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Estate Notices

DECEDENTS ESTATES

NOTICE IS HEREBY GIVEN that letters testamentary or of administration have been granted in the following estates. All persons indebted to the estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors or their attorneys named below.

FIRST PUBLICATION

ESTATE OF SHIRLEY M. LUTZ, late of Hershey, Dauphin County, Pennsylvania. Co-Executors: J. Michael Lutz, 236 East Grant Street, Lancaster, PA 17062 and Beth Schock, 1370 L.A. Carr Lane, Dauphin, PA 17018.

j7-j21

ESTATE OF STELLA D. BOWMAN, late of Millersburg, Dauphin County, Pennsylvania (died November 9, 2010). Executor: Harold E. Dressler, Jr., 555 Race Street, Millersburg, PA 17061. j7-j21

ESTATE OF KENNETH C. LINT, late of Susquehanna Township, Dauphin County, Pennsylvania. Executor: R. Scott Cramer, P.O. Box 159, Duncannon, PA 17020. j7-j21

SECOND PUBLICATION

ESTATE OF ROSS L. SIMMONS, late of Susquehanna Township, Dauphin County, Pennsylvania (died November 26, 2010). Executrix: Barbara A. Gingrich, 2219 Lancashire Drive, Wilmington, DE 19810. d31-j14

ESTATE OF SHIRLEY C. JOHNSON, late of Lower Paxton Township, Dauphin County, Pennsylvania. Executor/Attorney: Derek J. Cordier, Esq., Law Office of Derek J. Cordier, 319 South Front Street, Harrisburg, PA 17104. d31-j14

ESTATE OF RITA M. GASH, late of Derry Township, Dauphin County, Pennsylvania. Executor: David S. Gash. Attorney: Anthony J. Nestico, Esq., Nestico, Druby & Hildabrand, P.C., 840 East Chocolate Avenue, Hershey, PA 17033. d31-j14

ESTATE OF DONALD R. McCAHAN, late of Londonderry Township, Dauphin County, Pennsylvania (died September 19, 2010). Executrix: Gail C. Burns, 795 Main Street, McAlisterville, PA 17049. Attorney: Andrew L. Winder, Esq., 25 North Main Street, P.O. Box 149, Mifflintown, PA 17059. d31-j14

SECOND PUBLICATION

Estate Notices

ESTATE OF GEORGE L. ROPOS, late of Lower Paxton Township, Dauphin County, Pennsylvania. Personal Representative: The Ropos Family Irrevocable Trust, Catherine Grab, Co-Trustee and Janet A. Ropos, Co-Trustee. Attorney: Craig A. Hatch, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043. d31-j14

ESTATE OF ELIZABETH D. SMITH, late of Susquehanna Township, Dauphin County, Pennsylvania (died August 30, 2010). Executor: Thomas S. Smith, 4604 Custer Drive, Harrisburg, PA 17110. Attorney: Kevin R. Helm, Esq., 3759 Peters Mountain Road, Halifax, PA 17032. d31-j14

ESTATE OF MARY C. BLASKO, late of Harrisburg, Dauphin County, Pennsylvania (died November 6, 2010). Executor: Stephen M. Blasko, 7 Kower Court, Mechanicsburg, PA 17055. Attorney: Diane M. Dils, Esq., 1400 North Second Street, Harrisburg, PA 17102. d31-j14

ESTATE OF DOROTHY V. HOLLENBACH, late of Elizabethville Borough, Dauphin County, Pennsylvania. Executrix: Peggy M. Biddinger, 18 West Broad Street, Apt. 103, Elizabethville, PA 17023. Attorney: Gregory M. Kerwin, Esq., Kerwin & Kerwin, 4245 State Route 209, Elizabethville, PA 17023. d31-j14

ESTATE OF ANNA M. HARRELL, late of Dauphin County, Pennsylvania (died December 4, 2010). Personal Representative/Attorney: Nathan H. Waters, Jr., Esq., Law Office of Nathan Waters, P.O. Box 61081, Harrisburg, PA 17106-1081. d31-j14

ESTATE OF EMILY M. MILLER-LUCAS, late of Wiconisco Township, Dauphin County, Pennsylvania. Co-Executors: Wayne I. Miller, 88 Lake Point Lane, Clinton, NC 28328 and Steven D. Miller, 1414 Pottsville Street, Lykens, PA 17048. Attorney: Gregory M. Kerwin, Esq., Kerwin & Kerwin, 4245 State Route 209, Elizabethville, PA 17023. d31-j14

ESTATE OF WANDA P. DAUGHERTY, late of Lower Paxton Township, Dauphin County, Pennsylvania. Executrix: Antoinette Koch, 2224 Manchester Boulevard, Harrisburg, PA 17112. Attorney: Gerald J. Shekletski, Esq., Stone LaFaver & Shekletski, P.O. Box E, New Cumberland, PA 17070. d31-j14

ESTATE OF CONRAD L. MILLER, late of Upper Paxton Township, Dauphin County, Pennsylvania. Executrix: Ruth Nazay, c/o 1 Irvine Row, Carlisle, PA 17013. Attorney: Susan J. Hartman, Esq., Duncan & Hartman, 1 Irvine Row, Carlisle, PA 17013. d31-j14

ESTATE OF HERBERT L. KUHNS, late of Millersburg Borough, Dauphin County, Pennsylvania. Executor: Eric K. Spittle, 5351 Christa Court, Warrenton, VA 20187. Attorney: Earl Richard Etzweiler, Esq., 105 North Front Street, Harrisburg, PA 17101. Telephone (717) 234-5600. d31-j14

ESTATE OF DIANE SUSAN STAHL, late of Swatara Township, Dauphin County, Pennsylvania (died August 26, 2010). Administrator: Ronald L. Stahl, 5860 Chambers Hill Road, Harrisburg, PA 17111. Attorney: Scott M. Dinner, Esq., 3117 Chestnut Street, Camp Hill, PA 17011. d31-j14

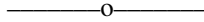
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sentencing order because the petitioner requested the placement, noting at the hearing that this court “graciously” granted him that request. As such, the Teen Challenge placement is somewhat of a custodial hybrid; neither completely involuntary nor voluntary. Because it has an element of voluntariness to it, this court believes that petitioner is not automatically entitled to the credit but that such credit is within this court’s discretion. Nevertheless, it is this court’s opinion that given the restrictive nature of petitioner’s confinement that he is entitled to credit for time served under the facts presented in this case.

Accordingly, I enter the following:

ORDER

AND NOW, this 5th day of November 2010, upon consideration of Stephon Adams’ request for time credit, it is hereby directed that he receive credit against his sentence for time served at Teen Challenge from December 20, 2006 to October 31, 2007.

**Wagner v. Commonwealth (PennDOT)****Motor Vehicles — Driver’s License Suspension — Driving Under the Influence of Alcohol — Refusal to Submit to Chemical Testing — Medical Incapacity — Diabetic Hyperglycemic Episode.**

Petitioner failed to give consent for a blood alcohol test following his arrest for driving under the influence of alcohol. He appealed the suspension of his driving privileges on the grounds that he was medically incapable of making a knowing and conscious decision to submit to a chemical test of his blood when requested to do so. The Court granted petitioner’s appeal.

1. In license suspension cases under Section 1547(b) of the Vehicle Code, the Commonwealth must establish that the driver involved: (1) was arrested for driving while under the influence of alcohol; (2) was asked to submit to a breathalyzer/chemical test; (3) refused to do so; and (4) was specifically warned that a refusal would result in the revocation of his driver’s license. Once the Commonwealth meets its burden, it is the driver’s responsibility to prove that he was not capable of making a knowing and conscious refusal to take the test. This is a factual determination which is to be made by the trial court. *Commonwealth v. O’Connell*, 555 A.2d 873, 876 (Pa. 1989).

2. When appellate courts review the decision of a court of common pleas in a license suspension case, the scope of review is limited to determining whether the findings of facts of the trial court are supported by competent evidence and whether the trial court

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committed an error of law or an abuse of discretion in reaching its decision. Questions of credibility and conflict in evidence presented are for the trial court to resolve, not our appellate courts. *Commonwealth v. Korchak*, 483 A.2d 1360 (Pa. 1984).

Pa.R.A.P. 1925(a) Opinion. C.P., Dau. Co., No. 1646 CD 2010.

Justine J. McShane, for Petitioner

Beverly J. Points, for the Commonwealth

CLARK, J., December 3, 2010. –

[PURSUANT TO Pa. R.A.P. 1925(a)]

AND NOW, upon review of the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing's (hereinafter "Respondent" or "PennDOT") Statement of Matters Complained of on Appeal (hereinafter "Statement") and the Responsive Post-Adjudication Brief of the Petitioner (hereinafter "Mr. Wagner"), this Court offers the following writing for the consideration of the Appellate Courts of this Commonwealth.

FACTUAL HISTORY

On March 4, 2009, the Petitioner, Mr. Wagner, was operating a motor vehicle on a public highway in Swatara Township, Dauphin County, and was stopped by Pennsylvania State Police Trooper Joseph M. Harper (hereinafter "Tpr. Harper") for a traffic violation. Based on Tpr. Harper's observations during the stop, Mr. Wagner was asked to exit the vehicle and submit to field sobriety testing. Mr. Wagner did not agree to participate in the field sobriety test but did assent to provide a breath sample in a portable breath testing device (hereinafter "PBT device") That breath sample was positive for the presence of alcohol, and Mr. Wagner was subsequently arrested on view for driving under the influence of alcohol ("DUI").

Mr. Wagner was then transported to Harrisburg Hospital and taken to the emergency ward. Tpr. Harper read Mr. Wagner the required warnings contained on the PennDOT form titled as "Chemical Testing Warnings And Report Of Refusal To Submit To Chemical Testing As Authorized By Section 1547 Of The Vehicle Code In Violation Section 3802" (known as the DL-26 Form), specifically Paragraphs One (1) through Four (4), and both Tpr. Harper and Mr. Wagner signed that form. Tpr. Harper then asked Mr. Wagner if he would submit to a blood test and Mr. Wagner did not respond in the affirmative. At that point, Tpr. Harper drove Mr. Wagner to his hotel. Subsequently, PennDOT sent an Official Notice of the Suspension of Petitioner's Driving Privilege to Mr.

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Wagner, which Notice was mailed on April 23, 2009. This Notice was sent to inform Mr. Wagner that his driving privilege would be suspended for one (1) year beginning May 28, 2009, as a result of his violation of Section 1547 of the Vehicle Code (Refusal to Submit to Chemical Testing).

PROCEDURAL HISTORY

On May 20, 2009, Petitioner commenced this action by filing a Statutory Operator's License Appeal, pursuant to the provisions of 75 Pa.C.S.A. §1550(a). A hearing was initially scheduled on July 15, 2009, but the matter was continued until August 4, 2009 (First Hearing). At the First Hearing, it became apparent to the Court that the audio/video capability installed in Tpr. Harper's State Police patrol unit was in fact operating and recording the roadside encounter between Mr. Wagner and Tpr. Harper, but was inexplicably not produced at that First Hearing by PennDOT's trial counsel.¹ Inasmuch as it had, by that time in the hearing proceedings, become quite obvious to this Court that the precise facts of such roadside interaction were going to be pertinent factors in the overall determination of this matter; this Court, *sua sponte*, directed the production of that video/audio recording at a subsequent proceeding (Second Hearing). The First Hearing was then adjourned until that recording could be produced at the Second Hearing.

At that Second Hearing on October 14, 2009, Mr. Wagner's counsel, Justin J. McShane, Esquire, specifically informed the Court and PennDOT's counsel that he (Attorney McShane) intended to call Joseph Citron, M.D. (hereinafter Dr. Citron), as an expert witness to testify that Mr. Wagner was medically incapable of making a knowing and conscious decision to submit to a chemical test of his blood when requested to do so by Tpr. Harper. (N.T. 10/14/09, Page 8). A Third Hearing was then scheduled for December 8, 2009 to hear Dr. Citron's testimony. That Third Hearing was continued until January 7, 2010. Due to a vehicle accident involving Dr. Citron, the January 7, 2010 Third Hearing was further continued until March 11, 2010. At that Third Hearing on March 11, 2010, Dr. Citron testified at length with respect to Mr. Wagner's medical condition at the time of his arrest for DUI on March 4, 2009, and was fully cross-examined by PennDOT's counsel concerning such testimony. At the conclusion of that Third Hearing, the Court directed the parties to submit Memoranda in support of their respective positions.

1. Throughout all of the proceedings before this Court, Respondent (PennDOT) was represented by Beverly J. Points, Esquire, Administrative Counsel-in-Charge, Office of Chief Counsel, Pennsylvania Department of Transportation, Harrisburg, Pennsylvania.

Both parties timely filed said Briefs. This appeal arises from this Court's Initial Order of July 27, 2010, in which we sustained the appeal of the Petitioner, Mr. Wagner.

MATTERS RAISED IN RESPONDENT'S 1925(b) STATEMENT

The rather prolix issues as articulated by Respondent in its Statement are:

1. The Court erred by misunderstanding the burdens borne by the parties in this matter.
2. Regarding the Department's burden, the Court erred when it found the testimony of Wagner's medical expert, Joseph Citron, M.D., J.D., dispositive of this matter because the Department "had ample opportunity to proffer an expert witness to rebut Dr. Citron's testimony but inexplicably chose not to do so. Therefore, inasmuch as these critical pieces of testimony are unrebutted, this Court is constrained to rule in favor of Mr. Wagner."
3. The Court erred as a matter of law when it stated in its July 27, 2010 order, "It is essential that the motorist make a knowing, intelligent or voluntary refusal after receiving his *O'Connell* warnings."
4. The Court erred as a matter of law when it stated at the hearing of Wagner's appeal:

We have the *O'Connell* warnings for a reason. The reason is to ensure, because of the sanctions, that the refusal is truly a knowing and volitional act with the concomitant understanding of the consequence. That is the whole purpose of *O'Connell*.
5. The Court erred when it did not require Wagner's medical expert to address the effect his admitted alcohol consumption had on his ability to make a knowing and conscious refusal.
6. The Court erred when it concluded that Dr. Citron, Esq.'s testimony was competent and unequivocal.
7. The Court erred because its decision to grant Wagner's appeal is not based on substantive evidence of record.

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8. The Court erred by using the wrong standard to evaluate the scientific basis for Dr. Citron, Esq.'s testimony.
9. Our Supreme Court has observed that "the Courts of Common Pleas are not boards of clemency; they are strictly courts of law; they are bound by rules of legal procedure and their decisions must be founded on firm jurisprudence, not fluctuating policy. . . . Courts interpret and expound laws; they do not lay down policies." *Commonwealth v. Moogerman*, 385 Pa. 256, 259-60, 122 A.2d 804, 806 (1956). Here, as explained in the proceeding paragraphs, the Court has created its own policy for adjudicating chemical test refusal appeals.
10. The Court erred in its August 18, 2010 order (the "August 18 Order") to produce this 1925(b) statement.

ANALYSIS OF MATTERS RAISED

Issue #1: The Respondent submits that this Court erred by misunderstanding the burdens borne by the parties in this matter. This Court is perfectly capable of understanding the burdens attributable to the parties in this case. In license suspension cases under Section 1547(b) of the Vehicle Code, the Commonwealth must establish that the driver involved: (1) was arrested for driving while under the influence of alcohol; (2) was asked to submit to a breathalyzer/chemical test; (3) refused to do so; and (4) was specifically warned that a refusal would result in the revocation of his driver's license. Once the Commonwealth meets its burden, it is the driver's responsibility to prove that he was not capable of making a knowing and conscious refusal to take the test. This is a factual determination which is to be made by the trial court. *Commonwealth v. O'Connell*, 555 A.2d 873, 876 (Pa. 1989).

The Respondent cites *Yourick v. Department of Transportation, Bureau of Driver Licensing*, 965 A.2d 341 (Pa. Cmwlth. 2009), where the Commonwealth Court of Pennsylvania reversed the judgment of the trial court which previously sustained the driver's appeal based on the ambiguity of the *O'Connell* warnings communicated to the driver and her *subjective interpretation* of those warnings. The Commonwealth Court in *Yourick* further articulated that the Pennsylvania Supreme Court has held that "[a] motorist's subjective beliefs are an insufficient justification for refusing to comply with the mandates of the Implied Consent Law." (citing, *Department of Transportation, Bureau of Driver Licensing v. Scott*, 684 A.2d 539, 543 (1996)). While we are not at all in

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dispute with Respondent's statement of the burdens placed on both parties, the *Yourick* case utilized by the Respondent is distinguishable from the case at hand in that, in the instant case, the driver (Mr. Wagner) has asserted that he was medically incapable of understanding the *O'Connell* warnings and in *Yourick* the driver simply misunderstood the warnings. There is a vast difference between medical incapacity and misunderstanding. We are also fully aware that Mr. Wagner had the burden of proving that his refusal was not knowing or conscious or that he was physically unable to take the test, and we found he did so through the testimony of Dr. Joseph Citron, as discussed *infra*.

Issue #2: The Respondent's next allegation is that this Court erred when it found the testimony of Mr. Wagner's medical expert, Joseph Citron, M.D., J.D., dispositive of this matter because the Department "had ample opportunity to proffer an expert witness to rebut Dr. Citron's testimony but inexplicably chose not to do so." The Respondent states that the Department does not have the burden of producing a medical expert at an appeal of a chemical testing refusal hearing. We never suggested that it did. Again, there is a vast difference between being required to produce a medical expert witness to support its (PennDOT's) case in chief, and producing rebuttal expert witness testimony when the Petitioner produces significant expert testimony in support of the claim of medical incapacity. And therein lies the gravamen of this case.

We would, however, note that the Respondent stipulated to the admission of Dr. Citron's *curriculum vitae* and also stipulated that he would be acceptable as an expert witness in this matter. (N.T. 3/11/10, Page 11). In *Commonwealth v. O'Connell*, 555 A.2d 873 (Pa. 1989), the Supreme Court of Pennsylvania held that, "when appellate courts review the decision of a court of common pleas in a license suspension case, the scope of review is limited to determining whether the findings of facts of the trial court are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion in reaching its decision. Questions of credibility and conflict in evidence presented are for the trial court to resolve, not our appellate courts." (*citing, Commonwealth v. Korchak*, 483 A.2d 1360 (1984)). The court in *O'Connell* reiterated the well-established maxim that, as long as sufficient evidence exists in the record which is adequate to support the finding of the trial court, as factfinder, an appellate court is precluded from overturning that finding and must affirm. This rule of law pays the proper deference owed to the factfinder who heard the witnesses testify and was in the sole position to observe the demeanor of the witnesses and assess their credibility. *Id.* at 875. (*citations omitted*).

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It is difficult to comprehend why trial counsel for the Respondent (PennDOT) would not have produced a rebuttal witness in opposition to Dr. Citron, especially since Respondent's trial counsel was potentially aware of all the factors associated with that testimony before it even occurred. Perhaps the Respondent's trial counsel requested those expert rebuttal witness resources from her superiors, and through some sort of myopic bureaucratic process, was denied the same. Had that initially been the case, and after hearing Dr. Citron's expert testimony, if PennDOT's trial counsel had made a viable argument in support of a Motion for a Continuance to further consult with her superiors and have the decision for expert rebuttal witness testimony revisited, we would have likely given such a Motion serious consideration. However, that Motion for Continuance was not made, and, as mentioned above and discussed *infra*, that lack of any meaningful rebuttal of Dr. Citron's expert testimony was a critical factor in this Court's decision in this case.

Indeed, considering the significant legal import of the issues in this case, it was very disappointing for this Court to not have had the opportunity to access and weigh opposing expert testimony in a case such as this. However, at the end of the day, unless this Court were to find Dr. Citron's testimony to be incredible and without foundation, which we did not so find, we must accord it the un rebutted weight which it deserves, and again, therein lies the essence of this case. We reiterate our initial position that Dr. Citron unequivocally possesses the reasonable pretension required under Pennsylvania law to qualify as an expert witness on the matters to which he testified. As such, this Court did not err by finding Dr. Citron's testimony dispositive of whether or not Mr. Wagner gave a knowing or conscious refusal to the chemical test. That the Respondent did not provide any testimony to rebut Dr. Citron's testimony was a strategic mistake on its part, given Dr. Citron's extensive credentials and experience. And especially since PennDOT's trial counsel had extensive advance notice of the identity of Dr. Citron and his professional credentials.

Issue #3: The Respondent claims that this Court erred as a matter of law when it failed to provide a citation for its assertion in its July 27, 2010 Order that, "It is essential that the motorist make a knowing, intelligent, or voluntary refusal after receiving his *O'Connell* warnings." While the "knowing and conscious" concept has become widely accepted as the standard with regard to the *O'Connell* warnings, we would note that the words "knowing and conscious refusal" are absent from Section 1547 of the Vehicle Code. Section 1547 of the Vehicle Code does not require that a refusal be "knowing and conscious." Furthermore, because driving a

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motor vehicle is not a constitutionally protected right, the “knowing and conscious refusal” standard was not added by the judiciary to make Section 1547 of the Vehicle Code constitutional. *Commonwealth, DOT, Bureau of Driver Licensing v. Hoover*, 606 A.2d 1264, 1267 (Pa. Commw. Ct. 1992). The word intelligent comes from the Latin word *intellegere* which means to understand. *Merriam-Webster’s Collegiate Dictionary* (10th ed. 2001). Similarly, voluntary means proceeding from the will or from one’s own choice or consent. *Id.* One would think it was common sense to include these words when investigating whether or not a motor vehicle driver actually refused chemical testing. Did he understand the warning when he refused the testing? Did he refuse the testing voluntarily? These concepts are implicit in the standard which governs the refusal of chemical testing. Therefore, this Court did not err as a matter of law when it stated that it is essential that the motorist make a knowing, intelligent or voluntary refusal after receiving his *O’Connell* warnings.

Issue #4: The Respondent asserts that this Court erred as a matter of law when it stated at the hearing of Mr. Wagner’s appeal:

We have the *O’Connell* warnings for a reason. The reason is to ensure, because of the sanctions, that the refusal is truly a knowing and volitional act with the concomitant understanding of the consequence. That is the whole purpose of *O’Connell*.

The trial court in *Commonwealth, DOT, Bureau of Driver Licensing v. Lipko*, 654 A.2d 227, 229 (Pa. Commw. Ct. 1995), explained that “the officer must assure himself that the licensee understands the context of the test and that Miranda rights do not apply when the chemical test is part of a civil investigation as opposed to part of a criminal investigation. Without such an adequate warning, a finding of ‘knowing and conscious refusal’ is impossible.” In *Lipko*, the trial court sustained the driver’s license suspension appeal based on his confusion at the time he was given the *O’Connell* warnings. In the case *sub judice*, pursuant to the credible and un rebutted expert testimony of Dr. Citron, Mr. Wagner medically lacked the necessary capacity to understand and effectively refuse chemical testing. Again, as per Dr. Citron’s credible and un rebutted expert testimony, as a result of the hyperglycemic episode Mr. Wagner was experiencing at the time of the stop, he was unable to comprehend the *O’Connell* warnings and respond knowingly and consciously. Thus, this Court made no misstatement of the law with reference to the purpose of the *O’Connell* warnings at Mr. Wagner’s Hearing.

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Issue #5: The Respondent further advances that this Court erred when it did not require Mr. Wagner's medical expert to address the effect his admitted alcohol consumption had on his ability to make a knowing and conscious refusal. The Respondent specified that a licensee must produce expert medical testimony to discount the effects of admitted alcohol consumption on his or her ability to make a knowing and conscious decision to refuse chemical testing. *Daily v. Department of Transportation, Bureau of Driver Licensing*, 722 A.2d 772 (Pa. Commw. Ct. 1999). We categorically agree.

Dr. Citron addressed Mr. Wagner's admitted alcohol consumption forthrightly. When asked on cross-examination whether Mr. Wagner admitted that he consumed alcohol on the night of the stop and whether his problems in understanding could have also been caused by consumption of alcohol, Dr. Citron candidly replied, "Yes, it's possible, yes." (N.T. 3/11/10, Page 91). Counsel for Respondent further questioned Dr. Citron by asking, "Based on the behavior of and the demeanor that you observed on the video and then the fact that the Trooper read those warnings and Mr. Wagner signed that form, are you saying that you would not consider that to be a valid consent?" To which Dr. Citron responded, "Yes, ma'am, that's what I am saying." Dr. Citron continued to explain his answer by adding, "I'm basing that on the responses that I heard in the conversation that was taking place on the videotape where things were being explained over again and again; were not being appreciated by Mr. Wagner. If he was not able to understand the simplicity of that explanation about the portable breath testing, it's my opinion that he was not going to be able to comprehend the complexity of that document (DL-26 Form)." (N.T. 3/11/10, Pages 96-97).

Then, on recross-examination, Dr. Citron was asked, "Can you say to a reasonable degree of medical certainty what his (Mr. Wagner's) medical condition was on March 4, 2009?" At which point Dr. Citron answered, "Yes. He was an undiagnosed diabetic on March 4." Dr. Citron was then asked, "Can you say that he was suffering a hyperglycemic episode at the time of the stop?" And Dr. Citron replied, "Yes. That's why I'm here, yes." (N.T. 3/11/10, Page 110). Dr. Citron provided further explanation for Mr. Wagner's reading on the PBT device conducted by the Trooper on March 4, 2009, as it relates to a hyperglycemic episode, when he articulated that, "In the regard that we have discussed when you have these ketones circulating in your body and your body produces the isopropanol alcohol, then you have this additional self-generated alcohol accounting for what came out on the portable breath test." (N.T. 3/11/10, Page 112). Dr. Citron did more

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than simply address the effect Mr. Wagner's admitted alcohol consumption had on his ability to make a knowing and conscious refusal, he very assiduously clarified the true cause of Mr. Wagner's PBT reading, Mr. Wagner's undiagnosed diabetes.

Issue #6: The Respondent avers that this Court erred when it concluded that Dr. Citron's testimony was competent and unequivocal. There is nothing in the record to suggest that Dr. Citron's testimony was even remotely equivocal or ambivalent. As stated above, Dr. Citron delivered his professional opinion to a medical certainty that Mr. Wagner was incapable of knowingly refusing the chemical test requested by the Trooper due to the hyperglycemic episode he was experiencing. The Respondent alleges that Dr. Citron's testimony was equivocal because he did not know the specifics of Mr. Wagner's medical condition on the night of his refusal. We inexorably disagree.

Dr. Citron viewed the video footage from the stop of Mr. Wagner on the night of March 4, 2009, he read the Trooper's report from that same night, and he reviewed Mr. Wagner's medical records. In *Commonwealth DOT v. Neeson*, the court held that the Licensee presented credible, expert medical testimony, which confirmed that the Licensee was unable to make a knowing and conscious refusal as a result of an injury inflicted by the arresting officer. 2006 Pa. Dist. & Cnty. Dec. LEXIS 499 (Pa. C. P. 2006). In *Neeson*, the Licensee was pulled over on March 23, 2006 and was not treated by the medical expert, Dr. Matthew Kulka, until March 30, 2006. Here, similar to Mr. Wagner's medical expert, Dr. Kulka did not have the advantage of personally observing the Licensee on the date of the stop and arrest. In fact, it was seven days before Dr. Kulka was able to examine the Licensee and he was only provided with photographs of the incident to show the extent of the bruising to the Licensee. Dr. Kulka testified that he was convinced, to a reasonable degree of medical certainty, that the Licensee would have been unable to comprehend what police officers were saying to her following her arrest due to the nature of her injuries. He further stated that the injury would have had this effect on her mental abilities, independent of the effect that alcohol may have had on her. It was also noted that the Appellant did not offer any medical testimony to refute Dr. Kulka's opinions. *Id.* at 6.

In the case *sub judice*, when asked by the Respondent, "Mr. Wagner admitted to drinking alcohol that night and I am simply asking if that would have had an effect based on all of your training and experience? It seems reasonable that you would be able to make some kind

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of opinion?”, Dr. Citron responded, “Based on my experience and knowledge, I know that alcohol has to reach a certain threshold in a person’s body to have any effect. I have not heard anything to that. I didn’t see anything to make me aware of that looking at the video, so that’s why I can’t answer that.” (N.T., 3/11/10, Page 114). Dr. Citron testified copiously about the effect of ketones circulating in the body of someone affected by diabetes and the production of isopropanol alcohol that occurs as a result of this, which accounts for additional self-generated alcohol. (N.T., 3/11/10, Page 112). Based on Dr. Citron’s expansive medical and legal experience and his observation of Mr. Wagner on March 4, 2009, we reject Respondent’s claim that Dr. Citron’s testimony was equivocal or incompetent.

Issue #7: The Respondent states that this Court erred because its decision to grant Mr. Wagner’s appeal is not based on substantive evidence of record. The Respondent’s Statement appears to contend that in order for this Court to consider this appeal, “two separate and important steps” need to be established by Mr. Wagner, namely that Mr. Wagner himself must testify and convince the court of his sincerity and Mr. Wagner must provide competent medical evidence to support that foundation. Curiously, the Respondent has failed to provide this Court with any citation of statute or case law in support of that contention. After a fair investigation of the same, we are likewise unable to locate support for such a contention. Even if we were to presume that the Respondent was correct, as a general rule, the instant case does not, due to its biomedical factual underpin, conform to that contention. The Respondent’s counsel who authored the 1925(b) Statement has taken extraordinary literary license to paraphrase and amplify the burden of the Licensee. The burden of the Licensee has remained unchanged for decades. In *Commonwealth v. O’Connell*, 555 A.2d 873 (Pa. 1989), the Court emphasized that once the Commonwealth has met its burden, it is the driver’s responsibility to prove that he was not capable of making a knowing and conscious refusal to take the test. Nowhere in any case law or statute is there language that the Licensee must testify and convince the court of his sincerity. As for expert medical evidence, it was unequivocal and un rebutted from the testimony of Dr. Citron that Mr. Wagner was medically incapable of processing and understanding the *O’Connell* warnings that were presented to him and the request to consent to chemical testing due to the diabetic episode he was experiencing at the time. Therefore, we find no merit to the Respondent’s allegation.

Item #8: The Respondent declares that this Court used the wrong standard to evaluate the scientific basis for Dr. Citron’s testimony. It is

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well-known under Pennsylvania law that the standard by which a witness qualifies as an expert witness is a liberal one. As we stated in our July 27, 2010 Opinion, Pennsylvania law requires that the expert witness must possess the requisite skill, training, education or other reasonable pretension to specialized knowledge on the subject under investigation. *Bielski v. Brabender*, 2001 Pa. Dist. & Cnty. Dec. LEXIS 412 (Pa. C.P. 2001). Furthermore, for an alleged expert's testimony to be admitted at trial, the substance of the expert's opinion, as well as the methodology underlying the opinion must be generally accepted by the relevant scientific community. *Id.* (citing, *Thomas v. West Bend Company Inc.*, 760 A.2d 1174 (Pa. Super. 2000)). The trial court enjoys broad discretion in deciding whether the evidence may be admitted or excluded. *Id.* As stated in our prior Initial Order, Dr. Citron has been a licensed physician since 1975 and also a licensed attorney since 1997. He lectures on diabetes nationally, is board certified in ophthalmology, and has been trained in breath testing instruments. (N.T. 3/11/10, Pages 11-20). Not to mention, counsel for Respondent stipulated to the admission of Dr. Citron's *curriculum vitae* and stipulated that he would be acceptable as an expert witness in this matter. (N.T. 3/11/10, Page 11). If Respondent objected to the medical community's acceptance of Dr. Citron's diagnosis of Mr. Wagner, it should have raised that challenge at the Appeal Proceedings, perhaps through the employment of its own expert witness. But that did not occur. As a result, we find that the standard used to evaluate Dr. Citron's testimony was indeed the correct standard under Pennsylvania law.

Item #9: The Respondent claims that this Court has created its own policy for adjudicating chemical test refusal appeals. In a sincere desire to avoid regurgitating our entire July 27, 2010 Initial Order/Opinion, we will simply maintain that the standards, burdens, and law that this Court relied on in issuing its Initial Order/Opinion have been cited and explained thoroughly. While we wholeheartedly agree with the Respondent that the Courts of Common Pleas are not boards of clemency, we are nevertheless, and in fact, authorized and even encouraged to interpret and expound laws. That is what we have done with this appeal.

We also note, with regret, the somewhat impertinent tone embedded in this particular issue as presented by Respondent's authoring counsel. Indeed, were we inclined to do so, we might have viewed the presentation of this issue as an attempt by Respondent's authoring counsel to hector the Court. However, we choose not to descend into those dark reaches, and instead, attribute authoring counsel's presentation of this

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particular issue to an overabundance of unchecked advocacy zeal. Thus, we simply find the Respondent's claim on this issue to be futile and, quite frankly, a bit disingenuous.

Item #10: The Respondent spuriously insists that this Court erred in its August 18, 2010 Order, which required the production of the Respondent's 1925(b) Statement. It appears to the Court that the Respondent's authoring counsel has grossly misconstrued the essence of this Court's 1925(b) Order with regard to the preparation and filing of an optional supporting Brief. So there can be no misunderstanding, this Court's 1925(b) Order specifically states:

...

"The Appellant is likewise *requested* to file a Brief in support of such Statement, unless the matters contained therein are so patently obvious with regard to their basis and legal significance as to not warrant discussion through a Brief. Upon the filing of said Statement, and Brief, *if any*, the Appellee is *requested* to file a Response to said Statement and a Reply Brief, *if necessary*, within twenty-one (21) days unless the matters contained in such Response are likewise so patently obvious with regard to their basis and legal significance as to not warrant discussion through a Reply Brief."

...

This Court's 1925(b) Order of August 18, 2010 (emphasis added).

The clear language of the 1925(b) Order merely *requests* the Respondent (PennDOT) to file an optional Brief in support of its Statement. However, it is specifically noted that we did not order, nor direct, the filing of a Brief by either party. As we have stated in other matters, it is merely an option affording both parties an opportunity to clarify their respective positions such that the Court would have the benefit of such additional clarity in the preparation of any supplemental Memorandum or Opinion that we may choose to author in this case. This additional opportunity for counsel to develop their positions and to share those thoughtful insights with the trial court as to the matters raised on appeal serves the true interests of justice, tends to sharpen the focus of the debate, and avoids misimpressions by the trial court concerning the essence of the appeal issues. Had either the Petitioner or the Respondent not wished to file a Brief or a Response and/or a Responsive Brief, as

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the case may be, as was their right, we would have certainly not taken any offense at such posture. However, Respondent's counsel chose, without direction from or authority of this Court or an Appellate Court, to integrate a sort of abbreviated Brief into Respondent's Statement and thereby clearly violated Pa. R.A.P. Rule 2116. Pa. R.A.P. Rule 2116, requires that,

The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. The Statement shall be **no more than two pages** and will be deemed to include every subsidiary question fairly comprised therein. (emphasis added).

Unfortunately, the authoring counsel for Respondent who prepared the 1925(b) Statement, Philip M. Bricknell, Esquire, took unauthorized liberty in concocting his own hybrid Statement, resulting in a prolix nine (9) page document. It appears from Attorney Bricknell's writing that this was intentional conduct on his part and thus violative of the provisions of Rule 2116. Indeed, such intentional conduct may be construed by the Appellate Court as the basis for striking the Respondent's 1925(b) Statement in its entirety. We are unable to deduce as to whether or not that improvident approach was the product of Attorney Bricknell's gross misunderstanding of our 1925(b) Order, or just sloth in the preparation of a proper Brief. Once again, we find the Respondent's claim ineffectual.

Interestingly, the said authoring counsel, Attorney Bricknell, has not, according to the official online docket of the Commonwealth Court, entered his appearance in this matter as of the date hereof. Therefore, we must presume that Respondent's actual appellate counsel of record (who was also Respondent's trial counsel) has, by implication, fully endorsed and subscribed to the writing tendered to this Court by Attorney Bricknell. Furthermore, it is unclear what is the meaning of the last paragraph contained in the Statement. The paragraph states that the Department reserves the right to argue any additional issues that may be raised by the Common Pleas Court's Opinion filed in support of the Order. It would appear that Respondent's counsel is attempting to create an open door, indeed a carte blanche, to enlarge and exacerbate this already unfortunate situation.

CONCLUSION

This Court's ruling in favor of Mr. Wagner was justified, free of error, and legally compelled by the record evidence adduced during such proceedings. Mr. Wagner provided convincing and un rebutted expert medical testimony to support his contention that he could not make a knowing or conscious refusal of chemical testing because of the undiagnosed medical condition he was suffering from at the time. This Court, upon finding Dr. Citron's testimony to be credible and undisputed, had no other recourse in the exercise of fairness and justice than to rule in favor of Mr. Wagner. Thus, this Court respectfully suggests that all of Respondent's claims on appeal lack merit and should be dismissed.

ISSUED AT HARRISBURG, this 3rd day of December, 2010.

—————○—————

THIRD PUBLICATION

Estate Notices

ESTATE OF ANNA ECKER, late of Wayne Township, Dauphin County, Pennsylvania. Executor/Attorney: Joseph D. Kerwin, Esq., 4245 State Route 209, Elizabethville, PA 17023. d24-j7

ESTATE OF CHARLOTTE W. BOGGS, late of Harrisburg City, Dauphin County, Pennsylvania. Personal Representative: Constance E. Stoneroad, President, Keystone Guardianship Services, P.O. Box 804, Elizabethville, PA 17023. Attorney: David H. Stone, Esq., Stone LaFaver & Shekletski, P.O. Box E, New Cumberland, PA 17070. d24-j7

ESTATE OF PEARL C. MILLER, late of Harrisburg, Dauphin County, Pennsylvania. Executor: The Reverend Monsignor Robert E. Lawrence, 6150 Allentown Boulevard, Harrisburg, PA 17112. Attorney: Heather D. Royer, Esq., Smigel, Anderson & Sacks, LLP, 4431 North Front Street, Third Floor, Harrisburg, PA 17110. d24-j7

ESTATE OF RITA A. HOMMEL, late of Washington Township, Dauphin County, Pennsylvania. Executrix: Cindy Dearwechter-Miller, 86 Red Hill Road, Newport, PA 17074. Attorney: Earl Richard Etzweiler, Esq., 105 North Front Street, Harrisburg, PA 17101. Telephone (717) 234-5600. d24-j7

ESTATE OF EDNA E. SHILEY, late of the Township of Washington, Dauphin County, Pennsylvania (died October 3, 2010). Executrix: Denise E. Carl, 6261 State Route 209, Elizabethville, PA 17023. Attorney: Joseph D. Kerwin, Esq., Kerwin & Kerwin, 4245 State Route 209, Elizabethville, PA 17023. d24-j7

ESTATE OF ANITA H. CHAPPELLE, late of the City of Harrisburg, Dauphin County, Pennsylvania (died May 30, 2010). Administrator: George E. Humes, 7065 Clearfield Road, Harrisburg, PA 17111. Attorney: Edward P. Seeber, Esq., James, Smith, Dietterick & Connelly, LLP, 555 Gettysburg Pike, Suite C-400, Mechanicsburg, PA 17055. Telephone (717) 533-3280. d24-j7

ESTATE OF MARY E. GOHO, late of Susquehanna Township, Dauphin County, Pennsylvania. Executor: David L. Foreman, 451 Rosewood Lane, Harrisburg, PA 17111. d24-j7

ESTATE OF REGINA S. HIPPLE, late of the Borough of Highspire, Dauphin County, Pennsylvania (died September 7, 2010). Administrator: Scott A. Gaylor. Attorney: Nora F. Blair, Esq., 5440 Jonestown Road, P.O. Box 6216, Harrisburg, PA 17112. d24-j7

ESTATE OF JAMES C. KEPNER, late of the City of Harrisburg, Dauphin County, Pennsylvania (died December 3, 2010). Executor: Thomas D. Cope, 50 Locust Street, Steelton, PA 17113. Attorney: Jill M. Wineka, Esq., Purcell, Krug & Haller, 1719 North Front Street, Harrisburg, PA 17102. d24-j7

ESTATE OF JANET H. HOFFSTOT, late of the Township of Derry, Dauphin County, Pennsylvania. Executor: Francis Donnelly Hoffstot, 869 D Rhue Haus Lane, Hummelstown, PA 17036. Attorney: Jerry A. Weigle, Esq., Weigle & Associates, P.C., 126 East King Street, Shippensburg, PA 17257. d24-j7

ESTATE OF CHARLES S. DAVENHALL, late of Swatara Township, Dauphin County, Pennsylvania. Executor: Thomas E. Davenhall, 3690 Sandy Plains Road, Marietta, GA 30066-3020. Attorney: Suzanne S. Friday, Esq., Nauman, Smith, Shissler & Hall, LLP, P.O. Box 840, Harrisburg, PA 17108-0840. d24-j7

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that **IPC Inc.** with a commercial registered agent in care of National Registered Agents, Inc. in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 4129(b). The address of its principal office under the laws of its jurisdiction is 6641 West Broad Street, Richmond, VA 23230.

This shall serve as official notice to creditors and taxing authorities. j7

NOTICE IS HEREBY GIVEN that **Dauphin-Middle Paxton Community Ambulance Association**, a Pennsylvania nonprofit corporation with its registered office at 930 Peters Mountain Road, P.O. Box 109, Dauphin, PA, is now engaged in winding up and settling the affairs of said corporation. The corporation will be filing Articles of Dissolution with the Commonwealth of Pennsylvania at Harrisburg, PA, so that its corporate existence shall be ended by issuance of a Certificate of Dissolution by the Department of State under the provisions of the Nonprofit Corporation Law of 1988 (as amended).

McNEES WALLACE & NURICK LLC
100 Pine Street
Harrisburg, PA 17101

j7

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Corporation Bureau of the Department of State of the Commonwealth of Pennsylvania:

1. The name of the corporation is: **B D HARDWARE HOUSE, INC.**
2. The corporation has been organized under Title 15 of the Pennsylvania Consolidated Statutes §§1101-4162 (the Business Corporation Law, as amended).

ROBERT C. MAY, Esq.
The Law Firm of May & May, P.C.
4330 Carlisle Pike
Camp Hill, PA 17011
(717) 612-0102

j7

NOTICE IS HEREBY GIVEN that **IROQUOIS TOOL SYSTEMS, INC.**, a business corporation incorporated under the laws of Pennsylvania, hereby gives notice of its winding up proceedings. j7

NOTICE IS HEREBY GIVEN of the filing of Articles of Incorporation as follows:

1. The name of the corporation is **Neo Enterprises, LLC.**
 2. The location of the registered office of the corporation is 472 Woodruff Way, Harrisburg, PA 17112.
 3. The Articles of Incorporation were filed under the provisions of the Business Corporation Law of 1988.
 4. The corporation shall have unlimited power to engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law.
 5. The Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania and approved by said Department on the 22nd day of October, 2010. j7
-

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on December 20, 2010 with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the 1988 Pennsylvania Business Corporation Law of the Commonwealth of Pennsylvania. The name of the corporation is **1400 N 3rd Enterprises, Inc.** The registered office is at 1400 N. 3rd Street, Harrisburg, Dauphin County, Pennsylvania 17102-1908.

The purpose of the corporation is: To conduct a licensed restaurant business and all other lawful business in the Commonwealth of Pennsylvania and elsewhere for which corporations may be incorporated under the Pennsylvania Business Corporation Law.

STEVE C. NICHOLAS, Esq.
Nicholas Law Offices, P.C.
2215 Forest Hills Drive, Suite 37
Harrisburg, PA 17112-1099
(717) 540-7746

j7

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that Nonprofit Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on December 27, 2010, for the purpose of obtaining a Certificate of Incorporation under the provisions of the Nonprofit Corporation Law of 1988. The name of the proposed nonprofit corporation is **Samuel and Gail Lindenberg Family Foundation**.

It will be organized under Section 501(c)(3) of the Internal Revenue Code of 1986, as thereafter amended, as a foundation for religious, charitable, scientific, and educational purposes, including providing educational assistance grants to high school and college students.

McNEES WALLACE & NURICK LLC
100 Pine Street
Harrisburg, PA 17101

j7

NOTICE IS HEREBY GIVEN that **LIFESPRING FINANCIAL, INC.**, a foreign business corporation incorporated under the laws of the State of FLORIDA, Received a Certificate of Authority in Pennsylvania on 09/10/2007 and surrenders its Certificate of Authority to do business in Pennsylvania.

Its last registered office in this Commonwealth was located at: 111 PINE STREET, SUITE 320, HARRISBURG, PA., and its last registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania.

Notice of its intention to withdraw from Pennsylvania was mailed by certified or registered mail to each municipal corporation in which the registered office or principal place of business of the corporation in Pennsylvania is located.

The post office address, including street and number, if any, to which process may be sent in an action or proceeding upon any liability incurred before any liability incurred before the filing of the application for termination of authority is 18901 NE 29th Avenue, Suite 103, Aventura, Florida 33180.

j7

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed pursuant to the Pennsylvania Nonprofit Corporations Law of 1988, as amended, with the Department of State of the Commonwealth of Pennsylvania, located in Harrisburg, Pennsylvania, on December 3, 2010 for the purpose of forming a new corporation.

The name of the corporation is the **Capital City Charter School for Public Service**. This corporation is organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

LATSHA DAVIS YOHE & McKENNA
350 Eagleview Boulevard
Exton, PA 19341

j7

NOTICE IS HEREBY GIVEN that **Totah Rental & Equipment Co., Inc.**, a foreign business corporation incorporated under the laws of the State of New Mexico, where its principal office is located at 812 South Main Street, Aztec, New Mexico 87410, has applied for a Certificate of Authority in Pennsylvania, where its registered office is located at 116 Pine Street, Suite 320, Harrisburg, Pennsylvania 17101.

The registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania.

j7

NOTICE IS HEREBY GIVEN that an application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 23, 2010, by **HSBC Mortgage Services Inc.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 636 Grand Regency Boulevard, Brandon, FL 33510, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania.

j7

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 22, 2010, by **Project Consulting Services, Inc.**, a foreign corporation formed under the laws of the State of Louisiana, where its principal office is located at 3300 W. Esplanade Ave., South, Suite 500, New Orleans, LA 70002, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. j7

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on November 29, 2010, by **DBL ENTERPRISES, INC.**, a foreign corporation formed under the laws of the State of New Jersey, where its principal office is located at 3411 Rose Avenue, Ocean, NJ 07712, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. j7

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 23, 2010, by **Blossman Services, Inc.**, a foreign corporation formed under the laws of the State of Mississippi, where its principal office is located at 809 Washington Avenue, Ocean Springs, MS 39564, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. j7

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 23, 2010, by **Target Enterprise, Inc.**, a foreign corporation formed under the laws of the State of Minnesota, where its principal office is located at 1000 Nicollet Mall, Minneapolis, MN 55403, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. j7

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 27, 2010, by **Target Corporate Services, Inc.**, a foreign corporation formed under the laws of the State of Minnesota, where its principal office is located at 1000 Nicollet Mall, Minneapolis, MN 55403, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. j7

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 20, 2010, by **Playworks Education Energized d/b/a Playworks Education Energized, Inc.**, a foreign nonprofit corporation formed under the laws of the State of California, where its principal office is located at 380 Washington Street, Oakland, CA 94607, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988, exclusively for religious, educational, scientific and charitable purposes within the meaning of under Section 501(c)(3) of the Internal Revenue Code as amended.

The registered office in Pennsylvania is located at c/o National Registered Agents, Inc., Dauphin County, Pennsylvania. j7

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on November 12, 2010, by **Financial First, Inc.**, a foreign corporation formed under the laws of the State of California, where its principal office is located at 463 Aviation Boulevard, Suite 210, Santa Rosa, CA 95403, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania.

Stinson, Morrison Hecker LLP, Solicitors
7700 Forsyth Blvd., Ste. 1100
St. Louis, MO 63105-1821

j7

NOTICE IS HEREBY GIVEN that **AMR/Arlington Medical Resources, Inc.**, a Delaware Corporation intends to file an Application for Termination of Authority and the registered office is located at c/o Corporation Service Company, Dauphin County, Pennsylvania.

j7

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 23, 2010, by **Maitland Trifecta, Inc.**, a foreign corporation formed under the laws of the State of Florida, where its principal office is located at 369 Tymber Run, Ormond Beach, FL 32174, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o Corporation Service Company, Dauphin County, Pennsylvania.

j7

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 22, 2010, by **Clean Earth Dredging Technologies-Delaware, Inc.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o Corporation Service Company, Dauphin County, Pennsylvania.

j7

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 23, 2010, by **Lifestar Response Corporation**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 2711 Centerville Road, Suite 400, Wilmington, DE 19808, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o Corporation Service Company, Dauphin County, Pennsylvania.

j7

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 30, 2010, by **AMR/Arlington Medical Resources, Inc.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 707 Eagleview Boulevard, Suite 305, Exton, PA 19341, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o Corporation Service Company, Dauphin County, Pennsylvania.

j7

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State for **KLF ENTERPRISES INC.**, a corporation organized under the Pennsylvania Business Corporation Law of 1988. j7

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State for **STUCCO KINGS, INC.**, a corporation organized under the Pennsylvania Business Corporation Law of 1988. j7

FIRST PUBLICATION

Fictitious Notices

NOTICE IS HEREBY GIVEN that an Application for Registration of a fictitious name, **Pathetic Medic of Harrisburg**, for the conduct of business in Dauphin County, Pennsylvania, with the principal place of business being 975 Powells Valley Road, Halifax, PA 17032, was made to the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on the 29th day of November, 2010, pursuant to the Act of Assembly of December 16, 1982, Act 295.

The name and address of the persons owning or interested in the said business are: Nathan G. Billhime, 975 Powells Valley Road, Halifax, PA 17032, Shannon D. Billhime, 975 Powells Valley Road, Halifax, PA 17032. j7

NOTICE IS HEREBY GIVEN that an Application for Registration of a fictitious name, **Vision Products**, for the conduct of business in Dauphin County, Pennsylvania, with the principal place of business being 56 Downing Parkway, Pittsfield, MA 01201, was made to the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on the 12th day of December, 2010, pursuant to the Act of Assembly of December 16, 1982, Act 295.

The name of the entity owning or interested in the said business is: Sampco of Pennsylvania, Inc. j7

FIRST PUBLICATION

Miscellaneous Notices

**IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY
PENNSYLVANIA**

No. 2010-CV-519-MF

**NOTICE OF
SHERIFF'S SALE**

**WELLS FARGO BANK, N.A.,
Plaintiff**

vs.

**UNKNOWN HEIRS, SUCCESSORS,
ASSIGNS, AND ALL PERSONS,
FIRMS, OR ASSOCIATIONS
CLAIMING RIGHT, TITLE OR
INTEREST FROM OR UNDER
JUANITA L. CLYDE, DECEASED,
Defendants**

NOTICE

**TO: UNKNOWN HEIRS, SUCCESSORS,
ASSIGNS, AND ALL PERSONS,
FIRMS, OR ASSOCIATIONS
CLAIMING RIGHT, TITLE OR
INTEREST FROM OR UNDER
JUANITA L. CLYDE, DECEASED**

**NOTICE OF SHERIFF'S SALE
OF REAL PROPERTY**

BEING PREMISES: 642 SENECA STREET,
HARRISBURG, PA 17110-3464.

BEING in 10TH WARD OF CITY OF
HARRISBURG, County of DAUPHIN,
Commonwealth of Pennsylvania.

PARCEL Number 1: 10-009-023-000-0000.
IMPROVEMENTS consist of residential
property.

SOLD as the property of UNKNOWN
HEIRS, SUCCESSORS, ASSIGNS, AND ALL
PERSONS, FIRMS, OR ASSOCIATIONS
CLAIMING RIGHT, TITLE OR INTEREST
FROM OR UNDER JUANITA L. CLYDE,
DECEASED.

FIRST PUBLICATION

Miscellaneous Notices

YOU ARE HEREBY NOTIFIED that your house (real estate) at 642 SENECA STREET, HARRISBURG, PA 17110-3464 is scheduled to be sold at the Sheriff's Sale on APRIL 14, 2011 at 10:00 AM., at the DAUPHIN County Courthouse to enforce the Court Judgment of \$75,508.85 obtained by, WELLS FARGO BANK, N.A. (the mortgagee), against the above premises.

PHELAN HALLINAN
& SCHMIEG, LLP

j7

**IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY
PENNSYLVANIA**

NOTICE OF SHERIFF'S SALE

**SALE No. 111
CHRISTINE A. PINTO, Esq.**

JUDGMENT AMOUNT \$168,424.04

THE PROPERTY AND IMPROVEMENTS described below will be sold by the Sheriff of Dauphin County on January 13, 2011 at 10:00 a.m., in the Dauphin County Administration Building, 4th Floor, Commissioners Hearing Room, Harrisburg, Pennsylvania.

ALL THAT CERTAIN leasehold estate or unexpired term of years in and to all that certain tract or parcel of ground situate in the Borough of Middletown, Dauphin County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the eastern side of Nissley Street at a corner of Lot No. 166 on the hereinafter mentioned Plan of Lots; THENCE northwardly along Nissley Street 40 feet to a point on the southern line of a 14 foot wide alley, known as Detweiler Avenue; THENCE eastwardly along the same 143 feet, more, or less, to a point opposite the most eastern outside wall of the garage building located on the herein described tract of land; THENCE southwardly along said outside wall of said garage 40 feet to a point in the northern line of Lot No. 166 afore-said; THENCE westwardly along Lot No. 166, 143 feet more or less, to the place of BEGINNING.

BEING the western portion of Lot No. 167 on the Plan of Lots of the Estate of George Frey, deceased, as recorded in Deed Book C, Volume 3, Page 602.

HAVING THEREON erected a three story brick dwelling house known and numbered as 163 Nissley Street, Middletown, Pennsylvania.

PARCEL IDENTIFICATION No. 41-002-025.

UNDER AND SUBJECT, NEVERTHELESS, to any and all covenants, conditions, easements, rights of way, restrictions and matters of prior record and any matter which a physical inspection or survey of the property would disclose.

Tract No. 1

BEING THE SAME PREMISES which Theodora L. Detweiler, also known as Theo L. Detweiler, widow, acting herein by Dauphin Deposit Bank and Trust Company, successor to Dauphin Deposit Trust Company, her attorney-in-fact, duly appointed by Power of Attorney dated March 16, 1976, recorded in Misc. Book T, Volume 16, Page 705, in the Dauphin County Records, by deed dated November 16, 1977 and recorded November 17, 1977 in Deed Book G, Volume 64, Page 300 in the Office of the Recorder of Deeds of Dauphin County, granted and conveyed unto George W. Murtorff and Virginia E. Murtorff. George W. Murtorff died October 6, 1985, thereby vesting title solely to Virginia E. Murtorff, Grantor herein.

TITLE TO SAID PREMISES IS VESTED IN Russell J. Freeze, Jr., an adult individual, by Deed from Virginia E. Murtorff, an adult individual, dated 06/11/2009, recorded 06/19/2009 in Instrument Number 20090019858.

SEIZED AND SOLD as the property of Russell J. Freeze, Jr., his heirs, devisees and personal representatives, and his, her, their or any of their successors in right, title and interest; to wit; Kathellean R. Markley, as administratrix and heir to Estate of Russell J. Freeze, Jr., Richard W. Markley, Jr. as heir to Estate of Russell J. Freeze, Jr., Rita T. Snyder, as heir to Estate of Russell J. Freeze, Jr. under Judgment Number 2010-CV-1971.

NOTICE is further given to all parties in interest and claimants. Schedule of proposed distributions will be filed by the Sheriff of Dauphin County, on Monday, February 14, 2011 and distributions will be made in accordance with the said schedule unless exceptions are filed thereto within ten (10) days thereafter.

j7

FIRST PUBLICATION

Miscellaneous Notices

**IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY
PENNSYLVANIA**

CIVIL ACTION – LAW

No. 2010-CV-05784-MF

**NOTICE OF ACTION IN
MORTGAGE FORECLOSURE**

**THE BANK OF NEW YORK MELLON,
AS SUCCESSOR TRUSTEE UNDER
NOVASTAR MORTGAGE FUNDING
TRUST, SERIES 2005-2, Plaintiff**

vs.

**RONALD E. ANDERSON and
MICHELLE R. ANDERSON, Defendants**

**NOTICE OF SALE
OF REAL PROPERTY**

**TO: Michelle R. Anderson, Defendant
459 Cooper Creek Circle
Pollar, GA 31332
404 Colfax Street
Middletown, PA 17057
3 Dulles Drive
Camp Hill, PA 17011**

YOU ARE HEREBY NOTIFIED that your house (real estate) at 404 Colfax Street, Middletown, PA 17057 is scheduled to be sold at the Sheriff's Sale on April 14, 2011 at 10:00 a.m. in the Dauphin County Administration Building, 4th Floor, Second and Market Streets, Commissioners Hearing Room, Harrisburg, PA, to enforce the court judgment of \$62,845.56, obtained by Plaintiff above (the mortgagee) against you. If the sale is postponed, the property will be relisted for the Next Available Sale.

ALL THOSE CERTAIN tracts or parcels of land located in the Borough of Middletown, Dauphin County, Pennsylvania, bounded and described as follows, to wit:

Tract No. 1

BEGINNING at a point in the southerly line of Colfax Street, which point is in the eastern line of lands now or late of John Matincheck and Agnes

Matincheck, his wife; thence eastwardly along Colfax Street thirty-eight (38) feet to a point; thence southwardly in a line parallel with the eastern line of the aforesaid Matincheck property and thirty-eight (38) feet, distant therefrom eighty-one (81) feet to a point; thence westwardly in a line parallel with Colfax Street thirty-eight (38) feet to a point in the eastern line of the aforesaid property of John Matincheck and Agnes Matincheck, his wife; and thence northwardly along said Matincheck property eighty-one (81) feet to a point, the place of BEGINNING.

HAVING thereon erected a dwelling house known as 404 Colfax Street.

BEING the same premises which Ronald E. Anderson and Maria H. Anderson, his wife, by deed dated November 1, 1994 and recorded in Deed Book 2321, page 141 Dauphin County records, granted and conveyed unto Ronald E. Anderson, Grantor herein.

Tract No. 2

BEGINNING at a point located on the boundary line of Lot No. 75 and No. 74, eighty-one (81) feet north of a stake in the corner of Lot No. 75 and Lot No. 74 on Front Street, formerly called Mudd Pike; thence northerly along said property line of Colfax Street, a distance of approximately seventy-three (73) feet; thence easterly along Colfax Street thirty-eight (38) feet to a point in Lot No. 73 on the plan hereinafter mentioned; thence southwardly in a line parallel with the first mentioned line, a distance of approximately seventy-three (73) feet to the northeast corner of property of Ellen A. Deibel; thence westwardly a distance of thirty-eight (38) feet along property presently owned by Ellen A. Deibel to the place of BEGINNING.

BEING the northerly portion of Lot No. 74 and part of the northerly portion of Lot No. 73 on the plan of Rife's extension to Middletown recorded in Plan Book "B", page 54.

BEING KNOWN AS: 404 Colfax Street, Middletown, PA 17057.

PROPERTY ID No. 40-004-002 and 40-004-044.

TITLE TO SAID PREMISES IS VESTED IN RONALD E. ANDERSON AND MICHELLE R. ANDERSON, HIS WIFE BY DEED FROM RONALD E. ANDERSON DATED 12/23/02 RECORDED 8/19/03 IN DEED BOOK 5093 PAGE 385.

UDREN LAW OFFICES, P.C.
111 Woodcrest Road, Suite 200
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FIRST PUBLICATION

Miscellaneous Notices

**IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY
PENNSYLVANIA**

CIVIL ACTION – LAW

No. 2003-CV-1578-MF

**NOTICE OF ACTION IN
MORTGAGE FORECLOSURE**

**OPTION ONE MORTGAGE
CORPORATION, Plaintiff**

vs.

BETTY JOHNSON, Defendant

**NOTICE OF SALE
OF REAL PROPERTY**

**TO: Betty Johnson, Defendant
219 North 14th Street
Harrisburg, PA 17103**

YOU ARE HEREBY NOTIFIED that your house (real estate) at 219 North 14th Street, Harrisburg, PA 17103 was scheduled to be sold at the Sheriff's Sale on January 13, 2011 at 10:00 A.M. in the Dauphin County Administration Building, 4th Floor, Second and Market Streets, Commissioners Hearing Room, Harrisburg, PA to enforce the court judgment of \$51,605.94, obtained by Plaintiff above (the mortgagee) against you. If the sale is postponed, the property will be relisted for the Next Available Sale.

**JANUARY 13, 2011 SALE POSTPONED
TO FEBRUARY 17, 2011**

ALL THAT CERTAIN PIECE OR PARCEL OF LAND SITUATE IN THE EIGHTH WARD OF THE CITY OF HARRISBURG, DAUPHIN COUNTY, PENNSYLVANIA, BOUNDED AND DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE EAST SIDE OF NORTH FOURTEENTH STREET, WHICH POINT IS 166 FEET 10 INCHES NORTH OF THE NORTHEAST CORNER OF WALNUT AND FOURTEENTH STREETS; THENCE EASTWARDLY THROUGH THE CENTER OF A PARTITION WALL BETWEEN HOUSES NOS. 217 AND 219 NORTH FOURTEENTH STREET AND BEYOND A DISTANCE OF 75 FEET AND 5-1/2 INCHES TO THE WEST SIDE OF A 3 FEET WIDE ALLEY; THENCE NORTHWARDLY ALONG THE WEST SIDE OF SAID ALLEY A DISTANCE OF 14 FEET 2 INCHES TO A POINT; THENCE WESTWARDLY AND THROUGH THE CENTER OF THE PARTITION WALL OF HOUSE NO. 219 AND 221 NORTH FOURTEENTH STREET, A DISTANCE OF 74 FEET AND 2-1/2 INCHES TO THE EAST SIDE OF NORTH FOURTEENTH STREET; AND THENCE SOUTHWARDLY ALONG THE EAST SIDE OF NORTH FOURTEENTH STREET A DISTANCE OF 14 FEET AND 2 INCHES TO A POINT, THE PLACE OF BEGINNING.

HAVING THEREON ERECTED A TWO STORY BRICK DWELLING, KNOWN AND NUMBERED AS NO. 219 NORTH FOURTEENTH STREET. TOGETHER WITH THE RIGHT TO USE IN COMMON WITH OTHER OWNERS AND OCCUPIERS ABUTTING THEREON, THE SAID 3 FEET WIDE ALLEY WAY IN THE REAR OF SAID LOT.

BEING KNOWN AS: 219 North 14th Street, Harrisburg, PA 17103.

TITLE TO SAID PREMISES IS VESTED IN BETTY JOHNSON BY DEED FROM SCHIERDAT, INC. DATED 3/5/2002 RECORDED 3/12/2002 IN DEED BOOK 4308 PAGE 540.

UDREN LAW OFFICES, P.C.
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(856) 482-6900

FIRST PUBLICATION

Miscellaneous Notices

**IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY
PENNSYLVANIA**

CIVIL COMPLAINT

No. 2010-CV-6965-CV

CHERYL D. CHICHI, Plaintiff

vs.

SANDRA WILLIAMS, Defendants

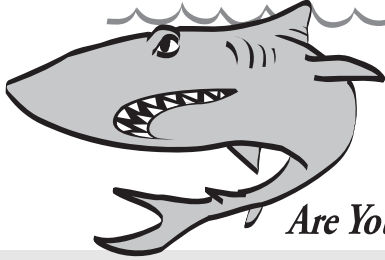
NOTICE YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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The Board of Directors of the Bar Association meets on the third Thursday of the month at the Bar Association headquarters. Anyone wishing to attend or have matters brought before the Board should contact the Bar Association office in advance.

REPORTING OF ERRORS IN ADVANCE SHEET

The Bench and Bar will contribute to the accuracy in matters of detail of the permanent edition of the Dauphin County Reporter by sending to the editor promptly, notice of all errors appearing in this advance sheet. Inasmuch as corrections are made on a continuous basis, there can be no assurance that corrections can be made later than thirty (30) days from the date of this issue but this should not discourage the submission of notice of errors after thirty (30) days since they will be handled in some way if at all possible. Please send such notice of errors to: Dauphin County Reporter, Dauphin County Bar Association, 213 North Front Street, Harrisburg, PA 17101-1493.

DAUPHIN COUNTY COURT SECTION

Motion Judge of the Month

JANUARY 2011
FEBRUARY 2011

Judge John F. CHERRY
Judge Andrew H. DOWLING

Opinions Not Yet Reported

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BAR ASSOCIATION PAGE – Continued

MISCELLANEOUS SECTION

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Candidate should have working knowledge of Microsoft Office, Word and Excel and be proficient in the use of computers, and other office equipment such as fax, copier, postage meter, etc. Also, candidate should be well organized with an eye for detail and effective time management to meet important deadlines and work well under pressure. Ability to grasp new concepts for quick learning and good comprehension and writing abilities and effective communication skills, with superiors, subordinates and most importantly clients is essential. Ability to maintain documents and case files is a must.

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