

THE COURT OF CLAIMS OF OHIO

65 S. Front Street  
Columbus, Ohio 43215

FILED  
COURT OF CLAIMS  
OF OHIO

SUBPOENA **COURT'S COPY**

STEVEN LISS  
**RETURN OF SERVICE**  
Plaintiff

2014 FEB 11 PM 3:23

Case Number: 2013-00139

v.

Judge: Patrick M. McGrath  
Magistrate Holly T. Shaver

CLEVELAND STATE UNIVERSITY  
Defendant

To: John F. Burke, Jr., Ph.D.  
Harvey S. Rosen, Ph.D.  
Burke, Rosen & Associates  
2800 Euclid Ave., Suite 300  
Cleveland, OH 44115  
Facsimile: 216-566-0927

**YOU ARE HEREBY COMMANDED TO:**

- \_\_\_\_\_ Attend and give testimony at a trial/deposition/hearing on the date, time and at the place specified below.
- \_\_\_\_\_ Attend and produce documents and/or tangible things at a trial on the date, time and at the place specified below.
- X   Produce and permit inspection and copying, on the date and at the time and place specified below, of any designated documents that are in your possession custody or control.
- \_\_\_\_\_ Produce and permit inspection and copying, testing or sampling, on the date and at the time and place specified below, of any tangible things that are in your possession, custody or control.
- \_\_\_\_\_ Permit entry upon the following described land or other property, for the purposes described in civil 34(a)(3)), on the date and at the time and place specified below. *Description of land or other premises:* \_\_\_\_\_

DATE: February 10, 2014

TIME: ---

PLACE: Office of the Ohio Attorney General  
150 E. Gay St., 18<sup>th</sup> Fl.  
Columbus, OH 43215

**DESCRIPTION OF ITEMS TO BE PRODUCED: See Exhibit A. In lieu of appearance, please mail items described on the attached Exhibit A to the Office of the Ohio Attorney General, address listed above, attention Emily M. Simmons.**

THE STATE OF OHIO Franklin County,  
SS

To the Sheriff of \_\_\_\_\_ County, Ohio Greetings:

**YOU ARE HEREBY COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON.**

*Certified mail service and via facsimile.*

WITNESS MY HAND THIS 31<sup>st</sup> DAY OF JANUARY, 2014.

BY:   
Emily M. Simmons, Attorney for Defendant

**ON COMPUTER**

**REQUESTING PARTY INFORMATION:**

ATTORNEY'S NAME: Emily M. Simmons, Assistant Chief  
ATTORNEY FOR: Defendant  
ATTORNEY CODE: 0082519  
TELEPHONE NUMBER: 614-466-7447

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**NOTE: READ ALL INFORMATION ON THE REVERSE SIDE OF THIS SUBPOENA.**

**Civil Rule 45 (C) Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2) (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii),(iii),(iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

**Civil Rule 45 (D) Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R.26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**Civil Rule 45 (E) Sanctions.**

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

**\*\*\*\*\* RETURN OF SERVICE\*\*\*\*\***

I RECEIVED THIS SUBPOENA ON January 31, 2014, AND SERVED THE PARTY NAMED ON THE REVERSE HEREOF BY certified mail ON February 4, 2014.

I WAS UNABLE TO COMPLETE SERVICE FOR THE FOLLOWING REASON:

\_\_\_\_\_

2014 FEB 11 PM 3:23  
SHERIFF'S FEES  
Service \_\_\_\_\_ -0-  
Mileage \_\_\_\_\_ -0-  
Copy \_\_\_\_\_ -0-  
Total \_\_\_\_\_ -0-  
COURT OF CLERKS OF OHIO  
Circle One:

[Signature]  
(Signature of Serving Party)  
Deputy Sheriff Attorney  
Process Server Deputy Clerk  
Special Agent of the Attorney General

## **EXHIBIT A**

### **DESCRIPTION OF ITEMS TO BE PRODUCED:**

1. A list of all cases in which Dr. Burke has been an expert, including but not limited to those cases where Dr. Burke provided testimony.
2. All documents reviewed and/or relied upon in the preparation of the expert report in this case.
3. All correspondence exchanged between plaintiff's counsel and Dr. Burke or plaintiff's counsel and anyone from Dr. Burke's office.
4. All billing statements for work on this case.
5. Entire file for this case.

**CERTIFIED MAIL**

**OHIO ATTORNEY GENERAL MIKE DeWINE**  
Court of Claims  
AGO 431000  
150 E. Gay St, 18th Fl.  
Columbus, Ohio 43215



91 7199 9991 7030 3901 5969

To: **John F. Burke, Jr., Ph.D.**  
**Harvey S. Rosen, Ph.D.**  
**Burke, Rosen & Associates**  
**2800 Euclid Ave., Suite 300**  
**Cleveland, OH 44115**



Date: February 10, 2014

Ohio Attorney General:

The following is in response to your February 10, 2014 request for delivery information on your Certified Mail™ item number 9171999991703039015969. The delivery record shows that this item was delivered on February 4, 2014 at 1:27 pm in CLEVELAND, OH 44115. The scanned image of the recipient information is provided below.

Signature of Recipient :

Signature	
Name	Linda JACQUAYS

Address of Recipient :

Address	
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Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,  
United States Postal Service

