

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**THELMA R. KOESTLER**

**APPELLANT**

**VS.**

**CAUSE NO. 2009-CA-00603**

**MISSISSIPPI BAPTIST MEDICAL SYSTEMS, INC., a/k/a  
Mississippi Baptist Medical Center a/k/a Baptist Medical Center  
MISSISSIPPI BAPTIST MEDICAL CENTER, INC., BAPTIST  
BEHAVIORAL HEALTH SERVICES, WILLIAM S.  
COOK, JR., M.D., P.A., WILLIAM S. COOK, JR., M.D.,  
INDIVIDUALLY and/or in his capacity as an employee of  
Mississippi Baptist Medical Systems, Inc., and/or in his capacity  
as an employee of Mississippi Baptist Medical Center, Inc., and/or  
in his capacity as Medical Director of Baptist Senior Behavioral  
Health Services, and/or in his capacity as a contractor with  
Mississippi Baptist Medical Systems, Inc., and/or in his capacity as  
a contractor with Mississippi Baptist Medical Center, Inc., and/or  
in his capacity as a contractor with Baptist Senior Behavioral Health  
Services; KHARI A. OMOLARA, P.C., KHARI A. OMOLARA, M.D.,  
INDIVIDUALLY and/or in his capacity as an employee of Mississippi  
Baptist Medical Systems, Inc., and/or in his capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in his capacity as an  
employee of Baptist Behavioral Health Services; and/or in his capacity  
as a contractor of Mississippi Baptist Medical Systems, Inc., and/or in  
his capacity as a contractor with Mississippi Baptist Medical Center, Inc.,  
and/or in his capacity as a contractor with Baptist Senior Behavioral  
Health Services, AND JOHN DOES 1 THROUGH 10**

**APPELLEES**

**APPEAL FROM THE CIRCUIT COURT  
OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI**

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**BRIEF OF APPELLEE 3**

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AND WILLIAM S. COOK, JR., M.D., P.A.**

**CERTIFICATE OF INTERESTED PARTIES**

**THELMA R. KOESTLER**

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Baptist Medical Center, Inc., and/or in his capacity as a contractor  
with Baptist Senior Behavioral Health Services, AND JOHN  
DOES 1 THROUGH 10**

**APPELLEES**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These presentations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

**PERSONS OR OTHER ENTITIES**

**CONNECTION / INTEREST**

- |    |                       |   |
|----|-----------------------|---|
| 1. | Thelma R. Koestler    | Plaintiff/Appellant                           |
| 2. | Marcie T. Southerland | Attorney of Record for<br>Plaintiff/Appellant |

3.	Mississippi Baptist Medical Systems, Inc.	Defendant/Appellee
4.	Mississippi Baptist Medical Center Inc.	Defendant/Appellee
5.	Baptist Behavioral Health Services	Defendant/Appellee
6.	William S. Cook, Jr., M.D., P.A.	Defendant/Appellee
7.	William S. Cook, Jr., M.D., Individually and/or in his capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in his capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in his capacity as Medical Director of Baptist Senior Behavioral Health Services	Defendant/Appellee
8..	Khari A. Omolara, P.C.	Defendant/Appellee
9.	Khari A. Omolara, M.D., Individually and/or in his capacity as an employee of Mississippi Baptist Medical Systems, Inc., And/or in his capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in his capacity as an employee of Baptist Behavioral Health Services	Defendant/Appellee
10.	Grace Scott, R.N., Individually and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., And/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services	Defendant/Appellee
11.	Tiffany Parker, L.S.W., Individually and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., And/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services	Defendant/Appellee
12.	Becky Ivey, O.T., Individually and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., And/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services	Defendant/Appellee

- |     |   |   |
|-----|---|---|
| 13. | S. Inman, R.N., Individually and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., And/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services | Defendant/Appellee                            |
| 14. | Stacey Ashley, Individually and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., And/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services  | Defendant/Appellee                            |
| 15. | Eugene R. Naylor<br>Rex M. Shannon, III   | Attorneys of Record<br>for Defendant/Appellee |
| 16. | Whitman B. Johnson, III   | Attorneys of Record<br>for Defendant/Appellee |
| 17. | Clifford B. Ammons<br>Anastasia Jones   | Attorneys of Record for<br>Defendant/Appellee |
| 18. | Hon. Swan Yerger  | Hinds County Circuit Court<br>Judge           |

## TABLE OF CONTENTS

	Page
CERTIFICATE OF INTERESTED PARTIES .....	ii
TABLE OF CONTENTS .....	v
TABLE OF AUTHORITIES .....	vii
STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE CASE .....	2
Nature of the Case .....	2
Course of the Proceedings/Disposition of the Court Below .....	3
Statement of the Facts .....	4
Standard of Review .....	5
SUMMARY OF THE ARGUMENT .....	5
ARGUMENT AND DISCUSSION .....	6
I.    SUMMARY JUDGMENT SHOULD BE AFFIRMED BECAUSE THE STATUTE OF LIMITATIONS EXPIRED PRIOR TO THE DATE THE SECOND COMPLAINT WAS FILED. ....	6
A.    The Statute of Limitations is not Tolerated for 120 Days for Service of Process When a Complaint is Filed if the Complaint is Voluntarily Dismissed for Lack of Service of Process. ....	6
B.    The Savings Statute Does Not Operate to Save an Action from the Expiration of the Statute of Limitations for Lack of Personal Jurisdiction or Lack of Service of Process. ....	10
II.    SUMMARY JUDGMENT SHOULD BE AFFIRMED BECAUSE DR. COOK IS IMMUNE FROM LIABILITY FOR FALSE IMPRISONMENT AND OTHER ALLEGED INTENTIONAL TORTS BECAUSE PLAINTIFF HAS PRESENTED NO EVIDENCE OF BAD FAITH. ....	13

A. Dr. Cook is Immune from Liability for Involuntary Commitment  
Absent Bad Faith. ....14

B. Koestler Has Cited No Facts Supporting Allegations of Bad Faith on  
Behalf of Dr. Cook, He is Therefore Immune From Any Liability  
for Involuntary Commitment. .... 15

CONCLUSION ..... 17

CERTIFICATE OF SERVICE ..... 19

## TABLE OF AUTHORITIES

	Page
<i>Bailey v. Bailey</i> , 724 So.2d 335 (Miss.1998) .....	17
<i>Blue v. State</i> , 825 So.2d 709 (Miss. App. 2002) .....	16
<i>Brown v. Credit Ctr., Inc.</i> , 444 So.2d 358 (Miss.1983) .....	5
<i>Carrington v. Methodist Medical Center, Inc.</i> , 740 So. 2d 827 (Miss. 1999) .....	15, 18
<i>Cenac v. Murry</i> , 609 So.2d 1257 (Miss.1992) .....	17
<i>Conley v. State</i> , 790 So.2d 773 (Miss.2001) .....	16
<i>Cossitt v. Alfa Ins. Corp.</i> 726 So.2d 132 (Miss.1998) .....	5
<i>Erickson v. Smith</i> , 909 So.2d 1173 (Miss. App. 2005) .....	17, 18
<i>Koestler v. Koestler</i> , 976 So. 2d 372 (Miss. App. 2008) .....	2
<i>Lippincott v. Mississippi Bureau Of Narcotics</i> , 856 So.2d 465 (Miss. App. 2003) .....	17, 18
<i>Marshall v. Kansas City Southern Railways</i> , 7 So. 3d 210 (Miss. 2009) .....	7 - 13, 18
<i>Moore v. Mem'l Hosp.</i> , 825 So.2d 663 (Miss.2002) .....	5, 17
<i>Morton v. City of Shelby</i> , 984 So.2d 323 (Miss.App. 2007) .....	16
<i>Nevitt v. Bacon</i> , 32 Miss. 212 (Miss. Err & App. 1856) .....	8, 13
<i>Owens v. Mai</i> , 891 So.2d 220 (Miss. 2005) .....	7, 9, 11, 12
<i>Parmley v. Pringle</i> , 976 So. 2d 422 (Miss. App. 2008) .....	7 - 9, 11
<i>Smith v. Copiah County</i> , 100 So. 2d 614 (Miss. 1958) .....	8, 10, 13
<i>Triple "C" Transport, Inc. v. Dickens</i> , 870 So 2d 1195 (Miss. 2004) .....	9
<i>W. T. Raleigh Co. v. Barnes</i> , 109 So. 8 (Miss. 1926) .....	8, 13

Other Authorities:

MISS. CODE ANN. § 15-1-35 (Rev. 2003) .....	2, 5, 6
MISS. CODE ANN. § 15-1-69 (Rev. 2003) .....	6, 10 - 12
MISS. CODE ANN. § 41-21-61(e) ( Rev. 2009) .....	14
MISS. CODE ANN. § 41-21-67(5) ( Rev. 2009) .....	2, 5, 14, 15, 17, 18
MISS. CODE ANN. § 41-21-105 ( Rev. 2009) .....	2, 5, 14 - 18
M. R. A. P. 28(a) .....	16
Miss. R. Civ. P. 4 .....	12, 13
Miss. R. Civ. P. 4 (h) .....	6, 9, 12
Miss. R. Civ. P. 56 .....	5



## STATEMENT OF THE ISSUES

- I. SUMMARY JUDGMENT SHOULD BE AFFIRMED BECAUSE THE STATUTE OF LIMITATIONS EXPIRED PRIOR TO THE DATE THE SECOND COMPLAINT WAS FILED.
  - A. The Statute of Limitations is not Tolloed for 120 Days for Service of Process When a Complaint is Filed if the Complaint is Voluntarily Dismissed for Lack of Service of Process.
  - B. The Savings Statute Does Not Operate to Save an Action from the Expiration of the Statute of Limitations for Lack of Personal Jurisdiction or Lack of Service of Process.
- II. SUMMARY JUDGMENT SHOULD BE AFFIRMED BECAUSE DR. COOK IS IMMUNE FROM LIABILITY FOR FALSE IMPRISONMENT AND OTHER ALLEGED INTENTIONAL TORTS BECAUSE PLAINTIFF HAS PRESENTED NO EVIDENCE OF BAD FAITH.
  - A. Dr. Cook is Immune from Liability for Involuntary Commitment Absent Bad Faith.
  - B. Koestler Has Cited No Facts Supporting Allegations of Bad Faith on Behalf of Dr. Cook, He is Therefore Immune From Any Liability for Involuntary Commitment.

## **STATEMENT OF THE CASE**

### **Nature of the Case**

Plaintiff's Complaint alleges that Plaintiff (hereinafter "Koestler") was unlawfully admitted and unlawfully detained at Baptist Behavioral Health Services in the psychiatric unit at Baptist Hospital. Complaint, ¶ 26. As a result, Koestler is alleging damages, including punitive damages, for false imprisonment, assault and battery, invasion of privacy, intentional infliction of emotional distress, and loss of consortium. Complaint, ¶¶ 35, 37, 43, 45, 51, 53, 55, 63, 65, 71, 73, 80.

The issues regarding this appeal are primarily in regard to: (1) the expiration of the one-year statute of limitations, pursuant to Mississippi Code Annotated section 15-1-35, for intentional torts, and (2) immunity from liability for Dr. Cook and other defendants pursuant to Mississippi Code Annotated sections 41-21-67(5) and 41-21-105 . MISS. CODE ANN. § 15-1-35 (Rev. 2003); MISS. CODE ANN. §§ 41-21-67(5), 41-21-105 ( Rev. 2009).

Also of pertinence is the fact that Koestler has appealed the same alleged involuntary commitment that is the basis of this appeal, in *Koestler v. Koestler*, 976 So. 2d 372 (Miss. App. 2008). That case was in regard to an issue which is not relevant to the case at bar; nevertheless, the case at bar relies on many of the same material facts regarding Koestler's hospitalization as did *Koestler v. Koestler*. Koestler's brief to the Mississippi Court of Appeals in *Koestler v. Koestler* acknowledged in its statement of facts that "Thelma Koestler, appellant . . . admitted herself to Mississippi Baptist Medical Center - Senior Behavioral Health Services . . . " R. 106. The Mississippi Court of Appeals, in *Koestler v. Koestler*, accepted Koestler's statement of facts and incorporated the statement of facts into its ruling: "Thelma admitted herself in the Senior Behavioral Health Services wing of the Mississippi Baptist Memorial Hospital (Baptist)." *Id.* at 374 (¶ 2).

However, in order to support the allegations regarding various intentional torts, Koestler now alleges in her Complaint that, "Plaintiff did not voluntarily consent to treatment by the Defendants and all treatment of and towards the Plaintiff was intentional and without informed consent." Complaint, ¶ 40.

**Course of the Proceedings /  
Disposition in the Court Below**

The Complaint was filed in this case on January 30, 2008. R. 4. A prior identical complaint had been filed on October 1, 2007, however, that complaint was never served and was voluntarily dismissed. Appellant's Record Excerpts, pp. 1, 18.

Answer and Defenses of Khari A. Omalara, M.D. and Khari A. Omalara, P.C. was filed on May 29, 2008. R. 23. On May 30, 2008, Motion for Summary Judgment by Defendants Khari A. Omalara, M.D. and Khari A. Omalara, P.C. was filed. R. 44. Separate Answer of Mississippi Baptist Medical Center, Inc., Mississippi Baptist Health Systems, Inc. and Baptist Behavioral Health Services was filed on June 6, 2008. R. 48. Subsequently, on September 3, 2008, Defendants Mississippi Baptist Medical Center, Inc., Mississippi Baptist Health Systems, Inc. and Baptist Behavioral Health Services filed Joinder in Motion for Summary Judgment. R. 73.

On September 11, 2008, Motion for Summary Judgment of Defendants William S. Cook, Jr., M.D. and William S. Cook, Jr., M.D., P.A. was filed. R. 79. Plaintiff's Response to Defendants' Motion for Summary Judgment was then filed and on November 6, 2008, Defendants Khari A. Omalara, M.D. and Khari A. Omalara, P.C., filed Rebuttal in Support of Their Motion for Summary Judgment. R. 84, 92.

Defendants William S. Cook, Jr. and William S. Cook, Jr., M.D., P.A. filed Reply to

Plaintiff's Response to Motion for Summary Judgment on November 7, 2008. R. 149. On November 10, 2008, Plaintiffs filed Response to Defendants' Khari A. Omalara, M.D., and Khari A. Omalara, P.C., Rebuttal in Support of Their Motion for Summary Judgment. R. 155. On December 1, 2008, Plaintiff filed another Response to Defendants' Khari A. Omalara, M.D., and Khari A. Omalara, P.C., Rebuttal in Support of Their Motion for Summary Judgment and Affidavit of Thelma R. Koestler. R. 159, 164. Defendants Khari A. Omalara, M.D., and Khari A. Omalara, P.C. filed Second Rebuttal in Response to Plaintiff's Response to Defendants' Rebuttal in Support of their Motion for Summary Judgment on December 4, 2008. R. 168.

The Court entered Final Judgment of Dismissal for all Defendants' motions for summary judgment on March 19, 2009, as well as Opinion of the Court and Order Granting Defendants' Motions for Summary Judgment. R. 173, 174. On March 27, 2009, Plaintiff filed her Motion for Reconsideration, which the Court denied on April 1, 2009. R. 179, 185. On April 14, 2009, Plaintiff filed Notice of Appeal and perfected her appeal. R. 186, 190, 192, 195.

#### **Statement of the Facts**

On October 2, 2006, Koestler was admitted to Baptist Behavioral Health Services in the psychiatric unit at Baptist Hospital. Complaint, ¶ 23. She filed her first complaint on October 1, 2007, however, process was never served for this complaint and Koestler voluntarily filed Notice of Dismissal which dismissed all defendants without prejudice on January 30, 2008. Appellant's Record Excepts, pp. 1, 18. On that same day, Koestler filed the Complaint giving rise to this appeal, which appears to be identical to the complaint which had been previously filed and voluntarily dismissed. R. 4.

The trial court granted Defendants' motion for summary judgment, from which Koestler now

appeals, on the basis of: 1) judicial estoppel, because Koestler had already asserted in a prior appeal for involuntary commitment, from the same set of facts, that she voluntarily admitted herself to treatment at Mississippi Baptist Medical Center, 2) immunity from liability for in-patient treatment for mental illness pursuant to Mississippi Code Annotated section 41-21-67(5), and 3) the expiration of the one-year statute of limitations for intentional torts, pursuant to Mississippi Code Annotated section 15-1-35 . MISS. CODE ANN. §§ 15-1-35, 41-21-67(5); R. 174.

### **Standard of Review**

An appeal from summary judgment is reviewed *de novo*. *Cossitt v. Alfa Ins. Corp.* 726 So.2d 132, 136 (¶ 19) (Miss.1998). A motion for summary judgment will be granted where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *Brown v. Credit Ctr., Inc.*, 444 So.2d 358, 362 (Miss.1983); Miss. R. Civ. P. 56. A trial court's decision to grant summary judgment will not be reversed unless it appears that triable issues of fact remain when the facts are viewed in the light most favorable to the nonmoving party. *Moore v. Mem'l Hosp.*, 825 So.2d 658, 663 (Miss.2002).

### **SUMMARY OF THE ARGUMENT**

Appellee (hereinafter "Dr. Cook") asserts that summary judgment should be affirmed because the one-year statute of limitations, pursuant to Mississippi Code Annotated section 15-1-35 for intentional torts, expired prior to January 30, 2008, the date the Complaint was filed. He also maintains statutory immunity from liability through Mississippi Code Annotated sections 41-21-67(5) and 41-21-105 for the various alleged intentional torts. MISS. CODE ANN. §§ 15-1-35, 41-21-67(5), 41-21-105.

## ARGUMENT AND DISCUSSION

### **I. SUMMARY JUDGMENT SHOULD BE AFFIRMED BECAUSE THE STATUTE OF LIMITATIONS EXPIRED PRIOR TO THE DATE THE SECOND COMPLAINT WAS FILED.**

It is uncontested that the statute of limitations began to run on October 2, 2006, the day Koestler was admitted to the psychiatric unit at Baptist Hospital. Complaint, ¶ 23. Thus, the applicable one-year statute of limitations, pursuant to Mississippi Code section 15-1-35<sup>1</sup>, expired on October 2, 2007. MISS. CODE ANN. § 15-1-35 (Rev. 2003). The second Complaint, filed on January 30, 2008, was untimely, unless the statute of limitations was tolled for 120 days for service of process when the first complaint was filed. Miss. R. Civ. P. 4(h).

Appellee, Dr. Cook, argues that the statute of limitations expired prior to the date the second Complaint was filed for two reasons: 1) the statute of limitations was not tolled for 120 days for service of process because the first complaint was voluntarily dismissed for lack of service of process, and 2) the savings statute, Mississippi Code Annotated section 15-1-69, does not operate to save an action from the expiration of the statute of limitations for lack of personal jurisdiction or lack of service of process. MISS. CODE ANN. § 15-1-69 (Rev. 2003).

These are discussed separately below.

#### **A. The Statute of Limitations is not Tolled for 120 Days for Service of Process When a Complaint is Filed if the Complaint is Voluntarily Dismissed for Lack of Service of Process.**

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<sup>1</sup> Section 15-1-35 states: All actions for assault, assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous words concerning the person or title, for failure to employ, and for libels, shall be commenced within one (1) year next after the cause of such action accrued, and not after. MISS. CODE. ANN § 15-1-35 (Rev. 2003).

Koestler's first complaint was filed on October 1, 2007, just one day before the expiration of the statute of limitations. However, process was never served for this complaint and Koestler voluntarily filed Notice of Dismissal which dismissed all defendants without prejudice on January 30, 2008. Appellant's Record Excepts, pp. 1, 18. On that same day, Koestler filed the Complaint giving rise to this appeal, which appears to be identical to the complaint which had been voluntarily dismissed. R. 4.

Koestler argues that the statute of limitations had not expired when she filed the Complaint on January 30, 2008. Appellant's Brief, p. 11. Her argument is based on the premise that the statute of limitations was tolled for 120 days for service of process when she filed her first complaint, and that the 120 days for tolling ended on January 29, 2008. Since there was one day left on the statute of limitations when the first complaint was filed, Koestler submits that her Complaint was timely filed because January 30, 2008, was the last day before the statute of limitations expired. Appellant's Brief, pp. 11-12. She relies on *Owens v. Mai*, 891 So.2d 220 (Miss. 2005). That case states that filing a complaint tolls the applicable statute of limitations for 120 days even when service of process has not been made upon the defendant, and resumes running at the end of the 120 days. *Id.* at 223 (§ 14).

However, our appellate courts have refused to allow the statute of limitations to be tolled under certain circumstances which apply to the facts of this case. *Marshall v. Kansas City Southern Railways*, 7 So. 3d 210 (Miss. 2009); *Parmley v. Pringle*, 976 So. 2d 422 (Miss. App. 2008).

The prompt pursual of valid claims is a basic principle of law which is to be considered in determining the effect that the dismissal of a case without prejudice has when a new suit is subsequently filed. The Supreme Court has recently affirmed the long-standing legal principle in

*Marshall v. Kansas City Southern Railways Co.*, that a voluntary dismissal without prejudice should not deprive a defendant of any defense he may make to a new suit nor should it confer any advantage to the plaintiff, and the dismissal would not have the effect of tolling the statute of limitations during the time period in which that suit was pending. *Marshall v. Kansas City Southern Railways Co.*, 7 So. 3d at 213 (citing *Smith v. Copiah County*, 100 So. 2d 614, 616 (Miss. 1958) (quoting *W. T. Raleigh Co. v. Barnes*, 109 So. 8, 9 (Miss. 1926) (quoting *Nevitt v. Bacon*, 32 Miss. 212 (Miss. Err & App. 1856)))). *Marshall* has thus reaffirmed the general rule that the statute of limitations is not tolled when a complaint is filed if that complaint is subsequently voluntarily dismissed without prejudice. *Id.*

The trial court in the case at bar came to the same conclusion in its Opinion of the Court and Order Granting Defendants' Motions for Summary Judgment. R. 174. The trial court, however, relied on *Parmley v. Pringle*, since *Marshall* was handed down subsequent to the time the parties submitted their briefs and made their arguments.<sup>2</sup> R. 88, 92, 149.

The plaintiff in *Parmley v. Pringle* filed a complaint for legal malpractice on January 31, 2005, but never served process. While the case was still pending, the plaintiff filed a similar complaint on July 7, 2005, which was properly served. The date the statute of limitations began to run was stipulated as May 16, 2002. *Parmley v. Pringle*, 976 So. 2d at 423 (¶¶ 2-4). The trial court dismissed the first complaint for failure to serve process and dismissed the second complaint for failure to file before the expiration of the three-year statute of limitations. *Id.* On appeal, the Court

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<sup>2</sup> *Marshall v. Kansas City Southern Railways*, 7 So. 3d 210 (Miss. 2009) was handed down on March 5, 2009, and rehearing was denied on May 7, 2009. The trial court's Opinion and Order was entered on March 19, 2009. R. 174. Appellant's Brief makes no mention of *Marshall*, even though it was filed November 25, 2009, over 6 months after *Marshall* was handed down.



of Appeals held that the statute of limitations had expired and affirmed the dismissal of both complaints. *Parmley v. Pringle*, 976 So. 2d at 425 (¶ 12).

Even though the *Parmley* court (citing *Owens v. Mai*, 891 So. 2d at 223 (¶ 16) and *Triple "C" Transport, Inc. v. Dickens*, 870 So 2d 1195, 1199-1200 (¶¶ 34-35)(Miss. 2004)) recognized that the mere filing of a complaint without service tolls the statute of limitations for 120 days, the court considered the effect of this application to Rule 4 (h) and concluded that to allow a plaintiff to file a second or subsequent complaint while a previously filed complaint was still pending in the same cause of action would extend the statute of limitations ad infinitum. Miss. R. Civ. P. 4(h); *Parmley* at 425 (¶¶ 8, 11). *Parmley* also recognized that under *Dickens*, the filing of a subsequent complaint just one day after a previous complaint was dismissed would extend the statute of limitations exponentially if it were a repeated process, which is exactly the set of facts in the case at bar. *Parmley* at 425 n. 3. *Parmley* therefore narrowly construed *Dickens* on the facts. *Id.* at 426 (¶ 12).

*Parmley* reasoned that to allow the statute of limitations to be tolled under the circumstances of the case would frustrate the purpose of Rule 4 (h), as the primary purpose of statutes of limitations is to compel the exercise of a right of action within a reasonable time. Furthermore, the court stated that statutes of limitations are established so that valid claims would be promptly pursued. *Id.* at 425 (¶ 12).

Koestler argues in Brief of Appellant that the trial court's reliance on *Parmley v. Pringle* in the case at bar is nothing more than reliance on *dicta*. Brief of Appellant, pp. 13, 14. However, the same result is compelled upon the application of *Marshall*, the Supreme Court's subsequent and most recent opinion on the issue. *Marshall v. Kansas City Southern Railways*, 7 So. 3d 210 (Miss. 2009).

Koestler's first complaint was filed on October 1, 2007, but Koestler neither served Dr. Cook nor asserted that any effort or attempt to serve Dr. Cook was ever made after this complaint was filed. Instead, the day after the 120 days for service had expired, January 30, 2008, Plaintiff voluntarily dismissed the action and filed what appears to be another identical Complaint on the same day. R. 4; Appellant's Record Excerpts, p. 18. To allow Koestler the benefit of the 120 days which tolled the statute of limitation for an action that was subsequently voluntarily dismissed would confer an advantage to her, as Plaintiff, which is contrary to the long standing principle of Mississippi law which was recently affirmed in *Marshall*. *Id.* at 213 (§ 15). Thus, based on the Court's holding in *Smith* and *Marshall*, the statute of limitations for Koestler's claims had run when the second Complaint was filed unless the savings statute is invoked, which is codified in section 15-1-69 of Mississippi Code Annotated. MISS. CODE ANN. 15-1-69 (Rev. 2003).

**B. The Savings Statute Does Not Operate to Save an Action from the Expiration of the Statute of Limitations for Lack of Personal Jurisdiction or Lack of Service of Process.**

The savings statute, Mississippi Code Annotated section 15-1-69, provides in relevant part:

If any action, duly commenced within the time allowed, the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any *matter of form* ... the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit.

MISS. CODE ANN. § 15-1-69 (emphasis added). Thus, in order for the savings statute to apply and save Koestler's claim, Koestler's voluntary dismissal must have been for a "matter of form." *Id.*

Whether a voluntary dismissal is considered a matter of form within section 15-1-69 was most recently addressed in *Marshall*. In that case the Supreme Court held that a voluntary dismissal for lack of subject matter jurisdiction was a "matter of form" for which the savings statute would

apply. *Marshall v. Kansas City Southern Railways Co.*, 7 So. 3d 210, 216-17 (¶¶ 25-27). Pursuant to the reasoning of the Court in *Marshall*, voluntary dismissals are not dismissals as a matter of form within the purview of section 15-1-69 of the Mississippi Code, but dismissals for lack of subject matter jurisdiction are considered dismissals as a matter of form. *Id.* at 214 (¶¶ 18-19).

Koestler's voluntary dismissal was for lack of service of process, rather than for lack of subject matter jurisdiction; therefore, pursuant to *Marshall*, it was not a dismissal as a matter of form. *Id.* It is therefore not within the purview of the savings statute and the savings statute cannot apply to save Koestler's claim from the expiration of the statute of limitations.

Because *Marshall* was handed down after the parties submitted their briefs and made their arguments in the trial court, *Marshall* was neither cited nor relied upon in the parties' briefs to the trial court or by the trial court in its Opinion and Order Granting Defendants' Motion for Summary Judgment.<sup>3</sup> R. 44, 79, 88, 92, 149, 174. However, the trial court came to the same conclusion without the benefit of *Marshall*, relying on *Parmley v. Pringle*, 976 So. 2d 422 (Miss. App. 2008), and *Owens v. Mai*, 891 So.2d 220 (Miss. 2005). Thus, *Marshall* serves to affirm and bolster the trial court's Opinion and Order Granting Defendants' Motion for Summary Judgment.

Koestler has cited *Owens v. Mai* in Brief of Appellant to support her assertion that her Complaint was timely filed but did not address the fact that the Supreme Court in *Owens v. Mai* expressed its protective nature in regard to the statute of limitations and would not permit the plaintiff in that case to extend the life of his claims by applying the savings statute for failure to serve process. *Id.* at 222-24 (¶¶ 13-17); Brief of Appellant, pp. 11 - 13.

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<sup>3</sup> See *supra* note 2.

The plaintiff in *Owens v. Mai* filed a complaint for wrongful death which the trial court dismissed for lack of service. *Owens v. Mai*, 891 So.2d at 221 (¶ 6). Prior to the dismissal, plaintiff had filed a subsequent but identical complaint which the trial court dismissed because it had been filed after the expiration of the statute of limitations. *Id.* at 221 (¶ 7). The *Owens* plaintiff asserted that the statute of limitations had not expired because the savings statute, Mississippi Code Annotated § 15-1-69, could save an action which had been dismissed for defective service of process, pursuant to Mississippi Rule of Civil Procedure 4(h), from the expiration of the statute of limitations. *Owens v. Mai*, 891 So.2d 221-22 (¶¶ 6, 7); Miss. R. Civ. P. 4(h); MISS. CODE ANN. § 15-1-69.

*Owens v. Mai* held that dismissal for failure to serve process is not a matter of subject matter jurisdiction for purposes of the savings statute. As a result, the Supreme Court in *Owens v. Mai* would not allow the savings statute to be used to extend the life of a claim under circumstances where process was not proper because it would seriously undermine not only the legislative intent of the savings statute but also the legal effect of Rule 4. *Owens v. Mai*, 891 So.2d at 222-23 (¶¶ 12-13); Miss. R. Civ. P. 4. The Supreme Court recognized that this would circumvent the effect and purpose of statutes of limitations. *Owens v. Mai*, 891 So.2d at 224 (¶ 17).

Furthermore, good faith in the pursual of claims is an element which is to be considered when determining whether the savings statute should be invoked. *Marshall v. Kansas City Southern Railways Co.*, 7 So. 3d at 216 (¶ 28). The fact that Koestler filed her first complaint on October 1, 2007, but neither served Dr. Cook nor asserted that any effort or attempt to serve Dr. Cook was ever made after this complaint was filed, is a fact to be considered in determining whether Koestler made

a good faith effort to pursue her claims and whether the savings statute should even be considered to be invoked.

Thus Dr. Cook respectfully requests that the court recognize the protective nature of statutes of limitations and limit the application of the Supreme Court's interpretation of Rule 4 when a plaintiff voluntarily dismisses a complaint so that the statute of limitations is not tolled for 120 days and Plaintiff is not conferred an advantage. *Marshall v. Kansas City Southern Railways Co.*, 7 So. 3d at 213 (citing *Smith v. Copiah County*, 100 So. 2d at 616 ) (quoting *W. T. Raleigh Co. v. Barnes*, 109 So. at 9 (quoting *Nevitt v. Bacon*, 32 Miss. 212 (Miss. Err & App. 1856)))). In addition, the application of *Marshall* does not permit the savings statute to be used to extend the life of a claim that was voluntarily dismissed for lack of service of process. *Marshall v. Kansas City Southern Railways Co.*, 7 So. 3d at 215 (¶ 21).

**II. SUMMARY JUDGMENT SHOULD BE AFFIRMED BECAUSE DR. COOK IS IMMUNE FROM LIABILITY FOR FALSE IMPRISONMENT AND OTHER ALLEGED INTENTIONAL TORTS BECAUSE PLAINTIFF HAS PRESENTED NO EVIDENCE OF BAD FAITH.**

Koestler argues to support that summary judgment should have been denied that: 1) there is a fact question for the jury as to whether Koestler presented a risk of harm to herself and whether she was able to care for herself; 2) Dr. Cook's failure to certify in writing the reasons for Koestler's confinement to the hospital was evidence of bad faith; 3) and, Dr. Cook was duty-bound to discharge Koestler simply because she told him she wanted to leave the hospital and his failure to do so gives rise to her claims for various intentional torts. Appellant's Brief, pp. 8, 9. Dr. Cook counters these arguments as set forth below.

**A. Dr. Cook is Immune from Liability for Involuntary Commitment Absent Bad Faith.**

Koestler now concedes that she voluntarily admitted herself to the hospital and consented to treatment. Appellant's Brief, pp. 1, 5, 6. However, she argues that she withdrew her consent when she discovered that she was going to be held in a locked unit for an undetermined period of time. Appellant's Brief, p. 5. Koestler argues that because she allegedly retracted her consent to treatment Dr. Cook was duty-bound to discharge her. It is Dr. Cook's failure to discharge Koestler which Koestler claims gives rise to his liability for various intentional torts. She states that there is a genuine issue of material fact as to whether she withdrew her consent which should have precluded summary judgment. Appellant's Brief, p. 6.

Dr. Cook argues that once Koestler was admitted he was immune from liability by operation of section 41-21-67(5)<sup>4</sup> of Mississippi Code Annotated for any treatment he rendered during the first 72 hours of admission as long as he was acting in good faith. MISS. CODE ANN. § 41-21-67(5). For any treatment beyond the first 72 hours, Dr. Cook is immune by the application of section 41-21-105, as long as the alleged act for which liability is claimed was committed within the scope of

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<sup>4</sup> Section 41-21-67(5) states: Whenever a licensed physician or psychologist certified to complete examinations for the purpose of commitment has reason to believe that a person poses an immediate substantial likelihood of physical harm to himself or others or is gravely disabled and unable to care for himself by virtue of mental illness, as defined in Section 41-21-61(e), then the physician or psychologist may hold the person or the physician may admit the person to and treat the person in a licensed medical facility, without a civil order or warrant for a period not to exceed seventy-two (72) hours or the end of the next business day of the chancery clerk's office. The person may be held and treated as an emergency patient at any licensed medical facility, available regional mental health facility, or crisis intervention center. The physician or psychologist who holds the person shall certify in writing the reasons for the need for holding. Any respondent so held may be given such treatment by a licensed physician as indicated by standard medical practice. Persons acting in good faith in connection with the detention of a person believed to be mentally ill shall incur no liability, civil or criminal, for those acts. MISS. CODE. ANN § 41-21-67(5)(Rev. 2009).

employment, except for wilful or malicious acts or acts of gross negligence. MISS. CODE ANN. § 41-21-105<sup>5</sup>. Section 41-21-105 immunizes good faith actions made during the commitment process and applies to wrongful commitment, unlawful detention and battery based on non-consensual treatment. *Carrington v. Methodist Medical Center, Inc.*, 740 So. 2d 827, 829 (Miss. 1999). It applies to negligence insofar as one might deviate from the appropriate standard of care in making the commitment decision, but does not immunize negligent care. *Id.* It is inherent that there is an absence of consent to treatment in the involuntary commitment process. *Id.* at 830.

As a result of the application of the aforementioned statutes, Dr. Cook is immune from liability for any claims resulting from alleged involuntary commitment, absent a showing that he acted in bad faith.

**B. Koestler Has Cited No Facts Supporting Allegations of Bad Faith on Behalf of Dr. Cook, He is Therefore Immune From Any Liability for Involuntary Commitment.**

Koestler argues that Dr. Cook was acting in bad faith so that the immunity provided in Mississippi Code Annotated section 41-21-67(5) could not be invoked because he failed to certify in writing the reasons for Koestler's confinement to the hospital and because he did not specify why he believed Koestler was not able to care for herself or that she was a danger to herself or others until she was discharged. Brief of Appellant, p. 9; MISS. CODE. ANN § 41-21-67(5). In addition, the

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<sup>5</sup> Miss. Code § 41-21-105 states: (1) All persons acting in good faith in connection with the preparation or execution of applications, affidavits, certificates or other documents; apprehension; findings; determinations; opinions of physicians and psychologists; transportation; examination; treatment; emergency treatment; detention or discharge of an individual, under the provisions of sections 41-21-61 to 41-21-107, shall incur no liability, civil or criminal, for such acts. (2) No civil suit of any kind whatsoever shall be brought or prosecuted against the board, any member thereof, any director or employee for acts committed within the scope of their employment, except for wilful or malicious acts or acts of gross negligence. MISS. CODE. ANN § 41-21-105 (Rev. 2009).

immunity provided in section 41-21-105 is invoked unless there is malice or acts of gross negligence. MISS. CODE. ANN § 41-21-105.

Koestler presents to the court in her appeal numerous medical records and documents to support this argument. Appellant's Brief, pp. 8, 9; Appellant's Record Excerpts, pp. 20 - 41. However, Koestler never presented these documents to the trial court and these documents are not a part of the record.<sup>6</sup> The Mississippi Rules of Appellate Procedure mandate that the arguments advanced by the parties in their briefs shall contain their contentions with respect to the issues presented and their reasons for those contentions, with citations to any authorities, statutes, and/or parts of the record on which they relied. M.R.A.P. 28(a)(6). Because Koestler has failed to include the documents she relies upon in the record, there is no evidentiary support for her argument and her assertion that Koestler did not present a risk of substantial harm to herself or others and that she was able to care for herself is no more than an unsubstantiated allegation. Unsubstantiated allegations do not create fact questions and are insufficient to defeat summary judgment. *Morton v. City of Shelby*, 984 So.2d 323, 332 (Miss.App. 2007).

Furthermore, Koestler has cited no facts to show that Dr. Cook's alleged failures in his documentation were evidence of bad faith or gross negligence. An issue on appeal not supported by the record and citation to legal authority will not be considered on appeal. *Blue v. State*, 825 So.2d 709, 712 (Miss.App. 2002); *Conley v. State*, 790 So.2d 773 (¶ ¶ 28-31) (Miss. 2001).

Bad faith requires a showing of more than bad judgment or negligence and implies conscious wrongdoing "because of dishonest purpose or moral obliquity." *Bailey v. Bailey*, 724 So.2d 335,

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<sup>6</sup> Dr. Cook has filed a Motion to Strike Pages 20 Through 41 of Appellant's Record Excerpts because these documents are not in the Record. The Supreme Court filed an Order on December 30, 2009, regarding said Motion, to pass for consideration with the merits of this appeal. Exhibits A and B.



338 (Miss.1998). "The breach of good faith is bad faith characterized by some conduct which violates standards of decency, fairness or reasonableness." *Cenac v. Murry*, 609 So.2d 1257, 1272 (Miss.1992). Koestler has failed to present any evidence of bad faith on Dr. Cook's part. She has made no claim that Dr. Cook acted with "dishonest purpose or moral obliquity," of any kind. Rather, she claims that Dr. Cook failed to timely document Koestler's condition. Brief of Appellant, p. 9. This is insufficient on its face to support a claim of bad faith. Koestler has cited no facts which would justify a finding of "bad faith" on the part of Dr. Cook, and a thorough review of the record discloses none. Absent such support in the record, there can be no bad faith. *Erickson v. Smith*, 909 So.2d 1173, 1183 (Miss.App. 2005); *Lippincott v. Mississippi Bureau Of Narcotics*, 856 So.2d 465, 468 (Miss.App. 2003).

Because there is no support in the record for bad faith, the application of sections 41-21-67(5) and 41-21-105 provides immunity for Dr. Cook. MISS. CODE. ANN §§ 41-21-67 (5), 41-21-105.

### CONCLUSION

A trial court's decision to grant summary judgment will not be reversed unless it appears that triable issues of fact remain when the facts are viewed in the light most favorable to the nonmoving party. *Moore v. Mem'l Hosp.*, 825 So.2d at 663. The Order Granting Defendants' Motions for Summary Judgment of the Circuit Court of Hinds County should be affirmed because:

- (1) A voluntary dismissal without prejudice precludes the tolling of the statute of limitations that is otherwise triggered when a complaint is filed; in addition, the savings statute cannot be invoked to extend the life of a claim that was voluntarily dismissed for lack of service of process; as a result, Koestler's Complaint filed on January 30, 2008, was filed after the one year statute of limitations for intentional

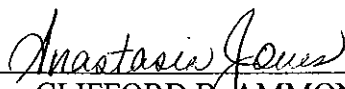
torts expired. *Marshall v. Kansas City Southern Railways Co.*, 7 So. 3d at 213, 215 (¶ 21).

- (2) The application of section 41-21-67(5) provides immunity from liability for any treatment Dr. Cook rendered during the first 72 hours of admission as long as he was acting in good faith. MISS. CODE ANN. § 41-21-67(5).
- (3) For any treatment beyond the first 72 hours, Dr. Cook is immune from any acts resulting from negligence in making the commitment decision by the application of section 41-21-105, since the alleged act for which liability is claimed was committed within the scope of employment, unless there is malice or gross negligence. MISS. CODE ANN. § 41-21-105; *Carrington v. Methodist Medical Center, Inc.*, 740 So. 2d at 829.
- (4) There is no evidence in the record that Dr. Cook acted in bad faith. Absent such support, there can be no bad faith. *Erickson v. Smith*, 909 So.2d at 1183; *Lippincott v. Mississippi Bureau Of Narcotics*, 856 So.2d at 468.

Respectfully submitted,

**WILLIAM S. COOK, JR., M.D., INDIVIDUALLY  
AND WILLIAM S. COOK, JR., M.D., P.A.**

BY: WATKINS & EAGER PLLC

BY:   
CLIFFORD B. AMMONS  
ANASTASIA JONES

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ATTORNEYS FOR WILLIAM S. COOK, JR., M.D.,  
INDIVIDUALLY AND WILLIAM S. COOK, JR., M.D., P.A.

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and correct copy of the foregoing instrument has been this day mailed by United States mail, postage prepaid to the following:

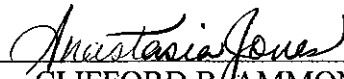
Marcie T. Southerland  
Branan P. Southerland  
Jennifer P. Fortner  
Southerland & Southerland, PLLC  
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Eugene R. Naylor, Esquire  
Wise Carter Child & Caraway  
401 East Capitol Street, Suite 600  
Post Office Box 651  
Jackson, MS 39205-0651

Honorable W. Swan Yerger  
Hinds County Circuit Court Judge  
Post Office Box 327  
Jackson, MS 39205

This the 22<sup>nd</sup> day of January, 2010.

  
\_\_\_\_\_  
CLIFFORD B. AMMONS  
ANASTASIA JONES

**COPY**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

THELMA R. KOESTLER

APPELLANT

VS.

CAUSE NO. 2009-CA-00603

MISSISSIPPI BAPTIST MEDICAL SYSTEMS, INC.,  
a/k/a Mississippi Baptist Medical Center a/k/a  
Baptist Medical Center  
MISSISSIPPI BAPTIST MEDICAL CENTER, INC.  
BAPTIST BEHAVIORAL HEALTH SERVICES  
WILLIAM S. COOK, JR., M.D., P.A.  
WILLIAM S. COOK, JR., M.D., INDIVIDUALLY and/or  
in his capacity as an employee of Mississippi Baptist Medical  
Systems, Inc., and/or in his capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in his capacity  
as Medical Director of Baptist Senior Behavioral Health Services;  
and/or in his capacity as a contractor with Mississippi Baptist  
Medical Systems, Inc., and/or in his capacity as a contractor with  
Mississippi Baptist Medical Center, Inc., and/or in his capacity as  
a contractor with Baptist Senior Behavioral Health Services  
KHARI A. OMOLARA, P.C.  
KHARI A. OMOLARA, M.D., INDIVIDUALLY and/or in his  
capacity as an employee of Mississippi Baptist Medical Systems, Inc.,  
And/or in his capacity as an employee of Mississippi Baptist Medical  
Center, Inc., and/or in his capacity as an employee of Baptist  
Behavioral Health Services; and/or in his capacity as a contractor of  
Mississippi Baptist Medical Systems, Inc., and/or in his capacity as a  
contractor with Mississippi Baptist Medical Center, Inc., and/or in his  
capacity as a contractor with Baptist Senior Behavioral Health Services  
AND JOHN DOES 1 THROUGH 10

**FILED**

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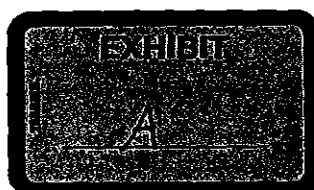
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SUPREME COURT  
COURT OF APPEALS

APPELLEES

Appeal From the Circuit Court of Hinds County, Mississippi

AMENDED MOTION TO STRIKE  
PAGES 20 THROUGH 41 OF  
APPELLANT'S RECORD EXCERPTS

COMES NOW THE APPELLEE, William S. Cook, Jr., M.D., individually and William S.  
Cook, Jr., M.D., P.A. (hereinafter "Dr. Cook") and files this his Amended Motion to Strike Pages



20 through 41 of Appellant's Record Excerpts and in support thereof would state unto the Court the following:

1. On November 25, 2009, Appellant filed Brief of Appellant and Appellant's Record Excerpts (attached hereto) in the Supreme Court of the State of Mississippi in the above-captioned matter arguing that summary judgment should not have been granted in favor of Dr. Cook and the other defendants.
2. Pages 20 through 41 of Appellant's Record Excerpts do not appear in the Record for this case and are not a part of the Record in the above-captioned matter. A document cannot be a record "excerpt" if it is not contained in the record itself. *Carlisle v. Carlisle*, 11 So. 3d 142, 146 n.1 (Miss. App. 2009).

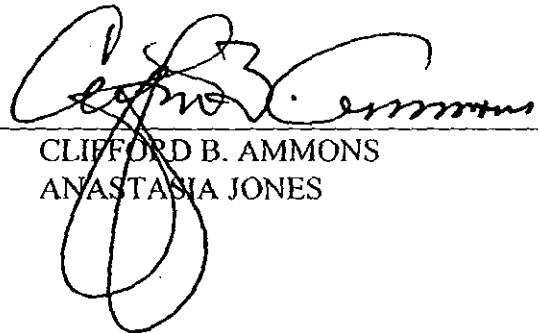
WHEREFORE, PREMISES CONSIDERED, Appellee, Dr. Cook, respectfully requests the Court to Grant this his Amended Motion to Strike Pages 20 through 41 of Appellant's Record Excerpts so that the basis of this appeal will be limited to that information which is in the Record.

Respectfully submitted,

**WILLIAM S. COOK, JR., M.D., INDIVIDUALLY  
AND WILLIAM S. COOK, JR., M.D., P.A.**

BY: WATKINS & EAGER PLLC

BY:

  
CLIFFORD B. AMMONS  
ANASTASIA JONES

**FILED**

NOV 25 2009

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**IN THE SUPREME COURT OF MISSISSIPPI**

**THELMA KOESTLER AND  
LEO C. (MICKEY) KOESTLER,  
DECEASED, BY AND THROUGH  
THELMA R. KOESTLER**

**APPELLANT**

**v.**

**NO. 2009-TS-00603**

**MISSISSIPPI BAPTIST MEDICAL SYSTEMS, INC., a/k/a  
Mississippi Baptist Medical Center a/k/a Baptist Medical Center;**

**MISSISSIPPI BAPTIST MEDICAL CENTER, INC.;**

**BAPTIST BEHAVIORAL HEALTH SERVICES;**

**WILLIAM S. COOK, JR., M.D., P.A.;**

**WILLIAM S. COOK, JR., M.D., INDIVIDUALLY and/or in his capacity as an employee  
of Mississippi Baptist Medical Systems, Inc., and/or in his capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in his capacity as Medical Director of  
Baptist Senior Behavioral Health Services;**

**KHARI A. OMOLARA, P.C.;**

**KHARI A. OMOLARA, M.D., INDIVIDUALLY and/or in his capacity as an employee of  
Mississippi Baptist Medical Systems, Inc., and/or in his capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in his capacity as an employee of Baptist  
Behavioral Health Services;**

**GRACE SCOTT, R.N., INDIVIDUALLY and/or in her capacity as an employee of  
Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist  
Behavioral Health Services;**

**TIFFANY PARKER, L.S.W., INDIVIDUALLY and/or in her capacity as an employee of  
Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist  
Behavioral Health Services;**

**BECKY IVEY, O.T., INDIVIDUALLY and/or in her capacity as an employee of  
Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist  
Behavioral Health Services;**

**S. INMAN, R.N., INDIVIDUALLY, and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;**

**STACEY ASHLEY, INDIVIDUALLY and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;**

**AND JOHN DOES 1 THROUGH 10**

**APPELLEES**

**APPELLANT'S RECORD EXCERPTS**

**APPEAL FROM THE CIRCUIT COURT OF  
HINDS COUNTY, MISSISSIPPI**

**COUNSEL FOR APPELLANT:**

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**1120 Jackson Street  
Vicksburg, Mississippi 39183  
Telephone: 601-636-1930  
Facsimile: 601-636-1563**

## INDEX

Original Complaint filed October 1, 2007.....	1
Notice of Dismissal Without Prejudice.....	17
Consent for Medical Treatment.....	20
Discharge Summary.....	21
Physician Orders.....	23
Assessment.....	24
Progress Notes.....	37
Psychiatric Evaluation/Consult.....	39
Physician Directions.....	41



IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

THELMA R. KOESTLER  
and LEO C. (MICKEY) KOESTLER,  
DECEASED, by and through  
THELMA R. KOESTLER

PLAINTIFFS

VS.

CAUSE NO. 21-07969C1V

MISSISSIPPI BAPTIST MEDICAL SYSTEMS, INC., a/k/a  
Mississippi Baptist Medical Center a/k/a Baptist Medical Center;

**FILED**

MISSISSIPPI BAPTIST MEDICAL CENTER, INC.;

OCT - 1 2007

BAPTIST BEHAVIORAL HEALTH SERVICES;

BARBARA DUNN, CIRCUIT CLERK

WILLIAM S. COOK, JR., M.D., P.A.;

BY \_\_\_\_\_ D.C.

WILLIAM S. COOK, JR., M.D., INDIVIDUALLY and/or in his capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in his capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in his capacity as Medical Director of Baptist Senior Behavioral Health Services;

KHARI A. OMOLARA, P.C.;

KHARI A. OMOLARA, M.D., INDIVIDUALLY and/or in his capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in his capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in his capacity as an employee of Baptist Behavioral Health Services;

GRACE SCOTT, R.N., INDIVIDUALLY and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;

TIFFANY PARKER, L.S.W., INDIVIDUALLY and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;

BECKY IVEY, O.T., INDIVIDUALLY and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of

Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;

S. INMAN, R.N., INDIVIDUALLY and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;

STACEY ASHLEY, INDIVIDUALLY and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;

**FILED**

AND JOHN DOES 1 THROUGH 10

OCT - 1 2007

DEFENDANTS

BARBARA DUNN, CIRCUIT CLERK

RY

D.C.

### COMPLAINT

COME NOW Plaintiffs, Thelma R. Koestler and Leo C. (Mickey) Koestler, Deceased, by and through Thelma R. Koestler, and file their Complaint against Mississippi Baptist Medical Systems, Inc., a/k/a Mississippi Baptist Medical Center a/k/a Baptist Medical Center; Mississippi Baptist Medical Center, Inc.; Baptist Behavioral Health Services; William S. Cook, Jr., M.D., P.A.; William S. Cook, Jr., M.D., Individually, and/or in his capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in his capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in his capacity as Medical Director of Baptist Senior Behavioral Health Services; Khari A. Omolara, P.C.; Khari A. Omolara, M.D., Individually, and/or in his capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in his capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in his capacity as an employee of Baptist Behavioral Health Services; Grace Scott, R.N., Individually, and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc. and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health

Services; Tiffany Parker, L.S.W., Individually, and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services; B. Ivey, O.T., Individually, and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services; S. Inman, R.N., Individually, and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services; Stacey Ashley, Individually, and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services and JOHN DOES 1 THROUGH 10 and in support thereof would show unto this Honorable Court the following, to-wit:

#### PARTIES

1. Plaintiff, Thelma R. Koestler ( hereinafter referred to as "Plaintiff") is an adult resident citizen of Hinds County, Mississippi.
2. Plaintiff, Leo C. (Mickey) Koestler (hereinafter referred to as "Mickey"), died on December 3, 2006, and is the late husband of Plaintiff, Thelma R. Koestler.
3. Defendant Mississippi Baptist Medical Systems, Inc., a/k/a Mississippi Baptist Medical Center, a/k/a Baptist Medical Center, (hereinafter referred to as "Baptist Hospital") is a hospital organized and existing pursuant to the laws of the State of Mississippi, with its principal place of business in Jackson, Mississippi. According to information received from the Secretary of State, the Defendant, Mississippi Baptist Medical Systems, Inc., a/k/a Mississippi Baptist Medical Center, a/k/a Baptist Medical Center, may be served with process of this Court upon its registered

agent for service, Gwinn Magee, at 1225 North State Street, Jackson, Mississippi, 39202.

4. Defendant Mississippi Baptist Medical Center, Inc., is a Mississippi Non-Profit Corporation organized and existing pursuant to the laws of the State of Mississippi, with its principal place of business in Jackson, Mississippi. According to information received from the Secretary of State, the Defendant, Mississippi Baptist Medical Center, Inc., may be served with process of this Court upon its registered agent for service, William B. Grete, at 1225 North State Street, Jackson, Mississippi, 39202.

5. Defendant Baptist Behavioral Health Services, upon information and belief is an entity of Mississippi Baptist Medical Systems, Inc., a/k/a Mississippi Baptist Medical Center, a/k/a Baptist Medical Center, organized and existing pursuant to the laws of the State of Mississippi, with its principal place of business in Jackson, Mississippi and may be served with process of this Court upon its registered agent for service, Gwinn Magee, at 1225 North State Street, Jackson, Mississippi, 39202.

6. Defendant William S. Cook, Jr., M.D., P.A., is a Mississippi Corporation organized and existing pursuant to the laws of the State of Mississippi, with its principal place of business in Jackson, Mississippi. According to information received from the Secretary of State, the Defendant, William S. Cook, Jr., M.D., P.A., may be served with process of this Court upon its registered agent for service, William S. Cook, Jr., M.D., at 2906 North State Street, Suite 300, Jackson, Mississippi, 39216.

7. Defendant William S. Cook, Jr., M.D., is an adult resident citizen of the State of Mississippi and may be served with process of this Court at 2906 North State Street, Suite 300, Jackson, Mississippi, 39216.

8. Defendant Khari A. Omolara, P.C., is a Mississippi Corporation organized and

existing pursuant to the laws of the State of Mississippi, with its principal place of business in Jackson, Mississippi. According to information received from the Secretary of State, the Defendant, Khari A. Omolara, P.C., may be served with process of this Court upon its registered agent for service, Khari A. Omolara, at 6237 Tanglewood Drive, Jackson, Mississippi, 39213.

9. Defendant Khari A. Omolara, M.D., is an adult resident citizen of the State of Mississippi and may be served with process of this Court at 6237 Tanglewood Drive, Jackson, Mississippi, 39213, or at his usual place of business at 2906 North State Street, Jackson, Mississippi.

10. Defendant Grace Scott, R.N., is an adult resident citizen of the State of Mississippi and may be served with process of this Court at 1225 North State Street, Jackson, Mississippi, 39202.

11. Defendant, Tiffany Parker, L.S.W., is an adult resident citizen of the State of Mississippi and may be served with process of this Court at 1225 North State Street, Jackson, Mississippi, 39202.

12. Defendant, Becky Ivey, O.T., is an adult resident citizen of the State of Mississippi and may be served with process of this Court at 1225 North State Street, Jackson, Mississippi, 39202.

13. Defendant, S. Inman, R.N., is an adult resident citizen of the State of Mississippi and may be served with process of this Court at 1225 North State Street, Jackson, Mississippi, 39202.

14. Defendant, Stacey Ashley, is an adult resident citizen of the State of Mississippi and may be served with process of this Court at 1225 North State Street, Jackson, Mississippi, 39202.

15. Defendants, John Does One through Ten are unknown as of the date of filing this action but may be determined during the course of discovery and at such time will be named and served with process of this Court.

16. Hereinafter, the above named Defendants [their managing agents, and the individual Defendants], will be collectively referred to as the Defendants.

17. Plaintiffs plead respondeat superior.

### JURISDICTION AND VENUE

18. This Court has personal jurisdiction of the parties as all parties are residents of the State of Mississippi.

19. This Court has subject matter jurisdiction over this cause pursuant to the terms of Mississippi Code Annotated 9-9-21.

20. Venue is proper in the Circuit Court of Hinds County, Mississippi, First Judicial District, pursuant to the terms of Mississippi Code Annotated 11-11-3, as the causes of action being sued upon occurred in Hinds County, Mississippi, First Judicial District.

### COUNT ONE

#### FALSE IMPRISONMENT

21. Plaintiffs repeat and re-allege all of the above paragraphs and all subsequent paragraphs as if each were set forth herein verbatim.

22. At the relevant times herein, the Defendants, acting individually and/or through their agents, servants and/or employees and/or employers unlawfully detained Plaintiff, Thelma R. Koestler in the Baptist Hospital.

23. On October 2, 2006, Plaintiff Thelma R. Koestler, with the urging of two of her five children, Carl and Beth Koestler, agreed to go to Baptist Hospital for some rest. Plaintiff was suffering from mild depression caused by the imminent death of her husband of over 50 years, Leo C. (Mickey) Koestler.

24. On October 2, 2006, Plaintiff was admitted to the Baptist Behavioral Health Services Geropsychiatric Unit at Baptist Hospital.

25. Although Plaintiff initially signed an Authorization to Release Information and Consent for Medical Treatment, all remaining paperwork required for admission and treatment was completed without the Plaintiff's authorization by Carl Koestler, Plaintiff's son, including but not limited to, the Consent for the Release of Confidential Information, the Visitation and Telephone Consent, the Consent for the Use of Psychotropic Medications, and the Certification of Receipt of Patient's Bill of Rights.

26. Plaintiff retracted any and all consent for admission and for her treatment on the date of admission (October 2, 2006) when she advised Becky Ivey, the occupational therapist that "I didn't need to come here and my goal is to get the hell out of here!" The Plaintiff was unlawfully admitted and unlawfully detained by the Defendants and as a result of said actions, the Plaintiff was falsely imprisoned in the Baptist Hospital.

27. Pursuant to the Visitation and Telephone Consent form completed by Carl Koestler, Plaintiff's son, and the progress notes of Tiffany Parker, LSW, the Plaintiff was authorized to receive phone calls and visits from only two people, Carl and Beth Koestler. The Plaintiff was also denied the right to make outgoing telephone calls, including but not limited to, her attorney. The restrictions placed on the Plaintiff were initiated by Carl Koestler on or about October 2, 2006 and continued until October 17, 2006 (subsequent to her commitment hearing on October 16, 2006).

28. The Plaintiff's right to correspond freely without censorship and without restrictions pursuant to the Patient's Bill of Rights and under the laws of the State of Mississippi were violated entirely without cause whatsoever by the Defendants and as a result of said actions, the Plaintiff was falsely imprisoned in the Baptist Hospital.

29. On October 10, 2006, Plaintiff requested to leave the hospital AMA to Nurse Inman and Tiffany Parker as reflected in the Plaintiff's progress notes. The Plaintiff was denied her request to leave the hospital AMA. Defendants' detention of the Plaintiff after her specific request to leave the hospital AMA on October 10, 2006, was unlawful and constitutes false imprisonment.

30. Subsequent to Plaintiff's request to leave the hospital on October 10, 2006, Tiffany Parker, LSW, contacted two of the Plaintiff's children, Carl and Beth Koestler, and advised that their mother was asking to leave the hospital AMA. Tiffany Parker further advised the children that the hospital needed them to "file the paperwork so that she could be informed."

31. The Plaintiff was detained against her will and in violation of The Patient's Bill of Rights and in violation of the laws of the State of Mississippi. The Defendants' efforts to further Plaintiff's unlawful detention constitutes false imprisonment.

32. The Defendants' failure to follow Mississippi Code Annotated Section 41-21-103 constitutes unlawful admission of the Plaintiff to the defendant hospital and said actions coupled with her detention resulted in the false imprisonment of the Plaintiff.

33. All of the above-referenced acts and/or omissions and/or commissions are in violation of the common law and statutes of the State of Mississippi.

34. Each of the aforescribed acts and/or omissions and/or commissions of the Defendants singularly and/or in combination with others constitutes a False Imprisonment of the Plaintiff which proximately caused injury to Plaintiff.

35. As a direct and proximate result of the aforementioned acts of False Imprisonment, Plaintiff has undergone great shock and suffering, great physical and emotional pain and mental anguish, unwanted and unnecessary medical costs, unnecessary living expenses, past, present, and



future emotional pain and suffering, past, present, and future medical costs, property loss, attorney fees and costs.

36. Plaintiff seeks actual damages in an amount deemed proper and just by this Honorable Court and Jury.

37. Plaintiff seeks punitive damages in an amount sufficient to deter such unconscionable conduct in the future.

## COUNT TWO

### ASSAULT

38. The Plaintiffs repeat and re-allege all of the above paragraphs and all subsequent paragraphs as if each were set forth herein verbatim.

39. At the relevant times herein, the Defendants, acting individually and/or through their agents, servants and/or their employees and/or employers committed acts against and/or toward Plaintiff, Thelma R. Koestler, intending to cause a harmful or offensive contact with Plaintiff, or an imminent apprehension of such contact, and Plaintiff was put in such imminent apprehension by the following actions of the Defendants.

40. The Plaintiff was admitted to the Baptist Hospital on October 2, 2006. The Plaintiff did not voluntarily consent to treatment by the Defendants and all treatment of and towards the Plaintiff was intentional and without informed consent. Such treatment by the Defendants was offensive and caused the Plaintiff imminent apprehension which was the proximate cause of numerous ongoing assaults upon the Plaintiff.

41. All of the above-referenced acts and/or omissions and/or commissions are in violation of the common law and statutes of the State of Mississippi.

42. Each of the aforescribed acts and/or omissions and/or commissions of the Defendants singularly and/or in combination with others constitutes assaults upon the Plaintiff which proximately caused injury to Plaintiff.

43. As a direct and proximate result of the aforementioned Intentional Assaults, Plaintiff has undergone great shock and suffering, great physical and emotional pain and anguish, unwanted and unnecessary medical costs and living expenses, past, present, and future emotional pain and suffering, past, present, and future medical costs, property loss, attorney fees and costs.

44. Plaintiff seeks actual damages in an amount deemed proper and just by this Honorable Court and Jury.

45. Plaintiff seeks punitive damages in an amount sufficient to deter such unconscionable conduct.

### COUNT THREE

#### BATTERY

46. The Plaintiffs repeat and re-allege all of the above paragraphs and all subsequent paragraphs as if each were set forth herein verbatim.

47. At the relevant times herein, the Defendants, acting individually and/or through their agents, servants and/or their employees and/or employers subjected the Plaintiff, Thelma R. Koestler, to medical treatment without her informed consent. The Defendants' medical treatment of and towards the Plaintiff without her informed consent, no matter how slight or well-intentioned, constituted ongoing and numerous batteries on the Plaintiff.

48. The Defendants failed to inform the Plaintiff of the nature and character of the planned course of treatment. The Defendants' failure to inform the Plaintiff of the nature, means, and likely consequences of the particular treatment plan (commitment to State Hospital) resulted in

"unconsented to" medical treatment without informed consent and said actions of the Defendants constitute batteries upon the Plaintiff.

49. All of the above-referenced acts and/or omissions and/or commissions are in violation of the common law and statutes of the State of Mississippi.

50. Each of the aforedescribed acts and/or omissions and/or commissions of the Defendants singularly and/or in combination with others constitutes Intentional Batteries upon the Plaintiff which proximately caused injury to Plaintiff.

51. As a direct and proximate result of the aforementioned Intentional Batteries, Plaintiff has undergone great shock and suffering, great physical and emotional pain and mental anguish, unwanted and unnecessary medical costs and living expenses, past, present, and future emotional pain and suffering, past, present, and future medical costs, property loss, attorney fees and costs.

52. Plaintiff seeks actual damages in an amount deemed proper and just by this Honorable Court and Jury.

53. Plaintiff seeks punitive damages in an amount sufficient to deter such unconscionable conduct in the future.

#### COUNT FOUR

#### INVASION OF PRIVACY

54. The Plaintiffs repeat and re-allege all of the above paragraphs and all subsequent paragraphs as if each were set forth herein verbatim.

55. At the relevant times herein, the Defendants, acting individually and/or through their agents, servants and/or their employees and/or employers denied the Plaintiff, Thelma R. Koestler, the most comprehensive right and the right most valued by Man: The Right To Privacy.

56. The Defendants expressly violated the Plaintiff's right to privacy when they failed to follow Mississippi Code Annotated Section 41-21-103 and unlawfully admitted the Plaintiff to Baptist Hospital.

57. The Defendants expressly violated the Plaintiff's right to privacy when they failed to discharge her from the hospital upon her numerous requests to leave Baptist Hospital AMA. The Defendants further violated the Plaintiff's right to privacy in the following ways:

- a. Failure to inform the Plaintiff of the planned course of treatment and discharge plan (State Hospital Commitment);
- b. Failure to properly admit Plaintiff into the hospital;
- c. Failure to obtain the Plaintiff's consent to treatment;
- d. Failure to provide Plaintiff with a copy of the Patient's Bill of Rights
- e. Failure to adhere to the Patient's Bill of Rights regarding visitation and telephone contact;
- f. The false imprisonment of the Plaintiff;
- g. The Defendants' discussion of and publishing of the Plaintiff's medical information to a third party (Carl and Beth Koestler's attorney) without her consent; and,
- h. Failure to provide Plaintiff access to an attorney.

58. All of the aforescribed actions of the Defendants constitute the deprivation of the Plaintiff's Right To Privacy guaranteed by the Constitution of the State of Mississippi.

59. All of the above-referenced acts and/or omissions and/or commissions are in violation of the common law and statutes of the State of Mississippi.

60. Each of the aforescribed acts and/or omissions and/or commissions of the Defendants singularly and/or in combination with others constitutes the deprivation of the Plaintiff's Right To Privacy which proximately caused injury to Plaintiff.

61. As a direct and proximate result of the aforementioned Invasion of Privacy, Plaintiff has undergone great shock and suffering, great physical and emotional pain and anguish, unwanted and unnecessary medical costs and living expenses, past, present, and future emotional pain and suffering, past, present, and future medical costs, property loss, attorney fees and costs.

62. Plaintiff seeks actual damages in an amount deemed proper and just by this Honorable Court and the Jury.

63. Plaintiff seeks punitive damages in an amount sufficient to deter such unconscionable conduct in the future.

#### COUNT FIVE

#### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

64. The Plaintiffs repeat and re-allege all of the above paragraphs and all subsequent paragraphs as if each were set forth herein verbatim.

65. At the relevant times herein, the Defendants' extreme, outrageous, reckless, and gross careless actions, acting individually and/or through their agents, servants and/or their employees and/or employers caused the Intentional Infliction of Emotional Distress to the Plaintiff, Thelma R. Koestler, as follows.

- a. Defendants' express violation of the Plaintiff's right to privacy when said Defendants failed to inform Plaintiff of the planned course of treatment and her discharge plan (State Hospital Commitment);
- b. Defendants' failure to obtain Plaintiff's full and proper consent to admission

to the hospital;

- c. Defendants' failure to obtain Plaintiff's consent to treatment;
- d. Defendants' failure to provide Plaintiff with a copy of Patient's Bill of Rights;
- e. Defendants' failure to adhere to the Patient's Bill of Rights regarding visitation and telephone contact;
- f. The false imprisonment of the Plaintiff;
- g. The Defendants' discussion of and publishing of the Plaintiff's medical information to a third party without her consent; and
- h. Defendants' failure to provide Plaintiff access to an attorney.

66. All of such aforedescribed acts/actions of the Defendants toward the Plaintiff constitute the Intentional Infliction of Emotional Distress.

67. All of the above-referenced acts and/or omissions and/or commissions are in violation of the common law and statutes of the State of Mississippi.

68. Each of the aforedescribed acts and/or omissions and/or commissions of the Defendants singularly or in combination with others constitutes the Intentional Infliction of Emotional Distress which proximately caused injury to Plaintiff.

69. As a direct and proximate result of the aforementioned Intentional Infliction of Emotional Distress, Plaintiff has undergone great shock and suffering, great physical and emotional pain and anguish, unwanted and unnecessary medical costs and living expenses, past, present, and future emotional pain and suffering, past, present, and future medical costs, property loss, attorney fees and costs.

70. Plaintiff seeks actual damages in an amount deemed proper and just by this Honorable

Court and the Jury.

71. Plaintiff seeks an award of punitive damages in an amount sufficient to deter such unconscionable conduct in the future.

### COUNT SIX

#### LOSS OF CONSORTIUM

72. The Plaintiffs, repeat and re-allege all of the above paragraphs and all subsequent paragraphs as if each were set forth herein verbatim.

73. At the relevant times herein, the Defendants acts/acting individually and/or through their agents, servants and/or their employees and/or employers caused the Loss of Consortium of the Plaintiff, Thelma R. Koestler and Plaintiff, Leo C. (Mickey) Koestler as follows.

74. As a result of the aforescribed intentional and wrongful acts of the Defendants, the Plaintiff, Thelma R. Koestler, was denied the companionship, comfort, and society of Leo C. (Mickey) Koestler, her husband of fifty plus years. The Plaintiff, Thelma R. Koestler, has suffered wounded feelings, grief, sorrow, and mental anguish.

75. As a result of the aforescribed intentional and wrongful acts of the Defendants against Thelma R. Koestler, Plaintiff, Leo C. (Mickey) Koestler, who is now deceased, was denied the companionship, comfort, and society of Thelma R. Koestler, his wife of 50 plus years. The Plaintiff, Leo C. (Mickey) Koestler, suffered wounded feelings, grief, sorrow, and mental anguish.

76. All of the acts as set forth above constitute the Plaintiffs suffering a Loss of Consortium.

77. Plaintiffs are entitled to compensation for their loss due to the intentional unlawful conduct of the Defendants as outlined above and set forth herein.

78. The above acts were done with conscious and willful indifference to Plaintiffs' safety and well-being, and as such, the Plaintiffs seek recovery of actual damages in an amount deemed just by this Court and the Jury.

79. Plaintiffs seek actual damages in an amount deemed proper and just by this Honorable Court and the Jury.

80. Plaintiffs seek an award of punitive damages in an amount sufficient to deter such unconscionable and irresponsible conduct in the future.

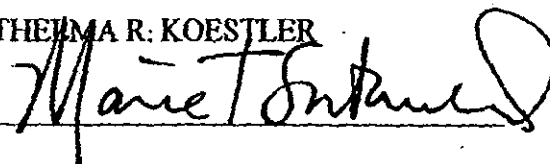
81. Plaintiffs demand Jury Trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request Judgement against the Defendants jointly and/or severally for actual and/or punitive damages incurred as alleged herein above in an amount to be determined by a Jury, for attorney fees and the costs of this action, and for such other and further relief as this Honorable Court and Jury may deem just and proper.

RESPECTFULLY SUBMITTED,

THELMA R. KOESTLER

BY:



SOUTHERLAND & SOUTHERLAND, PLLC

Marcie T. Southerland, MSB# [REDACTED]  
Branan P. Southerland, MSB# [REDACTED]  
Lisa Counts, MSB#99377  
Jennifer P. Fortner, MSB#99840  
1120 Jackson Street  
Vicksburg, MS 39183  
Ph. 601-636-1930  
Fax 601-636-1563



**IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

**THELMA R. KOESTLER  
and LEO C. (MICKEY) KOESTLER,  
DECEASED, by and through  
THELMA R. KOESTLER**

**PLAINTIFFS**

**VS.**

**CAUSE NO. 251-07-969CIV**

**MISSISSIPPI BAPTIST MEDICAL SYSTEMS, INC., a/k/a  
Mississippi Baptist Medical Center a/k/a Baptist Medical Center;**

**MISSISSIPPI BAPTIST MEDICAL CENTER, INC.;**

**BAPTIST BEHAVIORAL HEALTH SERVICES;**

**WILLIAM S. COOK, JR., M.D., P.A.;**

**WILLIAM S. COOK, JR., M.D., INDIVIDUALLY and/or in his capacity as an employee  
of Mississippi Baptist Medical Systems, Inc., and/or in his capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in his capacity as Medical Director of  
Baptist Senior Behavioral Health Services;**

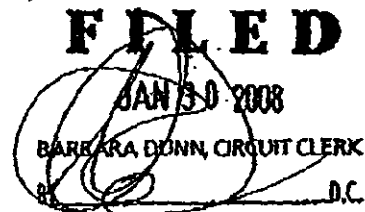
**KHARI A. OMOLARA, P.C.;**

**KHARI A. OMOLARA, M.D., INDIVIDUALLY and/or in his capacity as an employee of  
Mississippi Baptist Medical Systems, Inc., and/or in his capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in his capacity as an employee of Baptist  
Behavioral Health Services;**

**GRACE SCOTT, R.N., INDIVIDUALLY and/or in her capacity as an employee of  
Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist  
Behavioral Health Services;**

**TIFFANY PARKER, L.S.W., INDIVIDUALLY and/or in her capacity as an employee of  
Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of  
Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist  
Behavioral Health Services;**

**BECKY IVEY, O.T., INDIVIDUALLY and/or in her capacity as an employee of  
Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of**



Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;

S. INMAN, R.N., INDIVIDUALLY and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;

STACEY ASHLEY, INDIVIDUALLY and/or in her capacity as an employee of Mississippi Baptist Medical Systems, Inc., and/or in her capacity as an employee of Mississippi Baptist Medical Center, Inc., and/or in her capacity as an employee of Baptist Behavioral Health Services;

AND JOHN DOES 1 THROUGH 10

DEFENDANTS

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Ms. Rule Civil Procedure Rule 41(a)(1)(I), the Plaintiffs, by and through the undersigned counsel, hereby dismiss their complaint filed against the above named defendants without prejudice..

In support thereof, the Plaintiffs affirmatively state that, as of the date of filing this Notice of Dismissal, no answer or summary judgment motion has been filed by the defendants, and all court cost have been paid.

The Plaintiffs further state that no dismissal of this Complaint has been made previously.

WHEREFORE, the Plaintiffs file their Notice of Dismissal pursuant to Ms. Rule Civil Procedure Rule 41(a)(1)(I).

This the 30 day of January, 2008.

Respectfully submitted,

Thelma R. Koestler and Leo C. (Mickey)  
Koestler, Deceased, by and through Thelma R.  
Koestler

BY: 

Marcie T. Southerland, MSB#10360

Branan P. Southerland, MSB#101758

Jennifer P. Fortner, MSB#99840

OF COUNSEL:

SOUTHERLAND & SOUTHERLAND, PLLC

1120 Jackson Street  
Vicksburg, MS 39183  
Ph. 601-636-1930  
Fax 601-636-1563

**BAPTIST MEDICAL CENTER**

KOESTLER, THELMA R



Acct#: 06-27500734 MRN: 0-00-64-52-85  
5024-A 70Y F DOB: 02/20/36  
12800 I 20 FRONTAGE RD 427-68-4084  
EDWARDS, MS 39066  
OMOLARA, KHARI A 10/02/06

**AUTHORIZATION TO RELEASE INFORMATION AND CONSENT FOR MEDICAL TREATMENT**

Initials

I hereby authorize Mississippi Baptist Medical Center to release the data pertinent to this hospitalization for insurance, hospital management, or other legal purposes, and certify that the information furnished for this admission is true and complete. This release also applies to attending and consulting physicians.

I hereby authorize and request Mississippi Baptist Medical Center to carry out such orders and treatment as are deemed necessary by my attending physician(s) and/or their assistants or designee(s). I recognize that, during the course of treatment, unforeseen conditions may necessitate certain diagnostic procedures and treatment requiring anesthetics and operations which may be deemed advisable by physicians serving on the Medical Staff of Mississippi Baptist Medical Center. I hereby grant authority to Mississippi Baptist Medical Center physicians/employees to administer and perform all and singular any examinations, treatments, anesthetics, operations, and diagnostic procedures which may now, or during the course of my care, be deemed advisable and/or necessary. I am aware that the practice of medicine is not an exact science and acknowledge that no guarantees have been made to me concerning the result of my treatment.

**ASSIGNMENT OF INSURANCE BENEFITS, PRE-CERTIFICATION AND FINANCIAL AGREEMENT**

Initials

I hereby assign payment of hospital benefits directly to Mississippi Baptist Medical Center, herein specified and otherwise payable to me. This assignment also applies to attending and consulting physicians. I understand I am financially responsible for charges not covered by this assignment. This assignment covers all insurance claims, including Medigap, filed by the hospital and physician for this admission.

**PRE-CERTIFICATION:** It is my responsibility to contact my insurance company concerning Per-Certification ensuring maximum benefits available. Mississippi Baptist Medical Center will not be held responsible for penalty.

For and in consideration of hospital services rendered, or to be rendered, to the below named patient, the undersigned hereby jointly and severally agree (if more than one signing party) to pay as and when due the reasonable charges of Mississippi Baptist Medical Center for the hospitalization, care and treatment furnished or to be furnished to the undersigned. It is understood that such non-covered charges, above those covered by third party payers (i.e. Blue Cross, Medicare), are due and payable weekly and in full upon discharge of patient.

**STATEMENT TO PERMIT PAYMENT OF MEDICARE BENEFITS TO PROVIDER, PHYSICIAN AND PATIENT**

Initials

Beneficiary \_\_\_\_\_

HIC Number \_\_\_\_\_

I request that payment of authorized Medicare benefits may be made either to me or on my behalf for any services furnished me by or in Mississippi Baptist Medical Center, including physician services. I authorize any holder of medical or other information about me to release to the Health Care Financing Administration and its agents any information needed to determine these benefits or benefits for related services.

Medicare Dates of Qualifying Stay \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ To \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year Month Day Year

Name of Facility \_\_\_\_\_

**SIGNATURES:****DATE:** 10/02/2006

Patient (closest relative or legal guardian)

Guarantor: (person other than patient, closest relative or legal guardian)

Witness



CONSTR

MISSISSIPPI BAPTIST MEDICAL CENTER  
1225 North State St.  
Jackson, MS 39202

Discharge Summary Transcribed

KOESTLER, THELMA R  
Pt. No. 0627500734  
MR No. 000645285  
Location 5A 5024 A

SS#: 427-68-4084 DOB: 02/20/1936  
ADMISSION DATE: 10/02/2006  
DISCHARGE DATE: 10/24/2006

PATIENT NAME: Thelma Koestler.

ADMISSION DIAGNOSTIC IMPRESSION (DSM-IV): Axis I: Major depressive disorder, single episode, severe, with psychotic features (296.24). Rule out cognitive disorder, NOS.

Axis II: Deferred.

Axis III: Arthritis, diverticulosis.

Axis IV: Severe.

Axis V: Global assessment of functioning: On admission 21; highest in the past year estimated at 60.

DISCHARGE DIAGNOSTIC IMPRESSION (DSM-IV): Axis I: Major depressive disorder, single episode, severe, with psychotic features (296.24), cognitive disorder, NOS (294.9).

Axis II: Severe borderline personality disorder.

Axis III: Arthritis, diverticulosis.

Axis IV: Catastrophic.

Axis V: Global assessment of functioning on discharge is 40; highest in the past year estimated at 60.

COURSE IN THE HOSPITAL: The patient is a 70-year-old white female referred for inpatient treatment due to the failure of outpatient treatment. The patient had become more depressed and had been poorly compliant with her medications. The patient had become delusional and was expressing passive wishes to die. Her husband has terminal cancer. Apparently, the patient had adjusted many of her husband's medications without physician approval. This had resulted in her husband's condition actually getting worse. During the course of treatment, it was quite obvious that the patient has severe borderline personality disorder. The patient had quick mood swings going from severe rage to extreme calm. The patient was court ordered for treatment at the Mississippi State Hospital. The patient continued treatment here at the Baptist Hospital until a bed was available at the Mississippi State Hospital. The patient underwent CT scan of the brain without contrast on 10/03/06 and was essentially negative. The patient responded fairly well to Lamictal for mood stabilization and Zoloft as an anti-depressant. At the time of discharge, the patient is very depressed and fearful, especially over her husband's illness. She exhibits severe characterological pathology consistent with borderline personality disorder. This has not improved with treatment.

DISCHARGE MEDICATIONS: Lamictal 100 mg p.o. a.m., Zoloft 150 mg p.o. a.m., Benefiber 2 tablespoons in 8 ounces of water q.a.m., Loper 40 mg p.o. h.s., GlycoLax 1 cap in 8 ounces of water at h.s., Phillips gel tabs 4 p.o. at h.s., Relafen 500 mg p.o. 2

daily, Ultram 50 mg p.o. q.6 hours p.r.n. pain, Levoxyl 0.1 mg  
p.o. daily, Trazodone 50 mg p.o. h.s. p.r.n. insomnia,  
multi-vitamin 1 tablet daily.

---

William S Cook Jr, M.D.

DD: 10/24/2006 08:17:31

DT: 10/24/2006 08:54:36

Job#: 121286

Doc#: 260829842

CC: William S Cook Jr, M.D.

WILLIAM S COOK, MD

Authenticated by Dr. William S. Cook, Jr. On 10/26/06 9:43:58 AM

## BAPTIST MEDICAL CENTER

KOESTLER, THELMA R

OMOLARA, KHARIA

427-68-4084

0627500734 10/02/06 02/20/36

F 70Y  
0-00-64-52-85GERIATRIC PSYCHIATRIC UNIT  
PHYSICIAN ORDERS

Drug Allergies	Type of Reaction
Morphine	
Bp - 168/100 P 68 R 20 T 97.8	
Hr 58 Wt 238.6 Sat - 98% Admit to Senior Care and to Dr. KHaria Omolara	
Diagnosis depressive disorder	
Diet Reg	
Vital Signs BID	
Consult Dr. Robert Saulters for medical consultation	
Consult Dr. for history and physical	
Dietary Consult	
Weekly Weights 9 Monday	
Nursing Admission Assessment	
Psychosocial Assessment <del>OT</del>	
Activity Assessment PT	
Group Therapies OT	
LAB: UA CBC, Comp TSH, RPR B12, Folate ESR	
CXR: CT scan of Head	
Medications: MOM 30cc PO PRN every day for constipation 2 step Taskintest	
Tylenol two tablets PO every 4 hours PRN pain or temp > 101	
Ativan .5 to 1 mg PO every 4 hours PRN anxiety	



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Form Date: Unknown

Rev Date: 07/2001

BAPTIST MEDICAL CENTER

KOESTLER, THELMA R

OMOLARA, KHARI A

427-68-4084

0627500734 10/02/06 02/20/36



F 70Y

0-00-64-52-85

Interdisciplinary Assessment  
Geriatric Psychiatric Unit

Date: <u>10/2/06</u> Time: <u>1755</u>		Arrival: Stretcher <u>Wheelchair</u> Ambulatory	
Admitted From: Home Hospital <u>Doctors Office</u> Nursing Home Other Health Care Facility		Physician Notified: <u>Yes</u> No If Yes: Time: <u>1700</u> Date: <u>10/2/06</u> <u>Dr. Orndale</u> <u>10/3/06 @ 0850 Dr. Scullers</u>	
Orientation: <u>ID bracelet on</u> <u>Meal Times</u> <u>Visiting hours</u> <u>Call Assistance</u> <u>Room/Unit</u> Valuables list completed		Information Provided by: Spouse Family Member <u>Patient</u> Friend Unable to take history (PT unable to provide and no family or friend present)	
Patient/Family History: (Check only if data pertinent)		Valuables: Money <u>Amount</u> Jewelry Disposition: Home Safe Neither	
PT	Family	PT	Family
	<input checked="" type="checkbox"/> Diabetes		<input type="checkbox"/> Kidney Disease
	<input type="checkbox"/> Glaucoma		<input type="checkbox"/> Lung Disease
	<input checked="" type="checkbox"/> Heart Disease		<input type="checkbox"/> Seizures
	<input type="checkbox"/> Liver		<input type="checkbox"/> TB
	<input checked="" type="checkbox"/> Hypertension	<input checked="" type="checkbox"/>	<input type="checkbox"/> Arthritis
	<input type="checkbox"/> Neurological		<input type="checkbox"/> Cancer
<input checked="" type="checkbox"/>	<input type="checkbox"/> Thyroid	<input checked="" type="checkbox"/>	<input type="checkbox"/> Stomach
Assistive Devices: <u>Glasses</u> Contacts L-eye Implant R-eye Implant Walker Cane Hearing Aids: R-ear L-Ear Both Dentures: Upper Lower Both Prosthesis: Yes <u>No</u>		Patient's Legal Status: <u>Voluntary</u> Involuntary	
Allergies: Drugs Foods Other List: <u>morphine</u>			
Medications brought from Home: Yes No		Disposition: Sent Home Sent to Pharmacy	
Current Medications: 1. <u>Synthroid (Levothyron) 0.1mg po daily</u> 2. <u>Ultram 50mg po q 6 hr prn (pain)</u> 3. <u>Kelafen 500mg po 2 daily</u> 4. <u>Valium (4) @ HS (Phillips q 1 tabs)</u> 5. <u>Glycolax 1 cap in 8oz H2O q 12 hrs</u> <u>Zocor 40mg once daily @ HS</u>		Dose/Frequency: 1. <u>Wellbutrin 100mg po q day</u> 2. _____ 3. _____ 4. _____ 5. _____	
NURSING ASSESSMENT			
Admission Physical Data: <u>02 Sat 97-99%O</u>			
Temperature: <u>96.7</u>		<u>Oral</u> Rectal Axil	
Blood Pressure: <u>168/100</u> <u>man 166/98</u>		<u>RA</u> LA <u>Lying</u> Standing Sitting	
Pulse: <u>72</u>		<u>RB</u> LB RR LR	
Height: <u>5'8"</u>		Actual Stated	
Weight: <u>231.6</u>		Actual Stated	
Neurological: <u>Denies Problem</u> Blackouts Seizures Tremors Numbness Tingling Loss of consciousness Comments: _____			



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PAGE 1 OF 14

FORM DATE: UNKNOWN

Revised: 5/05



## NURSING ASSESSMENT CONTINUED:

*buzzing sounds humming High pitched*

Ears:	Denies Problem	<input type="checkbox"/> Infection:	R	L	Ear Ache:	R	L	Tinnitus:	R	L
Nose/Throat:	Denies Problems	Nose Bleeds	Sinusitis	Hay Fever	Sore Throats					
Eyes:	Denies Problems	Clear	Reddened	Yellow	Drainage	Burning	Blurred			
Pupils:	Equal	Unequal								
Pupil Sizes:										
Rt	3 mm	Reactive	Non-reactive	Dilated	Constricted	Sluggish				
Li	3 mm	Reactive	Non-reactive	Dilated	Constricted	Sluggish				

## Pupillary Gauge:



Pupillary gauge

Sleep/Comfort/Rest Pattern: Normal hours of sleep: 8 Naps: Yes No Restful

Insomnia Difficulty going to sleep Difficulty staying awake Awakens frequently Apnea

Early morning awakening Nightmares Night Sweats Recent change in sleeping habits

Sleep Aids Used: Tranxene

Pain: Yes No Dull Sharp Constant Intermittent

Location: Knee (arthritis)

Medications Used to Control Pain: Yes No

If yes, list: Ultram prn

## Nutrition/Metabolic Pattern:

*low calorie*

Diet: Regular Vegetarian Soft/Mech Pureed ADA Renal NA Restricted

Other:

Meals per day: 2 Snacks: Yes No Recent weight loss: Yes No

Recent Weight Gain: Yes No If yes: 15 lbs Binge Eating: Yes No

Induced Vomiting: Yes No Obese Well-nourished Emaciated

Tube Feeding: No Yes If yes, type: Amount:

Difficulty in Swallowing: Yes No

Taste: WNI Diminished

Oral Mucosa: Moist Dry Lesions Cracked Halitosis Poor Oral Hygiene

Teeth: Cracked/missing teeth Caries

fixed bridges



<b>Respiratory:</b>					
Pattern:	<u>Normal</u>	Shallow	Deep	Labored	SOB/Dyspnea
Breath Sounds:	<u>Clear</u>	Crackles	Rales	Rhonchi	Expiratory wheezing
	Friction Rub		Diminished		Absent
Cough:	Yes <u>No</u>		Productive		Non-Productive
Sputum:	Clear/White	Yellow	Brown	Green	Blood-tinged
Oxygen used:	<u>No</u>	Yes	Liters/minute		
<b>Cardiovascular:</b>					
Apical Heart Rate:	<u>72</u>	<u>Regular</u>	Irregular	Pacemaker:	Yes No
Abnormal Heart Sounds:	<u>No</u>	Yes	If yes: Murmurs	Gallops	Bruits
	Hypotensive	Hypertensive	Palpations	Chest Pain	Angina
Edema:	<u>None</u>	+1	+2	+3	+4
Pulses:	<u>N (normal)</u>	W (weak)	T (thready)	B (bounding)	
RB:	RR:	RF:	RP:		
LB:	LR:	LF:	LP:		
<b>Genitourinary:</b>					
	<u>Normal</u>	<u>Incontinent</u>	Urgency	Burning	Frequency Hesitation
	Nocturia	Ileostomy:	<u>No</u>	Yes	
	Hematuria	Catheter:	<u>No</u>	Yes	Size: Last Changed:
Color/Clarity:	Yellow	<u>Amber</u>	Blood-tinged	<u>Clear</u>	Cloudy w/sediment
<b>Gastrointestinal:</b>					
	Denies problems	<u>Continent</u>	Incontinent		
Bowel sounds:	<u>All four quadrants</u>	Right Upper	Left Upper	Right Lower	
	Left Lower	<u>Normal</u>	Hyperactive	Hypoactive	
Inspection of Abdomen:	<u>Soft</u>	Distended	Rigid	Tender	Non-Tender
Colostomy:	Yes <u>No</u>	Nausea	Vomiting	Belching	Frequent Indigestion
Stool:	Normal/Formatted	Diarrhea	Hard	<u>loose @ times</u>	
Complaints of Constipation:	No	<u>Yes</u>	If yes, medications used:	No	Yes
List:	<u>mom tabs x4 @ HS</u>				
<b>Reproductive:</b>					
Female:	<u>Denies Problems</u>	Menopausal	Postmenopausal	Vaginal Bleeding	Infection
	Vaginal Discharge	Other:		Last	
Period:					
Male:	Denies problems	Impotency	Enlarged Prostate	Hernia	Discharge
	Testicular Problems	Last			
<b>Musculoskeletal:</b>					
	Denies Problems				
ROM:	Right upper ext.	<u>Full</u>	Limited	Left upper ext.	<u>Full</u> Limited
	Right lower ext.	<u>Full</u>	Limited	Left lower ext.	<u>Full</u> Limited
Standing Balance:	Steady	<u>Unsteady</u>			
Joints:	<u>Stiff</u>	<u>Swelling</u>	Contracted		
Comments:					



Hand Grips: Right: Weak <u>Strong</u>		Left: Weak <u>Strong</u>				
Hypotonicity Present: <u>No</u> Yes Describe: _____						
Hypotonicity Present: <u>No</u> Yes Describe: _____						
<b>Integumentary:</b>						
Temperature:	<u>Warm</u>	Hot	Cool	Clammy		
Condition:	<u>Intact</u>	<u>Dry</u>	Flaky	Moist		
Color:	<u>WNI</u>	Pale	Cyanotic	Jaundiced	Flushed	Ruddy
Turgor:	<u>WNI</u>	Flaccid	Taut	Tenting		
Reddened Areas:	<u>No</u>	Yes				
Decubitus:	<u>No</u>	Yes				
Number: _____	Stage: I _____	II _____	III _____	IV _____		
	Cuts/laceration/tears	Rashes	Burns	Blisters	Scars	
	Lesions	Bruises	Incision	Dressings		
<b>INTEGUMENTARY: (continued)</b>						
Indicate location as follows:		Decubitis (D)	Burns (B)	Scar (S)	Incision (I)	Bruises (Br)
		Blisters (Bl)	Rashes (R)	Lesions (L)	Tears (T)	Cuts C
<b>Mental Status (check all that apply)</b>						
Frail	<u>Overweight</u>	Poor Hygiene				
Disheveled	<u>Appropriately dressed</u>					
Other: _____						
<b>BEHAVIOR/PSYCHOMOTOR ACTIVITY:</b>			<b>SPEECH:</b>			
<u>Calm</u>	Hyperactive	Impulsive	Circumstantial	Garbled	Rapid	Slow
Ritualistic	Catatonic	Sarcastic	<u>Coherent</u>	Incoherent	Echolalia	Loud
Uncooperative	<u>Cooperative</u>	Combative	Monotonous	Pressured	Fluent	Soft
Demanding	Rage Episodes	Aggressive	Stuttering	Mumbled	Hesitant	Fluent
Wanders	Paces	Unusual Gait	Slurred	Other: _____		
Stiff	Tics	Dystonic				
Motor retardation	Other: _____					
<b>COGNITION/SENSORIUM:</b>			<b>MOOD/AFFECT:</b>			
Orientation: <u>Person</u>	<u>Place</u>	Time	Anxious	Fearful	Inappropriate	Flat
	Situation	<u>Alert</u>	<u>Depressed</u>	Guarded	Appropriate	Sad
	Delirious	Intoxicated	Blunted	Restricted	Preoccupied	Angry
Concentration: Adequate	<u>Impaired</u>		Evasive	Hostile	Relaxed	Labile
Judgement: Good	<u>Impaired</u>		Worried	Elated	Irritable	Guilty
Memory: Good (Recalls 3 objects)			Helpless	Hopeless	Panicked	
	<u>Fair (Recalls 2 objects)</u>					
	Poor (Recalls 1 object)					
	None (Recalls 0 objects)					
Eye Contact: <u>Good 100-75%</u>	Fair 74-50%					
	Poor 49-25%	None 24-0%				
<b>THOUGHT PROCESS:</b>						
Normal			Relevant	Blocking		
Psychosomatic			Disorganized	<u>Clear</u>		
Loose associations			Speeded	Retarded		
Flight of ideals			Obsessions	Demented		
Ruminations			Incoherent	Coherent		
Spontaneous			Fabrication	Tangential		
Circumstantial			Preoccupation	Concrete		
Bizarre ideation			Goal directed	Indecisive		
Slow Thinking			Rapid Thinking			
Other: _____						

KOESTLER, THELMA R

OMOLARA, KHARI A

0627500734

10/02/06 02/20/36

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Perceptual Disturbances:	Depersonalization	Recurrent illusions	Distorted body image
Hallucination: <u>None</u>	Visual	Auditory	Tactile
Delusions: <u>None</u>	Grandeur	Paranoia	Religious
	Thought broadcast	Thought insertion	Thought reference
Learning Needs Assessment			
Areas to be Addressed:	<u>Medication</u>	Medical Equipment	Community Resources
Self Care	Home Care	<u>Disease Process</u>	Exercise Program
Target Person for Teaching:	<u>Patient</u>	Family/Caregiver	Both
How does your patient learn best?	Verbal	Video	Reading
	Demonstration	Combination	<u>One to One</u>
	No preference	Other: _____	Literature Classroom
Barriers to Learning:	Cultural	Language	Religion
	Financial	Physical	<u>Cognitive</u>
Reading			Sensory
Readiness to learn:	Motivated	Anxious	Asks questions
	Denies need for education	<u>unable to assess</u>	
SKIN RISK ASSESSMENT			
FACTORS			SCORE
Mental Condition:	Alert = 1	Lethargic = 2	Stupor = 3
			Unresponsive = 4
Mobility:	No Limit = 1	Slightly Limited = 2	Very Limited = 3
			Immobile = 4
Moisture:	Never Moist = 1	Rarely Moist = 2	Moist = 3
			Always Moist = 4
Activity:	Ambulatory = 1	Walk With Help = 2	Chair Bound = 3
			Bed Bound = 4
Nutrition:	Excellent (>80%) = 1	Adequate (>50%) = 2	Inadequate (50%) = 3
	Very Poor (<33%) = 4	Nutrition: NPO = 4	NGT = 3
		TPN = 2	
Friction/Shear:	No Problem = 1	Potential Problem = 2	Problem = 3
Key to scoring:	6-8 Low Risk	9-12 Moderate Risk	13+ High Risk
TOTAL			<u>8</u>



Circle all appropriate points

FALL PREVENTION ASSESSMENT PROTOCOL					
Points	AGE DESCRIPTION	Points	ACTIVITY DESCRIPTION	Points	PHYSICAL DESCRIPTION
0	13 - 50 yrs.	0	Up Ad Lib	2	Seizures
1	51 - 75 yrs.	1	Utilizes cane, <u>Walker</u>	2	Visual impairment
2	80+ yrs.	2	Wheelchair, Crutches, etc.	3	Weakness
			Requires personal assist with ambulation / transfers	4	Dizziness/balance problems/unsteady gait
MENTAL DESCRIPTION		MEDICATIONS		FALL HISTORY	
POINTS	DESCRIPTION	(Antihypertensives, Narcotics, Sedatives, Bowel Preps, Diuretics)		** If patient reports a history of falls (at home or in the hospital), the patient should be placed in the Fall Prevention Program regardless of their total number of points.	
0	Alert/Oriented or in Coma	POINTS DESCRIPTION			
2	Confused/Disoriented	1 Takes 1 - 2 of above meds			
3	Intermittently Confused or Disoriented	2 Takes 3+ of above meds			
4	Disregards instructions				
TOTAL POINTS					

10+ POINTS - PATIENT AT RISK FOR FALLS AND SHOULD BE PLACED IN THE FALL PREVENTION PROGRAM.

NOTE: IF PATIENT HAS HAD A FALL IN THE PAST 3 MONTHS, THE PATIENT SHOULD BE PLACED IN THE FALL PREVENTION PROGRAM REGARDLESS OF THEIR TOTAL NUMBER OF POINTS.

PATIENT PLACED IN FALL PREVENTION PROGRAM: ☒ Yes ☐ No ☐ NAFALL PREVENTION BRACELET ON: ☒ Yes ☐ No ☐ NAFALL PREVENTION BOOKLET GIVEN: ☒ Yes ☐ No ☐ NAFALL PREVENTION CARD ON DOOR: ☒ Yes ☐ No ☐ NA\*ADVANCE DIRECTIVE- BOOKLET GIVEN ☒ Yes ☐ NoAdvance Healthcare Directives: ☒ No ☐ Yes, if yes: PUSO asked to Bring Copy ☐ Yes ☐ No Copy on Chart ☐ Yes ☐ No ☐ NA

## ADMISSION PAIN ASSESSMENT

Date: 10/2/06

Time: 1840 Circle One: Pre-op Discharge

Educational Pain Pamphlet given: ☒ Yes ☐ No1. Are you in pain? ☒ No ☐ Yes 2. Please rate your pain on a scale of 0-10

No Pain      Distressing pain      Unbearable pain

0    1    2    3    4    5    6    7    8    9    10

Type scale used: ☒ 0-10 ☐ FLACC (pt unable to verbalize)

\*\*\*STOP HERE if patient has no pain symptoms... Continue if pain is present:

3. Location of pain on your body: \_\_\_\_\_

4. Description of pain: Sharp dull throbbing aching other: \_\_\_\_\_

5. ONSET: When did the pain start? \_\_\_\_\_

6. Duration of pain? \_\_\_\_\_ minutes \_\_\_\_\_ hours \_\_\_\_\_ days \_\_\_\_\_ weeks \_\_\_\_\_ months

7. Variation of pain. What makes it worse? \_\_\_\_\_ better? \_\_\_\_\_

8. Does the pain affect activities? a. Eating ☐ No ☐ Yes b. Sleeping ☐ No ☐ Yes c. Walking ☐ No ☐ Yes d. Other \_\_\_\_\_

9. Present pain treatment and/or medications: \_\_\_\_\_

10. Present pain management effectiveness: Satisfactory ☐ No ☐ Yes

11. On a scale of 0-10, with 0 being no pain and a 10 being unbearable pain, where would you like your pain to be? \_\_\_\_\_

Nurse Signature: Thelma KoestlerDate: 10/2/06Time: 1845

**KOESTLER,THELMA R**

OMOLARA, KHARI A

427-68-4084

0627500734 10/02/06 02/20/36



**F 70Y**

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**GPU001**



## SOCIAL HISTORY

## Cultural/Ethnic Background

What is the ethnic background of the patient? white

How does the patient/family celebrate their cultural heritage? (Specify) \_\_\_\_\_

Does the patient have any negative family feelings about their ethnic heritage? ☒ No ☐ Yes (specify) \_\_\_\_\_

## Sexual History:

How does the patient describe their sexual development: \_\_\_\_\_

Sexual Orientation: ☐ Homosexual ☐ Bi-sexual ☐ HeterosexualSexually Active: ☒ No ☐ Yes Multiple Partners? ☐ No ☐ YesIs there any history of sexual abuse or negative sexual development? ☐ No ☐ Yes

If yes, specify: \_\_\_\_\_

Does the patient have any sexual concerns? ☐ No ☐ Yes

If yes, specify: \_\_\_\_\_

## Spiritual Needs:

Religion: CatholicDoes the patient believe in a higher power? ☒ Yes ☐ No ☐ Unknown

How important is the role of religion in the patient's life? \_\_\_\_\_

Patient attends religious services: ☐ No ☒ Yes How Often: weeklyWould the patient like to speak with a representative from their church or religion? ☐ No ☐ Yes

## Support System:

Resources: ☒ Spouse ☐ Family ☐ Home Health Care ☐ Nursing Home☐ Other \_\_\_\_\_Does the patient have a adequate support system? ☒ Yes ☐ No How Often: \_\_\_\_\_

If no, specify: \_\_\_\_\_

## Marital History:

☒ Married ☐ Single ☐ Divorced ☐ Widowed ☐ SeparatedIf currently married, how Long? 54 yrs. How many times married? 1

How did the patient meet their current spouse \_\_\_\_\_

How does the patient describe their marriage and marital role? \_\_\_\_\_

If the patient is a widow/divorced/separated, how long? \_\_\_\_\_

How is the patient coping with the marital loss? \_\_\_\_\_

If the patient is single, how do they describe their decision not to marry? \_\_\_\_\_

## Children:

Does the patient have any children? ☐ No ☒ YesHow many? 5

Name	Location	Relationship	Yes	No	Visits
Carl			<input type="checkbox"/> Yes	<input type="checkbox"/> No	
mark	LA		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Beth			<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Kevin	TX		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Paul			<input type="checkbox"/> Yes	<input type="checkbox"/> No	
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	
			<input type="checkbox"/> Yes	<input type="checkbox"/> No	

Are there outstanding issues among the children? ☒ No

Yes (specify) \_\_\_\_\_

KOESTLER, THELMA R

OMOLARA, KHARI A

427-68-4084

0627500734 10/02/06 02/20/36

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0-00-64-52-83

## SOCIAL HISTORY

## TOBACCO/DRUG/ALCOHOL USE:

Tobacco: ☒ Never used ☐ Quit ☐ Uses ☐ Type: ☐ Cigarettes ☐ Cigars ☐ Pipe ☐ Chews  
Age Began: \_\_\_\_\_ Age Quit: \_\_\_\_\_ Amount per day: \_\_\_\_\_Alcohol: ☐ None ☒ Denies ☐ Yes ☐ Signs and symptoms of withdrawalType: ☐ Beer ☐ Wine ☐ Liquor ☐ Other \_\_\_\_\_

Describe usage pattern: \_\_\_\_\_

Drugs: ☐ No ☒ Denies ☐ Yes Type (be specific) \_\_\_\_\_

Has the patient ever had blackouts, seizures, tremors, or hallucinations associated with drug/alcohol use?

☐ No ☐ Yes ☐ Denies If yes, give details: \_\_\_\_\_Family History of alcohol/drug use? ☐ No ☐ Yes If yes, describe: \_\_\_\_\_husband & dr - alcoholics reportsPrior drug/alcohol treatment ☐ No ☒ YesWhen dr - 3 times Where \_\_\_\_\_

When \_\_\_\_\_ Where \_\_\_\_\_

Details: \_\_\_\_\_

## Support System:

Resources: ☒ Spouse ☒ Family ☐ Home Health Care ☐ Nursing Home☐ Other \_\_\_\_\_Does the patient have a adequate support system? ☒ Yes ☐ No How Often: \_\_\_\_\_

If so, specify: \_\_\_\_\_

## Psychiatric

Has the patient previously received psychiatric treatment? ☒ No ☐ Yes

## Treatment:

If yes, was treatment:

☐ Inpatient ☐ Outpatient ☐ Both

Treatment location: \_\_\_\_\_ Date: \_\_\_\_\_

Treatment location: \_\_\_\_\_ Date: \_\_\_\_\_

Treatment location: \_\_\_\_\_ Date: \_\_\_\_\_



KOESTLER, THELMA R

OMOLARA, KHARI A

427-68-4084

0627500734 10/02/06 02/20/36

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0-00-64-52-85

## Suicide Risk Assessment

Yes	No	Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/> Do you ever feel that life is not worth living?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Does the individual express feelings of guilt or blame for the misfortune of others?
<input type="checkbox"/>	<input checked="" type="checkbox"/> Have you ever thought of hurting yourself?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Does the individual experience feelings of isolation, Depressed affect, lethargy, short attention span, Insomnia, anorexia?
<input type="checkbox"/>	<input checked="" type="checkbox"/> Is the individual expressing suicidal thoughts?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Is the individual obsessing/focusing about an "anniversary" in the future?
<input type="checkbox"/>	<input checked="" type="checkbox"/> Has the individual identified a method?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Have any family members, loved ones committed Suicide?
<input type="checkbox"/>	<input checked="" type="checkbox"/> Does the individual have access to a Method or weapon?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Any recent deaths of family members or close Friends? <i>1 yr. ago</i>
<input type="checkbox"/>	<input type="checkbox"/> Is the individual complacent and accepting of His/her suicidal thoughts?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Does the individual refuse to engage in Conversation about the future?
<input type="checkbox"/>	<input checked="" type="checkbox"/> Does the individual allow suicidal thoughts To occupy him/her?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Does the individual deny having a support system?
<input type="checkbox"/>	<input checked="" type="checkbox"/> Has the individual attempted suicide in the past?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Has the individual made any preparations for His/her death?

Describe present/previous ideation- Plan/ Means/ Intent/ Gestures

## Homicidal Risk Assessment

Has a threat been made by the individual to harm or kill someone? ☐ Yes ☒ No  
If yes, then answer the following questions.

Yes	No	Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/> Threat is specific to an individual?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Threat is focused on a member of a group, Prominent person, or identified persecutor?
<input type="checkbox"/>	<input checked="" type="checkbox"/> Person possesses a lethal weapon while Making threats and is demonstrating signs Of emotional disturbance?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Do you ever think of harming someone else?
<input type="checkbox"/>	<input checked="" type="checkbox"/> Do you presently have wishes, feelings, Or plans to harm someone else?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Verbal and nonverbal behavior is suggestive of an impending outburst in a person with a history of Previous assaultive or sexually suggestive behavior.
<input type="checkbox"/>	<input checked="" type="checkbox"/> Person has a history of significant Damage to property?	<input type="checkbox"/>	<input checked="" type="checkbox"/> There is indication of substance abuse which Promotes disinhibition of impulses.

Describe present/previous ideation- Plan/ Means/ Intent/ Gestures

KOESTLER, THELMA R

COOK, WILLIAM S JR

427-68-4084

0627500734 10/02/06

02/20/36



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## ADL Assessment Cont:

Grooming (task includes ability to wash hands and face, brush teeth, comb hair, apply make-up or shave):

☒ Independent in grooming activities☐ Requires supervision or set-up☐ Requires minimum assistance for grooming activities☐ Requires moderate assistance for grooming activities☐ Requires total assistance for grooming activities

Toileting (includes going to the toilet, for bowel and urine elimination, cleaning, and adjustment of clothes):

☒ Independent in toileting activities☐ Requires assistance to get to toilet only☐ Requires assistance to clean self☐ Requires assistance to adjust clothes☐ Requires total assistance for toileting activities

Transfers (how patient moves in and out of bed, toilet, tub/shower):

☒ Independent in all transfer activities☐ Requires minimum assistance to transfer from: ☐ Bed to Chair ☐ Toilet ☐ Tub/shower☐ Requires moderate assistance to transfer from: ☐ Bed to Chair ☐ Toilet ☐ Tub/shower☐ Requires total assistance to transfer from: ☐ Bed to Chair ☐ Toilet ☐ Tub/shower

Continence:

☒ Controls urination and bowel movements completely by self☐ Has occasional accidents but less than daily☐ Patient requires bowel/bladder program to maintain continence☐ Patient incontinent

Eating:

☒ Independent☐ Requires supervision/set-up☐ Partial Feed☐ Total Feed

PT. SEC SINCE AUG-05  
Gastrointestinal surgery  
April 05 - at Cook.

Advanced ADL's	Indep.	Assist	N/A	Deficit Code	Comments
Household Chores		✓		1,3,4,5	PT. LIVING AT
Transportation	✓	REPORTS THAT			HOME & husband
Cooking	✓	THIS TIME			when she reports
Laundry	✓	UNDERSTANDS			is dying of
Shopping		WAS BETTER DOES			lung CA - had sister but
Banking/Paying Bills		SOME DOES			pt sent her away after 2
Household Repairs					weeks
Codes for primary interface with skill deficit: 1. Motivational 2. Communication 3. Interpersonal					
4. Cognitive 5. Physical					
Information obtained from: <input checked="" type="checkbox"/> Patient <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend <input checked="" type="checkbox"/> Other					

Completed by (name and Credentials):

Blacky Day OT/L Date: 10-2-06

GPU001

PAGE 12 OF 14

REASON FOR ADMIT: "I think they think I'm going to kill myself or someone else." GOAL: "I WANT TO GET THE HELL OUT OF HERE."

KOESTLER, THELMA R

COOK, WILLIAM S JR

427-68-4084

0627500734 10/02/06

02/20/36



F 70Y

0-00-64-52-85

KOESTLER

Functional Assessment					
Cognitive Component	Intact	Impaired	Not assessed	Comments	
Organization	✓			for simple tasks	
Frustration Tolerance		✓		irritable, fearful - lots of anger	
Following Direction	✓			able to follow 2 step direction	
Planning Skills	✓			for simple tasks / some memory	
Decision Making		✓		—	
Judgement		✓		—	
Safety Awareness	✓			GROSSLY intact	
Problem Solving	✓			for simple tasks	
Reality Orientation	✓			oriented to home, date, & place	
Attention Span	✓			↓ concentration	
Depth Perception		✓		good vision, glasses / hearing is ac.	
Physical Sensation	✓				
Physical Ability	Good	Fair	Poor	N/A	Details
RUE Strength	✓				4/5
LUE Strength	✓				4/5
RLE Strength	✓				ambulating only
LLE Strength	✓				" "
UE Grip	✓				GOOD
UE ROM	✓				GOOD
Fine Motor Skills	✓				GOOD
Eye/hand Coordination	✓				GOOD
ADL Assessment					
Bathing (either sponge bath, tub bath, or shower):					
<input checked="" type="checkbox"/> Receives no assistance (gets in and out of tub/shower by self) <b>SUPERVISION</b> <input type="checkbox"/> Receives assistance in bathing only one part of body (such as back or leg) <input type="checkbox"/> Receives assistance in bathing more than one part of body <input type="checkbox"/> Requires total assistance for bathing					
Dressing (includes getting clothes from closet and drawers):					
<input checked="" type="checkbox"/> Independent in both lower and upper dressing <b>SUPERVISION</b> <input type="checkbox"/> Requires assistance to get clothes only <input type="checkbox"/> Requires minimum assistance to dress self <input type="checkbox"/> Requires moderate assistance for dressing <input type="checkbox"/> Requires total assistance for dressing					

PAIN: HEADACHE

GPU001

PAGE 11 OF 14

LEAFLET: "T-FORM" - 04/07/06 - 101 VISIT C

KOESTLER, THELMA R

OMOLARA, KHARIA

427-68-4084

0627500734 10/02/06 02/20/36



F 70Y

0-00-64-52-85

Abuse History	
Yes	No
	Have you ever physically abused or been physically abused?
	Have you ever sexually abused or been sexually abused?
	Have you ever emotionally abused or been emotionally abused?
	If yes, to abuse questions, was it reported and dealt with legally?
	Have you ever been the victim of or perpetrator of domestic violence?
Describe situation and legal disposition:	
Discharge Plan/Needs Assessment	
Discharge Plan: <input type="checkbox"/> Return Home <input type="checkbox"/> Nursing Home Placement <input type="checkbox"/> Assisted Living	
<input type="checkbox"/> Home with family (who) _____	
<input checked="" type="checkbox"/> Other (specify) <u>State Hospital</u>	
Does the patient's discharge plan seem adequate to meet needs? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (specify) _____	
Is the patient's family satisfied with the patient's discharge plan? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (specify) _____	
Discharge Needs: <input type="checkbox"/> Community Resources <input type="checkbox"/> Meals on Wheels <input type="checkbox"/> Social Services <input type="checkbox"/> Outpatient Services	
<input type="checkbox"/> Home Health Referral <input type="checkbox"/> Special Equipment <input type="checkbox"/> Financial Support	
Information obtained from: <input checked="" type="checkbox"/> Patient <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend	
(Check all that apply) <input type="checkbox"/> Other _____	
Signature: <u>Parker, LSW</u>	
Date: <u>10/3/06</u>	



**GERIATRIC PSYCHIATRIC UNIT  
INTERDISCIPLINARY PROGRESS NOTES**

## Weekly Meeting

DATE	DISCIPLINE	NOTE PROGRESS OF PATIENT, COMPLICATIONS, CONSULTATIONS, CHANGE IN CONDITION, AND UNUSUAL EVENTS
10/10/66	Psychiatry	Pt's mood remains unstable. Same Axis II psychopathology. Eating/sleeping ok. Cont. (continued recommended w/Lord)
	Nsp.	Wants to leave Ann, Not Competent - Sleep well - Interacts = stay only J Herman
	Occupational Therapy / ACTIVITIES	PT. ATTENDING ACTIVITIES, DOES Admit to Depression. PT. Attention seeking AT TIMES. stating everything was "wonderful" until she found out she was NOT going to be OK. TOTAL. PT. @ in basic self care, SUPERVISION TO ASSIST in extended SELF CARE. BILLY OTR/K.
	Social Work	HFT met w/ family. Recommendation is for commitment to State Hospital. Marker, LSW - Shagun shg, lsw -





Acc#: 0627500734 MRN: 0-00-64-52-85  
5024-A 70Y F DOB: 02/20/36  
12600 I 20 FRONTAGE RD 427-68-4084  
EDWARDS, MS 39066-9999  
COOK, WILLIAM S JR 10/02/06

**GERIATRIC PSYCHIATRIC UNIT  
INTERDISCIPLINARY PROGRESS NOTES**

DATE	DISCIPLINE	NOTE PROGRESS OF PATIENT, COMPLICATIONS, CONSULTATIONS, CHANGE IN CONDITION, AND UNUSUAL EVENTS
10/10/06	social work 11:10 AM	out of the way before the commitment papers were filed, SW told Mrs. Koestler that her mother was asking to leave AMA: the dr. didn't think she is competent to make that decision & we needed them to file the paperwork so the pt could be informed. Mrs. Koestler sd they would try to hurry & SW recommended that the family contact the lawyer: see what his advise was. Mrs. Koestler called back: sd she would be filing the paperwork for commitment on Wednesday AM. Mr. Koestler dropped off letter regarding competency.
10/11/06	social work 9:10	SW called Mr. Koestler & told him the letters read Warren County instead of Hinds Co. SW received new letters from the lawyer that read Hinds County, Barker, LA. — Stag In Shl, Inc —



MISSISSIPPI BAPTIST MEDICAL CENTER  
1225 North State St.  
Jackson, MS 39202

Psychiatric Eval/Consult Transcribed

KOESTLER, THELMA R  
Pt. No. 0627500734  
MR No. 000645285  
Location 5A 5024 A

SS#: 427-68-4084  
DOB: 02/20/1936  
ADMISSION DATE: 10/02/2006

PATIENT NAME: Thelma Koestler.

IDENTIFYING DATA: Ms. Koestler is a 70-year-old white female.

JUSTIFICATION FOR ADMISSION: Evaluate depression.

HISTORY OF PRESENT ILLNESS: Ms. Koestler is a 70-year-old white female referred to inpatient treatment from her outpatient psychiatrist. Over the past several weeks, Ms. Koestler has been more depressed. She's been poorly compliant with her medications. She also has been delusional and has been continuing to express passive wishes to die. Her family feels as though she is unsafe to be in a lower level of treatment.

PAST PSYCHIATRIC HISTORY: Ms. Koestler was previously treated with Wellbutrin and Zoloft but she has been poorly compliant with these medicines. She denies past psychiatric hospitalizations or suicide attempts.

PAST MEDICAL HISTORY: Allergies: MORPHINE.

Illnesses:

- . Diverticulosis.
- . Arthritis.

MEDICATIONS: Unknown at this time.

REVIEW OF SYSTEMS: All systems are reviewed and are negative.

LEGAL HISTORY: Negative.

FAMILY HISTORY: Negative.

SUBSTANCE HISTORY: None reported.

SOCIAL HISTORY: Ms. Koestler is married. She reports her husband is dying of kidney failure. She has 5 children. She has a high school diploma.

PHYSICAL STATUS EXAMINATION

Ms. Koestler appears to be her stated age of 70 years old. She is calm and cooperative. She is casually dressed and groomed. She has no abnormal movements. She has a normal gait. She has good attention but poor concentration. She is awake, alert, and oriented to person, place, and situation. She has poor recall, decreased abstraction, and average fund of knowledge. Her mood

is "depressed" with a tearful affect. She denies thoughts of harming herself or others. Her thought process is circumstantial with logical dissociations. She reports numerous beliefs which I am not sure are true. She is aware that she has illness. She has impaired insight and judgment.

DIAGNOSTIC IMPRESSION: AXIS I: 1. Major depression, single episode, with psychosis.

1. Rule out cognitive disorder.

AXIS II: Deferred.

AXIS III: 1. Arthritis.

1. Diverticulosis.

AXIS IV: Severe.

AXIS V: GAF of 21.

PLAN: Acute inpatient psychiatric evaluation and treatment of depression with failed outpatient treatment, inability to care for self, and increased risk of self-harm, and unclear history.

ESTIMATED LENGTH OF STAY: Seven to 14 days.

---

Khari Omolara, M.D.

DD: 10/03/2006 08:26:45

DT: 10/03/2006 08:57:40

Job#: 17042

Doc#: 258525743

EC: Khari Omolara, M.D.

KHARI A OMOLARA, MD

Authenticated by DR. KHARI A. OMOLARA On 10/25/06 11:00:14 AM



BAPTIST MEDICAL CENTER

PHYSICIAN'S DIRECTIONS

KOESTLER, THELMA R

OMOLARA, KHARI A.

0627500734 10/02/06 02/20/38



F 70Y

0-00-64-52-85

Patient:

Service of Dr.

ALWAYS WRITE OUT THESE ABBREVIATIONS: QD, QOD, MS, MSO4, MGSO4, U, IU

PUT A ZERO BEFORE A DECIMAL (0.5). DO NOT PUT A ZERO AFTER A WHOLE NUMBER (1.0)

Secs (s)	Min (m)	Sec (s)	Date	Time	Orders / Directions
			10/3/06	0770	1 - Transfer to Services Dr. Cook Edusson Notified C-0840
					2 - multivitamin i po daily
					3 - Wellbutrin SR 100mg i po qam
					4 - Consult Dr. Adams
					5 - Zoloft 50mg i po qam
					5 - Zoloft 25mg i po qam
					6 - urine drug screen Staff Notified
					7 - Please obtain pts current med list Done per Grace
			10/3/06	0835	D/c Zoloft U.O. Dr. K. Omolara / Grace Notified C-0846
			10/4/06	820	Zoloft 25mg po Am D/c Wellbutrin Lamictal 25mg po Am Trazodone 50mg po HS per Grace w/ 5. loop C-0846

MD SIGNATURE:

Form# MD1091

PHYSICIAN'S DIRECTIONS

Daiba Thompson

Page 1 of 1

Form Date: Unknown

Revised: 7/05



PHYORD

10-4-06

**CERTIFICATE OF SERVICE**

I certify that I have this day mailed, postage prepaid, a true and correct copy of the above  
and foregoing Appellant's Record Excerpts to the following persons:

Honorable W. Swan Yerger  
Hinds County Circuit Judge  
P.O. Box 22711  
Jackson, Mississippi 39225

Honorable Barbara Dunn  
Circuit Clerk for Hinds County, Mississippi  
P.O. Box 327  
Jackson, Mississippi 39205-0327

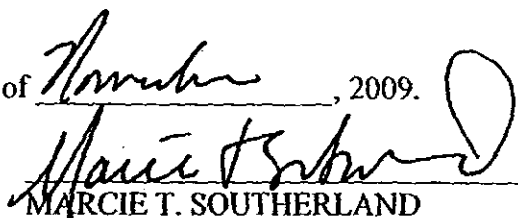
Kathy Gillis, Clerk  
Mississippi Supreme Court Clerk  
P.O. Box 117  
Jackson, Mississippi 39205-0117

Clifford B. Ammons, Esq.  
Watkins & Eager  
P.O. Box 650  
Jackson, Mississippi 39205-0650

Whitman B. Johnson, III, Esq.  
Currie Johnson Griffin Gaines & Myers, PLLC  
P.O. Box 750  
Jackson, Mississippi 39205-0750

Eugene R. Naylor, Esq.  
Wise Carter Child & Caraway  
P.O. Box 651  
Jackson, Mississippi 39205-0651

SO CERTIFIED this the 25 of November, 2009.

  
MARCIE T. SOUTHERLAND

FILED

DEC 30 2009

Serial: 159846

IN THE SUPREME COURT OF MISSISSIPPI

SUPREME COURT CLERK

No. 2009-CA-00603

**THELMA R. KOESTLER AND LEO C. (MICKEY)  
KOESTLER, DECEASED, BY AND THROUGH THELMA R.  
KOESTLER**

*Appellants*

v.

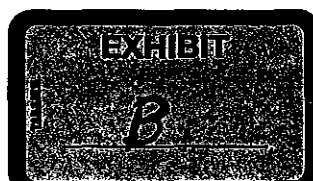
**MISSISSIPPI BAPTIST HEALTH SYSTEMS, INC., ET AL.**

*Appellees*

**ORDER**

This matter is before the undersigned Justice on the Motion to Strike Pages 20 Through 41 of Appellant's Record Excerpts filed by Appellees William S. Cook, Jr., M.D., individually and William S. Cook, Jr., M.D., P.A., the Joinders filed by Appellees Mississippi Baptist Medical Center, Inc., Mississippi Baptist Health Systems, Inc., Baptist Behavioral Health Services, Grace Scott, R.N., Becky Ivey, O.T., Stacey Ashley, Khari A. Omolara, M.D. and Khari A. Omolara, P.C., and the Amended Motion to Strike filed by Appellees William S. Cook, Jr., M.D., individually and William S. Cook, Jr., M.D., P.A., and the Joinder filed by Appellees Mississippi Baptist Medical Center, Inc., Mississippi Baptist Health Systems, Inc., Baptist Behavioral Health Services, Grace Scott, R.N., Becky Ivey, O.T. and Stacey Ashley. After due consideration the undersigned Justice finds that the Motion to Strike Pages 20 Through 41 of Appellant's Record Excerpts and the Amended Motion to Strike should be passed for consideration with the merits of the appeal.

IT IS THEREFORE ORDERED that the Motion to Strike Pages 20 Through 41 of Appellant's Record Excerpts and the Amended Motion to Strike filed by Appellees William



S. Cook, Jr., M.D., individually and William S. Cook, Jr., M.D., P.A., are passed for consideration with the merits of the appeal.

SO ORDERED, this the 30<sup>th</sup> day of December, 2009.

A handwritten signature in black ink, appearing to read "George C. Carlson, Jr.", written over a horizontal line.

GEORGE C. CARLSON, JR.,  
PRESIDING JUSTICE