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**COMMONWEALTH OF KENTUCKY  
KNOTT CIRCUIT COURT  
CIVIL ACTION NO. 22-CI-00099**

MEDIA5022

*ELECTRONICALLY FILED*

**PHILLIP JED MAGGARD**

*and*

**TONYA LYNN MAGGARD, *his wife***

**PLAINTIFFS**

v.

**PRIMARY CARE CENTERS OF EASTERN  
KENTUCKY, LLC; JAMES D. HALL, APRN;  
KENDALL L. BOWLING, D.O.**

**DEFENDANTS**

**DEFENDANTS' CIVIL RULE 26 DSCLOSURE OF EXPERTS**

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Come the Defendants, Primary Care Centers of Eastern Kentucky, LLC, James D. Hall, APRN, and Kendall L. Bowling, D.O., by and through counsel, and hereby submits the following Civil Rule 26 Disclosure of Experts who may be called to testify at trial as follows:

- 1. **Eric W. Byrd, M.D.**  
**Carolina Mountain Internal Medicine**  
**902 Fleming, Suite C**  
**Hendersonville, NC 28791**

Dr. Byrd will testify regarding his background, training, and experience in primary care. Details concerning Dr. Byrd's professional credentials are contained in the attached C.V. It is anticipated that Dr. Byrd will testify regarding standard of care, causation, and damages. In connection with Dr. Byrd's review and analysis of this matter, he has reviewed the relevant medical records and deposition testimony taken to date pertaining to Phillip Jed Maggard, as well

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as Plaintiffs' expert disclosures and any available deposition testimony of Plaintiffs' experts.<sup>1</sup> The materials Dr. Byrd has reviewed includes:

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**Medical Records**

Primary Care Centers of Eastern Kentucky (Hindman and Hazard Clinics)  
Hazard ARH Regional Medical Center  
Hazard Family Health  
Dr. Ryan Shepard  
East Kentucky Physical Therapy  
Quantum Healthcare  
Appalachian Rehabilitation Team, Inc.  
Cleveland Clinic

**Depositions**

Kendall Bowling, D.O.  
James Hall, APRN  
Phillip Jed Maggard  
Tonya Lynn Maggard  
Jill Baldwin, APRN

**Misc.**

Phillip Maggard's KEMI/Workers Comp file  
Plaintiffs' CR 26 Expert Compliance

Dr. Byrd is expected to testify that APRN Hall, Dr. Bowling, and Primary Care Centers of Eastern Kentucky complied with the standard of care at all times during their care and treatment of Phillip Jed Maggard. Dr. Byrd will respond to and rebut the criticisms offered by Plaintiffs' experts, APRN Baldwin and Dr. Morris, regarding the care provided to Mr. Maggard by the Defendants.

Specifically, Dr. Byrd will testify that APRN Hall's treatment of Mr. Maggard at the May 26, 2021, office visit complied with standard of care. APRN Hall's H&P and documentation were appropriate and within standard of care. Given Mr. Maggard's presenting symptoms and physical exam findings, APRN Maggard clearly appreciated that this was a biceps tendon injury. His

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<sup>1</sup> As of the date of this filing, all of the deposition testimony of Plaintiffs' experts is either not available or has yet to be taken. Dr. Byrd reserves the right to supplement or further clarify his opinions upon receipt and review of the complete deposition testimony of all of Plaintiffs' identified expert witnesses.

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differential was appropriate and included a biceps tendon strain vs. a partial or total tear. It was appropriate and within standard of care for APRN Hall to order an MRI at the May 26<sup>th</sup> office visit so that the nature and extent of Mr. Maggard's biceps tendon injury could be further evaluated and diagnosed. Dr. Byrd does not believe, however, that the standard of care also required a referral to an orthopedic specialist at the May 26<sup>th</sup> office visit.

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Dr. Byrd will further testify APRN Hall's order for the MRI, and the timing in which the MRI was performed complied with standard of care. The MRI was performed on June 9, 2021, two weeks following Mr. Maggard's presentation to APRN Hall. Dr. Byrd will testify this is a timely imaging study for a suspected biceps tendon injury by any standard.

Dr. Byrd is expected to testify that Dr. Bowling also complied with standard of care when he reviewed and co-signed APRN Hall's May 26, 2021, office note on June 4, 2021. Nothing in APRN Hall's note required further investigation or action by Dr. Bowling, including making a referral to an orthopedic specialist at that time. APRN Hall's treatment plan for Mr. Maggard per the visit note, namely, to obtain imaging to confirm the nature and extent of the biceps tendon injury, was appropriate and Dr. Bowling was not required to alter or change that plan based upon the available information.

Dr. Byrd is expected to further testify that APRN Hall took immediate and appropriate action when he received the MRI results on June 10, 2021, which confirmed a complete tendon tear. APRN Hall attempted to contact Mr. Maggard regarding the results, and he made a referral to orthopedic surgeon, Dr. Ryan Shepard, that same day. The process by which APRN Hall made the referral was appropriate. APRN Hall's referral form sent to Dr. Shepard's office on June 10<sup>th</sup> specifically listed the reason for the referral as an abnormal MRI showing a complete tear of the biceps tendon. Thus, APRN Hall communicated the severity of the tendon injury to Dr. Shepard's

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office. Dr. Byrd would expect the orthopedic specialist to then determine how urgently Mr. Maggard needed to be seen in the office and scheduled for surgical repair. It is not the standard of care for a family practice nurse practitioner to make those determinations. The standard of care for an APRN under these circumstances is to perform a thorough exam to arrive at a differential, determine the extent of the suspected injury, and then make an appropriate and timely referral. APRN Hall took all of these precise actions within two weeks of Mr. Maggard's initial presentation on May 26, 2021. This is timely and efficient treatment, particularly for a Workers Comp case, and complies with the standard of care.

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Dr. Byrd will discuss the process by which primary care providers make referrals and the timing of those referrals both in general, and specifically as that issue relates to Mr. Maggard's case. Dr. Byrd will further discuss the relationship between an APRN practicing independently in a family practice setting, and the role of a physician reviewing the APRN's notes in general, and specifically as that issue relates to Dr. Bowling's review of APRN Hall's May 26, 2021, office note.

Based on the foregoing, Dr. Byrd will testify that the timeline of care in this case from Mr. Maggard's initial presentation on May 26, 2021, to when surgical repair was attempted on June 29, 2021, is within standard of care and consistent with what he would expect under the same or similar circumstances. While Dr. Byrd would defer to an orthopedic specialist with respect to the specifics involved with the attempted repair of Mr. Maggard's biceps tendon and why that repair may have been unsuccessful, he will testify that an unreasonable or unnecessary delay did not contribute to Mr. Maggard's outcome because he does not believe anything the Defendants did or allegedly failed to do caused or contributed to any such delay.

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This is merely a summary of Dr. Byrd's opinions, and he expects to elaborate upon them more fully at his deposition. Dr. Byrd reserves the right to supplement or clarify his opinions as discovery progresses. This disclosure will be supplemented in accordance with the Civil Rules. Finally, Dr. Byrd reserves the right to rebut additional opinions of Plaintiffs' experts.

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**2. Wesley K. Cox, M.D.**  
**University of Arkansas for Medical Sciences**  
**Orthopedics and Sports Medicine**  
**201 W. Van Asche Loop**  
**Fayetteville, AR 72703**

Dr. Cox will testify regarding his background, training, and experience in orthopedic surgery and sports medicine, as well as the subspecialty of arthroscopic and reconstructive surgery of the shoulder and elbow. Details concerning Dr. Cox's professional credentials are set forth in the attached C.V. Dr. Cox is expected to testify regarding the standard of care, causation, and damages. In connection with Dr. Cox's review and analysis of this matter, he has reviewed the relevant medical records and deposition testimony taken to date pertaining to Phillip Jed Maggard, as well as Plaintiffs' expert disclosures and any available deposition testimony of Plaintiffs' experts.<sup>2</sup> The materials Dr. Cox has reviewed includes:

**Medical Records**

Primary Care Centers of Eastern Kentucky (Hindman and Hazard Clinics)  
Hazard ARH Regional Medical Center  
Hazard Family Health  
Dr. Ryan Shepard  
East Kentucky Physical Therapy  
Quantum Healthcare  
Appalachian Rehabilitation Team, Inc.  
Cleveland Clinic

**Depositions**

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<sup>2</sup> As of the date of this filing, all of the deposition testimony of Plaintiffs' experts is either not available or has yet to be taken. Dr. Cox reserves the right to supplement or further clarify his opinions upon receipt and review of the complete deposition testimony of all of Plaintiffs' identified expert witnesses. Dr. Byrd specifically reserves the right to further supplement his opinions upon receipt and review of the deposition testimony of Plaintiffs' orthopedic surgery expert, Dr. Nikhil Verma.

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Kendall Bowling, D.O.  
James Hall, APRN  
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Jill Baldwin, APRN

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**Misc.**

Phillip Maggard's KEMI/Workers Comp file  
Plaintiffs' CR 26 Expert Compliance

It is anticipated that Dr. Cox will testify that APRN Hall's treatment of Mr. Maggard at the May 26, 2021, office visit was appropriate and consistent with what he would expect a family practice nurse practitioner to do under the same or similar circumstances. Following an appropriate history and physical exam, APRN Hall suspected a biceps tendon injury and ordered an MRI. Dr. Cox will testify that the two-week interval of time from Mr. Maggard's presentation on May 26<sup>th</sup> to when the MRI was performed on June 9<sup>th</sup> is appropriate and well-within standard of care. The standard of care does not require an MRI to be ordered STAT for evaluation of a biceps tendon injury, or even a suspected rupture.

Upon receipt of the MRI results on June 10<sup>th</sup>, which confirmed a complete biceps tendon tear, APRN Hall made an immediate referral to an orthopedic specialist. Dr. Cox will testify the standard of care did not require APRN Hall to make a referral to an orthopedic surgeon until the MRI confirmed the nature and extent of Mr. Maggard's biceps tendon injury. Dr. Cox will further testify that based upon his experience, the fact that APRN Hall obtained imaging first, and then made the referral to the orthopedist likely caused Mr. Maggard to see the orthopedist sooner than he would have otherwise.

Dr. Cox will testify that upon receipt of the MRI results, the standard of care did not require APRN Hall to contact the orthopedic surgeon directly himself to arrange the referral. APRN Hall's referral form sent to Dr. Shepard's office clearly indicated the referral was being made because

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MRI had confirmed a complete biceps tendon tear. At that point, it was incumbent upon the orthopedic surgeon's office to determine what surgical repair may be indicated, and the timing in which the surgery needed to be performed. Determining the timing of that treatment is obviously outside the scope of practice for a family nurse practitioner.

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Moreover, Dr. Cox will testify the timing in which Dr. Shepard first saw Mr. Maggard on June 21<sup>st</sup> (11 days after the referral was made), and took Mr. Maggard to surgery on June 29<sup>th</sup> (an additional 8 days after the first appointment), indicates Mr. Maggard's biceps tendon injury was treated in a timely manner. If Mr. Maggard's biceps tendon injury required immediate and urgent treatment for the best chance at a good surgical outcome as has been posited by Plaintiffs' experts, Dr. Cox believes Dr. Shepard would have proceeded with surgical repair much quicker.

Ultimately, Dr. Cox believes the timeline of care with respect to Mr. Maggard's biceps injury in this case was appropriate and within standard of care. The period of time between Mr. Maggard's initial presentation to APRN Hall on May 26, 2021, to when Dr. Shepard attempted the repair on June 29, 2021, is not an unreasonable delay for treatment of a biceps tendon rupture. Dr. Cox will testify that the ideal window for surgical repair for a biceps tendon tear is 4-6 weeks. Thus, Dr. Cox will testify that the timeline of care in this case was efficient, particularly for a Workers Comp claim.

Given the foregoing, Dr. Cox will testify there was not an unreasonable delay in treatment that contributed to or caused the unsuccessful repair. Dr. Cox will further testify regarding the anatomy and treatment options involved with a biceps tendon injury like Mr. Maggard's. Dr. Cox will specifically testify regarding the nature and extent of Mr. Maggard's injury based upon the medical records, the MRI of June 9<sup>th</sup>, and Dr. Shepard's operative findings from the attempted repair on June 29<sup>th</sup>. Dr. Cox is not critical of the timing in which Dr. Shepard saw Mr. Maggard

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in the office, and took him to surgery. Nor is he critical of Dr. Shepard's surgical technique utilized during the attempted repair. But Dr. Cox will discuss alternative surgical techniques that may have increased the likelihood for a successful repair on June 29<sup>th</sup>.

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Dr. Cox will further testify that the success of surgical repair of a complete biceps tendon tear is variable regardless of the timing of the procedure. Dr. Cox will also discuss that the nature of Mr. Maggard's index injury alone may have impacted the chances of a successful surgical repair.

Dr. Cox is expected to testify that despite the unsuccessful repair, Mr. Maggard has been left with reasonable functionality. This is not a disabling injury, and based upon Dr. Cox's understanding of the nature of Mr. Maggard's work, he will testify it is not likely that Mr. Maggard's ability to work will be significantly impacted. Nor does Dr. Cox anticipate Mr. Maggard having severe difficulties with activities of daily living.

This is merely a summary of Dr. Cox's opinions, and he expects to elaborate upon them more fully at deposition. Dr. Cox reserves the right to supplement or clarify his opinions as discovery progresses. This disclosure will be supplemented in accordance with the Civil Rules. Finally, Dr. Cox reserves the right to rebut additional opinions of Plaintiffs' experts.

**3. Ryan Shepard, D.O.  
100 Medical Center Drive  
Hazard, Kentucky 41701**

Dr. Shepard will testify regarding his background, training, and experience as an orthopedic surgeon. Dr. Shepard will testify based upon his knowledge of the care and treatment provided to Mr. Maggard for his biceps tendon injury. Dr. Shepard will testify consistent with his medical records regarding his involvement in the care and treatment of Mr. Maggard, as well as any deposition testimony he may give in this matter.

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4. **Yuji Umeda, M.D., Ph.D.**  
**Cleveland Clinic**  
**9500 Euclid Avenue**  
**Cleveland, OH 44195**

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Dr. Umeda will testify regarding his background, training, and experience as an orthopedic surgeon. Dr. Umeda will testify based upon his knowledge of the care and treatment provided to Mr. Maggard for his biceps tendon injury. Dr. Umeda will testify consistent with his medical records regarding his involvement in the care and treatment of Mr. Maggard, as well as any deposition testimony he may give in this matter.

5. **Kendall Bowling, D.O.**  
**Primary Care Centers of Eastern Kentucky**  
**101 Town and Country Lane, Suite 100**  
**Hazard, Kentucky 41701**

Dr. Bowling is expected to testify concerning his background, training, and experience in primary care. Dr. Bowling's testimony will be based upon his knowledge of the care and treatment provided to Mr. Maggard for his biceps tendon injury. Dr. Bowling will testify he complied with the applicable standard of care at all times during his limited involvement in Mr. Maggard's care and treatment. Dr. Bowling will further testify APRN Hall complied with the applicable standard of care at all times in his care and treatment of Mr. Maggard. Dr. Bowling will address the criticisms raised by Plaintiffs' experts. Dr. Bowling will testify that Defendants' care of Mr. Maggard was appropriate and consistent with the expected standard of care for primary care/family practice providers. Dr. Bowling will testify consistent with his deposition testimony.

6. **James Hall, APRN**  
**Primary Care Centers of Eastern Kentucky - Hindman Clinic**  
**425 Hindman Bypass**  
**Hindman, Kentucky 41822**

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APRN Hall will testify concerning his background, training, and experience as an Advanced Practice Registered Nurse. APRN Hall will testify based upon his knowledge of the care and treatment provided to Mr. Maggard for his biceps tendon injury. APRN Hall will further testify that he complied with the applicable standard of care at all times in his care and treatment of Mr. Maggard. APRN Hall will address the criticisms raised by Plaintiffs' experts. APRN Hall will testify that his care was appropriate and consistent with the expected standard of care for an APRN in the primary care/family practice setting. APRN Hall will testify consistent with his deposition testimony.

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7. **Any treating physician or medical provider of Phillip Jed Maggard.**
8. **Any expert identified by Plaintiffs.**
9. **Any expert necessary for rebuttal.**

Defendants, Primary Care Centers of Eastern Kentucky, LLC, James D. Hall, APRN, and Kendall L. Bowling, D.O. reserve the right to supplement this disclosure.

Respectfully submitted,

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ELLEN BLACK (#97056)  
**COUNSEL FOR DEFENDANTS**

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**CERTIFICATE OF SERVICE:**

I hereby certify that a true and complete copy of the foregoing was served upon the parties via email this 15<sup>th</sup> day of February 2024 to the following:

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