Circuit Court
OF THE
City of Richmond

JOHN MARSHALL COURTS BUILDING
400 NORTH 9TH STREET
RICHMOND, VIRGINIA 23219

804-646-6505

October 1, 2009

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Re: Chalifoux v. Radiology Associates of Richmond, Inc., et al, Case No. CL07-4916-1

Dear Counsel:

This matter came before the Court on Defendants' Plea in Bar of the Statute of Limitations at a hearing on August 17, 2009. Defendants moved the Court to dismiss the case pursuant to the applicable statute of limitations. This medical malpractice action arose from a neurologist's referral of the Plaintiff to the Defendant on five separate occasions. Plaintiff alleged that the Defendants negligently performed and interpreted various radiological studies from December 2002 to

October 2005. Plaintiff further alleged that during this timeframe she exhibited symptoms consistent with a tumor in the trigeminal nerve of the brain on the right side of her face.

After considering the record, argument of counsel and the legal memoranda filed by the parties, the Court sustained Defendants' Plea of the Statute of Limitations, finding that the Defendants' treatments of Plaintiff were single, isolated acts which do not toll the statute of limitations under the continuous treatment rule. The Court dismissed the case with prejudice.

The statute of limitation for personal injuries is two years and accrues when the plaintiff is injured. Va. Code § 8.01-243(A). Virginia holds the continuous treatment rule as an exception to the two-year limitation. Under the continuous treatment rule, the injury occurs "when the improper course of examination, and treatment if any, for the particular malady terminates." Farley v. Goode, 219 Va. 969, 976 (1979).

The continuous treatment rule does not apply simply to a continuation of the physician-patient relationship. Id. The rule's purpose is to allow a physician reasonable time and opportunity to correct mistakes made in the midst of effecting a cure. Grubbs v. Rawls, 235 Va. 607, 611-12 (1988). The rule is not applicable "where the malpractice complained of constitutes a single, isolated act." Farley, 219 Va. at 980. Application of

the rule requires continuing diagnosis and treatment for the same or related illnesses or injuries after the alleged acts of malpractice." Id. at 976.

The Court considered numerous decisions from Virginia Courts, as well as Castillo v. Emergency Medicine Associates, P.A., 372 F.3d 643 (4th Cir 2004). In that case, the United States Court of Appeals for the Fourth Circuit analyzed numerous Virginia cases and applied Virginia law regarding the continuous treatment doctrine to a matter involving an emergency room physician. However, no controlling authority exists in Virginia concerning the continuing treatment doctrine with respect to radiologists. Thus, the Court was guided in its decision with persuasive authority that it will discuss below.

In Hollingsworth v. Shenandoah Medical Imaging, Inc., 38 Va. Cir. 324 (City of Winchester 1996), a patient's obstetrician referred her to a radiologists for a mammogram on June 4, 1990. The radiologist interpreted the films and found no evidence of malignancy and recommended a follow-up in one year. On October 7, 1991, the obstetrician ordered a second mammogram and the mammogram was sent to the same radiology group for interpretation. On this occasion, a different radiologist interpreted the films and ordered a biopsy, which revealed an invasive carcinoma. The patient filed suit in September 1993 and argued that the first radiologist's review of her films was

negligent and that the continuing treatment doctrine applied. The City of Winchester Circuit Court held that the continuing treatment rule did not apply because the physician's two radiology readings were single, isolated acts.

The Court was also guided with the persuasive authority of Baker v. Radiology Associates, P.A., 72 Ark App. 193, 35 S.W.3d 254 (2000). In Baker, the Arkansas Court of Appeals held that the continuous treatment rule, which is similar to Virginia's rule, was not applicable against radiologists who conducted nine separate mammograms on the plaintiff over a period of years. The plaintiff in Baker sought the exception of the continuous treatment rule. However, the Arkansas Court of Appeals determined that the plaintiff alleged a series of separate and distinct wrongs even though the mammograms were viewed in conjunction with previous mammograms to determine if a change had occurred. Id. at 200, 359. There was no indication that the radiologists were engaged in any active consultation with the referring physician or in the ongoing treatment of the plaintiff for any specific condition.

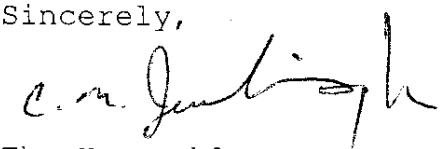
In accord with Baker, the duties and responsibilities of a radiologist, in general and in this case, makes it such that the continuous treatment rule is inapplicable. The Court finds that a comparison of test results suggest adherence to appropriate

diagnostic procedure, rather than an assumption of ongoing treatment. *See* Baker at 200-201, 359. The treatment offered by the radiologist in the instant case terminated after Defendants produced their reports and sent those reports to the Plaintiff's clinical physician. Defendant was under no duty to "follow-up" with the patient at a later date, as it treated Plaintiff only upon the referral of her clinical physician.

There exists a June 1, 2001 order by then Judge Millette of Prince William County Circuit Court, which denied Virginia Radiology Associates' plea of statute of limitations based on the continuous treatment doctrine. However, Judge Millette's order lacks a recitation of the facts upon which the court can rely.

For these reasons, the Court sustains Defendants' Plea of the Statute of Limitations and the case is dismissed, with prejudice.

Sincerely,



The Honorable C.N. Jenkins, Jr.

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

ALYSSA CHALIFOUX,

Plaintiff,

v. Case No. CL07-4916

RADIOLOGY ASSOCIATES OF
RICHMOND, INC., ET AL.,

Defendants.

ORDER

On September 4, 2009, Plaintiff, by counsel, submitted her Motion for Reconsideration of this Court's bench ruling granting Defendant's Plea in Bar of the Statute of Limitations. After considering the motion and memoranda of both parties, the Court hereby **DENIES** Plaintiff's Motion for Reconsideration. The Court stands with its ruling and reasoning articulated in its letter opinion dated October 1, 2009. This case is hereby **DISMISSED**.

The Clerk shall forward copies of this order to the Plaintiff and counsel of record for the Defendant.

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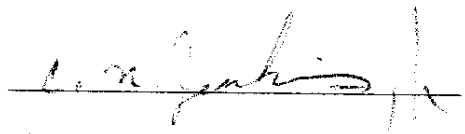

The Honorable C.N. Jenkins, Jr.

ASSIGNMENTS OF ERROR

1. The trial court erred by failing to properly apply the continuing care and treatment rule in granting defendant Radiology Associates of Richmond, Inc.'s plea in bar of the statute of limitations.

2. The trial court erred by failing to find that defendant Radiology Associates provided a continuing course of examination and diagnosis to its patient, Alyssa Chalifoux, for the same illness with the same or similar but progressively worsening symptoms from December 2002 through October 2005.

3. The trial court erred by granting defendant Radiology Associates' plea in bar since genuine issues of material fact are in dispute whether defendant Radiology Associates provided a continuing course of examination and diagnosis for the same illness to its patient, Alyssa Chalifoux, from Dec. 2002 through Oct. 2005.