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Attorneys for Plaintiffs,
Guadalupe Arroyo, et al.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

GUADALUPE ARROYO, an individual; ARMANDO ARROYO, an individual; GRACIANO ARROYO, an individual; ARTEMIO ARROYO, an individual; EMILIO ARROYO, an individual; WILLIBALDO ARROYO, an individual; MARIA F. GUTIERREZ, an individual; LETICIA A. JIMENEZ, an individual; and MARIA CARMEN ZAMORA, an individual, Plaintiffs, vs. WHITE MEMORIAL MEDICAL CENTER, a California Corporation; and DOES 1-10, inclusive, Defendants.	Case No.: **BC454144** Hon. Rolf M. Treu Dept. 58 **DECLARATION OF WILLIAM LOUIS MANION, MD, PhD, JD, MBA, IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION** Date: December 19, 2011 Time: 8:30 a.m. Dept.: 58

I, William Louis Manion, declare:

1. I am aware of the matters stated in this declaration which are of my own knowledge and based on a review of the medical records of Maria De Jesus Arroyo (hereinafter referred to as "Decedent" or "Mrs. Arroyo"), provided by White Memorial Medical Center (hereinafter

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"Defendant"). The opinions expressed are based on my education and clinical experience and my review of the currently available documentation. If called upon to do so, I could and would testify confidently as to the matter stated in this declaration in a court of law.

2. I currently work as a pathologist at numerous hospitals, and I have worked as a medical examiner and hospital pathologist since 1987. As a hospital based pathologist and department chairman I am familiar with the practice of hospital morgues. In general, hospital morgues are under the control of the pathology chairman. I am also familiar with the practice of funeral homes and as a forensic pathologist, the morgues of medical examiner offices. A true and correct copy of my curriculum vitae is attached hereto as Exhibit "A."

3. In order to familiarize myself with the facts of this case, I reviewed the following case specific materials:

i. The Complaint in this action;

ii. Decedent's medical records provided by Defendant;

iii. The Declaration of Jorge Silva in support of Defendant's Motion;

iv. The Declaration of Kathleen Jermain, R.N., in support of Defendant's Motion;

v. The Declaration of William Colburn, M.D., in support of Defendant's Motion;

vi. The Declaration of Elizabeth Garcia, R.N., in support of Defendant's Motion;

vii. The Declaration of Estiban Evangelista (EMT) in support of Defendant's Motion;

viii. The Declaration of Geraldo Perez (EMT) in support of Defendant's Motion;

ix. 7 color photographs of the Decedent taken after she was prepared by the

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mortuary for burial;

x. The entire Deposition of All Souls Mortuary's Person Most Knowledgeable, including all the documents which were produced by All Souls Mortuary at its deposition;

xi. The relevant portions of the depositions of the following Plaintiffs: Leticia Arroyo Jimenez, Jose Guadalupe Arroyo Guzman, Willibaldo Arroyo, Emilio Arroyo, Maria F. Gutierrez, Armando Arroyo, Artemio Arroyo, Graciano Arroyo, and Maria Carmen Zamora. I have also reviewed the relevant portions of the deposition of Adrina Arroyo;

xii. The entire deposition of Andrew Urteaga, the mortuary worker who picked up Mrs. Arroyo's body from Defendant's morgue.

4. With respect to Dr. Colburn's explanation of appropriate morgue procedures, found in paragraph 25 of his declaration, I strenuously disagree. In all my years of practicing pathology (since 1982) I have not witnessed any hospital morgue storing more than one deceased body in a refrigerated door compartment, or bodies being stacked on top of one another. This may be done in a disaster situation or in a war zone to accommodate an overwhelming number of dead bodies and keep them refrigerated in a limited space. This would not ordinarily occur in a normal hospital setting. In fact, the only time I was asked to have my morgue accommodate bodies that might have to be stacked up on top of each other was the day after 9/11/01 when I received a call from the New York Medical Examiner's Office asking if I could make my morgue available for the many bodies they anticipated discovering. Absent such catastrophic circumstances, a morgue stacking bodies on top of one another, or placing multiple bodies in the same refrigeration compartment is a gross

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deviation from the standard of care required when rendering post mortem care to a body in the hospital setting. A hospital morgue owes the same duty of care not to mishandle a body in its possession that a mortuary does.

5. Mrs. Arroyo was found by her family to be unresponsive at her home on July 25, 2010, at approximately 11:40 pm. Her family called called 911 for help, and Mrs. Arroyo was eventually transported by ambulance to Defendant's emergency room ("ER"). In the ER, she coded, was intubated, and received CPR. In spite of resuscitative measures, Defendant's staff was unable to revive Mrs. Arroyo. Possible causes of her apparent death included an acute MI (heart attack), abdominal aortic aneurysm, metabolic acidosis, and septic shock. She was ultimately declared dead by Defendant's staff.

6. After Mrs. Arroyo passed away, and before being placed in the morgue, she was left nude in the ER without any covering, and with her privacy curtain open. I agree with Dr. Colburn that Mrs. Arroyo being disrobed for a short period of time could happen in the usual cleaning and preparation of a body for visitation. However, if Mrs. Arroyo was to be disrobed for any amount of time, hospital personnel should have made her area as private as possible or placed her in a room where a door could be closed until her body was prepared properly for visitation. The failure to place Mrs. Arroyo in a private room or secure private area while she was undressed and prepared for the morgue constitutes a significant deviation from the applicable standard of care.

7. Thereafter, based on the declarations of Defendant's staff who prepared her body, and transported her to the morgue, the following events took place:

i. The family viewed Mrs. Arroyo's body in a visitation room within Defendant's ER. After several hours, the family was asked to leave, and the family left Defendant's

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hospital.

ii. Thereafter Nurse Garcia, Estiban Evangelista (EMT) and Geraldo Perez (EMT) placed Mrs. Arroyo's body in the supine (face up) position within the body bag. They then closed the body bag by zipping it.

iii. Thereafter Mr. Jorge Silva transported Mrs. Arroyo's body (in the body bag) to Defendant's morgue, and placed her in a refrigeration tray in the supine position.

iv. Thereafter Mrs. Arroyo's body was found by an All Souls Mortuary worker in the prone (face down) position, with the body bag open approximately to the middle of Mrs. Arroyo's back.

8. While at first blush the events described in Paragraph 7 above may seem copasetic, in reality they illustrate a staggering deviation from the standard of care required in handling a body headed for a hospital morgue. Dr. Colburn opines that the wounds on Mrs. Arroyo's face would have to have occurred while her heart was still beating. On this much, at least, we agree. I believe she would have had to have been alive for at least a few minutes after whatever trauma created the wounds on Mrs. Arroyo's forehead. Marks such as those on Mrs. Arroyo's forehead would first appear approximately 5-10 minutes after the trauma which caused them. The two discolored skin wounds on Mrs. Arroyo's left forehead are characteristic of antemortem wounds, revealing a dry dark crust like abrasion surface outlined by a narrow pink hyperemia. I do not believe these wounds could occur postmortem.

9. However, in paragraph 24 of his declaration, Dr. Colburn opines that a body can rotate in a body bag, due to the accumulation of fluids within the bag. In ordinary circumstances, such as those surrounding Mrs. Arroyo's transportation to Defendant's morgue, it would be

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unimaginable for a deceased body to create enough moisture in a body bag to cause a slipping shift of body position as described by Dr. Colburn in paragraph 24 of his declaration. I have moved thousands of bodies in my career as a pathologist and I have yet to see a body rotate within a body bag when it is moved from a stretcher to the morgue table or from the morgue table to another stretcher. In fact, if Mrs. Arroyo's body bag was moved with enough force to cause the body inside to rotate 180 degrees, it would by my opinion to a reasonable degree of medical and forensic probability that such a violent transfer of the body bag causing internal rotation would significantly deviate from the applicable standard of care. Thus, if Mrs. Arroyo shifted body position in her body bag, an extraordinary amount of force would have been required to do so, and treating Mrs. Arroyo's body in such a violent way, is by itself a substantial deviation from the standard of care. Importantly, regardless of what caused Mrs. Arroyo to be stored face down in the Defendant's morgue, merely storing a body in the face down position is a substantial breach of the applicable standard of care. This causes body fluids to congeal around the face, changing its coloring and making it impossible for a mortician to return the face to its normal hue. Further, this made Mrs. Arroyo's facial wounds much more pronounced, and impossible for a mortician to hide. Finally, this changed the shape of Mrs. Arroyo's nose, causing it to be flattened.

10. If I am to assume that the sworn declarations of Mrs. Arroyo's caretakers (Nurse Garcia, Estiban Evangelista (EMT), Geraldo Perez (EMT) and Mr. Jorge Silva are all accurate and true (and I have no reason to believe that they are not), then there is only one apparent explanation: **Mrs. Arroyo was alive when she was placed into a refrigerated unit within Defendant's morgue**. This conclusion is further cemented by the very serious concerns I have about the medical care which Mrs. Arroyo received during her code. Although her

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normal cardiac rhythm was recovered, there was no significant effort made by ER personnel to reverse the metabolic acidosis that Mrs. Arroyo was experiencing. The failure to provide timely and significant reversal of her metabolic acidosis constitutes a significant deviation from the applicable standard of care. Further, the code team failed to confirm Mrs. Arroyo was actually deceased, in that I did not see any evidence of an EKG documenting the asystole of the heart of Mrs. Arroyo. This is a further breach of the applicable standard of care. In fact, one EKG page documents a mildly abnormal rhythm with the time 26-Jul-2010 0:25:05 or 25 minutes after midnight. This report contradicts the CPR record which indicates that Mrs. Arroyo had just been intubated at 00:23 for rhythm bradycardia. Therefore I am not convinced that EKG strip is that of Mrs. Arroyo, as the EKG page states that her heart rate is 78 bpm (beats per minute, which is normal) contradicting the code sheet which is asserting a bradycardia which by definition is less than 60 bpm. A second EKG sheet reveals ventricular fibrillation and I do not see an EKG sheet with asystole or flat line. Such internally inconsistent records also illustrate a breach of the standard of care.

11. Such antemortem injuries (as Mrs. Arroyo exhibited when she was found by All Souls Mortuary) would require some residual heart rate that could cause a high enough blood pressure to cause such injuries. It is therefore my opinion to a reasonable degree of medical certainty that she would have to live for several minutes to develop the full effect of the long injury to the left forehead. However, the wounds on Mrs. Arroyo's face and forehead were not documented on any of Mrs. Arroyo's medical records. Given the fact that she was in a code (i.e. in extreme medical distress) and given the location of the wounds (on her head, and therefore a potential cause of her code), if they were present, they would have been noted by the code team. It is therefore my opinion to a reasonable degree of medical certainty that

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Mrs. Arroyo received these wounds after the code team had left her bedside. Remembering that she had to still live for several minutes after the head trauma to develop the bruises she developed, she must still have been alive when the code team declared her dead. As such it is my opinion, to a reasonable degree of medical and forensic certainty, that when Mrs. Arroyo was placed in the body bag, she was still alive. Saying that this was a deviation from the standard of care seems an understatement in light of how she must have suffered, although it is clearly true. She became conscious in the morgue because of the cold and turned her body in an attempt to escape the body bag. Her being found face down, and showing wounds that occurred antemortem, and found with the body bag approximately half way open, would all be consistent with her struggling in the body bag to get out. Ultimately, hypothermia caused Mrs. Arroyo to become unconscious and die.

12. In sum, to a reasonable degree of medical and forensic probability, there were the following breaches of the standard of care, with respect to the antemortem and postmortem treatment that Mrs. Arroyo received while in Defendant's care:

i. Defendant's code team fell below the applicable standard of care in their attempt to treat Mrs. Arroyo. Although her normal cardiac rhythm was recovered there was no significant effort made by ER personnel to reverse the metabolic acidosis that Mrs. Arroyo was experiencing. The failure to provide timely and significant reversal of her metabolic acidosis constitutes a significant deviation from the usual standards of medical care. Further, the code team failed to confirm Mrs. Arroyo was actually deceased in documenting asystole of the heart with an EKG. This is a further breach of the applicable standard of care. In fact, one EKG page documents a mildly abnormal rhythm with the time 26-Jul-2010 0:25:05 or 25 minutes after midnight.

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This report contradicts the CPR record which indicates that Mrs. Arroyo had just been intubated at 00:23 for rhythm bradycardia. Therefore I am not convinced that EKG strip is that of Mrs. Arroyo as the EKG page states that her heart rate is 78 bpm (beats per minute, which is normal) contradicting the code sheet which is asserting a bradycardia which by definition is less than 60 bpm. A second EKG sheet reveals ventricular fibrillation and I do not see an EKG sheet with asystole or flat line. Such internally inconsistent records illustrate a breach of the standard of care.

ii. Mrs. Arroyo was prepared for viewing by her family in full view of Defendant's entire ER. If Mrs. Arroyo was to be disrobed for any amount of time, hospital personnel should have made her area as private as possible or placed her in a room where a door could be closed until her body was prepared properly for visitation. The failure to place Mrs. Arroyo in a private room or a secure private area while she was undressed and prepared for the morgue constitutes a significant deviation from the applicable standard of care.

iii. Mrs. Arroyo was stored in the face down position in Defendant's morgue. This is a substantial breach of the applicable standard of care. Storing a body face down causes body fluids to congeal around the face, changing its coloring and making it impossible for a mortician to return the face to its normal hue. This made Mrs. Arroyo's facial wounds much more pronounced, and impossible for a mortician to hide. Finally, being stored face down changed the shape of Mrs. Arroyo's nose, causing it to be flattened. Mrs. Arroyo was either deliberately stored in the face down position (a gross breach of the standard of care), or if Mrs. Arroyo shifted body position in her body bag, then Defendant's staff used an extraordinary amount of

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force that would have been required to shift her in such a way. Treating Mrs. Arroyo's body in such a violent way, is by itself a substantial deviation from the standard of care.

iv. In the alternative to Mrs. Arroyo being deliberately stored face down, or being handled in such a violent way as to shift her body position within her body bag, Mrs. Arroyo was likely alive when she was placed into the refrigeration unit of Defendant's morgue. I find this scenario to be the most probable scenario, based on her antemortem wounds, the halfway open body bag, the abundance of testimony that she was placed in the morgue face up, and based on Defendant's failure to properly check that she had passed away (before declaring her dead). This is a gross deviation from the standard of care, and certainly caused Mrs. Arroyo terror and great suffering in her final minutes.

13. I hold all of the opinions stated in this declaration to a reasonable degree of medical and forensic certainty.

I declare the foregoing is true and correct under penalty of perjury under the laws of the State of California.

Executed on December 8, 2011, at _____, _____.

See next page
William L. Manion, M.D., Ph.D., JD, MBA
Declarant

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iv. In the alternative to Mrs. Arroyo being deliberately stored face down, or being handled in such a violent way as to shift her body position within her body bag, Mrs. Arroyo was likely alive when she was placed into the refrigeration unit of Defendant's morgue. I find this scenario to be the most probable scenario, based on her antemortem wounds, the halfway open body bag, the abundance of testimony that she was placed in the morgue face up, and based on Defendant's failure to properly check that she had passed away (before declaring her dead). This is a gross deviation from the standard of care, and certainly caused Mrs. Arroyo terror and great suffering in her final minutes.

13. I hold all of the opinions stated in this declaration to a reasonable degree of medical and forensic certainty.

I declare the foregoing is true and correct under penalty of perjury under the laws of the State of California.

Executed on December 8, 2011, at 310 Woodstown Road
Salem County, New Jersey

William L. Manion, M.D., Ph.D., JD, MBA
Declarant

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EXHIBIT "A"

WILLIAM LOUIS MANION, MD, PhD, JD, MBA

President and CEO, Diagnostic Pathology Consultants, PA
Assistant Medical Examiner, Burlington & Ocean County
Corporate Director, Dept. of Pathology, Virtua Health System
Chairman, Dept. of Pathology, Memorial Hospital
Laboratory Director, Memorial Hospital of Salem County
and Memorial Hospital of Burlington County
Co-Chairman, Institutional Review Board, Fox Chase
Virtua Cancer Program

OFFICE ADDRESS

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175 Madison Avenue
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CURRENT CONSULTATION, NATIONAL

Consulting Forensic Pathologist and Medical Examiner, Issues and Answers with Jayne Valez Mitchell on CNN Headline News, discussing high profile homicide cases, 2008-2009

EDUCATION

1999-2001 Masters in Business Administration
Eastern University School of Professional Studies
St. Davids, Pennsylvania

1986	Doctor of Juris Law Temple University School of Law Philadelphia, Pennsylvania
1982	Doctor of Medicine West Virginia University School of Medicine Morgantown, West Virginia
1981	Doctor of Philosophy (Anatomy) West Virginia University Graduate School Morgantown, West Virginia
1974	Bachelor of Science, Biology (Honors Program) Villanova University Villanova, Pennsylvania

FELLOWSHIP TRAINING

1986-1987	Forensic Pathology Franklin County Coroner's Office, in Affiliation with the Ohio State University 520 King Avenue, Columbus, Ohio 43201

RESIDENCY TRAINING

1982-1986	Anatomic and Clinical Pathology The Graduate Hospital in Affiliation with the University of Pennsylvania Department of Pathology and Laboratory Medicine One Graduate Plaza Philadelphia, Pennsylvania

BOARD CERTIFICATIONS

(Anatomic, Clinical and Forensic Pathology)

Specialty Boards: Anatomic and
Clinical Pathology, May 30, 1986
Forensic Pathology, May 30, 1987
The American Board of Pathology
Tampa, Florida 33622

STATE MEDICAL LICENSES

Ohio: State of Ohio Medical Board
Columbus, Ohio 43215 (inactive)

Pennsylvania: Bureau of Professional and
Occupational Affairs
Harrisburg, Pennsylvania 17102 (inactive)

New Jersey
Board of Medical Examiners
Trenton, New Jersey 08608

STATE LAW LICENSES

Pennsylvania, Administrative Office of Pennsylvania Courts
Camp Hill, Pennsylvania

New Jersey, ID 00726-1987 Trenton, New Jersey

TEACHING FELLOWSHIP

Embryology and Anatomy (Gross) (1982)
Hahnemann University School of Medicine
Department of Anatomy
Philadelphia, Pa

PREVIOUS POSITIONS

1994-95	Director of Clinical Pathology Dept. of Pathology and Laboratory Medicine, The Graduate Hospital Philadelphia, Pennsylvania 19146
1990-95	Attending Pathologist Autopsy Director, Residency Coordinator Department of Pathology and Laboratory Medicine, The Graduate Hospital Philadelphia, Pennsylvania 19146
1993-95	Attending Pathologist Graduate City Avenue Hospital Department of Pathology Philadelphia, Pennsylvania 19131
1987-89	Chairman, Dept. of Pathology Lima Memorial Hospital Lima, Ohio

VIRTUA HEALTH SYSTEM COMMITTEES

Medical Staff Executive Committee,
West Jersey Health System (WJHS)
Medical Staff Executive Committee

Memorial Hospital, Burlington County
Cancer Committee, WJHS

Cancer Committee, Memorial Hospital
Nominating Committee, WJHS
Med. Staff Oper. Comm. Memorial Hospital
Quality Council, Memorial Hospital
Six Sigma Coach, General Electric Certification-
Employing DMAIIC – Define, Measure, Analyze,
Innovative Improvement and Control

GRADUATE HOSPITAL COMMITTEES

Comprehensive Cancer Program Clinical Panels;
Lung, Genitourinary (Prostate, Renal and Bladder) and
Neurologic Oncology
Impaired Physicians Committee
Utilization Management Committee

TEACHING EXPERIENCE

1990-1994	Anatomic and Clinical Pathology Department of Pathology and Laboratory Medicine, The Graduate Hospital Philadelphia, Pennsylvania
1986	Microbiology, Biology, Anatomy and Physiology Department of Biology, Widener University Chester, Pennsylvania
1985	General Biology, Mammalian Anatomy and Physiology Department of Biology, Widener University Chester, Pennsylvania
1984	Mammalian Anatomy and Physiology Department of Biology, Widener University Chester, Pennsylvania
1982	Embryology for Graduate Students Hahnemann University School of Medicine

Philadelphia, Pennsylvania

1981 Algebra, Dorchester High School
Boston, Massachusetts

1979-1980 Biology, Chemistry, Physics and Mathematics
Counseling and Career Guidance Center
University of Pittsburgh
Pittsburgh, Pennsylvania

1979 Biology, Carrick High School
Pittsburgh, Pennsylvania

1978 Dental Microanatomy for Dental Hygienists
West Virginia University
Morgantown, West Virginia

1977 Head and Neck Anatomy-Neuroanatomy for
Dental Students
West Virginia University
Morgantown, West Virginia

1975-1976 Microscopic and Gross Anatomy
for Medical Students
West Virginia University
Morgantown, West Virginia

ACHIEVEMENT MEMBERSHIPS AND ACADEMIC AWARDS

2006 "Top Doc" in Pathology
SJ (South Jersey) Magazine
PO Box 608
Moorestown, NJ 08057

2002 Delta Mu Delta Honor Society
National Honor Society in Business Administration
St. Louis, Missouri

2001 Servant–Leader Award
For inspiring others, encouraging teamwork, and striving
For improvement, awarded by classmates in MBA program
Eastern University
St. Davids, Pennsylvania

1985 International Who's Who in Education
International Biographical Center

Cambridge, CBZ, 3QP, England

1985 Dean's List
Temple University School of Law
Philadelphia, Pennsylvania

1982 Intertel Society
P.O. Box 33694
San Antonio, Texas 78233

1981 First Place, Student Basic Research Convocation
West Virginia University Medical Center
Morgantown, West Virginia

1981 Honors, Anesthesiology Rotation
West Virginia University
Morgantown, West Virginia

1977 Phi Kappa Phi
Graduate School Honor Society
West Virginia University
Morgantown, West Virginia

1974 American Mensa Limited
1701 West 3rd Street
Brooklyn, New York 11223

1974 Alpha Epsilon Delta
National Pre-Medical Honor Society
Villanova University
Villanova, Pennsylvania

PRESENTATIONS

1981 Age-Associated Changes in Rat Tracheobronchial Glands: A Morphometric and Histochemical Analysis.
American Association of Anatomists Meetings
New Orleans, Louisiana

1978 Histochemistry of Mucous Secreting Elements of the Rat Trachea Embedded in Glycol Methacrylate.
Southern Society of Anatomists Meetings
Nashville, Tennessee

PUBLICATIONS

Manion, W.L., Frederickson, R.G., and
Pinkstaff, C.A. "Histochemistry of Mucous Secreting Elements of the Rat Trachea Embedded in Glycol Methacrylate": Journal of
The South Carolina Medical Association. 74:51, 1978 (Abstract)

Manion, W.L., "Morphometry and Histochemistry of Goblet Cells and Tracheal Glands of the Wistar Rat: Paraffin Versus Glycol Methacrylate Embedding": Anatomical Record. 190: 468, 1977

Manion, W.L., Pinkstaff, C.A., and Frederickson, R. Department of Anatomy, West Virginia University Medical Center, Morgantown, West Virginia. "Age-Associated Changes in Rat Tracheobronchial Glands: A Morphometric and Histochemical Analysis".
Anatomical Record. 199: 158A-159A, 1981.

Contributor To: Histology and Embryology
Editor, Professor and Chairman of the
Department of Anatomy
Hahnemann University School of Medicine
Philadelphia, PA 19102, 1983

Blasko, E.C., M.D., Plzak, L.F., M.D. Sohn, M., M.D., and Manion, W.L., M.D., Ph.D. "Acute, Complete, Extrinsic Obstruction of the Bjork-Shirley Valve in the Immediate Postoperative Period." Journal of Thoracic and Cardiovascular Surgery 86: 630, October, 1983.

Schreck, R., M.D. Manion, W.L., MD, PhD
and Sohn, M., M.D. "Nucleus Pulposus Pulmonary Embolism, A Case Report." Spine 20: 2463, 1995.

PROFESSIONAL MEMBERSHIPS

American College of Healthcare Executives
Medical Group Management Association
American Board of Quality Assurance and Util. Rev. Physicians
American College of Physician Executives
Fellow, American Society of Clinical Pathologists
Fellow, College of American Pathologists
Inspector, College of American Pathologists
American Medical Association
Camden County Medical Society
Burlington County Medical Society
American Pathology Foundation
National Health Lawyers Association

American Association of Physicians and Surgeons

Professional Appointments for Organized Medicine

Medical Staff Representative to
American Medical Association for
Memorial Hospital of Salem County
Salem, NJ 08079