger DEPUTY

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