

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO.: 2008-IA-01233-SCT**

**ROGER COLLINS, M.D. AND
LEFLEUR FAMILY MEDICAL CLINIC**

APPELLANTS/PETITIONERS

VS.

JEANNE HOLMES HICKS

APPELLEE/RESPONDENT

BRIEF OF APPELLANTS

**INTERLOCUTORY APPEAL FROM DECISION OF THE
CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI
CIVIL ACTION NO. 251-02-1171 CIV**

ORAL ARGUMENT REQUESTED

PREPARED AND SUBMITTED BY:

**WHITMAN B. JOHNSON III, MSB #3158
KRISTI D. KENNEDY, MSB #10658**

OF COUNSEL:

**CURRIE JOHNSON GRIFFIN GAINES & MYERS, P.A.
1044 River Oaks Drive (39232)
Post Office Box 750
Jackson, MS 39205-0750
Telephone: (601) 969-1010
Facsimile: (601) 969-5120**

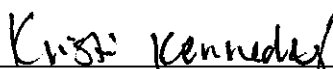
CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Roger Collins, M.D.
Appellant/Petitioner/Defendant
2. LeFleur Family Medical Clinic
Appellant/Petitioner/Defendant
3. Whitman B. Johnson III, Esq.
Kristi D. Kennedy, Esq.
Lorraine W. Boykin, Esq.
CURRIE JOHNSON GRIFFIN GAINES & MYERS, P.A.
*Attorneys for Appellants/Petitioners/Defendants Roger Collins, M.D., and
LeFleur Family Medical Clinic*
4. Jeanne Holmes Hicks
Appellee/Respondent/Plaintiff
5. Margaret P. Ellis, Esq.
James W. Kitchens, Esq.
KITCHENS & ELLIS
Attorneys for Appellee/Respondent/Plaintiff Jeanne Holmes Hicks
6. Jeffrey L. Ellis, Esq.
CHRISTOPHER & ELLIS
Attorney for Appellee/Respondent/Plaintiff Jeanne Holmes Hicks
7. Walgreen Company
Defendant in trial court proceedings
8. James P. Streetman, III, Esq.
C. Paige Herring, Esq.
SCOTT SULLIVAN STREEMAN & FOX
Attorney for Walgreen Company
9. Brian D. Mayo, Esq.
PAGE, MANNINO, PERESICH & MCDERMOTT, PLLC
Attorney for Walgreen Company

10. Purdue Pharma L.P.
Defendant in trial court proceedings
11. Purdue Pharma, Inc.
Defendant in trial court proceedings
12. The Purdue Frederick Co.
Defendant in trial court proceedings
13. Christopher A. Shapley, Esq.
Joseph Anthony Sclafani, Esq.
Lawrence E. Allison, Jr., Esq.
Robert L. Gibbs, Esq.
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
Attorneys for Purdue Pharma L.P.; Purdue Pharma, Inc.; and The Purdue Frederick Co.
14. Steven J. Allen
PRINCE, YOUNGBLOOD & MASSAGEE, PLLC
Hendersonville, NC
Attorney for Purdue Pharma L.P.; Purdue Pharma, Inc.; and The Purdue Frederick Co.
15. Abbott Laboratories
former Defendant in trial court proceedings
16. Abbott Laboratories, Inc.
former Defendant in trial court proceedings
17. Bradley W. Smith, Esq.
Barry Wayne Ford, Esq.
Walker W. Jones, III, Esq.
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.
Attorneys for Abbott Laboratories and Abbott Laboratories, Inc.
18. Honorable Winston L. Kidd
Hinds County Circuit Court Judge

THIS the 17th day of February, 2009.



WHITMAN B. JOHNSON III, MSB #3158
KRISTI D. KENNEDY, MSB #10658

TABLE OF CONTENTS

	PAGE
CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE ISSUE	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS RELEVANT TO APPEAL	3
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
I. STANDARD OF REVIEW	5
II. MS. HICKS' CLAIMS ARE BARRED BECAUSE SHE DID NOT FILE SUIT AGAINST THE APPELLANTS FOR ALLEGEDLY CAUSING HER ADDICTION UNTIL MORE THAN TWO (2) YEARS <u>AFTER</u> THE DATE SHE ADMITTED KNOWING THAT SHE WAS ADDICTED TO PAIN MEDICATION AS EVIDENCED BY THE FACT SHE WAS OBTAINING MULTIPLE PAIN MEDICATIONS FROM MULTIPLE DOCTORS THROUGH DECEPTION IN VIOLATION OF MISS. CODE ANN. § 41-29-144	6
CONCLUSION	16
CERTIFICATE OF SERVICE	18
APPENDICES	19
Appendix 1 – Excerpts from Deposition of Jeanne Holmes Hicks	
Appendix 2 – Excerpts from Plaintiff's Answers to First Set of Interrogatories Propounded By Defendants Roger Collins, M.D., and LeFleur Family Medical Clinic	
Appendix 3 – Copy of Medical Record of Robert A. McGuire, Jr., M.D., for Jeanne Holmes Hicks Dated August 25, 2000	

TABLE OF AUTHORITIES

CASES:

<i>Brown v. Credit Ctr., Inc.</i> , 444 So. 2d 358 (Miss. 1983)	5
<i>Capps v. Postal Telegraph-Cable Co.</i> , 19 So. 2d 491 (Miss. 1944)	14
<i>Downing v. City of Jackson</i> , 24 So. 2d 661 (Miss. 1946)	14
<i>Galloway v. Travelers Ins. Co.</i> , 515 So. 2d 678 (Miss. 1987)	5, 6
<i>Gorman-Rupp Co. v. Hall</i> , 908 So. 2d 749 (Miss. 2005).	6
<i>Guastella v. Wardell</i> , 198 So. 2d 227 (Miss. 1967)	14(n.5)
<i>Jackson Clinic for Women v. Henley</i> , 965 So. 2d 643 (Miss. 2007)	7
<i>J & J Timber Co. v. Broome</i> , 932 So. 2d 1 (Miss. 2006)	3(n.2)
<i>Joiner v. Phillips</i> , 953 So. 2d 1123 (Miss. 2007)	7
<i>McMillan v. Rodriguez</i> , 823 So. 2d 1173 (Miss. 2002)	5
<i>Morrissey v. Bologna</i> , 123 So. 2d 537 (Miss. 1960)	14
<i>Parkinson v. Williamson</i> , 262 So. 2d 777 (Miss. 1972)	14
<i>Powe v. Byrd</i> , 892 So. 2d 223 (Miss. 2004)	7
<i>PPG Architectural Finishes, Inc. v. Lowery</i> , 909 So. 2d 47 (Miss. 2005)	10, 11

<i>Price v. Purdue Pharma Co.</i> , 920 So. 2d 479 (Miss. 2006).	2, 4, 11, 14, 15, 16
<i>Sheriff v. Morris</i> , 767 So. 2d 1062 (Miss. Ct. App. 2006)	5
<i>Smith v. Maryland Casualty Co.</i> , 172 So. 2d 574 (Miss. 1965)	14
<i>Smith v. Sanders</i> , 485 So. 2d 1051 (Miss. 1986).	6
<i>Spartan Foods Sys., Inc. v. American Nat't Ins. Co.</i> , 582 So. 2d 399 (Miss. 1991)	6
<i>Sutherland v. Estate of Ritter</i> , 959 So. 2d 1004 (Miss. 2007)	2, 4, 7, 9, 10, 11, 16
<i>Washington v. Armstrong World Indus., Inc.</i> , 839 F.2d 1121 (5 th Cir. 1988)	6
<i>Western Union Tel. Co. v. McLaurin</i> , 66 So. 739 (Miss. 1914)	14

STATUTES:

MISSISSIPPI CODE ANNOTATED § 13-1-21	14(n.5)
MISSISSIPPI CODE ANNOTATED § 15-1-36	2, 4, 6, 9, 16
MISSISSIPPI CODE ANNOTATED § 41-29-115	11
MISSISSIPPI CODE ANNOTATED § 41-29-144	1, 2, 4, 6, 11, 16

RULES:

MISSISSIPPI RULE OF CIVIL PROCEDURE 56	5, 6
--	------

STATEMENT OF THE ISSUE

Whether Jeanne Holmes Hicks is entitled to go forward with her case despite the fact that she did not file suit against the appellants for allegedly causing her addictions until more than two (2) years after the date she admitted knowing that she was addicted to pain medication as evidenced by the fact she was obtaining multiple pain medications from multiple doctors through deception in violation of MISS. CODE ANN. § 41-29-144.

STATEMENT OF THE CASE

Appellee Jeanne Holmes Hicks initiated this action on September 6, 2002, by filing a suit for medical negligence against Appellants Roger Collins, M.D., and LeFleur Family Medical Clinic and others¹ in the Circuit Court of the First Judicial District of Hinds County, Mississippi. [R. 4]. In her suit, Ms. Hicks claimed that the conduct of Dr. Collins and the various defendants sued had resulted in her addiction to OxyContin.

Following various discovery, including Ms. Hicks' deposition, Dr. Collins moved the trial court for summary judgment on the basis that Ms. Hicks' claims were barred by two separate and independent grounds, either of which would have warranted dismissal of her claims against Dr. Collins. [R. 73]. Dr. Collins asserted that Ms. Hicks' claims against him were time-barred by MISS. CODE ANN. § 15-1-36 because Ms. Hicks filed her complaint against him over two years after she was aware of her addiction to OxyContin. *See Sutherland v. Ritter*, 959 So. 2d 1004 (Miss. 2007). Further, Dr. Collins argued that Ms. Hicks' claims against him were barred by her own unlawful conduct in obtaining multiple narcotics prescriptions from multiple physicians through deception in violation of MISS. CODE ANN. § 41-29-144. *See Price v. Purdue Pharma Co.*, 920 So. 2d 479 (Miss. 2006).

After granting Ms. Hicks multiple extensions, a hearing finally took place before Hinds County Circuit Judge Winston Kidd on April 17, 2008. On June 26, 2008, an Order was entered summarily denying Dr. Collins' motion for summary judgment. [R. 132].

¹In her complaint, Ms. Hicks also named Purdue Pharma L.P.; Purdue Pharma, Inc.; The Purdue Frederick Co.; Abbott Laboratories; Abbott Laboratories, Inc.; and Walgreen Company. [R. 4]. Abbott Laboratories and Abbott Laboratories, Inc., were dismissed from this action by order of the trial court on April 19, 2005.

On July 17, 2008, Dr. Collins and LeFleur Family Medical Clinic petitioned this Court for permission to file an interlocutory appeal from this ruling. This Court granted Appellants' petition by Order dated September 3, 2008. Accordingly, Dr. Collins and LeFleur Family Medical Clinic have filed this appeal to respectfully request that this Court reverse the June 26, 2008 Order of the trial court denying Dr. Collins' motion for summary judgment and render a judgment dismissing Dr. Collins and LeFleur Family Medical Clinic² from this action with prejudice.

STATEMENT OF THE FACTS RELEVANT TO APPEAL

Ms. Hicks was diagnosed with a broad based disc herniation at C5-6 with thecal sac and foraminal impingement on September 28, 1999, that ultimately required a discectomy at C5-6 around October 5, 1999. Despite surgery, Ms. Hicks continued to complain of neck and back pain.³ Dr. Collins treated Ms. Hicks for migraine headaches and for severe pain in her back and neck before and after this surgery. Dr. Collins' treatment of Ms. Hicks included prescriptions for OxyContin, which was appropriate given her medical condition.

Sometime prior to August 25, 2000, Ms. Hicks became aware that she was addicted to OxyContin and tried to detox herself with her husband. [R. 111 (page 126, line 21 – page 127, line 1); *see also* Appendix 1]. More than two years later on September 2, 2002, Ms. Hicks filed suit against Dr. Collins and LeFleur Family Medical Clinic, alleging that they negligently caused her

² Dr. Collins is employed by LeFleur Family Medical Clinic. LeFleur should be dismissed from this action per the Court's holding in *J & J Timber Co. v. Broome*, 932 So. 2d 1, 6 (¶6) (Miss. 2006) ("Where a party's suit against an employer is based on *respondeat superior*, the vicarious liability claim itself is extinguished when the solely negligent employee is released.") Since dismissal of Dr. Collins effectively dismisses LeFleur Family Medical Clinic, only Dr. Collins will be referenced throughout this brief.

³On August 25, 2000, Dr. McGuire found that Ms. Hicks' graft had collapsed and that she had a kyphotic deformity and compensatory hyperlordosis at the C6-7. [R. 130-131; *see also* Appendix 3]. Ultimately, she had to have a second surgery on this area on or about January 23, 2001. [R. 95 (page 62, lines 7-12); R. 96 (page 67, lines 1-3)].

addiction to OxyContin. [R. 9-15, 22-25]. During her deposition taken in this case, Ms. Hicks admitted that she frequently took pain medications in doses and by methods other than those prescribed. [R. 99 (page 78, line 8 – page 79, line 7); R. 100 (page 83, lines 8-25); *see also* Appendix 1]. She also testified that she sought out additional physicians to obtain pain medication when her current physician refused to give her more. [R. 99 (page 80, lines 6-12); *see also* Appendix 1]. Ms. Hicks identified numerous physicians in her discovery responses that she was seeing simultaneously for pain management, along with multiple pharmacies at which she was getting her different pain medication prescription filled. [R. 118-120, 124-125 ; *see also* Appendix 2]. In order to obtain multiple prescriptions for pain medications, Ms. Hicks neglected to tell Dr. Collins and most of her many treating physicians that she was receiving narcotic pain medications from her other treating physicians. [R. 93 (page 54, lines 18-20); R. 94 (page 57, lines 17-19); R. 94 (page 60, lines 5-7); R. 95 (page 61, lines 11-18); *see also* Appendix 1].

SUMMARY OF THE ARGUMENT

The trial court's ruling denying Dr. Collins' motion for summary judgment was erroneous. This Court's precedent and the State of Mississippi's laws mandated summary judgment in favor of Dr. Collins on two grounds. First, the evidence was clear that Ms. Hicks' claims were barred by the statute of limitations found in MISS. CODE ANN. § 15-1-36. Ms. Hicks has admitted that she filed her lawsuit against the appellants more than two years after she became aware of her addiction to OxyContin. *See Sutherland*, 959 So. 2d 1004. Second, Ms. Hicks was barred from pursuing a claim against Dr. Collins due to her own wrongful conduct in obtaining narcotics through deception in violation of MISS. STAT. ANN. § 41-29-144. *See Price*, 920 So. 2d 479. Ms. Hicks admitted in her deposition that she used fraud and deception to obtain multiple narcotic prescriptions from multiple physicians contrary to Mississippi law. Additionally, she admitted that she took prescription

medicine with greater frequency than prescribed, in larger doses than prescribed, and by methods other than those prescribed by her doctors.

In rebuttal to Dr. Collins' motion for summary judgment, Ms. Hicks failed to demonstrate that a genuine issue of material fact existed as to when she became aware of her addiction or her conduct in obtaining OxyContin by fraud or deception. Accordingly, Dr. Collins was entitled to summary judgment as a matter of law on each of these grounds individually. However, when considered together, these grounds most certainly required the dismissal of Ms. Hicks' claims against Dr. Collins and LeFleur Family Medical Clinic. The trial court decision denying Dr. Collins' motion for summary judgment was reversible error. Accordingly, appellants respectfully request that this Court dismiss the claims of Ms. Hicks against Dr. Collins and LeFleur Family Medical Clinic with prejudice and render a judgment dismissing appellants from this action with prejudice.

ARGUMENT

I. Standard of Review

The standard of review for a lower court's decision on a motion for summary judgment under MISSISSIPPI RULE OF CIVIL PROCEDURE 56 is *de novo*. *McMillan v. Rodriguez*, 823 So. 2d 1173, 1176-1177 (Miss. 2002). Further, questions regarding the statute of limitations are questions of law which require a *de novo* standard of review. *Sheriff v. Morris*, 767 So. 2d 1062, 1064 (¶10) (Miss. Ct. App. 2006).

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." M.R.C.P. 56(c). *See also Galloway v. Travelers Ins. Co.*, 515 So. 2d 678, 682 (Miss. 1987); *Brown v. Credit Ctr., Inc.*, 444 So. 2d 358, 362 (Miss. 1983). To survive a motion for summary judgment, the

nonmoving party must establish a genuine issue of material fact. *Spartan Foods Sys., Inc. v. American Nat'l Ins. Co.*, 582 So. 2d 399, 402 (Miss. 1991). "Mere allegations of facts are not sufficient to create a genuine issue of material fact sufficient to defeat a motion for summary judgment." *Gorman-Rupp Co. v. Hall*, 908 So. 2d 749, 757 (Miss. 2005). Likewise, claiming that additional discovery could reveal facts to support the plaintiffs' claims is not sufficient to overcome a motion for summary judgment. *Washington v. Armstrong World Indus., Inc.*, 839 F.2d 1121, 1123 (5th Cir. 1988).

Under Rule 56, if the party opposing the motion for summary judgment is unable to show that she will be able to establish an essential element of his claim, the moving party is entitled to summary judgment. *Galloway*, 515 So. 2d at 683. Ms. Hicks was unable to demonstrate an issue of material fact so as to withstand Dr. Collins' motion for summary judgment, and her claims against Dr. Collins and LeFleur Family Medical Clinic should have been dismissed with prejudice.

II. Ms. Hicks' claims are barred because she did not file suit against the appellants for allegedly causing her addiction until more than two (2) years after the date she admitted knowing that she was addicted to pain medication as evidenced by the fact she was obtaining multiple pain medications from multiple doctors through deception in violation of MISS. CODE ANN. § 41-29-144.

MISSISSIPPI CODE ANNOTATED § 15-1-36(2) provides that "[N]o claim in tort may be brought against a licensed physician . . . unless it is filed within two (2) years from the date the alleged act, omission or neglect shall or with reasonable diligence might have been first known or discovered." In determining whether or not the statute of limitations has expired, the focus is on when the plaintiff discovered that she had an actionable injury or should have discovered it by exercising reasonable diligence. *Smith v. Sanders*, 485 So. 2d 1051, 1052 (Miss. 1986). "The operative time is when the patient can reasonably be held to have knowledge of the injury itself, the cause of the injury, and the causative relationship between the injury and the conduct of the medical practitioner." *Smith*, 485

ACT is Rx Med - Act was known on date rx
Inf " " so date she knew of addiction

So. 2d at 1052. If a plaintiff neglects to file her complaint within two years of the date she becomes aware of or discovers her alleged injury, its cause, and the person allegedly responsible, her claim is barred. *Powe v. Byrd*, 892 So. 2d 223, 227 (¶16) (Miss. 2004); *Joiner v. Phillips*, 953 So. 2d 1123, 1126 (¶6) (Miss. 2007); *Sutherland*, 959 So. 2d at 1009 (¶¶16-17); *Jackson Clinic for Women v. Henley*, 965 So. 2d 643, 650 (¶15) (Miss. 2007) (“[T]he plaintiff’s own suspicions regarding possible negligent conduct starts the clock running.”)

Ms. Hicks’ claims against Dr. Collins and LeFleur Family Medical Clinic are barred by the statute of limitations because the evidence in this case clearly demonstrates that Ms. Hicks had knowledge of her injury (pain medicine addiction), its cause (pain medication), and the person allegedly responsible (Dr. Collins) more than two years before she filed suit.

The first and second factors to consider in determining when the statute of limitations began to run – knowledge of injury and its cause – show that Ms. Hicks had the requisite knowledge more than two years before she filed suit. This is evidenced by Ms. Hicks’ own admissions in her deposition testimony, in which she stated:

- Q. Okay. When did you first talk to your parents about feeling you were – you had a problem with medication?
- A. I really don’t recall.
- Q. Okay. . . . Did you talk with them prior to the time you saw Dr. McGuire?
- A. Yes.
- Q. Okay.
- A. Yes.
- Q. All right. And I think, from looking at the records, you first saw Dr. McGuire in late August of 2000?
- A. I can’t –
- Q. Do you believe you talked to your parents before you saw Dr. McGuire?
- A. That’s correct.
- Q. And told them you thought you had a problem with pain medication?
- A. I did.

- Q. That you specifically had a problem with the OxyContin?
A. OxyContin.

[R. 110 (page 124, line 13) through R. 111 (page 125, line 10); *see also* Appendix 1] (emphasis added).

- Q. Okay. All right. But you feel comfortable in [sic] own mind, before you ever saw Dr. McGuire the first time, your recollection is you had already come to the conclusion you had a problem with OxyContin and you had actually even tried to detox yourself with your husband?
A. Yes, sir.

[R. 111 (page 126, line 21 – page 127, line 1); *see also* Appendix 1] (emphasis added).

From this testimony, it is clear that Ms. Hicks knew she was addicted to OxyContin, i.e., had knowledge of her alleged injury and its cause, before her first visit to see Dr. Robert A. McGuire, Jr., an orthopaedic specialist in Jackson, Mississippi. [R. 110-111; *see also* Appendix 1]. Ms. Hicks' undisputed medical records reveal that this date was August 25, 2000. [R.130-131; *see also* Appendix 3].

Further, the third factor for determining when the statute of limitations began to run – knowledge of the person allegedly responsible – also indicates that Ms. Hicks had the requisite knowledge more than two years before she filed suit. The fact that Ms. Hicks knew that Dr. Collins prescribed OxyContin for her more than two years prior to the date she filed suit⁴ is undisputed and was admitted by Ms. Hicks in her discovery responses and complaint. [R.118-119, 122; *see also* Appendix 2] (“Dr. Roger Collins prescribed OxyContin® to the plaintiff [Jeanne Holmes Hicks].”); [R. 10] (“Dr. Roger Collins and/or Lefluer Family Medical Clinic prescribed narcotic pain

⁴In her response to an interrogatory asking her to list the names and addresses of any doctors she was seeing for pain management prior to December 1998, Ms. Hicks named Dr. Collins by reference to another interrogatory. [R. 120; *see also* Appendix 2].

medications, and specifically on or about September 24, 1999, prescribed the narcotic drug OxyContin.”)

As shown by the evidence, Ms. Hicks has admitted in her complaint, sworn deposition testimony, and sworn discovery responses that she had knowledge of her alleged injury (her addiction), its cause (pain medication), and the person allegedly responsible (Dr. Collins) prior to August 25, 2000, which was more than two years before she filed her complaint on September 6, 2002. As a result, the statute of limitations for Ms. Hicks’ claims expired prior to her filing suit, and her claims against Dr. Collins and LeFleur Family Medical Clinic are barred by the statute of limitations found in MISS. CODE ANN. § 15-1-36.

Moreover, Mississippi Supreme Court precedent, particularly this Court’s decision in *Sutherland v. Ritter*, 959 So. 2d 1004 (Miss. 2007), mandated that the lower court dismiss Ms. Hicks’ claims against appellants. In *Sutherland*, the plaintiff filed suit against the Estate of Dr. Robert M. Ritter for negligently prescribing Zyprexa. 959 So. 2d at 1006 (¶5). In his deposition, Sutherland testified as follows:

- Q. Okay. Now, did you check yourself into [treatment] or were you checked in by someone?
- A. I checked myself.
- Q. Okay. And why did you check yourself in?
- A. The Zyprexa was destroying my life.
- Q. Okay. So you believed when you checked yourself in it was the Zyprexa?
- A. It was not a belief, it was a knowing.
- Q. Okay.
- A. It was knowledge of it.

Id. at 1005-6 (¶2) (emphasis added). Based upon Sutherland’s admission in his testimony, the Supreme Court found that Sutherland “knew who, when, how, and by what he had been injured” by the date of his discharge from the treatment center, and that, as a result, the statute of limitations ran

prior to Sutherland's submission of a statutory notice of claim filed over 2 ½ years later. *Id.* at 1009 (¶¶16-17). The Supreme Court affirmed the trial court's ruling granting summary judgment in favor of the Estate of Dr. Ritter. *Id.* at 1009 (¶17).

Like the plaintiff in *Sutherland*, Ms. Hicks attempted to detoxify herself of the offensive medicine prescribed by the defendants more than two years before filing suit. The only difference between *Sutherland* and the case before the Court is that the plaintiff in *Sutherland* tried to detoxify himself formally at a treatment center while Ms. Hicks attempted to do it on her own with her husband. This is an irrelevant difference from a statute of limitations standpoint, because in both cases, the patient was aware of the alleged injury, its cause, and the person allegedly responsible more than two years before filing suit.

Sutherland is not the only precedent which required that the lower court grant Dr. Collins' motion for summary judgment. In *PPG Architectural Finishes, Inc. v. Lowery*, 909 So. 2d 47, 49 (¶6) (Miss. 2005), Lowery filed suit against a painting contractor for injuries caused by inhaling paint fumes. Over three years later, Lowery was allowed to amend her complaint to add PPG Architectural Finishes, Inc., as a defendant. Lowery, 909 So. 2d at 49 (¶6). PPG unsuccessfully moved for summary judgment on the grounds that the statute of limitations had expired before it was brought into the suit. *Id.* at 49 (¶7). The evidence in the case showed that the plaintiff had become ill, passed out, and sought medical treatment at an emergency room for exposure to paint fumes on the very day she was exposed. *Id.* at 48 (¶2). On appeal, the Supreme Court considered Lowery's actions in determining whether or not she knew or should have known of her injury and found that "[b]y her own admission, Lowery knew when, how and by whom she had been injured on the night of her acute exposure." *Id.* at 51 (¶16). It reversed the trial court's ruling and rendered judgment in favor of PPG. *Id.* at 52 (¶21). Likewise, in the case at hand, Ms. Hick's own testimony shows

that she “knew who, when, how, and by what [s]he had been injured” by at least the date of her visit to Dr. McGuire on August 25, 2000. *Sutherland*, 959 So. 2d at 1009 (¶16); *see also Lowery*, 909 So. 2d at 51 (¶16). As a result, Ms. Hicks’ suit, filed more than two years later in September 2002, was time-barred.

Summary judgment was proper in this case because Ms. Hicks clearly filed her complaint *after* the expiration of the statute of limitations. The lower court’s decision denying Dr. Collins’ motion for summary judgment is erroneous as it directly contradicts recent precedent from the Mississippi Supreme Court. However, the trial court’s decision denying summary judgment is also erroneous given Ms. Hicks’ undisputed wrongful conduct, which bars her from pursuing a claim against Dr. Collins and LeFleur Family Medical Clinic.

Per MISS. CODE ANN. § 41-29-144, it is unlawful for an individual to acquire or obtain possession of a controlled substance or prescription for a controlled substance by misrepresentation, deception, subterfuge, or fraud. OxyContin is an opioid derivative and a Class II Controlled Substance. *See* MISS. CODE ANN. § 41-29-115; *Price*, 920 So. 2d at 482 (¶3). Attempting to obtain OxyContin through fraud or deception is criminal. *Price*, 920 So. 2d at 484 (¶12). In her deposition, Ms. Hicks admitted in detail her attempts to obtain narcotics prescriptions through whatever means necessary and her improper use of narcotics, as evidenced by the following testimony:

Q. To better define the legal drugs other than as prescribed, have you ever taken pain medication in doses larger than what was prescribed?

A. Yes, sir.

Q. And how many times have you done that?

A. Hundreds.

Q. Hundreds? For what medications have you done it?

A. OxyContin, for one.

Q. What for two?

A. I’m sure Lortab or Lorcet, any pain medication I took more than I was prescribed, more than likely.

- Q. Have you taken any pain medication in more frequent doses than were prescribed?
- A. Yes, sir.
- Q. Same question, which drugs have you done that for?
- A. Same answer.
- Q. Any?
- A. Any and all.
- Q. All right. When you do that, you exhaust your prescription, your supply of pain medications, faster than was anticipated when the prescription was written. When that happens, do you then call early for a refill of that prescription?
- A. Yes, sir.

[R. 99 (page 78, line 8 – page 79, line 7); *see also* Appendix 1] (emphasis added).

- Q. If you are denied a refill for that reason, because it's early, have you ever gone to another health care provider complaining of, you know, back pain, headache, whatever, seeking a prescription from that health care provider because you couldn't get the same thing from the prescribing physician?
- A. Yes, sir.

[R. 99 (page 80, lines 6-12); *see also* Appendix 1] (emphasis added).

- Q. Have you ever altered a pain medication, and I'll ask specifically about OxyContin, for example, have you ever broken the tablet or crushed the tablet, taken anything other than the whole tablet?
- A. Yes, sir.
- Q. And how have you taken OxyContin in particular other than as a whole tablet?
- A. Chew it up.
- Q. Chew it up?
- A. Uh-huh.
- Q. Were you aware, when you did that, chewing it up had consequences?
- A. Yes, sir.
- Q. And how did you know that?
- A. It states it on the bottle.
- Q. What were the consequences you were trying to achieve when you chewed it up?
- A. To get it into my system faster.

[R. 100 (page 83, lines 8-25); *see also* Appendix 1].

Further, Ms. Hicks admitted in her testimony that she failed to tell Dr. Collins and most of her treating physicians that she was receiving pain medication from other doctors. In her deposition, she stated:

Q. Did you let Dr. Collins know Dr. Stringer was prescribing Oxycodone?

A. No, sir.

[R. 93 (page 54, lines 18-20); *see also* Appendix 1].

Q. Did you tell Dr. Summers that Dr. Collins was still prescribing medications?

A. I don't recall, sir.

Q. Did you tell Dr. Collins that Dr. Summers was prescribing pain medication?

A. I don't recall.

[R. 94 (page 57, lines 17-19); *see also* Appendix 1].

Q. And do you recall telling Dr. Weddle that Dr. Collins was also prescribing pain medication?

A. No, sir.

Q. Do you recall telling Dr. Collins that Dr. Weddle was prescribing pain medication?

A. No, sir.

[R. 94 (page 60, lines 5-7); *see also* Appendix 1].

Q. Did you ever tell Dr. Terry that you were –

A. No, sir.

Q. – receiving pain medications from another doctor?

A. No, sir.

Q. Did you ever inform Dr. Collins that you were receiving pain meds from another doctor?

A. I don't recall, sir.

[R. 95 (page 61, lines 11-18); *see also* Appendix 1].

Without a doubt, Ms. Hicks' conduct was immoral⁵ and illegal, and public policy dictates that she should not be allowed to benefit from her own wrongful conduct. The courts and laws of this state have long held pursuant to public policy, through the Wrongful Conduct Rule, that a plaintiff cannot maintain a law suit in which her very cause of action stems from her own immoral or illegal conduct. See *Parkinson v. Williamson*, 262 So. 2d 777 (Miss. 1972) (plaintiff could not recover damages because he was involved in an illegal act); *Smith v. Maryland Casualty Co.*, 172 So. 2d 574 (Miss. 1965) (plaintiff's claim based entirely on illegal contract and thus there could be no recovery); *Morrissey v. Bologna*, 123 So. 2d 537 (Miss. 1960) (plaintiff cannot recover when his cause of action is based on his own illegal conduct); *Downing v. City of Jackson*, 24 So. 2d 661 (Miss. 1946) (plaintiff was barred from recovering damages for her husband's death because his violation of the law caused his death); *Capps v. Postal Telegraph-Cable Co.*, 19 So. 2d 491 (Miss. 1944) (plaintiff had no case because his claim was rooted in his own illegal actions); *Western Union Tel. Co. v. McLaurin*, 66 So. 739 (Miss. 1914) (plaintiff could not recover because but for his own immoral actions, there would have been no injury).

Even more to the point is the case of *Price v. Purdue Pharma Co.*, 920 So. 2d 479, 482 (Miss. 2006), in which the Supreme Court extended the Wrongful Conduct Rule to apply to the very same fact scenario present in this case – an individual attempting to obtain multiple narcotics prescriptions from multiple physicians through multiple pharmacies, without the various physicians and pharmacies having knowledge of the other prescriptions. The plaintiff in *Price* saw ten (10)

⁵The immorality of Ms. Hicks' conduct arises from the parameters of the doctor-patient relationship. Mississippi law has established a doctor-patient privilege to ensure that a patient can speak freely to the physician. MISS. CODE ANN. § 13-1-21. Consequently, the physician has the right to expect the patient will be forthcoming and truthful about her complaints. It would be the height of inequity to allow a patient to make false representations (or omissions) of fact to the physician to obtain narcotics, and then allow that patient to sue the physician for injuries allegedly caused by that medicine. See *Guastella v. Wardell*, 198 So. 2d 227, 230 (Miss. 1967) (fraud can be based in silence when there is a duty to speak).

10
different physicians to obtain OxyContin and had his prescriptions filled at seven (7) different pharmacies. *Price*, 920 So. 2d at 482 (¶6). Price sued various doctors, manufacturers, and laboratories claiming that they were responsible for the injuries he suffered, including addiction, as a result of taking OxyContin. *Id.* at 481 (¶1). The various defendants in the case sought and received summary judgments in their favor on the grounds that Price was prohibited from proceeding with his claim per the Wrongful Conduct Rule. *Id.* at 483 (¶8). On appeal, the Supreme Court held that “‘the wrongful conduct rule’ in Mississippi prevents a plaintiff from suing caregivers, pharmacies, and pharmaceutical companies and laboratories for addiction to a controlled substance which he obtained through his own fraud, deception, and subterfuge.” *Id.* at 486 (¶17).

In the case at hand, Ms. Hicks has admitted that she received prescriptions for various controlled substances from ten (10) different physicians, which she had filled at eight (8) different pharmacies. [R. 118-120, 124-125; see also Appendix 2]; see also [R. 87-95, 97]. Further, she has admitted that she kept the fact that she was getting narcotics from other doctors from Dr. Collins. [R. 93 (page 54, lines 18-20); R. 94 (page 57, lines 17-19); R. 94 (page 60, lines 5-7); R. 95 (page 61, lines 11-18); see also Appendix 1]. She has also admitted that she took pain medication, including OxyContin, in larger doses than prescribed hundreds of times; took pain medication, including OxyContin, more frequently than prescribed; sought pain medication from other health care providers when she was refused pain medication by one; and altered OxyContin by crushing it or chewing it up to get it into her system faster. [R. 99 (page 78, line 8 – page 79, line 7; page 80, lines 6-12); R. 100 (page 83, lines 8-25); see also Appendix 1].

Like the plaintiff in *Price*, Ms. Hicks’ addiction to OxyContin was a result of her own wrongful conduct, and her claims for injury against Dr. Collins and LeFleur Family Medical Clinic are “wholly rooted in [her] own transgressions.” *Price*, 920 So. 2d at 485 (¶15). Mississippi

courts“will not lend aid to a party whose cause of action directly results from an immoral or an illegal act committed by that party.” *Id.* at 486 (§17). The Supreme Court’s decision in *Price* mandated the dismissal of Ms. Hicks’ claims against the appellants, and the trial court erred by ignoring this precedent.

CONCLUSION


The trial court committed reversible error by denying Dr. Collins’ motion for summary judgment. Both Mississippi statutory and case law mandated the dismissal of Ms. Hicks’ claims against Dr. Collins and LeFleur Family Medical Clinic on two separate grounds, either of which alone would have been sufficient to bar Ms. Hicks’ claims. First, Ms. Hicks’ claims were barred by the statute of limitations found in MISS. CODE ANN. § 15-1-36. The case of *Sutherland v. Ritter*, 959 So. 2d at 1009 (§§16-17), was directly on point and required dismissal of Ms. Hicks’ claims because Ms. Hicks, like the plaintiff in *Sutherland*, “knew who, when, how, and by what [s]he had been injured” more than two years before she filed suit against appellants. Second, Ms. Hicks’ claims were barred by her own wrongful conduct in obtaining narcotics through deception in violation of MISS. CODE ANN. § 41-29-144. The analogous case of *Price v. Purdue Pharma Co.*, 920 So. 2d at 482 (§6), required dismissal of Ms. Hicks’ claims against appellants because Ms. Hicks, like the plaintiff in *Price*, was barred from suing appellants due to her wrongful conduct in obtaining multiple narcotics prescriptions from multiple physicians through multiple pharmacies, without the various physicians and pharmacies having knowledge of the other prescriptions.

In the case *sub judice*, the trial court erroneously ignored the statutory laws and precedent from this Court directly on point which obligated the trial court to dismiss Ms. Hicks’ claims against Dr. Collins and LeFleur Family Medical Clinic. Ms. Hicks should not be allowed to continue to pursue her claims against the appellants in direct contravention of Mississippi law and public policy.

To allow her to do so would effectively overrule the statute of limitations and the longstanding Wrongful Conduct Rule. For these reasons, appellants respectfully request that this Court reverse the June 26, 2008 decision of the trial court denying Dr. Collins' motion for summary judgment and render a judgment dismissing Ms. Hicks' claims against Dr. Collins and LeFleur Family Medical Clinic with prejudice.

RESPECTFULLY SUBMITTED, this the 17th day of February, 2009.

**ROGER COLLINS, M.D. and
LEFLEUR FAMILY MEDICAL CLINIC**

By: 
WHITMAN B. JOHNSON III, MSB #3158
KRISTI D. KENNEDY, MSB #10658

OF COUNSEL:

CURRIE JOHNSON GRIFFIN GAINES & MYERS, P.A.
1044 River Oaks Drive (39232)
Post Office Box 750
Jackson, MS 39205-0750
Telephone: (601) 969-1010
Facsimile: (601) 969-5120

CERTIFICATE OF SERVICE

I do hereby certify that I have this day caused to be mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing document to:


Margaret P. Ellis, Esq.
KITCHENS & ELLIS
610 North Street
Jackson, Mississippi 39202-3116
Attorney for Appellee/Respondent/Plaintiff Jeanne Holmes Hicks

Joseph A. Sclafani, Esq.
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
P. O. Drawer 119
Jackson, MS 39205
*Attorneys for Purdue Pharma L.P.; Purdue Pharma, Inc.; and
The Purdue Frederick Co.*

C. Paige Herring, Esq.
SCOTT SULLIVAN STREEMAN & FOX, P.C.
P.O. Box 13847
Jackson, MS 39236-3847
Attorney for Walgreen Company

Honorable Winston L. Kidd
Hinds County Circuit Court Judge
Post Office Box 327
Jackson, MS 39205

SO CERTIFIED this the 17th day of February, 2009.



WHITMAN B. JOHNSON III, MSB #3158
KRISTI D. KENNEDY, MSB #00658

APPENDICES

- APPENDIX 1 EXCERPT FROM DEPOSITION OF JEANNE HOLMES HICKS
- APPENDIX 2 EXCERPTS FROM PLAINTIFF'S ANSWERS TO FIRST SET OF
INTERROGATORIES PROPOUNDED BY DEFENDANTS ROGER
COLLINS, M.D., AND LEFLEUR FAMILY MEDICAL CLINIC
- APPENDIX 3 COPY OF MEDICAL RECORD OF ROBERT A. MCGUIRE, JR., M.D.,
FOR JEANNE HOLMES HICKS DATED AUGUST 25, 2000

53

1 A. The directions were on the bottle.

2 Q. Okay. There wasn't a piece of paper with

3 warnings and directions?

4 A. May have been, sir.

5 Q. Technical information?

6 A. I don't recall.

7 Q. In September, September 28 of 1999, you received

8 an MRI of your back and it revealed a herniated disk. Do

9 you recall that?

10 A. Yes, sir.

11 Q. And was Dr. Collins the doctor that referred you

12 to get the MRI?

13 A. Yes, sir.

14 Q. And when the results of the MRI came out, he then

15 referred to you Dr. Lynn Stringer; is that correct?

16 A. Yes, sir.

17 Q. Dr. Stringer examined you again on September 29,

18 1999, and what did Dr. Stringer find when he examined you?

19 A. That I had a herniated disk.

20 Q. Okay. What was his treatment when he first

21 examined you?

22 A. To do a fusion, bone fusion.

23 Q. Did he do that before he tried exercise or

24 traction or anything more conservative?

25 A. Sir, I don't recall.

54

1 Q. You do recall that he ultimately recommended the

2 fusion?

3 A. Yes, sir.

4 Q. The medical records also indicate that

5 Dr. Stringer prescribed Oxycodone, which is a pain relief

6 medication, when you saw him. Do you recall that?

7 A. Yes, sir.

8 Q. When you saw Dr. Stringer, did you stop taking

9 the OxyContin that you had received from Dr. Collins?

10 A. No, sir.

11 Q. So you took both of them?

12 A. Yes, sir.

13 Q. Did you tell Dr. Stringer that you were taking

14 OxyContin?

15 A. Yes, sir.

16 Q. And did he advise you to take both of them?

17 A. He didn't advise me of anything.

18 Q. Did you let Dr. Collins know Dr. Stringer was

19 prescribing Oxycodone?

20 A. No, sir.

21 Q. All right. The disectomy and fusion were

22 performed in October, on October 5, 1999, according to

23 your medical records. Does that sound correct?

24 A. Yes, sir.

25 Q. And you were discharged from the hospital on

55

1 October 7, 1999; is that correct?

2 A. Yes, sir.

3 Q. And at the time of your discharge, Dr. Stringer

4 prescribed Hydrocodone, another pain relief medication.

5 Do you recall that?

6 A. Yes, sir.

7 Q. Were you still taking the OxyContin that

8 Dr. Collins prescribed?

9 A. No, sir.

10 Q. Had he quit prescribing it?

11 A. Who stopped prescribing it?

12 Q. Did Dr. Collins stop prescribing OxyContin?

13 A. No, sir.

14 Q. You said you were not still taking it?

15 A. No, sir.

16 Q. So he was prescribing it, you just were not

17 taking it? I may have misunderstood you. I understood

18 you to say you were no longer taking OxyContin when

19 Dr. Stringer prescribed --

20 A. To be very blunt, if I had it, I took it.

21 Q. You just don't recall whether you had it?

22 A. That's correct.

23 Q. All right. In the weeks following your

24 discharge, which was, again, October 7, 1999, you

25 continued to see Dr. Collins, he continued to prescribe

56

1 pain medications and he prescribed, for example, Lortab, I

2 think Stadol, Hydrocodone, Demerol, and in December he

3 again started prescribing OxyContin. Do you recall that?

4 A. Not particularly, sir.

5 Q. Okay. Do you recall receiving several pain

6 medications from him?

7 A. Yes, sir.

8 Q. Briefly describe -- well, let me take it a step

9 further. In the latter part of December, Dr. Collins

10 referred you to Dr. Summers for a pain management

11 assessment. Do you recall that?

12 A. Yes, sir.

13 Q. So in the period of October 7, 1999 to the latter

14 part of December, 1999, rather than getting better, rather

15 than the pain diminishing, apparently the pain was

16 increasing after your discharge from the fusion. Is that

17 accurate?

18 A. That is accurate, sir.

19 Q. All right. So you saw Dr. Summer or Summers, I

20 guess, on December 23rd, 1999, and just describe for us,

21 if you will, what the course of your treatment with

22 Dr. Summers was.

23 A. To the best of my knowledge, I was given a heavy

24 sedative and put to sleep and he would do an x-ray while

25 giving me a steroid injection into the actual fusion that

57

1 Dr. Stringer had done.

2 Q. And what was the purpose of the steroid

3 injection, as you understood it?

4 A. I assume to reduce the swelling and inflammation,

5 to reduce the pain.

6 Q. Okay. And during that period of time,

7 Dr. Summers also prescribed for you pain medications, did

8 he not?

9 A. I don't recall, sir.

10 Q. You don't recall. Do you recall whether

11 Dr. Collins was still prescribing pain medications while

12 were you seeing Dr. Summers?

13 A. Yes, sir, he was.

14 Q. Did you tell Dr. Summers that Dr. Collins was

15 still prescribing medications?

16 A. I don't recall, sir.

17 Q. Did you tell Dr. Collins that Dr. Summers was

18 prescribing pain medication?

19 A. I don't recall.

20 Q. Did Dr. Summers ever or Dr. Collins, either one

21 of them, ever have a conversation with you indicating that

22 they were concerned that you were receiving pain

23 medications from both of them?

24 A. No, sir.

25 Q. All right. In February, February 15, 2002,

58

1 according to your medical records, you received another

2 steroid injection from Dr. Summers. Do you recall that?

3 MS. ELLIS: I'm sorry. What was the date of

4 that?

5 MR. ALLISON: February, 2002, February 15th, I

6 think, 2002.

7 BY MR. ALLISON:

8 Q. Do you recall getting a second --

9 A. In 2002?

10 Q. -- steroid -- maybe it was 2000. Probably was

11 2000. I probably got the date wrong.

12 A. I know I had two or three injections from

13 Dr. Summers. I don't recall the dates, but I don't

14 believe it was in 2002.

15 Q. It would have been 2000, I'm sure. I probably

16 just misnoted the date. What, if anything, do you recall

17 about your treatment by Dr. Summers other than the two or

18 three injections you received?

19 A. Repeat the question.

20 Q. All right. Dr. Summers gave you two or three

21 injections of some steroid. Other than receiving those

22 injections, what do you recall about the treatment by

23 Dr. Summers?

24 A. I don't recall anything, sir.

25 Q. In April of 2000, which I believe was after your

59

1 last visit with Dr. Summers, you saw Dr. Stringer again.

2 Do you recall that?

3 A. I do, sir.

4 Q. And tell us what happened at that visit.

5 A. To the best of my knowledge, that's when I was

6 released from Dr. Stringer from my surgery, post-op visits

7 and so forth.

8 Q. So that was a follow-up visit?

9 A. Yes, sir.

10 Q. All right. The medical records indicate that at

11 some point, well, during this period of time, you

12 continued to have headaches and continued to complain

13 about tingling in your hands and difficulty using your

14 hands, and that you continued to receive prescriptions for

15 pain medications for headaches, back pain and other

16 ailments. And in April of 2000, Dr. Collins referred you

17 to Dr. Weddle, who was a neurologist.

18 A. Dr. Weddle I saw for carpal tunnel.

19 Q. And that was his diagnosis when you saw him, was

20 carpal tunnel?

21 A. Yes, sir.

22 Q. And your records reflect that Dr. Weddle also

23 prescribed pain medication?

24 A. If that's what they say, yes, sir.

25 Q. Okay. You don't recall that?

60

1 A. No, sir.

2 Q. And do you recall telling Dr. Weddle that

3 Dr. Collins was also prescribing pain medication?

4 A. No, sir.

5 Q. Do you recall telling Dr. Collins that Dr. Weddle

6 was prescribing pain medication?

7 A. No, sir.

8 Q. All right. On May 15, 2000, the records indicate

9 you saw Dr. Wallace Weatherly. Do you recall

10 Dr. Weatherly? The records indicate he gave you injection

11 or injections in your hand.

12 A. I don't recall.

13 Q. Do you recall that?

14 A. I remember having it done, but I don't have any

15 idea what date, sir.

16 Q. Do you recall Dr. Weatherly at all?

17 A. Yes, sir.

18 Q. How many times did you have those injections?

19 A. Maybe once or twice.

20 Q. Once in each hand or --

21 A. I don't recall.

22 Q. I think the records that we've gotten anyway

23 indicate you had one injection in one hand in May, another

24 injection in the other hand in June of 2000. Does that

25 sound --

61

1 A. That's probably right, sir.

2 Q. All right. The records also indicate that

3 Dr. Weatherly was prescribing pain medications. Do you

4 recall that?

5 A. I don't recall that, sir.

6 Q. And that during that same period of time, Dr. Joe

7 Terry was apparently prescribing pain medications and

8 Dr. Collins was prescribing pain medications. Do you

9 recall that?

10 A. Yes, sir.

11 Q. Did you ever tell Dr. Terry that you were --

12 A. No, sir.

13 Q. -- receiving pain medications from another

14 doctor?

15 A. No, sir.

16 Q. Did you ever inform Dr. Collins that you were

17 receiving pain meds from another doctor?

18 A. I don't recall, sir.

19 Q. All right. During the remainder of June 2000 and

20 into August of 2000, the records reflect that you're

21 calling on Dr. Collins and other health care providers

22 complaining about headaches, sinus problems, back and neck

23 pain, that type of thing, and that you were receiving

24 prescriptions for pain medications from a number of

25 health care providers. Do you recall that?

62

1 A. No, sir.

2 Q. All right. In August of 2000, Dr. Collins

3 referred you to Dr. Robert McGuire. Do you recall that?

4 A. Yes, sir.

5 Q. And who is Dr. McGuire?

6 A. He's a back doctor at UMC Pavilion.

7 Q. Okay. And what treatment did Dr. McGuire

8 provide?

9 A. He did surgery on the same disk that Dr. Stringer

10 had performed.

11 Q. Also a fusion?

12 A. Yes, sir.

13 Q. And the records would reflect that Dr. McGuire

14 was also prescribing pain medications at that time?

15 A. That's correct.

16 Q. And that you continued to receive pain

17 medications from a number of other health care providers.

18 Do you recall that?

19 A. Yes, sir.

20 Q. Did any -- and when I say that period of time,

21 we're talking about the end of August, first of September

22 of 2000. Did any of the health care providers you were

23 obtaining pain medications from have any conversation with

24 you about the possibility that you were abusing the pain

25 medications or becoming dependent or addicted to any

63

1 medication?

2 A. No, sir.

3 Q. All right. On September 6th, 2000, you signed an

4 agreement with Dr. Collins which stated that you

5 understood that, if you took more medication than he

6 actually was prescribing, that he would no longer

7 prescribe controlled medications for you. Do you recall

8 that?

9 A. No, sir.

10 Q. I'll get that out.

11 MR. ALLISON: Let's go off record for a minute.

12 MS. USRY: We're off record at 11:11 a.m.

13 (Discussion had off the record, not reported.)

14 MS. USRY: On record at 11:12 a.m.

15 MS. ELLIS: Counselor, can I ask a question?

16 MR. ALLISON: Sure.

17 MS. ELLIS: Is that our Bates number or is that

18 yours?

19 MR. SCLAFANI: That's ours.

20 MR. ALLISON: There are two of them on our --

21 MR. SCLAFANI: That's her number and that's our

22 number.

23 BY MR. ALLISON:

24 Q. Ms. Hicks, when we went off the record, I was

25 asking you about an agreement that was signed on September

64

1 6th, 2000 between you and Dr. Collins and you told me you

2 did not recall it, but let me hand you a copy of that and

3 see if that refreshes your memory. I don't mean to insult

4 you, but do you want to use my reading glasses? I borrow

5 people's all the time.

6 A. Okay.

7 Q. Do you recall that?

8 A. No, sir, I don't recall that.

9 Q. Is this your signature?

10 A. Looks like it, sir.

11 MR. ALLISON: Okay. Let me make this Exhibit

12 3 to the deposition, please.

13 (Exhibit No. 3 marked)

14 BY MR. ALLISON:

15 Q. And you have no recollection about this

16 agreement?

17 A. No, sir.

18 Q. Do you have any recollection of Dr. Collins

19 discussing such an agreement with you?

20 A. The only comment I can remember is Dr. Collins

21 made the statement that I must have a good liver for me to

22 be able to handle the prescription drugs that he had given

23 me.

24 Q. Do you recall when he made that statement?

25 A. No, sir, I don't.

77

1 Q. Morphine. When did that occur?

2 A. It happens all the time when he leaves the bottle

3 standing around.

4 Q. So it still happens?

5 A. Yes, sir.

6 Q. Have you ever told him?

7 A. He knows. I don't have to tell him.

8 Q. So knowing that, he still leaves the bottle

9 standing around?

10 A. No, it's locked, locked up.

11 Q. When you take his morphine, does it require him

12 to go back to his health care providers and obtain a

13 refill earlier than --

14 A. No, sir.

15 Q. Is he on no restriction for morphine?

16 A. I have no idea, sir.

17 Q. Have you ever discussed it with him?

18 A. No, sir.

19 Q. Have you ever discussed it with your pain

20 management --

21 A. No, sir.

22 Q. -- provider? Have you ever discussed it with

23 anybody at UMC?

24 A. No, sir.

25 Q. Is today the first time you've discussed it with

78

1 anyone?

2 A. Besides my husband, yes, sir.

3 Q. Is morphine the only one of his medications that

4 you've taken?

5 A. Yes, sir.

6 Q. Have you ever sold a pain medication?

7 A. No, sir.

8 Q. To better define the legal drugs other than as

9 prescribed, have you ever taken pain medication in doses

10 larger than what was prescribed?

11 A. Yes, sir.

12 Q. And how many times have you done that?

13 A. Hundreds.

14 Q. Hundreds? For what medications have you done it?

15 A. OxyContin, for one.

16 Q. What for two?

17 A. I'm sure Lortab or Lorcet, any pain medication I

18 took more than I was prescribed, more than likely.

19 Q. Have you taken any pain medication in more

20 frequent doses than were prescribed?

21 A. Yes, sir.

22 Q. Same question, which drugs have you done that

23 for?

24 A. Same answer.

25 Q. Any?

79

1 A. Any and all.

2 Q. All right. When you do that, you exhaust your

3 prescription, your supply of pain medications, faster than

4 was anticipated when the prescription was written. When

5 that happens, do you then call early for a refill of that

6 prescription?

7 A. Yes, sir.

8 Q. Do we need to take a minute?

9 MR. ALLISON: Let's take a break for a minute.

10 MS. USRY: We're off record at 11:37 a.m. This is

11 the end of tape two.

12 (Recess.)

13 MS. USRY: On record at 11:46 a.m.

14 BY MR. ALLISON:

15 Q. When we took a break, we were talking about

16 taking pain medications other than as prescribed and you

17 indicated that you many times took medications in larger

18 doses than were prescribed and many times took medications

19 in more frequent doses than were prescribed and I was

20 asking you, when you do, that isn't it true that you

21 exhaust your supply or your prescription of that

22 particular medication faster than was contemplated by the

23 prescribing physician?

24 A. Yes, that is correct.

25 Q. Okay. And when you do that, it causes you to

80

1 call or go see the physician or go to the pharmacist with

2 the prescription and seek a refill faster than the

3 original prescribing physician intended for the refill to

4 take place; is that correct?

5 A. That is correct, sir.

6 Q. If you are denied a refill for that reason,

7 because it's early, have you ever gone to another health

8 care provider complaining of, you know, back pain,

9 headache, whatever, seeking a prescription from that

10 health care provider because you couldn't get the same

11 thing from the prescribing physician?

12 A. Yes, sir.

13 Q. Okay.

14 MS. ELLIS: I'm assuming that you're talking

15 about she's denied a refill by the health care provider

16 and not by the pharmacist.

17 MR. ALLISON: Or either, whoever denied it denied

18 it because it was too early to get the refill.

19 MS. ELLIS: Okay.

20 MR. ALLISON: If there's a distinction there,

21 I'll be glad to take it each way, but I'm just trying to

22 get to the fact.

23 MS. ELLIS: I just didn't know how you were

24 asking it.

25 MR. ALLISON: Okay.

81

1 BY MR. ALLISON:

2 Q. So you've got a circumstance, where when you take

3 the medication other than prescribed, it has sometimes

4 caused you to seek to refill a prescription early and

5 you've also got a circumstance or circumstances where

6 you've been denied the ability to refill prescriptions

7 early and you have gone to other health care providers

8 seeking prescriptions for that medication because you

9 couldn't get it from the original prescribing physician;

10 is that correct?

11 A. Yes, sir.

12 Q. Ms. Hicks, isn't it a fact that both of these

13 things were occurring before September 25th or 24th, 1999,

14 when you got your first OxyContin prescription? Weren't

15 you taking drugs other than as prescribed before you were

16 first prescribed OxyContin?

17 A. I can't say that, sir. I can't agree with you

18 there.

19 Q. Well, can you disagree with me?

20 A. Yes, sir, I can.

21 Q. Okay. And if your records indicate otherwise,

22 then you disagree with what your records say?

23 A. I don't know how to answer that, sir.

24 Q. Have you ever sought or received a prescription

25 medication from a person or entity that was not licensed

82

1 to prescribe or distribute medication?

2 A. I don't understand the question.

3 Q. Have you ever sought?

4 A. Received or looked for.

5 Q. -- or received, looked for or received any

6 prescription medication from an individual or an

7 organization or entity that was not licensed to either

8 prescribe or distribute the medication?

9 MS. ELLIS: You're not talking about the drugs

10 that she got from her husband that she said awhile ago

11 that she had taken, the morphine.

12 MR. ALLISON: I had forgotten that.

13 BY MR. ALLISON:

14 Q. That would be an example of your obtaining a drug

15 from somebody that was not licensed to pre --

16 A. Did I obtain?

17 Q. -- Prescribe or distribute --

18 A. Yes.

19 Q. -- other than your husband?

20 A. Not that I can recall.

21 Q. You've never gone to a friend, a stranger?

22 A. No, sir.

23 Q. Have you ever sought to obtain or actually

24 obtained a replacement prescription for a drug, pain

25 medication, by claiming that the original prescription

83

1 form you were given was lost or destroyed somehow?

2 A. I can't recall, sir.

3 Q. Have you ever sought or obtained a replacement

4 prescription claiming falsely that it was needed because

5 somebody had stolen your medication or that it had been

6 lost?

7 A. I don't recall, sir.

8 Q. Have you ever altered a pain medication, and I'll

9 ask specifically about OxyContin, for example, have you

10 ever broken the tablet or crushed the tablet, taken

11 anything other than the whole tablet?

12 A. Yes, sir.

13 Q. And how have you taken OxyContin in particular

14 other than as a whole tablet?

15 A. Chew it up.

16 Q. Chew it up?

17 A. Uh-huh.

18 Q. Were you aware, when you did that, chewing it up

19 had consequences?

20 A. Yes, sir.

21 Q. And how did you know that?

22 A. It states it on the bottle.

23 Q. What were the consequences you were trying to

24 achieve when you chewed it up?

25 A. To get it into my system faster.

84

1 Q. Are there any other drugs other than OxyContin

2 that you have altered the drug while taking it?

3 A. (Witness shakes head from side to side.)

4 Q. And you stated earlier about your addiction. I

5 think I asked you had a health care provider told you or

6 discussed with you the possibility that you were dependent

7 upon or addicted to pain medications and I think you made

8 a statement that you didn't need for a doctor to tell

9 you.

10 A. That's correct.

11 Q. All right. What did you mean by that? How do

12 you know or how did you decide that you were addicted?

13 A. When I couldn't get any more OxyContin and you

14 can't get out of bed, you have vomiting and diarrhea,

15 don't eat for days, you don't care where your child is,

16 you're beating your head against the wall, that's when you

17 know you're sick.

18 Q. Well, Ms. Hicks, weren't things like that

19 happening before you were ever prescribed OxyContin?

20 A. No. No, sir. No, sir.

21 Q. When you realized your addiction, what did you

22 do?

23 A. I tried to hide it.

24 Q. And for how long did you try to hide it?

25 A. It didn't last for long.

121

1 Q. And after he did that, what was the result from
 2 your pain standpoint?
 3 A. It was immediate relief, immediate relief.
 4 Q. Okay.
 5 MS. USRY: Excuse me.
 6 MR. JOHNSON: You need to change tapes?
 7 MS. USRY: I need to change tapes, yes. This is
 8 the end of tape 3 at 12:54 p.m.
 9 (Discussion had off the record, not reported).
 10 MS. USRY: We're on record at 12:54 p.m.
 11 BY MR. JOHNSON:
 12 Q. And going back to this Dr. McGuire surgery
 13 providing you immediate relief, has that relief continued
 14 to as we sit here today?
 15 A. Yes, sir.
 16 Q. Okay. I understand you still have pain, but now
 17 it's more, as I understand it, arthritis pain?
 18 A. That's correct.
 19 Q. Okay. Whereas before it was --
 20 A. Bone rubbing on bone.
 21 Q. Yeah. Is the pain that you have now
 22 significantly less than you had prior to Dr. McGuire's
 23 surgery?
 24 A. Repeat that.
 25 Q. Is the pain you're having now, the arthritis pain

122

1 that you're having now that you're on the Ultram for, is
 2 it significantly less in intensity, and whatever other
 3 character you want to use, than the pain you had while you
 4 were still seeing Dr. Collins?
 5 A. Yes, sir.
 6 Q. And as I understand it, you're working now as a
 7 sub at Canton Academy?
 8 A. Yes, sir.
 9 Q. Several days a month?
 10 A. Yes, sir.
 11 Q. For what grades?
 12 A. K-4 through twelve.
 13 Q. Whatever they need you to do?
 14 A. What they throw at me, I take it. We can do PE
 15 and we can do music.
 16 Q. I suspect the K-4 is probably a lot tougher than
 17 the 12. You may have been asked this and I apologize.
 18 Who are your parents?
 19 A. James Earl and Hazel Holmes.
 20 Q. And they live in Canton?
 21 A. They live in Canton.
 22 Q. What's their address?
 23 A. 329 Holmes Hollow Lane.
 24 Q. Okay. So the street is named after them?
 25 A. They were the street.

123

1 Q. They were the street?
 2 A. They paved -- they graveled the street.
 3 Q. Okay. Do your parents still work?
 4 A. No.
 5 Q. They're both retired?
 6 A. My mother is semi-retired. My father has been
 7 retired.
 8 Q. And what did your daddy do?
 9 A. He was a photographer.
 10 Q. What did your mama do or does she do?
 11 A. She's a librarian.
 12 Q. And have you ever applied for disability
 13 anywhere?
 14 A. No, sir.
 15 Q. You haven't applied for Social Security
 16 disability?
 17 A. No, sir.
 18 Q. You said that you and your husband tried to do it
 19 and I wrote down, quote, on our own, close quote, and then
 20 you said he and I together.
 21 A. (Witness nods head up and down.)
 22 Q. Was he having any type of problem with
 23 medication?
 24 A. No, sir. No, sir, not at all.
 25 Q. All right. So you meant he was helping you try

124

1 to do it?
 2 A. Exactly. He was trying to assist the best he
 3 knew how.
 4 Q. All right. And he's got the morphine due to his
 5 cancer?
 6 A. That's correct.
 7 Q. And you also said that y'all had talked with
 8 somebody's parents and I couldn't tell if it was yours or
 9 his.
 10 A. It was my parents.
 11 Q. Did y'all live close to them?
 12 A. From Jackson to Canton.
 13 Q. Okay. When did you first talk to your parents
 14 about feeling you were -- you had a problem with
 15 medication?
 16 A. I really don't recall.
 17 Q. Okay. Can we put it in terms of -- let's see if
 18 we can do it this way, if we can use an event to get us a
 19 time frame. Did you talk with them prior to the time you
 20 saw Dr. McGuire?
 21 A. Yes.
 22 Q. Okay.
 23 A. Yes.
 24 Q. All right. And I think, from looking at the
 25 records, you first saw Dr. McGuire in late August of 2000?

125

1 A. I can't --

2 Q. Do you believe you talked to your parents before

3 you saw Dr. McGuire?

4 A. That's correct.

5 Q. And told them you thought you had a problem with

6 pain medication?

7 A. I did.

8 Q. That you specifically had a problem with the

9 OxyContin?

10 A. OxyContin.

11 Q. Do you know if you talked to them before you

12 started seeing Dr. Summers?

13 A. No, sir.

14 Q. When did you think you -- when did you come to

15 the conclusion in your own mind that you were having --

16 that you had a dependency on OxyContin? Obviously it was

17 before you saw Dr. McGuire because you talked with your

18 parents before you saw Dr. McGuire.

19 A. I may be real confused, but I truly believe that

20 I had already gone through withdrawals before I saw

21 Dr. McGuire, completely withdrawals before I even saw

22 Dr. McGuire.

23 Q. Let me ask you --

24 A. But yes, to answer your question, yes, I had

25 talked to my parents probably around the time that my

126

1 husband and I decided that I was going to go through

2 withdrawals with just he and I there.

3 Q. All right. Do you think you had that withdrawal

4 situation then before you had the surgery from

5 Dr. McGuire?

6 A. Yes, sir.

7 Q. Okay.

8 A. Because Dr. McGuire was aware of the OxyContin

9 withdrawals and all that because I told him I did not want

10 to have surgery if I had to be on medication and have to

11 come -- go through the withdrawals again.

12 Q. Okay.

13 A. From any pain medication.

14 Q. All right. Do you think you had the withdrawal

15 situation before you saw Dr. McGuire for the first time?

16 A. I do believe that, sir.

17 Q. Okay. Do you think you got another prescription

18 for OxyContin after you had the withdrawal situation?

19 A. I don't believe I did, but you stated earlier

20 that the records show, but I don't recall that.

21 Q. Okay. All right. But you feel comfortable in

22 own mind, before you ever saw Dr. McGuire the first time,

23 your recollection is you had already come to the

24 conclusion you had a problem with OxyContin and you had

25 actually even tried to detox yourself with your husband?

127

1 A. Yes, sir.

2 Q. Okay. Do you remember having any conversations

3 with Dr. Collins where he and you talked about a possible

4 drug dependency?

5 A. I don't recall, but there's Exhibit --

6 Q. Just say an exhibit.

7 A. -- an exhibit that states there had to have been

8 a conversation of some description because I've signed a

9 statement.

10 Q. Okay. All right. But every time you went in and

11 saw Dr. Collins and discussed getting pain medicine, it

12 was because you were in pain; is that right?

13 A. I'm sure it was, sir.

14 Q. I mean --

15 A. Or I thought I was in pain.

16 Q. All right.

17 A. I mean, if you're having withdrawals from

18 synthetic heroin, you're going to be in a lot of pain.

19 Q. Well, I think the last time you saw Dr. Collins

20 was before Dr. McGuire operated on you, correct?

21 A. That's correct.

22 Q. And you said Dr. McGuire's surgery is what really

23 relieved your neck pain?

24 A. It was a relief there, but if you haven't walked

25 in my shoes, buddy, you can't make that statement.

128

1 Q. Well, I mean, maybe I misunderstood that -- I

2 thought you said you were having bad, really bad neck

3 pain?

4 A. I was having bad pain. Your mind has bad pain.

5 You'll do anything almost. You'll tell them anything to

6 get a prescription.

7 Q. Well, the first time you got a prescription for

8 OxyContin or, for that matter, any pain medicine, the

9 reason was you were having bad pain?

10 A. That's correct. That's correct.

11 Q. Now, I also -- was there a period of time that

12 you were seeing Dr. Collins when you were without health

13 insurance?

14 A. That's correct.

15 Q. And I believe he saw you for a long period of

16 time when you had no health insurance?

17 A. That is correct.

18 Q. And continued to see you for a long time despite

19 a fairly large past due balance?

20 A. That is true.

21 MR. JOHNSON: I'm going to let Mr. Walgreen ask

22 you some questions. Okay?

23 MS. USRY: We're off record at 1:05 p.m.

24 (Recess.)

25 MS. USRY: We're on record at 1:10 p.m.

you suffered as a result of the allegations of the complaint.

ANSWER: Past and present pain and suffering, both physical and mental; future pain and suffering, both physical and mental; diminished life expectancy; humiliation to Plaintiff; personal problems and expenses and damages associated with the addiction by Plaintiff Jeanne Holmes Hicks; and, loss of enjoyment of life, and the constant of fear of addiction.

INTERROGATORY NO. 4: For each physician, hospital, health care provider or mental health care provider you have see in the past 10 (ten) years, please state the following:

- A. the provider's full name and address;
- B. the dates on which you sought care;
- C. the complaint(s) for which you were treated;
- D. what medication(s) was prescribed or given, particularly OxyContin®; and
- E. the name and address of the pharmacy(s) where the prescription(s) was filled.

ANSWER: Plaintiff's counsel objects to this interrogatory as it is overly broad, unduly burdensome and does not specify a time frame. Further, this information is contained in the medical records which are in the possession of Defendants and can be easily ascertained from said records. However, without waiving these objections, Plaintiffs states as follows: Dr. Roger Collins treated the plaintiff for two and one-half years for back pain.

Dr. Lynn Stringer treated the plaintiff for a ruptured disc and performed a disc fusion surgery on the plaintiff at River Oaks Hospital. Dr. Joe W. Terry, III at the MEA clinic in Madison treated the plaintiff for blood pressure, ear infections and back pain. Dr. Larry Sivils at MEA in Madison treated the plaintiff for headaches, drug addiction, and gynecological problems. University Medical Center Emergency Room treated the plaintiff for headaches and gynecological problems. Dr. Robert McGuire an orthopaedic back specialist at University Medical Center Pavilion treated the plaintiff for back problems and performed ruptured disc surgery on the plaintiff. Dr. Richard E. Weddle, Jackson, Mississippi, for back and joint pain. University Medical Center, O.B.G.Y.N. Clinic performed yearly exams and mammography on the plaintiff. Eckerd's, 5070 I-55 North, Jackson, Mississippi 39211, telephone no. 956-5143; Walgreen's, 6308 Ridgewood Road, Jackson, Mississippi, telephone no. 952-2945; Rite Aid, 6075 Old Canton Road, Jackson, Mississippi, telephone no. 957-0453; and Kroger Pharmacy, East County Line Road, Ridgeland, Mississippi, telephone no. 953-0335; Fred's Pharmacy, 5050 Parkway Road, Suite 12, Jackson, Mississippi 39211; Beemon Drugs, Post Office Box 14166, Jackson, Mississippi 39216; Albertson's Pharmacy, 7045 Old Canton Road, Ridgeland, Mississippi 3915, telephone no. 601-856-0977. Dr. Roger Collins prescribed OxyContin® to the plaintiff. Plaintiff had these prescriptions filled at Walgreen's and Eckerd's. Plaintiff is unsure of the date these prescriptions were filled but they are contained on the records from the respective pharmacies. Please see medical records for further information.

INTERROGATORY NO. 5: Between December 1998 and October 2000, list the

names and addresses of any physicians you were seeing for pain management

ANSWER: Please see answer above. In addition, Dr. Jeffrey Summers, Jackson, Mississippi.

INTERROGATORY NO. 6: Prior to December 1998, list the names and addresses of any physicians you were seeing for pain management.

ANSWER: Please see the answers to interrogatory numbers 4 and 5, and medical records.

INTERROGATORY NO. 7: After October 2000, list the names and addresses of any physicians you were seeing for pain management.

ANSWER: Please see answers above, as well as Dr. Robert A. McQuire, Dr. Larry Sivils, Dr. Roger Collins and Dr. Strong.

INTERROGATORY NO. 8: When and why did you begin to suspect that you had an addiction to OxyContin® or any other medications.

ANSWER: Plaintiff did not realize that she was addicted, however, her husband recognized that she was addicted when she finally could not get out of bed without taking this medicine. This was sometime after Defendant last prescribed OxyContin®.

INTERROGATORY NO. 9: Has any physician told you that you have a disability or impairment as a result of taking OxyContin®? If so, please list the physician's name, address, the date of this diagnosis and his or her specific comments.

ANSWER: No, but Plaintiff has been told that she will never be able to take

Plaintiff's husband tried to see Dr. Collins to find out what could be done to help Plaintiff, and Dr. Collins refused to see him but his nurses agreed that Plaintiff was likely going through withdrawals.

INTERROGATORY NO. 13: Describe all conversations regarding pain medicines you had with any person at any time prior to filing suit regarding OxyContin®, including conversations with doctors, pharmacists, and friends .

ANSWER: Plaintiff's counsel objects to this interrogatory as it seeks information which is protected by the attorney/client relationship and attorney work product doctrine. Please see answer above.

INTERROGATORY NO. 14: Please state in specific detail all alleged acts and/or omissions which you contend constitute negligence on the part of Dr. Roger Collins, or anyone for whom he is responsible, allegedly causing and/or contributing to your injuries, and, for each alleged act and/or omission, please state what facts, documents, and testimony you have to support same.

ANSWER: Plaintiff believes that Dr. Collins and/or the Lefleur Family Medical Clinic was negligent in prescribing narcotics in excessive amounts and prescribed and/or allowed untimely refills. Further, Plaintiff believes that Defendants failed to warn Plaintiff of the propensity for the addictiveness of OxyContin®. Further, Plaintiff believes that Dr. Collins and/or the Lefleur Family Medical Clinic violated the standard of care by prescribing OxyContin® for Plaintiff's chronic back pain. Others to be discovered and determined.

ANSWER: No

INTERROGATORY NO. 18: Have any of your medical bills which you allegedly incurred as a result of the claims enumerated in this Complaint been paid by any government entity? If so, by whom and how much?

ANSWER: Plaintiff's counsel objects to this interrogatory as it seeks information which is outside the scope of discovery or admissibility and the collateral source rule.

INTERROGATORY NO. 19: Describe all health insurance you have had since December 1995, including company names, dates of coverage, and amounts paid toward expenses for the condition which is the subject of this suit.

ANSWER: Plaintiff's counsel objects to this interrogatory as it seeks information which is overly broad and unduly burdensome and seeks information which is not relevant to the issues before this court, and is protected by the collateral source rule.

INTERROGATORY NO. 20: Give the name and address of any drugstore you have used in the past five (5) years, and specify those from which you got OxyContin® or any other pain medicine.

ANSWER: Plaintiff's counsel objects to this interrogatory as it is overly broad, unduly burdensome and does not specify a time frame, however, without waiving these objections, Plaintiffs states as follows: Eckerd's, 5070 I-55 North, Jackson, Mississippi 39211, telephone no. 956-5143; Walgreen's, 6308 Ridgewood Road, Jackson, Mississippi, telephone no. 952-2945; Rite Aid, 6075 Old Canton Road, Jackson, Mississippi, telephone

no. 957-0453; and Kroger Pharmacy, East County Line Road, Ridgeland, Mississippi, telephone no. 953-0335; Fred's Pharmacy, 5050 Parkway Road, Suite 12, Jackson, Mississippi 39211; Beemon Drugs, Post Office Box 14166, Jackson, Mississippi 39216; Albertson's Pharmacy, 7045 Old Canton Road, Ridgeland, Mississippi 3915, telephone no. 601-856-0977.

INTERROGATORY NO. 21: Give the name and address of every person from whom you will elicit lay opinion testimony, and describe the subject of that evidence.

ANSWER: The plaintiff has not yet determined who she will elicit lay opinion testimony from at a trial of this matter. Plaintiff reserves the right to supplement this interrogatory in accordance with the Mississippi Rules of Civil Procedure.

INTERROGATORY NO. 22: Describe all conversations you or anyone on your behalf had with any medical provider regarding your care or treatment by Dr. Roger Collins and/or Lefleur Family Medical Clinic.

ANSWER: Plaintiff objects to this interrogatory as it overly broad and burdensome. However, this information is available in Plaintiff's medical records which will be made available to defendant. Additionally, Plaintiff reserves the right to supplement this answer.

INTERROGATORY NO. 23: Describe your understanding of your prognosis insofar as it related to your prior ingestion of OxyContin®. What or who was the source of this information?

ANSWER: Plaintiff's counsel objects to this interrogatory as it is confusing. However, without waiving said objection, Plaintiff believed that she was being prescribed

University Orthopaedic Associates

NAME: HOLMES, Jeanne
CHART NO: 873906
DATE SEEN: August 25, 2000

UPDATE PRESENT ILLNESS: Ms. Holmes is a 40-year-old referred by Dr. Roger Collins for evaluation of cervical and lumbar spondylosis. She had surgery in October 1999, by Dr. Lynn Stringer who performed an anterior cervical discectomy and interbody fusion using autogenous bone graft at the C5-6 level. She was having fairly severe arm pain at that time that has since resolved. She has a component of neck pain that seems to be in the morning than does clear in during the day. She does notice pain in the lower back with morning stiffness, does notice difficulty with sleeping, pain referred into the left hip with no radiculopathy and no bowel or bladder abnormalities.

PAST MEDICAL HISTORY: Unremarkable.

PAST SURGICAL HISTORY: Significant for cervical surgery.

ALLERGIES: She has no allergies.

PRESENT MEDICATIONS: Her present medications include Norco and Celebrex.

TOBACCO HISTORY: She smokes one pack of cigarettes a day.

PHYSICAL EXAM: On physical exam she has a well-healed right sided transverse incision. She is able to place her chin on her chest. She fully extends and rotates approximately 70 degrees bilaterally. She has a negative Spurling's, has a normal motor, sensory and reflex exam. Has negative Tinel's at the wrist and the elbow.

Examination of her low back reveals a good range of motion of the lumbar spine with increased pain on extension, left lateral bending. The hip and SI examination are unremarkable. She has a negative straight leg raise. She has a normal motor, sensory and reflex exam. She has no clonus. She has downgoing Babinski's. Pulses are +2/4 and equal bilaterally. There is no pedal edema.

RADIOGRAPHS: Radiographs of her chest pain reveal evidence of a C5-6 fusion with collapse of the graft but healed in a kyphotic deformity with compensatory hyperlordosis at the C6-7 level. There is no evidence of translation.

Radiographs of her lumbar spine reveal a transitional vertebra with an articulation on the right and degenerative changes above the level at the L4-5 level. There is facet hypertrophy and some slight tropism noted. There is no evidence of mal-alignment or pars defect.

IMPRESSION:

1. Cervical surgery with mild degenerative changes of cephalad and caudal to the C5-6 level.
2. Lumbar spondylosis.

PLAN/RECOMMENDATIONS: At this point, I would recommend continued conservative management. She is using Celebrex. I have given her exercise regimen both her neck and her low back. At this point, I

UMC Pavilion • 2500 North State Street • Jackson, Mississippi 39216-4505 • (601) 984-6525 (Appointments) • (601) 984-5481 (Billing)
FAX (601) 984-6531 (Appointments) • FAX (601) 984-5485 (Billing)

500254.035.0016



University Orthopaedic Associates

NAME: HOLMES, Jeanne
CHART NO: 873906
DATE SEEN: August 25, 2000
Page 2

don't see anything that I would recommend proceeding with from the cervical standpoint. She will follow-up with Dr. Collins.

WORK STATUS:


Robert A. McGuire, Jr., M.D.

RAM/mtc-16