

CAUSE NO. 417-03159-2018

STEPHEN COURTNEY, M.D. AND	§	IN THE DISTRICT COURT
STEPHEN P. COURTNEY, M.D.,	§	
P.A.,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
vs.	§	_____ JUDICIAL COURT
	§	
PLANO ORTHOPEDIC AND	§	
SPORTS MEDICINE CENTER,	§	
P.L.L.C., f/k/a PLANO	§	
ORTHOPEDIC & SPORTS	§	
MEDICINE CENTER, INC.,	§	
	§	
<i>Defendant.</i>	§	COLLIN COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs, Stephen Courtney, M.D. (“Dr. Courtney”) and Stephen P. Courtney, M.D., P.A. (“Courtney P.A.”) (collectively, “Plaintiffs” or the “Courtney Parties”), file this Original Petition against Defendant, Plano Orthopedic and Sports Medicine Center, P.L.L.C. f/k/a Plano Orthopedic & Sports Medicine Center, Inc. (“POSMC”), and in support therefor, Plaintiffs would respectfully show as follows:

I.
DISCOVERY CONTROL PLAN

1. Consistent with Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE, the Courtney Parties request that an appropriate scheduling order be entered after POSMC has appeared and answered herein.

II.
CLAIM FOR RELIEF

2. Consistent with Texas Rule of Civil Procedure 47, the Courtney Parties seek monetary relief of more than \$1,000,000.00.

III.
PARTIES

3. Dr. Courtney is an individual residing in Collin County, Texas.

4. Courtney P.A. is a professional association organized under the laws of the State of Texas.

5. POSMC is a professional limited liability corporation organized under the laws of the State of Texas, and it may be served with citation through its agent for service of process, James M. Stewart, 1701 Market, Suite 200, Dallas, Texas 75202.

IV. JURISDICTION & VENUE

6. The Court has subject-matter jurisdiction over this dispute because the claims and damages sought are within the jurisdictional limits of this Court. The Court has personal jurisdiction over this dispute because POSMC is a Texas entity.

7. Venue is proper under Section 15.002 of the Texas Civil Practice & Remedies Code because all or a substantial portion of the events giving rise to the claims asserted in this lawsuit occurred in Collin County, Texas.

V. BACKGROUND

A. The Key Individuals:

8. POSMC: POSMC is an orthopedic and sports medicine center or clinic owned and operated by a group of physicians. Under the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 (*see* 45 C.F.R. § 164.102 *et seq.*) and the Texas Medical Records Privacy Act, POSMC was the legal custodian of the protected health information (“PHI”) belonging to patients treated by the POSMC physicians, including Dr. Courtney. As the “covered entity” under applicable law and the records custodian, POSMC had a legal duty to ensure the security of the protected health information and records of patients treated by the

POSMC physicians. As explained in detail below, POSMC failed to uphold that duty by allowing one of its doctors to unlawfully access more than 1,500 protected files of patients treated by Dr. Courtney while he was a shareholder of POSMC in an egregious breach of confidentiality. The protected health information contained in those files was then leaked, disclosed and/or trafficked to numerous people with no right to the information (including personal-injury lawyers) with catastrophic consequences to Dr. Courtney.

9. Dr. Stephen Courtney. Dr. Courtney is an orthopedic spine surgeon who practiced with POSMC until around February 1, 2018. POSMC voted to ask Dr. Courtney to leave the practice because, after (a) being besieged by multiple lawsuits and threats of lawsuits, combined with (b) 20+ meritless complaints filed with the Texas Medical Board (“TMB”), and (c) two unfair, misleading, distorted, and defamatory stories that were aired by Channel 8, WFAA-Dallas (“WFAA”) against Dr. Courtney, his malpractice insurance company, TMLT, advised that it was dropping his coverage. This sudden deluge of baseless medical malpractice claims, TMB complaints, and defamatory news stories against Dr. Courtney were filed at the behest of the same two individuals. As detailed below, those malpractice claims and TMB complaints were generated using the leaked, disclosed, or trafficked protected health information that POSMC failed to protect.

10. Dr. Cameron Carmody. Dr. Carmody is Dr. Courtney's long-time adversary and former rival spine surgeon at POSMC. Dr. Carmody is a former partner in POSMC whose ownership in, and right to practice with, POSMC was terminated in August 2016 after his partners discovered that Dr. Carmody violated HIPAA and the Texas Medical Records Privacy Act by conducting an unauthorized review of Dr. Courtney's patient records beginning as early as 2009. Dr. Carmody's longstanding personal animosity toward Dr. Courtney culminated in his unauthorized and secret review of Dr. Courtney's patient records and obsessive compilation of the protected data into a detailed, 181-page notebook (the "PHI Notebook"). The PHI Notebook and/or other confidential protected health records and information (collectively, the "PHI") eventually made its way into the hands of medical-malpractice lawyers, the disgruntled boyfriend of Dr. Courtney's ex-wife, and other people who had no right to the protected data, causing catastrophic consequences to Dr. Courtney.

11. William C. McMurrey ("McMurrey"). McMurrey is a former federal prosecutor and criminal-defense lawyer who formerly represented Dr. Carmody from approximately 2009 through 2017 in connection with Dr. Carmody's unauthorized review and use of at least 1,571 files of patients treated by Dr. Courtney. As set forth more fully below, McMurrey acquired the PHI about

Dr. Courtney's patients in the course of representing Dr. Carmody. According to an affidavit executed by Dr. Carmody, McMurrey thereafter disclosed and/or trafficked the PHI to a number of people, including Jonathan Rute, who was the live-in boyfriend of Dr. Courtney's ex-wife, and Kelly Liebke, who is a medical-malpractice lawyer, both of whom used the PHI to file baseless lawsuits and complaints and to harass and defame Dr. Courtney at every opportunity.

12. Jonathan Rute ("Rute"). As noted above, Rute is the long-time, live-in boyfriend of Dr. Courtney's ex-wife, who is believed to have met Rute at a drug rehabilitation facility in 2003. Like Dr. Carmody, Rute has maintained a long-standing and obsessive hostility toward Dr. Courtney and his family. He has a history of numerous events of harassment and false accusations toward Dr. Courtney since 2009. Rute came to possess the PHI after POSMC failed to maintain the confidentiality of the information contained therein. Rute is neither a physician nor an employee of nor associated with POSMC. Consequently, Rute had no right or access to Dr. Courtney's patient records and information, nor did Rute have any authority from the patients or POSMC to have access to such information. Regardless, Rute used the PHI to further his efforts to defame and damage Dr. Courtney's reputation and practice.

13. Kelly Liebbe (“Liebbe”). Liebbe is a personal-injury lawyer who handles medical-malpractice lawsuits against physicians. As detailed below, Liebbe also came into possession of the PHI and used the protected health information therein to seek out and file suit on behalf of Dr. Courtney’s former patients. Liebbe currently represents three former patients of Dr. Courtney: Bryan Taylor, Alan Tarrant, and Bethany Kendrick, in a malpractice lawsuit that Liebbe filed on their behalf in Dallas County, Texas, having Cause No. DC-16-12792, and pending in the 192nd Judicial District Court (the “TTK Lawsuit”). Liebbe has also sent letters to Dr. Courtney advising she also represents at least three other former patients in potential lawsuits against Dr. Courtney. Although the civil claims lack a proper basis, these are clients Liebbe would have never retained but for her obtaining the contraband PHI. The patient-clients of Liebbe did not seek her out; instead, Liebbe, either directly or through Rute, approached Dr. Courtney’s former patients using the PHI that POSMC failed to adequately protect from unauthorized use and disclosure.

B. POSMC breached its duties under HIPAA and the Texas Medical Records Privacy Act by allowing Dr. Carmody to unlawfully access Dr. Courtney’s patient files.

14. In or around 2008, Dr. Courtney created his own medical-implant device company called Eminent Spine. Out of professional jealousy and an

unbridled obsession with Dr. Courtney's success, Dr. Carmody began secretly reviewing and tracking Dr. Courtney's patient procedures and billing practices with the vindictive goal of reporting Dr. Courtney to federal and state authorities for what Dr. Carmody incorrectly believed were questionable decisions with respect to Dr. Courtney's use of his medical devices. Importantly, POSMC was the custodian of records for (and owed a duty to ensure the security of) all of this PHI under POSMC's own policies and procedures, to the extent they were in place during the relevant time period, and/or HIPAA and the Texas Medical Records Privacy Act.

15. Over the following years, POSMC failed to fulfill its duty because Dr. Carmody (either directly or indirectly through others at POSMC, including Noel Kerns and potentially others) accessed at least 1,571 of Dr. Courtney's confidential patient files without permission or authority of POSMC or Dr. Courtney. Dr. Carmody then compiled this confidential information into the "PHI Notebook," a detailed, 181-page notebook of data about Dr. Courtney's patients that included a list of their names, other confidential identifying information, treatment methods used, and inaccurate or incomplete comments on their surgical outcomes.

16. At no time over that time period while Dr. Carmody was developing the PHI Notebook did Dr. Carmody ever voice his so-called concerns to

Dr. Courtney, as one would normally expect a business partner would do in a similar situation. Indeed, Dr. Courtney had no inkling of Dr. Carmody's covert actions until around June 2016.

17. Additionally, at no time over that time period did POSMC fulfill its obligations to maintain the privacy of its patient records, as it permitted Dr. Carmody's ongoing breach to continue unhindered, until it was eventually discovered and reported by Dr. Courtney around June 2016.

C. POSMC's failure to ensure the security of the protected health information of Dr. Courtney's patients resulted in the leaked PHI Notebook ending up in the hands of Jonathan Rute and Kelly Liebbe.

18. During Dr. Carmody's review of the PHI and compilation of the PHI Notebook, Dr. Carmody hired a criminal-defense attorney, McMurrey, and relied on his legal advice and counsel on how to handle the unauthorized review of the PHI and report any alleged violations to the authorities. Within the confidence and protection of their attorney-client relationship, Dr. Carmody gave the PHI Notebook to McMurrey with the explicit instruction that McMurrey was not to distribute it to anyone else other than relevant federal authorities, if needed. Indeed, Dr. Carmody himself confirmed that instruction. According to Dr. Carmody's sworn affidavit (the "Carmody Affidavit") given on February 12, 2018, a copy of which is attached as Exhibit "1," he gave the PHI Notebook to

McMurrey in 2013 or 2014 to review and hold in confidence within the context of their attorney-client relationship.

19. Despite Dr. Carmody's instruction to McMurrey to keep the PHI Notebook in strict confidence, McMurrey disclosed the Notebook (either deliberately or carelessly) to other people who had no right to the protected data. As explained more fully in the Carmody Affidavit, both Liebbe and McMurrey have admitted to Dr. Carmody that McMurrey provided (either directly or indirectly through Rute) the PHI Notebook to Liebbe, and that Liebbe received and used it – thus providing Liebbe with information she never could have lawfully obtained at that point in time to begin building cases against Dr. Courtney. Moreover, Liebbe has herself admitted to receiving, at a minimum, a list of names for patients treated by Dr. Courtney from McMurrey; and Rute has also admitted to receiving PHI about patients treated by Dr. Courtney at POSMC from Dr. Carmody and others, likely including Liebbe given their conspiracy with each other to use the PHI to harm Dr. Courtney. See Exhibit "2", Jack Stick Affidavit with Liebbe's text messages; Exhibit "3", Rute deposition transcript; Exhibit "4" Rute's supplemental Brief on Motion to Dismiss SLAPP (without exhibits).

D. Inspector Gadget

20. On July 22, 2015, Steven Pennington (“Pennington”), a patient of Dr. Courtney’s, unfortunately died of an unrelated heart attack during an orthopedic procedure. Following his death, Pennington’s body was sent to the Collin County Medical Examiner’s Office for an autopsy.

21. On July 27, 2015, just five days after Pennington’s death, the Medical Examiner’s Office and the Collin County District Attorney’s Office unexpectedly received an unusual email from a person identifying himself as “*Inspector Gadget.*” Rute would later reveal himself to be the “*Inspector Gadget.*” Attached to the *Inspector Gadget* Email was a memo titled *Bad to the Bone* that Dr. Carmody had written (with McMurrey’s involvement and assistance) for use in their failed efforts over several years to have Dr. Courtney charged with various compliance issues. Both the *Inspector Gadget* Email and the *Bad to the Bone* Memo contain false and defamatory statements about Dr. Courtney intended to defame him personally and professionally in connection with Pennington’s death. More importantly, though, those documents reveal PHI about Dr. Courtney’s patients going as far back as 2004 and reference spreadsheets with a list of patient names and other documents that formed and/or were included in the PHI Notebook. Critically, neither McMurrey

nor Rute would have possessed this protected health information of Dr. Courtney's patients if not for POSMC's failure to ensure its security against HIPAA breaches.

22. Thereafter, unbeknownst to Dr. Courtney, Liebe began building her meritless lawsuits against Dr. Courtney using the protected information she obtained from the PHI Notebook. According to the Carmody Affidavit, Liebe, cold-called Dr. Carmody in March 2016 to discuss Dr. Courtney's treatment of his patients. Liebe and Dr. Carmody, upon McMurrey's advice, then met several times to discuss background on the procedures for the medical cases.

E. Dr. Courtney discovered POSMC's failure to maintain the privacy of the protected patient information contained in the PHI Notebook and promptly reported the breach to POSMC.

23. Around June 22, 2016 or shortly thereafter, Dr. Courtney first discovered the HIPAA breaches involved with Rute's sending of the *Inspector Gadget* Email and the *Bad-to-the-Bone* Memo to the Collin County Medical Examiner from the previous July. Dr. Courtney promptly reported this activity to POSMC, which commenced an investigation as required by HIPAA to determine if PHI had been unlawfully disclosed. Dr. Courtney also started his own investigation as well. At that time, Dr. Courtney only knew that a violation involving his patient records had occurred. He did not know the magnitude of it

nor was he aware of how the contraband information was being used by Liebbe, Rute, McMurrey and likely others.

24. In that context, the illegal information harvested from Dr. Carmody's unauthorized review of Dr. Courtney's patient files started to surface on or about July 8, July 18, and August 30, 2016, when Dr. Courtney received Chapter 74 notice letters from Liebbe advising of medical-malpractice claims she was asserting on behalf of three patients: Taylor, Tarrant, and Kendrick. See Exhibit "5", which is a copy of the Taylor, Tarrant and Kendrick notice letters sent by Liebbe. Before the notice letters were received by Dr. Courtney, there is no record of those patients having any connection with each other or coordinating their representation with Liebbe such that she would otherwise be representing three former patients together without working from some sort of list or other inside, private information about those patients. Up until then, the only claim filed against Dr. Courtney was in the Pennington matter, which had been filed by another law firm three months earlier in March 2016. After receiving Liebbe's Ch. 74 notice letters in July through late August 2016, Dr. Courtney began to suspect a nefarious use was somehow being made of his patients' confidential information.

F. POSMC confirmed and acknowledged its HIPAA breach and expelled Dr. Carmody.

25. On or around August 7, 2016, POSMC expelled Dr. Carmody after concluding from its own investigation that Dr. Carmody had violated, among other duties, laws, rules or regulations, 45 CFR 164.508, in that he “accessed protected health information without an authorization and for a purpose not specifically allowed pursuant to 45 CFR 164.512” relative to Rute and the *Inspector Gadget* Email/*Bad-to-the-Bone* Memo. Consequently, and upon information and belief, POSMC reported Dr. Carmody’s HIPAA breach to the Texas Medical Board and Office of Civil Rights (“OCR”) of the Department of Health and Human Services.

G. Liebe and Rute filed malpractice lawsuits and Texas Medical Board complaints against Dr. Courtney using the PHI that POSMC negligently failed to protect.

26. On September 28, 2016, Liebe filed the TTK Lawsuit.

27. Thereafter, on or around January 4, 2017, Rute sent an email to one of Dr. Carmody’s lawyers confirming the conspiracy and coordination with Liebe, McMurrey, and likely others in which email Rute acknowledged he had filed an anonymous complaint with the Texas Medical Board against Dr. Courtney on behalf of Liebe’s clients: Taylor, Tarrant, and Kendrick. A true and correct copy of the email is attached hereto as Exhibit “6.”

28. Next, on January 30, 2017, Dr. Courtney received notice from the Texas Medical Board that someone had anonymously filed a fifteen-patient complaint against him. Not surprisingly, all fifteen of the patients forming the basis of this complaint were included in the PHI Notebook. When later questioned about it, nine out of those fifteen patients said they had no knowledge of nor had they consented to their names being used to file a TMB complaint and that they were very supportive of Dr. Courtney's treatment and outcomes.¹

29. On or about March 1, 2017, Dr. Courtney completed the initial phase of his investigation confirming 421 patient files had been unlawfully accessed and reviewed by Dr. Carmody. In compliance with federal law concerning the breach of patient HIPAA information, and after POSMC refused to properly investigate or properly report the substantial HIPAA breach, Dr. Courtney personally filed a report with the OCR to ensure his compliance with applicable law and asked the OCR to further investigate the 421 breaches he had uncovered to that point. Dr. Courtney further requested that OCR take appropriate action against all persons who had unlawfully breached the confidentiality of Dr. Courtney's patient records. In compliance with federal law, and out of a concern for his patients, Dr. Courtney

¹ Five of those fifteen patients could not be reached or contacted to determine if they knew a complaint had been filed using their PHI. Liebke sent a Chapter 74 notice letter advising she represents one of the fifteen patients against Dr. Courtney. See Exhibit "7," which is Liebke's Chapter 74 notice letter for the lone remaining patient, with the patient's identifying information redacted.

wrote a letter to each affected patient advising them that their PHI had been breached. A number of the notified patients responded to Dr. Courtney's notice letter, saying they were aghast and angry that their very private and sensitive information had been used without their permission or knowledge.

30. On May 18, 2017, Dr. Courtney received yet another complaint filed with the Texas Medical Board on behalf of a patient who was also included in the PHI Notebook. On June 9, 2017, Dr. Courtney received a Chapter 74 notice letter from Liebebe advising she was representing that very same patient for whom the foregoing TMB complaint was filed. See Exhibit "8," which is Liebebe's Chapter 74 notice letter for this patient, with the patient's identifying information redacted.

H. Dr. Courtney lost millions after the protected health information POSMC failed to protect gave rise to a Channel 8 News story defaming Dr. Courtney and damaging his reputation.

31. On May 22, 2017, Liebebe and/or Rute provided Brett Shipp ("Shipp") with inaccurate and deceptive information for inclusion in the first of two unfair, misleading, distorted, and defamatory stories that were aired by Channel 8, WFAA-Dallas ("WFAA") against Dr. Courtney that outrageously compared him to the disgraced Plano Surgeon, Dr. Christopher Duntsch. The stories also featured Liebebe, her TTK Lawsuit clients, and a select few other patients who were also included in the PHI Notebook. Again, Liebebe and/or Rute provided Shipp with

slanted information and patients secured from the PHI Notebook to entice WFAA into running the stories, which from their standpoint, was a high-profile way to try to force a civil settlement from Dr. Courtney's insurance carrier in the TTK Lawsuit or to create other harm, both personal and professional, to Dr. Courtney. It was not an accident that Liebbe's clients would not provide a release to Dr. Courtney that would authorize him under HIPAA to specifically respond to their claims in Shipp's stories.

32. Just a few months before WFAA aired Shipp's inaccurate and unbalanced stories, Dr. Courtney opened a multi-million dollar hospital in Richardson called Eminent Medical Center. The airing of Shipp's salacious and disparaging stories based on allegations involving Liebbe's clients and other patients who she unlawfully obtained from the PHI Notebook caused significant financial harm to Dr. Courtney through his ownership of Eminent Medical Center by, among other reasons, unfairly making it unattractive to investors and other surgeons to use the facility given its affiliation with Dr. Courtney. Additionally, many other hospitals, surgery centers, and other physicians suddenly stopped using medical devices manufactured by Eminent Spine. Dr. Courtney's patient volume also dropped by almost half, all of which cost Dr. Courtney millions of dollars in monetary and reputational harm. To be clear, but for POSMC's failure to protect

the PHI, Liebe and/or Rute never would have been in a position to have filed the TTK Lawsuit and enticed Shipp/WFAA to run its defamatory stories.

I. Dr. Courtney finally learned the full extent of POSMC's failure to ensure the security of his patient files.

33. On June 28, 2017, Dr. Carmody was finally forced and compelled in a separate lawsuit to produce the PHI Notebook to Dr. Courtney. With that production, it was revealed that more than 1,140 more patient records had been unlawfully accessed and reviewed. While the revelation of the PHI Notebook and its contents was a shock, Dr. Courtney still did not know at that moment just how well-traveled and utilized the PHI Notebook had been. In response to this new information, Dr. Courtney made another report to the OCR for its investigation, and sent another round of notification letters to his patients as required by federal law, resulting in the discovery of more patients who were outraged by the improper accessing, reviewing and using of their confidential patient information without their permission.

J. Rute and Liebe continued to harm Dr. Courtney using the protected health information in the PHI Notebook.

34. In another suspicious occurrence, on July 21, 2017, a patient of Dr. Courtney's reported he had previously received a random call from an Oklahoma area code. That patient was asked by the caller if he wanted to join in an ongoing

lawsuit against Dr. Courtney. The patient declined. Although the patient could not remember the caller's name, the patient was certain the caller was male and that the in-coming call was from an Oklahoma area code. Notably, Rute's area code is (918) – a (918) area code is assigned to Northeastern Oklahoma. Moreover, this patient who reported receiving the call from the Oklahoma area code was one of the fifteen patients for whom a TMB complaint was made without that patient's knowledge or consent.

35. On December 11, 2017, the Texas Medical Board notified Dr. Courtney that yet another complaint had been filed against him with respect to a patient in the PHI Notebook. Three days later, on December 14, 2017, Dr. Courtney received yet another Chapter 74 notice letter from Liebbe advising that she was representing that very same patient. See Exhibit "9", which is a copy of Liebbe's Chapter 74 notice for this patient, with the patient's identifying information redacted.

K. Because POSMC failed to ensure the security of Dr. Courtney's patient files, TMLT dropped Dr. Courtney's malpractice insurance coverage due to mounting lawsuits, threats of lawsuits, and complaints with the Texas Medical Board.

36. Around December 2017, and after being besieged by multiple lawsuits and threats of lawsuits from Liebbe, combined with 20+ meritless complaints filed with the Texas Medical Board, Dr. Courtney's malpractice-insurance company,

TMLT, advised that it would drop his coverage effective January 31, 2018. In turn, POSMC chose to no longer stand behind Dr. Courtney and unanimously voted in favor of asking him to leave the practice in the face of the reputational devastation sustained by Dr. Courtney, all of which was caused by POSMC's negligence in failing to protect the records of Dr. Courtney's patients.

L. POSMC's non-competition covenant is unenforceable.

37. Around July 25, 2017, the Courtney Parties and the other POSMC physicians signed a First Amended and Restated Company Agreement of Plano Orthopedic and Sports Medicine Center (the "Company Agreement"). Section 14.01 of the Company Agreement contains a restrictive covenant, which states in pertinent part as follows:

Member agrees that during the Term of this Agreement and for two (2) years following the withdrawal of Member or termination of Member's ownership interest in with [sic] Company for any reason, Member, will not, on his own behalf, or as an officer, owner, director, manager, member, employee, contractor or agent of any individual, partnership, corporation, entity or association, or in any other capacity whatsoever own, manage, operate, control, participate in the management or control of, be employed by, provide services to, or maintain an interest in any enterprise, medical practice, association, hospital, surgery center, or ancillary services in competition with Company located within a radius of fifteen (15) miles of 5228 W Plano Parkway, Plano, Texas 75093 ("Office")." *Notwithstanding the foregoing, to the extent an Initial Member has an interest or ownership in a competing entity, enterprise, medical practice, association, hospital, or surgery center at the time of execution of this Agreement, such Initial Member shall have a period of five (5) years to completely divest himself of*

any and all such interest or ownership before he is deemed to be in violation and breach of this Section 14.01. [Emphasis added].

38. As noted above, around December 2017, POSMC unanimously voted to ask Dr. Courtney to leave the practice. Under the circumstances, Dr. Courtney and POSMC agreed on or around December 7, 2017 to separate, at which time POSMC indicated a willingness to waive the above non-competition provision in the Company Agreement. In this regard, Dr. Courtney advised POSMC that he would be opening his own office practice within a fifteen-mile radius of POSMC and began transitioning his practice to that new location with the hope of completing his move by February 1, 2018. Further, POSMC was already aware Dr. Courtney had built and was operating Eminent Medical Center before Dr. Courtney signed the Company Agreement. Consequently, POSMC is estopped from and/or waived enforcement of the non-competition agreement by not seeking to enforce the non-competition restrictions before Dr. Courtney completed the transition of his office practice on February 1, 2018. Additionally, by allowing its Members to compete for five years before divesting themselves of any competing ownership interests as contemplated in Section 14.01 of the Company Agreement, POSMC cannot credibly show the non-competition restrictions are reasonable or necessary to protect the legitimate business interests and goodwill of POSMC.

39. Since December 2017, when POSMC's members unanimously voted

to ask Dr. Courtney to leave the practice, Dr. Courtney and POSMC have been unable to agree upon the terms for his separation. Now, after the parties have reached an impasse on the separation terms, POSMC has threatened to enforce its flawed non-competition provision.

VI. CAUSES OF ACTION

40. The Courtney Parties incorporate by reference the foregoing facts into the following causes of actions.

A. NEGLIGENCE, NEGLIGENCE PER SE, AND GROSS NEGLIGENCE

41. It is undisputed that POSMC was the custodian of Dr. Courtney's patient records. Also, the OCR has already determined that POSMC was the "covered entity" with respect to the HIPAA breach involving Dr. Carmody. As a "covered entity" under HIPAA and the Texas Medical Records Privacy Act, POSMC owed Dr. Courtney a legal duty to keep the protected patient health information confidential and to not allow anyone to unlawfully access, disclose or disseminate it to non-covered entities or individuals. Moreover, POSMC failed to implement proper policies and procedures; or alternatively, failed to follow its own policies and procedures to the extent any were in place, to keep the PHI confidential and/or otherwise to not allow anyone to unlawfully access and then disclose or disseminate it to non-covered entities or individuals.

42. Therefore, POSMC breached its duty by allowing Dr. Carmody to unlawfully and without authority access Dr. Courtney's patient files and then allowing others to use the PHI by, among other things (1) maliciously filing meritless lawsuits against Dr. Courtney in hopes of extracting civil settlements from Dr. Courtney and/or his malpractice insurance company, and (2) conspiring to file multiple, meritless complaints with the Texas Medical Board as leverage for the civil lawsuits and otherwise harm his reputation, leading to Dr. Courtney's ultimate separation from POSMC. In this regard, it is undisputed that Dr. Carmody accessed without authority and performed an unauthorized review of Dr. Courtney's confidential patient records and other PHI; and consequently, the PHI was unlawfully disseminated to Rute, Liebke, and likely others who had no right to possess or use the PHI.

43. As a direct, foreseeable, and proximate cause of POSMC's negligence, the Courtney Parties have sustained massive actual, special, and consequential damages, including lost profits and reputational harm, for which sums the Courtney Parties hereby sue.

44. Further, POSMC's tortious conduct constitutes negligence *per se* because it directly violated HIPAA and the Texas Medical Records Privacy Act, and

the Courtney Parties are within the class of persons for whom the foregoing statutes were intended to protect.

45. The foregoing unlawful conduct by POSMC was also committed with gross negligence, meaning that (1) POSMC's actions or omissions, when viewed objectively from POSMC's standpoint at the time it occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, including the Courtney Parties; and (2) POSMC had actual, subjective awareness of the risks but proceeded with conscious indifference to the rights, safety, and welfare of others, including the Courtney Parties. Therefore, the Courtney Parties are entitled to recover exemplary damages in an amount to be determined by the trier of fact either under the common law and/or under Chapter 41 of the Texas Civil Practices and Remedies Code.

B. DECLARATORY JUDGMENT

46. TEXAS CIVIL PRACTICE & REMEDIES CODE § 37.002 *et seq.* provides a way to “settle and afford relief from uncertainty and insecurity with respect to the rights, status, and other legal relations” “A person interested under a . . . written contract . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status, or other legal relations thereto.” *Id.* § 37.004.

47. Justifiable controversies exist between the Courtney Parties and POSMC with respect to the enforceability of the non-competition restriction contained in Section 14.02 of the Company Agreement. Therefore, the Courtney Parties seek a judicial declaration as follows:

a. POSMC is estopped from enforcing or otherwise waived enforcement of the purported non-competition provision in Section 14.02 of the Company Agreement by indicating it would waive such enforcement to the detrimental reliance of the Courtney Parties and/or because POSMC waited too long to attempt to invoke the purported non-competition provision until after Dr. Courtney completed his transition to his office practice located within a fifteen radius of the Office;

b. The alleged non-competition provision in Section 14.02 of the Company Agreement is unenforceable because (i) the restrictions contained therein either impose a greater restraint than necessary, and/or (ii) POSMC cannot credibly show a legitimate business interest and goodwill worth protecting given the internally inconsistent provision that allows Members of POSMC to directly compete within fifteen miles of the Office for five years before divesting of any such competing ownership or interest. Restated, the difference of one day between the time of signing or the day after with respect to competitive activities cannot logically support

a legitimate business interest and goodwill worth protecting of POSMC – either you can compete or not, regardless of timing; and

c. POSMC has unclean hands that prevents it as a matter of law from seeking any equitable or injunctive relief to enforce the purported non-competition provision in Section 14.02 of the Company Agreement given its failure to properly safeguard and protect from disclosure the PHI, which failure ultimately resulted in POSMC's unanimous decision to ask Dr. Courtney to separate from the practice group.

48. The Courtney Parties are entitled to recover their reasonable and necessary attorneys' fees under Section 37 of the Texas Civil Practice and Remedies Code. The Courtney Parties are further contractually entitled to recover their attorneys' fees under Section 15.06 of the Company Agreement.

VIII. **REQUEST FOR DISCLOSURE**

49. Under Texas Rule of Civil Procedure 194, Defendant requests that Plaintiff disclose, with 30 days from the service of this request, the information or material described in Rule 194.2.

IX. **JURY DEMAND**

50. The Courtney Parties hereby request a trial by jury.

X.
PRAYER

Therefore, the Courtney Parties pray that upon final trial, the Courtney Parties be awarded their actual, special, consequential, and/or exemplary damages, declaratory relief as requested herein, plus recovery of attorneys' fees, plus pre-judgment interest at the highest rate allowed by law, plus post-judgment interest at the highest rate allowed by law, and all such other and further relief to which they may be justly entitled.

Dated: June 29, 2018

Respectfully submitted:

By: /s/ Michael S. Alfred
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EXHIBIT “1”

AFFIDAVIT

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me, the undersigned Notary Public, on this day personally appeared Cameron Carmody, M.D., known to me, who being by me duly sworn upon his/her oath, deposed and said:

1. My name is Cameron Carmody. I am over the age of 18, have never been convicted of a felony or any crime of moral turpitude, and have personal knowledge of the facts stated herein all of which are true and correct.
2. I am a medical doctor and have been licensed to practice medicine since 1990. I have practiced medicine in Texas since August, 2001.
3. In 2008, I became aware that my medical partner Stephen Courtney had opened Eminent Spine, a medical device company manufactures and assembles spinal implants used in spine surgery. I also became aware Dr. Courtney was using his own Eminent Spine products in the surgeries he was performing.
4. Thereafter, I reviewed Dr. Courtney's spinal surgical techniques and his billing practices for those procedures (the "Review"). In connection with the Review, I hired William "Bill" McMurrey to provide me with legal advice and counsel. I turned over to him all the records I had at the time for his review and safekeeping.
5. Through 2014 and part of 2015, I continued to review Dr. Courtney's patient files in an effort to document an increased used of spinal implants, surgical results and also maintain current data. I documented names, identifying information, procedure information, notes and my analysis of what had occurred during Dr. Courtney's operations (the "Documentation"). McMurrey stated he would give the Documentation and accompanying data and information to federal agents.
6. I gave McMurrey the Documentation and accompanying analysis I had compiled up to that point. I do not recall exactly when I gave him that information, but I believe it was in approximately 2013 or 2014. When I gave McMurrey the Documentation and my accompanying analysis, I told him I was giving it to him as my attorney and, except for turning those materials over to federal agents, he was to hold them in confidence.
7. Around March of 2016, Kelly Liebbe, a medical malpractice plaintiff's attorney who had sued Dr. Courtney on behalf of three patients, cold-called me at my office to discuss "cages backing out." I returned the call and learned she wanted to meet about Dr. Courtney. I told her I was uncomfortable having the conversation with her and declined to meet.
8. After that call, I spoke with McMurrey, my attorney, to explain what had happened. McMurrey contacted Liebbe and arranged a meeting; at that meeting with me were Liebbe, McMurrey and a colleague of Liebbe's father. I stated again I was uncomfortable meeting and did not want her calling my cell phone. Shortly after that, she sent me a temporary "burner" phone by US Mail or common carrier which she used to contact me to request a second meeting. McMurrey told me it was OK for me to meet with Liebbe although he left me with the impression I should be discreet about meeting with her.
9. At the second and third meeting I met with Liebbe alone; I believe the meetings were two weeks apart. I explained terminology and assisted Liebbe with understanding reports and x-rays. During the third meeting, Liebbe referred to a patient list of mine she had. I told

her I had not given her a list and she replied that Bill (McMurrey) had given it to her. I was frustrated and concerned at that information, and immediately set a meeting with McMurrey. At that meeting I told McMurrey what Liebebe had said; McMurrey acknowledged he gave Liebebe the Documentation and other information I had compiled about patients treated by Dr. Courtney that I had given to McMurrey. I was surprised when McMurrey told me that because I thought it would have been illegal to do something like that. McMurrey told me not to worry and that everything was "OK."

10. I was served with a counterclaim by Dr. Courtney in the summer of 2016. I immediately contacted McMurrey, who told me to destroy the burner phone Liebebe had sent to me previously by US mail or common carrier. I followed McMurrey's instructions.
11. Sometime in October or November of 2016, McMurrey and I were talking and he spontaneously brought up the patient list that was included in the Documentation. McMurrey told me he had spoken to Liebebe and that I did not need to worry, that there "is no list," and "there never was a list." I took that to mean McMurrey had spoken to Liebebe and she had either destroyed or hidden the Documentation that McMurrey gave her. McMurrey made it seem as though I had nothing to fear but I was by then aware he was the one who had violated the law.
12. Since these events transpired, I requested that McMurrey's law firm (then Lackey Hershman) provide me with copies of email correspondence related to my case. In that correspondence, I reviewed an email from Liebebe to McMurrey dated September 20, 2016. In that email she requested he obtain for her additional information relating to Dr. Courtney's surgical procedure. It is clear from the context of that email and the events that had occurred that she is requesting "Bill" obtain information from me.
13. Additionally, I received a text message from McMurrey on February 9, 2018 that stated (errors in the original):

Kelly Liebebe is upset with you. She tried calling Stick [my attorney] without success. She called wanting to schedule an interview with you. Then being subpoenaed for the second time in Courtney's battle with you she walks into court to see stick sitting with Courtney's attorneys when she moved to quash the taking of her deposition to protect you by not having to testify to those discussions between you two and any documents that were passed from you to her. Also, as we have discussed before she has remained friendly to you by not suing you. You don't want to piss her off. Well you have now. Because never called her back and you have not called me back to discuss her request she has a process server out to serve you with a notice to take your deposition. This could have been avoided but stick failed to respond to Kelly and you wouldn't talk with me. Please call me to discuss.

14. On February 12, 2018, my attorney Jack Stick told me he received a call from Kelly Liebebe in which she stated she had a process server attempting to serve me with a subpoena.
15. After I received McMurrey's text message on February 9, 2018 I responded:

Bill,

I got your text. I've been dealing with some personal medical problems. Sorry that I could not respond. I just want to clarify something. I never gave Kelly Liebebe any documents.

Any documents that I had were given to you. She told me that you gave her a "list". You confirmed to me that you did. I asked your advice on whether or not it was okay to talk with her. You set up the meeting. I followed your advice. Now your saying that I'm in trouble? I'm sorry Kelly is pissed. I'm just trying to comply with my attorneys advice just as I did when you were my attorney. This is messed up.

Cam

18. On the morning of February 11, 2018, I received the following text message from McMurrey (errors in the original):

Rute called to tell me he has a new attorney because Courtney filed to implead him as a named party in the lawsuit in response to him asserting the fifth refusing to answer their questions. His new attorney is suggesting that he answers their questions and he feels this is his opportunity to blow Courtney out of the water with all of his information. As you know Rute is unpredictable and dangerous to your case against Courtney. When excited he makes comments repeating the truth that conflicts with your version of events. He asserted the fifth to protect you and himself from Courtney.

He trust's me and I'm able to discuss and correct him. Also he reported that he is meeting with Medical Board in support of his complaint against Courtney this month.

19. McMurrey did not respond to my text of February 9, 2018.

In witness whereof, this 12th day of February, 2018.

[Signature] (Signature)

Cameron N. Carmody (Printed Name)

SUBSCRIBED TO AND SWORN TO BEFORE ME, on the 12th day of February 2018, Cameron N. Carmody, to certify which witness my hand and official seal.

Judy E. Stephenson Notary Public in and for the State of Texas

Judy E. Stephenson

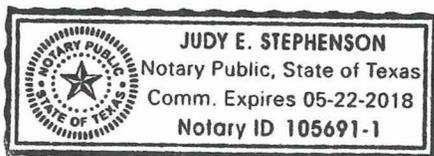


EXHIBIT “2”

CAUSE NO. 417-03470-2016

STEPHEN COURTNEY, M.D. AND	§	IN THE DISTRICT COURT
STEPHEN COURTNEY, M.D., P.A.	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
vs.	§	417 th JUDICIAL COURT
	§	
KELLY M. LIEBBE,	§	
WILLIAM C. McMURREY,	§	
AND JONATHAN RUTE,	§	
	§	
<i>Defendants.</i>	§	COLLIN COUNTY, TEXAS

AFFIDAVIT OF ATTORNEY JACK STICK

STATE OF TEXAS	§
	§
COUNTY OF TRAVIS	§

BEFORE ME, the undersigned authority, on this day personally appeared Jack Stick, the undersigned affiant, who stated to me upon his oath as follows:

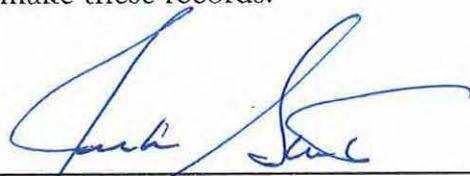
1. "My name is Jack Stick. I am over the age of twenty-one (21) years and have never been convicted of a felony or a crime involving moral turpitude. I am of sound mind and am fully competent to make this Affidavit. The facts set forth in this Affidavit are true and correct and based on my personal knowledge.

2. I am a licensed attorney at the Law Offices of Jack Stick in Austin, Texas.

3. I am the owner of a cell phone with the number (512) 470-1766. Attached to this Affidavit are true and correct copies of text messages ("records") received by me in my law practice from Kelly Liebke, whose cell phone number is (469) 260-7670. These records were made at or near the time of each act or event set forth.

4. The records were made by, or from information transmitted by, me, and I have knowledge of the matters set forth therein and I kept them in the course of regularly conducted business activity in connection with my law practice. It is the regular practice of my business activity to make these records.

This concludes my affidavit.

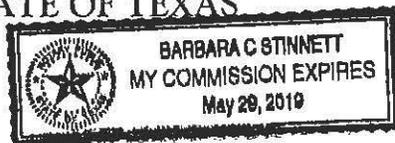


JACK STICK

SUBSCRIBED AND SWORN TO BEFORE ME on this the 23 day of May, 2018, to certify which witness my hand and official seal.



NOTARY PUBLIC
STATE OF TEXAS



Monday, March 12, 2018

(469) 260-7670

For the record. I do recall throwing the list away in a garbage bin that was full of poopy diapers at daycare. If you're wanted to know how I got rid of it. I figured nobody would dig through poop and discover it.

3:41 PM

Friday, March 16, 2018

(469) 260-7670

I met Bill McMurrey and his partner Rob Castle years ago maybe 2011. That's when I got a list of names. It could have been Rob that technically gave the list. Rob was the one the reached out to me to meet. I didn't know either Rob or Bill. At the meeting in 2011 neither ever mentioned Cams name. I simple figured it out for myself. But i didn't want Cam in trouble so I let it go. But I did call Ralph to verify if what Courtney was doing was true. He confirmed. Yet still I let it go because I would never use the list. Years later in 2015 when I started my own firm I felt a sense of guilt that people were being hurt & I knew about it. That is when I cold called Cam. He freaked out and had Rute call me. Not long after that Rute suggested that Tarrant Taylor and Kendrick call me. I signed them up. Once they were my clients I then reached out to Cam to see if he would teach me the medicine. We met at McMurreys office. I brought a notebook of Tarrant medical records (which I obtained legally through my client). I pointed out that Cam actually treated Tarrant as well. I asked if he would be our consulting expert since he obviously knew all about these surgeries. He agreed but was worried Courtney would find out Cam was my consultant. McMurrey suggested the "burner" phone. I bought one and sent to Cam. Cam called fairly regularly for awhile with great ideas for strategy. He was kind and helpful.

1:16 PM

(469) 260-7670

At one meeting just me and Cam I pulled out the list of names. I honestly thought HE instructed Bill to give to an attorney so these people would get legal help. That was an assumption. I guess Cam never knew I had the list. Nonetheless when I pulled it out at our meeting he didn't seem shocked or upset. Quite the opposite we talked about those folks and how they were hurt and some sorta disappeared but some got subsequent surgery by other surgeons. He was not shocked or upset when I pulled out the list.

1:18 PM

(469) 260-7670

When the lawsuit happened with Cam and Courtney I knew someone might think I used it. That's when the list when in a trashbin of poopy diapers at daycare. I never used it and never had reason to have it. And I didn't want any more people getting it bc I knew cam was in hot water but I always believed he was trying to do the right thing and protect people.

1:24 PM

EXHIBIT “3”

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">CAUSE NO. 417-03470-2016</p> <p>CAMERON CARMODY, MD AND) IN THE DISTRICT COURT CAMERON CARMODY, MD, PA,))) PLAINTIFFS,))) VS.) 417TH JUDICIAL DISTRICT)) STEPHEN COURTNEY, MD,) STEPHEN COURTNEY, MD, PA,))) DEFENDANTS.) COLLIN COUNTY, TEXAS</p> <p style="text-align: center;">VIDEOTAPED ORAL DEPOSITION OF JONATHAN RUTE DECEMBER 13, 2017</p> <p>VIDEOTAPED ORAL DEPOSITION OF JONATHAN RUTE, produced as a witness at the instance of the DEFENDANTS, and duly sworn, was taken in the above-styled and numbered cause on the 13th day of December 2017, from 8:12 to 10:01 a.m., before Jill Allen, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Hallett & Perrin, P.C., 1445 Ross Avenue, Suite 2400, in the City of Dallas, County of Dallas, State of Texas, pursuant to Notice and the Texas Rules of Civil Procedure.</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX</p> <p>WITNESS: JONATHAN RUTE PAGE EXAMINATION BY: PAGE BY MR. ALFRED.....4</p> <p>Changes and Corrections.....60 Reporter's Certificate.....62</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">EXHIBIT NO.</th> <th style="text-align: left;">DESCRIPTION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>Exhibit 1 -</td> <td>Order Setting Deposition of Jonathan Rute.....</td> <td style="text-align: right;">5</td> </tr> <tr> <td>Exhibit 2 -</td> <td>Order Resetting Deposition of Jonathan Rute.....</td> <td style="text-align: right;">5</td> </tr> <tr> <td>Exhibit 3 -</td> <td>Non-Party Movant Jonathan Rute Notice of Protection Under Amendment V of the Constitution of the United States.....</td> <td style="text-align: right;">5</td> </tr> <tr> <td>Exhibit 4 -</td> <td>Courtney Parties' Second Amended Notice of Intention to Take the Oral/Videotaped Deposition of Non-Party Jonathan Rute with Subpoena Duces Tecum.....</td> <td style="text-align: right;">8</td> </tr> <tr> <td>Exhibit 5 -</td> <td>Collin County Medical Examiner's Office Supplementary Investigative Report.....</td> <td style="text-align: right;">16</td> </tr> <tr> <td>Exhibit 6 -</td> <td>Affidavit to Texas Medical Board from Mr. Rute, 5/21/2017.....</td> <td style="text-align: right;">17</td> </tr> <tr> <td>Exhibit 7 -</td> <td>(Confidential exhibit, not attached to deposition.).....</td> <td style="text-align: right;">18</td> </tr> <tr> <td>Exhibit 8 -</td> <td>(Confidential exhibit, not attached to deposition.).....</td> <td style="text-align: right;">23</td> </tr> <tr> <td>Exhibit 9 -</td> <td>E-mail to Ms. Liebke and Ms. Kingston from Mr. Rute, 10/4/2016.....</td> <td style="text-align: right;">44</td> </tr> <tr> <td>Exhibit 10 -</td> <td>E-mail to Ms. Kingston from Mr. Rute, 1/4/2017.....</td> <td style="text-align: right;">45</td> </tr> <tr> <td>Exhibit 11 -</td> <td>E-mail from Mr. Rute, with attached TMB investigation status report, 7/21/2017... </td> <td style="text-align: right;">47</td> </tr> <tr> <td>Exhibit 12 -</td> <td>E-mail to Ms. Kingston from Mr. Rute, 8/9/2017.....</td> <td style="text-align: right;">49</td> </tr> <tr> <td>Exhibit 13 -</td> <td>E-mail to Ms. Kingston from Mr. Rute, 10/4/2016.....</td> <td style="text-align: right;">51</td> </tr> </tbody> </table>	EXHIBIT NO.	DESCRIPTION	PAGE	Exhibit 1 -	Order Setting Deposition of Jonathan Rute.....	5	Exhibit 2 -	Order Resetting Deposition of Jonathan Rute.....	5	Exhibit 3 -	Non-Party Movant Jonathan Rute Notice of Protection Under Amendment V of the Constitution of the United States.....	5	Exhibit 4 -	Courtney Parties' Second Amended Notice of Intention to Take the Oral/Videotaped Deposition of Non-Party Jonathan Rute with Subpoena Duces Tecum.....	8	Exhibit 5 -	Collin County Medical Examiner's Office Supplementary Investigative Report.....	16	Exhibit 6 -	Affidavit to Texas Medical Board from Mr. Rute, 5/21/2017.....	17	Exhibit 7 -	(Confidential exhibit, not attached to deposition.).....	18	Exhibit 8 -	(Confidential exhibit, not attached to deposition.).....	23	Exhibit 9 -	E-mail to Ms. Liebke and Ms. Kingston from Mr. Rute, 10/4/2016.....	44	Exhibit 10 -	E-mail to Ms. Kingston from Mr. Rute, 1/4/2017.....	45	Exhibit 11 -	E-mail from Mr. Rute, with attached TMB investigation status report, 7/21/2017...	47	Exhibit 12 -	E-mail to Ms. Kingston from Mr. Rute, 8/9/2017.....	49	Exhibit 13 -	E-mail to Ms. Kingston from Mr. Rute, 10/4/2016.....	51
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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>APPEARING FOR THE PLAINTIFFS: FRIEDMAN & FEIGER MS. MELISSA KINGSTON 5301 Spring Valley Road, Suite 200 Dallas, Texas 75254 (972) 450-7308 (972) 776-5313 FAX E-mail: mkingston@fflawoffice.com</p> <p>APPEARING FOR THE DEFENDANTS: MR. MICHAEL S. ALFRED HALLETT & PERRIN, P.C. 1445 Ross Avenue, Suite 2400 Dallas, Texas 75202 (214) 922-4121 (214) 922-4142 FAX E-mail: malfred@hallettperrin.com</p> <p>APPEARING FOR JONATHAN RUTE: MS. AMANDA FISHER "MANDY" MOORE ATTORNEY AT LAW 214 Connally Street Sulphur Springs, Texas 75482 (214) 669-9674 E-mail: mandyfmoore@yahoo.com</p> <p>ALSO PRESENT: Randy Johnson, Videographer</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1 2 VIDEOPHOTOGRAPHER: We are now on the record in 3 the video deposition of Jonathan Rute. The time is 8:12 4 a.m. The date is December 13th, 2017. Will the court 5 reporter please administer the oath. 6 JONATHAN RUTE, 7 having been first duly sworn, testified as follows: 8 EXAMINATION 9 BY MR. ALFRED: 10 Q. Good morning, Mr. Rute. I know you just 11 stated your name on the video, but I once had a judge 12 get upset with me in the deposition for not asking 13 you -- or the witness to formally state their name in 14 response to a question, so I'm coachable. 15 So, Mr. Rute, would you please state your name 16 for the record. 17 A. My name is Jonathan Rute. 18 (Exhibits 1-2 marked.) 19 Q. All right. I'm going to attach as Exhibit 1 20 to your deposition the order setting your deposition. 21 And then there was an order resetting your deposition as 22 well that I'll attach as Exhibit No. 2. There's Exhibit 23 No. 2. 24 So, Mr. Rute, you understand you are here by 25 order of the court and specifically by these two orders</p>																																										

<p style="text-align: right;">Page 5</p> <p>1 marked as Exhibits 1 and 2?</p> <p>2 A. Yes.</p> <p>3 Q. Now, I understand further that before the last</p> <p>4 deposition, you provided me with a copy of this</p> <p>5 Non-Party Movant Jonathan Rute Notice of Protection</p> <p>6 Under Amendment V of the Constitution of the United</p> <p>7 States. I'll mark that as Exhibit No. 3 to your</p> <p>8 deposition.</p> <p>9 (Exhibit 3 marked.)</p> <p>10 Q. It's my understanding that you intend to</p> <p>11 invoke your Fifth Amendment rights today for purposes of</p> <p>12 this deposition. Is that understanding correct?</p> <p>13 A. Yes.</p> <p>14 Q. And are you asserting that --</p> <p>15 MR. ALFRED: And maybe this is a better</p> <p>16 question for you, Mandy. But whoever wants to chime in</p> <p>17 on this, is the Fifth Amendment privilege being asserted</p> <p>18 in a blanket fashion, or are we going to take this on a</p> <p>19 question-by-question basis here today?</p> <p>20 MS. MOORE: On a question-by-question</p> <p>21 basis.</p> <p>22 MR. ALFRED: Okay. Great.</p> <p>23 Q. All right. So, Mr. Rute, you understand</p> <p>24 you're under oath here today, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 7</p> <p>1 Bowers, with bodily harm when he attempted to serve you</p> <p>2 with a subpoena for your deposition in this case?</p> <p>3 A. On the advice of counsel, I assert my Fifth</p> <p>4 Amendment rights under the United States Constitution</p> <p>5 and decline to answer.</p> <p>6 Q. Do you consider yourself to be a violent</p> <p>7 person?</p> <p>8 A. On the advice of counsel, I assert my Fifth</p> <p>9 Amendment rights under the United States Constitution</p> <p>10 and decline to answer.</p> <p>11 Q. Isn't it true that you have a personal grudge</p> <p>12 against Dr. Stephen Courtney?</p> <p>13 A. On the advice of counsel, I assert my Fifth</p> <p>14 Amendment rights under the United States Constitution</p> <p>15 and decline to answer.</p> <p>16 Q. Where are you currently employed?</p> <p>17 A. On the advice of counsel, I assert my Fifth</p> <p>18 Amendment rights under the United States Constitution</p> <p>19 and decline to answer.</p> <p>20 Q. Have you ever posed as a federal agent to</p> <p>21 anybody?</p> <p>22 A. On the advice of counsel, I assert my Fifth</p> <p>23 Amendment rights under the United States Constitution</p> <p>24 and decline to answer.</p> <p>25 Q. You are not a doctor licensed by the State of</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. And you understand that this oath has the same</p> <p>2 force and effect as if you were testifying in a</p> <p>3 courtroom before the judge or the jury. Do you</p> <p>4 understand that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And are you under the influence of any</p> <p>7 medications that might affect your ability to testify</p> <p>8 truthfully and completely today?</p> <p>9 A. No, sir.</p> <p>10 Q. Any other substances or aspects in your life</p> <p>11 that I need to know about that might affect your ability</p> <p>12 to testify truthfully and accurately today?</p> <p>13 A. On the advice of counsel, I assert my Fifth</p> <p>14 Amendment right under the Constitution and decline to</p> <p>15 answer.</p> <p>16 Q. Have you ever given a deposition before?</p> <p>17 A. On the advice of counsel, I assert my Fifth</p> <p>18 Amendment rights under the United States Constitution</p> <p>19 and decline to answer.</p> <p>20 Q. Did you resist being served with subpoenas for</p> <p>21 your deposition in this case?</p> <p>22 A. On the advice of counsel, I assert my Fifth</p> <p>23 Amendment rights under the United States Constitution</p> <p>24 and decline to answer.</p> <p>25 Q. Did you threaten the process server, Kyle</p>	<p style="text-align: right;">Page 8</p> <p>1 Texas to practice medicine; isn't that true?</p> <p>2 A. On the advice of counsel, I assert my Fifth</p> <p>3 Amendment rights under the United States Constitution</p> <p>4 and decline to answer.</p> <p>5 Q. You are not a lawyer licensed by the State of</p> <p>6 Texas to practice law; isn't that true?</p> <p>7 A. On the advice of counsel, I assert my Fifth</p> <p>8 Amendment rights under the United States Constitution</p> <p>9 and decline to answer.</p> <p>10 Q. Do you currently work for the government?</p> <p>11 A. On the advice of counsel, I assert my Fifth</p> <p>12 Amendment rights under the United States Constitution</p> <p>13 and decline to answer.</p> <p>14 (Exhibit 4 marked.)</p> <p>15 Q. I'm going to show you what I've marked as</p> <p>16 Exhibit No. 4, which is a copy of your -- the subpoena</p> <p>17 that you were served with. And you understand that this</p> <p>18 subpoena was -- the documents that were requested in the</p> <p>19 subpoena were included in your order setting and then</p> <p>20 resetting your deposition for today? Do you understand</p> <p>21 that?</p> <p>22 A. On the advice of counsel, I assert my Fifth</p> <p>23 Amendment rights under the United States Constitution</p> <p>24 and decline to answer.</p> <p>25 Q. If you'll look at the subpoena with me, there</p>

<p style="text-align: right;">Page 9</p> <p>1 are 20 document requests in the subpoena. Have you seen 2 that before?</p> <p>3 A. On the advice of counsel, I assert my Fifth 4 Amendment rights under the United States Constitution 5 and decline to answer.</p> <p>6 Q. Are you producing any documents responsive to 7 requests 1 through 20 for purposes of your deposition 8 today?</p> <p>9 A. On the advice of counsel, I assert my Fifth 10 Amendment rights under the United States Constitution 11 and decline to answer.</p> <p>12 Q. Okay. So just to be clear, I want to 13 understand. No documents are being produced today in 14 response to document requests 1 through 20 in the 15 subpoena based on the assertion of your Fifth Amendment 16 rights; is that correct?</p> <p>17 MS. MOORE: I've advised my client not to 18 answer any questions regarding the documents, and we 19 consider these documents to be protected under his Fifth 20 Amendment right.</p> <p>21 MR. ALFRED: Okay. Thank you.</p> <p>22 Q. And do you agree with your client's -- or not 23 the client. You're the client.</p> <p>24 Do you agree with lawyer's statement there, 25 Mr. Rute?</p>	<p style="text-align: right;">Page 11</p> <p>1 deposition today?</p> <p>2 A. On the advice of counsel, I assert my Fifth 3 Amendment rights under the United States Constitution 4 and decline to answer.</p> <p>5 Q. Did you visit with Mr. Loewinsohn, one of the 6 plaintiff's lawyers representing patients in a medical 7 malpractice lawsuit against Dr. Courtney, in preparation 8 of your deposition today?</p> <p>9 A. On the advice of counsel, I assert my Fifth 10 Amendment rights under the United States Constitution 11 and decline to answer.</p> <p>12 Q. Have you talked with any of Dr. Courtney's 13 patients or otherwise communicated with them in writing 14 or verbally in preparation of your deposition today?</p> <p>15 A. On the advice of counsel, I assert my Fifth 16 Amendment rights under the United States Constitution 17 and decline to answer.</p> <p>18 Q. Have you talked or otherwise communicated in 19 writing, including e-mail or verbally, with Brett Shipp 20 in preparation of your deposition today?</p> <p>21 A. On the advice of counsel, I assert my Fifth 22 Amendment rights under the United States Constitution 23 and decline to answer.</p> <p>24 Q. Have you talked or otherwise communicated, 25 including in writing, via e-mail or otherwise, with any</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. And so we don't know one way or the other 3 whether documents exist or not because you were 4 asserting your Fifth Amendment rights to answering that 5 question one way or the other; is that correct?</p> <p>6 A. On the advice of counsel, I am asserting my 7 Fifth Amendment rights under the United States 8 Constitution and decline to answer.</p> <p>9 Q. Other than with your attorney, Ms. Moore, who 10 have you spoken with in preparation for your deposition 11 today?</p> <p>12 A. On the advice of counsel, I assert my Fifth 13 Amendment rights under the United States Constitution 14 and decline to answer.</p> <p>15 Q. Did you have any communications, whether by 16 e-mail, any other writing or verbally, with 17 Ms. Kingston, directly with her, in preparation for your 18 deposition today?</p> <p>19 A. On the advice of counsel, I assert my Fifth 20 Amendment rights under the United States Constitution 21 and decline to answer.</p> <p>22 Q. Did you have any communication, either written 23 or verbal -- and written would include e-mail -- for 24 purposes of this question: Did you have any 25 communications with Kelly Liebe in preparation of your</p>	<p style="text-align: right;">Page 12</p> <p>1 government investigators in preparation of your 2 deposition today?</p> <p>3 A. On the advice of counsel, I assert my Fifth 4 Amendment rights under the United States Constitution 5 and decline to answer.</p> <p>6 Q. Who is Cynthia Ellis?</p> <p>7 A. On the advice of counsel, I assert my Fifth 8 Amendment rights under the United States Constitution 9 and decline to answer.</p> <p>10 Q. When did you meet Cynthia Ellis?</p> <p>11 A. On the advice of counsel, I assert my Fifth 12 Amendment rights under the United States Constitution 13 and decline to answer.</p> <p>14 Q. Are you currently living with Ms. Ellis?</p> <p>15 A. On the advice of counsel, I assert my Fifth 16 Amendment rights under the United States Constitution 17 and decline to answer.</p> <p>18 Q. I had heard that perhaps Ms. Ellis may have 19 passed away on November 17th, 2017. Do you understand 20 or do you know if she is still alive?</p> <p>21 A. On the advice of counsel, I assert my Fifth 22 Amendment rights under the United States Constitution 23 and decline to answer.</p> <p>24 Q. Have you ever met Dr. Courtney?</p> <p>25 A. On the advice of counsel, I assert my Fifth</p>

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<p>1 Amendment rights under the United States Constitution 2 and decline to answer. 3 Q. When did you first meet Dr. Courtney? 4 A. On the advice of counsel, I assert my Fifth 5 Amendment rights under the United States Constitution 6 and decline to answer. 7 Q. How did you first meet Dr. Courtney? 8 A. On the advice of counsel I assert my Fifth 9 Amendment rights under the United States Constitution 10 and decline to answer. 11 Q. Can you list for me everything that you think 12 Dr. Courtney has done that you believe to be illegal? 13 A. On the advice of counsel, I assert my Fifth 14 Amendment rights under the United States Constitution 15 and decline to answer. 16 Q. Have you made any audio or video recordings in 17 connection with the Dr. Carmody/Dr. Courtney lawsuit? 18 A. On the advice of counsel, I assert my Fifth 19 Amendment rights under the United States Constitution 20 and decline to answer. 21 Q. Do you have any audio recordings of 22 Dr. Courtney? 23 A. On the advice of counsel, I assert my Fifth 24 Amendment rights under the United States Constitution 25 and decline to answer.</p>	<p>1 Q. Dr. Carmody -- let me rephrase. 2 Isn't it true that Dr. Carmody has provided 3 confidential, protected health information to you about 4 Dr. Courtney's patients? 5 A. On the advice of counsel, I assert my Fifth 6 Amendment rights under the United States Constitution 7 and decline to answer. 8 Q. Isn't it true that Dr. Carmody provided you 9 access to Dr. Courtney's patients' medical files? 10 A. On the advice of counsel, I assert my Fifth 11 Amendment rights under the United States Constitution 12 and decline to answer. 13 Q. Isn't it true that you discussed information 14 contained in Dr. Courtney's patients' medical files with 15 Dr. Carmody? 16 A. On the advice of counsel, I assert my Fifth 17 Amendment rights under the United States Constitution 18 and decline to answer. 19 Q. Isn't it true that you did not know Steve 20 Pennington before he passed away? 21 A. On the advice of counsel, I assert my Fifth 22 Amendment rights under the United States Constitution 23 and decline to answer. 24 Q. Isn't it true that you did know Steve 25 Pennington before he passed away?</p>
Page 14	Page 16
<p>1 Q. Do you have any audio recordings of 2 Dr. Carmody? 3 A. On the advice of counsel, I assert my Fifth 4 Amendment rights under the United States Constitution 5 and decline to answer. 6 Q. When did you first meet Dr. Carmody? 7 A. On the advice of counsel, I assert my Fifth 8 Amendment rights under the United States Constitution 9 and decline to answer. 10 Q. Where did you meet Dr. Carmody? 11 A. On the advice of counsel, I assert my Fifth 12 Amendment rights under the United States Constitution 13 and decline to answer. 14 Q. Did you tell Dr. Carmody, when you first met 15 him, that you were a federal investigator? 16 A. On the advice of counsel, I assert my Fifth 17 Amendment rights under the United States Constitution 18 and decline to answer. 19 Q. If Dr. Carmody has stated in verified or sworn 20 interrogatory answers that you did pose as a federal 21 investigator when you first met Dr. Carmody, you don't 22 dispute that, do you? 23 A. On the advice of counsel, I assert my Fifth 24 Amendment rights under the United States Constitution 25 and decline to answer.</p>	<p>1 A. On the advice of counsel, I assert my Fifth 2 Amendment rights under the United States Constitution 3 and decline to answer. 4 Q. When did you first meet Mr. Steve Pennington? 5 A. On the advice of counsel, I assert my Fifth 6 Amendment rights under the United States Constitution 7 and decline to answer. 8 Q. How did you learn of Mr. Pennington's death? 9 A. On the advice of counsel, I assert my Fifth 10 Amendment rights under the United States Constitution 11 and decline to answer. 12 Q. Isn't it true that Dr. Carmody shared with you 13 details about Mr. Pennington's medical files with you? 14 A. On the advice of counsel, I assert my Fifth 15 Amendment rights under the United States Constitution 16 and decline to answer. 17 (Exhibit 5 marked.) 18 Q. I'm handing you what I've marked Exhibit 19 No. 5. Let me turn to my copy. Have you seen this 20 document before? 21 A. On the advice of counsel, I assert my Fifth 22 Amendment rights under the United States Constitution 23 and decline to answer. 24 Q. According to this document, you represented to 25 the Collin County Medical Examiner's Office that you did</p>

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1 not know Mr. Pennington before he passed away; isn't
2 that true?
3 **A. On the advice of counsel, I assert my Fifth**
4 **Amendment rights under the United States Constitution**
5 **and decline to answer.**
6 Q. And, in fact, it's your position that you did
7 not know Mr. Pennington before he passed away, isn't it?
8 **A. On the advice of counsel, I assert my Fifth**
9 **Amendment rights under the United States Constitution**
10 **and decline to answer.**
11 MS. MOORE: This was Exhibit 5, correct?
12 MR. ALFRED: Correct.
13 (Exhibit 6 marked.)
14 Q. Let me show you what I've marked as Exhibit
15 No. 6. This is an affidavit that you provided to the
16 Texas Medical Board in support of Dr. Carmody's
17 complaint that was -- that he was defending before the
18 medical board; isn't that correct?
19 **A. On the advice of counsel, I assert my Fifth**
20 **Amendment rights under the United States Constitution**
21 **and decline to answer.**
22 Q. Okay. Is that your signature on the first
23 page of this Exhibit No. 6, Bates labeled CAM 556?
24 **A. On the advice of counsel, I assert my Fifth**
25 **Amendment rights under the United States Constitution**

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1 **and decline to answer.**
2 Q. The statements you provided in -- on this
3 first page of Exhibit No. 6 are false, aren't they?
4 **A. On the advice of counsel, I assert my Fifth**
5 **Amendment rights under the United States Constitution**
6 **and decline to answer.**
7 Q. If you'll turn with me to the next page,
8 CAM 557, of this document. The statements provided on
9 that page of Exhibit 6 are false; isn't that correct?
10 **A. On the advice of counsel, I assert my Fifth**
11 **Amendment rights under the United States Constitution**
12 **and decline to answer.**
13 Q. Why did you provide this document in support
14 of Dr. Carmody's defense against the complaint filed
15 with the Texas Medical Board?
16 **A. On the advice of counsel, I assert my Fifth**
17 **Amendment rights under the United States Constitution**
18 **and decline to answer.**
19 Q. I'm going to mark as Exhibit 7 what we've come
20 to know as the Inspector Gadget e-mail in this case.
21 (Exhibit 7 marked.)
22 Q. In this Exhibit No. 7, there's an e-mail from
23 an Inspector Gadget dated July 27, 2015 to Medical Exam
24 Email, Dale Dowdy.
25 You're the author of that e-mail; isn't that

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1 true?
2 **A. On the advice of counsel, I assert my Fifth**
3 **Amendment rights under the United States Constitution**
4 **and decline to answer.**
5 Q. Why did you refer to yourself as Inspector
6 Gadget in sending this e-mail?
7 **A. On the advice of counsel, I assert my Fifth**
8 **Amendment rights under the United States Constitution**
9 **and decline to answer.**
10 Q. Do you still have a valid e-mail address
11 baddochero@gmail.com?
12 **A. On the advice of counsel, I assert my Fifth**
13 **Amendment rights under the United States Constitution**
14 **and decline to answer.**
15 Q. You agree that this Inspector Gadget e-mail
16 contains medical details that could only have been
17 learned from Steven Paul Pennington's confidential
18 medical file, correct?
19 **A. On the advice of counsel, I assert my Fifth**
20 **Amendment rights under the United States Constitution**
21 **and decline to answer.**
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 **A. On the advice of counsel, I assert my Fifth**

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1 **Amendment rights under the United States Constitution**
2 **and decline to answer.**
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 **A. On the advice of counsel, I assert my Fifth**
7 **Amendment rights under the United States Constitution**
8 **and decline to answer.**
9 Q. You further agree, Mr. Rute, don't you, that
10 the reference to Mr. Pennington having [REDACTED]
11 [REDACTED] could have only come from Mr. Pennington's
12 medical file?
13 **A. On the advice of counsel, I assert my Fifth**
14 **Amendment rights under the United States Constitution**
15 **and decline to answer.**
16 Q. You would agree that the reference to
17 Mr. Pennington [REDACTED]
18 could have only come from Mr. Pennington's medical file?
19 **A. On the advice of counsel, I assert my Fifth**
20 **Amendment rights under the United States Constitution**
21 **and decline to answer.**
22 Q. (As stated) You would agree with me that the
23 reference to [REDACTED] referring to the
24 [REDACTED]
25 [REDACTED] you would agree that that information could

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<p>1 have only come from Mr. Pennington's medical file?</p> <p>2 A. On the advice of counsel, I assert my Fifth</p> <p>3 Amendment rights under the United States Constitution</p> <p>4 and decline to answer.</p> <p>5 Q. You would agree with me that every reference</p> <p>6 to a medical condition of Mr. Courtney in the Inspector</p> <p>7 Gadget e-mail could have only come from Mr. Pennington's</p> <p>8 medical file?</p> <p>9 A. On the advice of counsel, I assert my Fifth</p> <p>10 Amendment rights under the United States Constitution</p> <p>11 and decline to answer.</p> <p>12 Q. And that information from Mr. Pennington's</p> <p>13 medical file could have only been given to you by</p> <p>14 Dr. Carmody?</p> <p>15 A. On the advice of counsel, I assert my Fifth</p> <p>16 Amendment rights under the United States Constitution</p> <p>17 and decline to answer.</p> <p>18 Q. So either the information came directly from</p> <p>19 the medical file of Mr. Pennington or it was told to you</p> <p>20 by Dr. Carmody; isn't that true?</p> <p>21 A. On the advice of counsel, I assert my Fifth</p> <p>22 Amendment rights under the United States Constitution</p> <p>23 and decline to answer.</p> <p>24 Q. Or Dr. Carmody just gave you Mr. Pennington's</p> <p>25 entire medical file. Isn't that what really happened?</p>	<p>1 the lawsuit before the estate had authorized any lawyers</p> <p>2 to review that information?</p> <p>3 A. On the advice of counsel, I assert my Fifth</p> <p>4 Amendment rights under the United States Constitution</p> <p>5 and decline to answer.</p> <p>6 Q. You also provided the information in this</p> <p>7 e-mail to Brett Shipp; isn't that true?</p> <p>8 A. On the advice of counsel, I assert my Fifth</p> <p>9 Amendment rights under the United States Constitution</p> <p>10 and decline to answer.</p> <p>11 Q. You have also provided the information in this</p> <p>12 Inspector Gadget e-mail concerning Mr. Pennington's</p> <p>13 medical conditions to Kelly Liebbe; isn't that true?</p> <p>14 A. On the advice of counsel, I assert my Fifth</p> <p>15 Amendment rights under the United States Constitution</p> <p>16 and decline to answer.</p> <p>17 Q. I'm going to mark as Exhibit No. 8 what is</p> <p>18 referred to as the Bad to the Bone memo.</p> <p>19 (Exhibit 8 marked.)</p> <p>20 Q. Have you seen this document before?</p> <p>21 A. On the advice of counsel, I assert my Fifth</p> <p>22 Amendment rights under the United States Constitution</p> <p>23 and decline to answer.</p> <p>24 Q. In truth, you have seen this e-mail -- or this</p> <p>25 memo before because Dr. Carmody gave it to you, correct?</p>
Page 22	Page 24
<p>1 A. On the advice of counsel, I assert my Fifth</p> <p>2 Amendment rights under the United States Constitution</p> <p>3 and decline to answer.</p> <p>4 Q. You and Dr. Carmody had specific detailed</p> <p>5 discussions about Mr. Pennington's medical conditions as</p> <p>6 referenced in the Inspector Gadget e-mail; isn't that</p> <p>7 true?</p> <p>8 A. On the advice of counsel, I assert my Fifth</p> <p>9 Amendment rights under the United States Constitution</p> <p>10 and decline to answer.</p> <p>11 Q. Dr. Carmody gave you those questions 1 through</p> <p>12 11 that are shown in the Inspector Gadget e-mail, didn't</p> <p>13 he?</p> <p>14 A. On the advice of counsel, I assert my Fifth</p> <p>15 Amendment rights under the United States Constitution</p> <p>16 and decline to answer.</p> <p>17 Q. In other words, Dr. Carmody scripted those</p> <p>18 questions 1 through 11 for you to present to the medical</p> <p>19 examiner in the Inspector Gadget e-mail; isn't that</p> <p>20 true?</p> <p>21 A. On the advice of counsel, I assert my Fifth</p> <p>22 Amendment rights under the United States Constitution</p> <p>23 and decline to answer.</p> <p>24 Q. You also provided this information to Mr. --</p> <p>25 the legal team representing Mr. Pennington's estate in</p>	<p>1 A. On the advice of counsel, I assert my Fifth</p> <p>2 Amendment rights under the United States Constitution</p> <p>3 and decline to answer.</p> <p>4 Q. Dr. Carmody is the author of this memo; isn't</p> <p>5 that right?</p> <p>6 A. On the advice of counsel, I assert my Fifth</p> <p>7 Amendment rights under the United States Constitution</p> <p>8 and decline to answer.</p> <p>9 Q. Dr. Carmody told you that he drafted the Bad</p> <p>10 to the Bone memo, didn't he?</p> <p>11 A. On the advice of counsel, I assert my Fifth</p> <p>12 Amendment rights under the United States Constitution</p> <p>13 and decline to answer.</p> <p>14 Q. You agree with me that the Bad to the Bone</p> <p>15 memo has got protected health information of</p> <p>16 Dr. Courtney's patients included within it; isn't that</p> <p>17 true?</p> <p>18 A. On the advice of counsel, I assert my Fifth</p> <p>19 Amendment rights under the United States Constitution</p> <p>20 and decline to answer.</p> <p>21 Q. How did Dr. Carmody give you this memo,</p> <p>22 meaning was it in person, by e-mail, by fax? What was</p> <p>23 the method of transmitting this memo to you by</p> <p>24 Dr. Carmody?</p> <p>25 A. On the advice of counsel, I assert my Fifth</p>

<p style="text-align: right;">Page 25</p> <p>1 Amendment rights under the United States Constitution 2 and decline to answer.</p> <p>3 Q. You agree that the Bad to the Bone memo in the 4 form as you received it contained a list of 5 Dr. Courtney's patients, correct?</p> <p>6 A. On the advice of counsel, I assert my Fifth 7 Amendment rights under the United States Constitution 8 and decline to answer.</p> <p>9 Q. And, in fact, it references -- the memo itself 10 references spreadsheets and patient lists in multiple 11 locations within the memo?</p> <p>12 A. On the advice of counsel, I assert my Fifth 13 Amendment rights under the United States Constitution 14 and decline to answer.</p> <p>15 Q. And that is the way you received this Bad to 16 the Bone memo, with the spreadsheets and patient lists 17 attached, showing confidential, protected health 18 information of Dr. Courtney's patients, correct?</p> <p>19 A. On the advice of counsel, I assert my Fifth 20 Amendment rights under the United States Constitution 21 and decline to answer.</p> <p>22 Q. You have shared the Bad to the Bone memo with 23 plaintiffs' lawyers in an effort to get them to sue 24 Dr. Courtney; isn't that true?</p> <p>25 A. On the advice of counsel, I assert my Fifth</p>	<p style="text-align: right;">Page 27</p> <p>1 Amendment rights under the United States Constitution 2 and decline to answer.</p> <p>3 Q. I'm going to rephrase that question because I 4 messed it up.</p> <p>5 Isn't it true that you provided a copy of the 6 Bad to the Bone memo with spreadsheets and patient lists 7 attached, containing confidential, protected health 8 information of Dr. Courtney to plaintiffs' lawyers, 9 including Ms. Liebbe and Mr. Loewinsohn, in an effort to 10 have malpractice cases maliciously filed against 11 Dr. Courtney; isn't that true?</p> <p>12 A. On the advice of counsel, I assert my Fifth 13 Amendment rights under the United States Constitution 14 and decline to answer.</p> <p>15 MR. ALFRED: I need to take a five-second 16 break. I need to go get the notebook. I'll be right 17 back. We can go off the record for a minute.</p> <p>18 VIDEOGRAPHER: We're off the record at 19 8:45 a.m.</p> <p>20 (Recess taken 8:45-8:48.)</p> <p>21 VIDEOGRAPHER: On the record at 8:48 a.m.</p> <p>22 Q. (BY MR. ALFRED) Okay. Mr. Rute, I'm not 23 going to attach this as an exhibit to your deposition 24 because it contains confidential patient information --</p> <p>25 MS. KINGSTON: We have a protective order</p>
<p style="text-align: right;">Page 26</p> <p>1 Amendment rights under the United States Constitution 2 and decline to answer.</p> <p>3 Q. You provided a copy of this Bad to the Bone 4 memo, with patient lists and spreadsheets attached, to 5 Kelly Liebbe; isn't that true?</p> <p>6 A. On the advice of counsel, I assert my Fifth 7 Amendment rights under the United States Constitution 8 and decline to answer.</p> <p>9 Q. Isn't it true that you provided a copy of this 10 Bad to the Bone memo with patient lists and spreadsheets 11 containing confidential, protected health information of 12 Dr. Courtney's patients to not only Ms. Liebbe, but also 13 to the Loewinsohn firm; isn't that true?</p> <p>14 A. On the advice of counsel, I assert my Fifth 15 Amendment rights under the United States Constitution 16 and decline to answer.</p> <p>17 Q. Isn't it true that you provided a copy of this 18 Bad to the Bone memo with spreadsheets and patient lists 19 attached, containing confidential, protected health 20 information of Dr. Courtney's patients to plaintiffs' 21 lawyers other than Ms. Liebbe and Mr. Loewinsohn in an 22 effort to have malpractice cases maliciously filed 23 against Dr. Carmody; isn't that true -- or against 24 Dr. Courtney rather; isn't that true?</p> <p>25 A. On the advice of counsel, I assert my Fifth</p>	<p style="text-align: right;">Page 28</p> <p>1 in place, so --</p> <p>2 MR. ALFRED: Yeah, we do.</p> <p>3 MS. KINGSTON: -- I'm going to object to 4 you referencing exhibits that aren't attached to the 5 record.</p> <p>6 MR. ALFRED: If I identify them by Bates 7 number, then that will be sufficient.</p> <p>8 Let's go off the record for one second.</p> <p>9 VIDEOGRAPHER: We're off the record at 10 8:49.</p> <p>11 (Brief off-the-record discussion.)</p> <p>12 VIDEOGRAPHER: We're on the record at 13 8:49.</p> <p>14 Q. (BY MR. ALFRED) Mr. Rute, are you aware that 15 there's a protective order entered in this case?</p> <p>16 A. On the advice of counsel, I assert my Fifth 17 Amendment rights under the United States Constitution 18 and decline to answer.</p> <p>19 MR. ALFRED: Ms. Moore, there were 20 documents produced in this case that were originally 21 reviewed in camera by Judge Wheless, and she made those 22 available to us.</p> <p>23 If I show you a copy of the protective order, 24 would you be agreeable to complying with the protective 25 order's terms with respect to documents that are marked</p>

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<p>1 as confidential in this case?</p> <p>2 MS. MOORE: Yes.</p> <p>3 MR. ALFRED: Okay. Tell you what, let's</p> <p>4 just be safe and let me go grab a copy of the protective</p> <p>5 order and show that to you and make sure you're</p> <p>6 comfortable with it. Is that okay?</p> <p>7 MS. MOORE: Yes.</p> <p>8 VIDEOGRAPHER: We're off the record at</p> <p>9 8:50 a.m.</p> <p>10 (Recess taken 8:50-8:59.)</p> <p>11 VIDEOGRAPHER: We're on the record at 8:59</p> <p>12 a.m.</p> <p>13 MR. ALFRED: Okay. So during a break or</p> <p>14 before the break, I went and pulled a copy of our agreed</p> <p>15 protective order. Is this something that you would be</p> <p>16 willing to have your client comply with?</p> <p>17 MS. MOORE: As Mr. Rute's counsel, I</p> <p>18 viewed the protective order and believe that these are</p> <p>19 outside the scope of this deposition and not relevant to</p> <p>20 Mr. Rute's testimony, and I would prefer that he not be</p> <p>21 shown the protective order or anything relating to the</p> <p>22 protective order or protected by said order.</p> <p>23 MR. ALFRED: Okay. But right now you're</p> <p>24 saying you're not -- you're objecting to having Mr. Rute</p> <p>25 participate within the scope of the protective order; is</p>	<p>1 to be covered by the protective order, I would prefer --</p> <p>2 to limit the amount of disputes we have in this case, if</p> <p>3 you would figure that out ahead of time, because after</p> <p>4 you've already shown it to him and before you showed him</p> <p>5 the protective order, I don't know what good that does</p> <p>6 us.</p> <p>7 MS. MOORE: I was going to say it's</p> <p>8 retroactive and we've already viewed it, and as it's</p> <p>9 been stated on the record, we don't want any part of</p> <p>10 anything to do with the protective order.</p> <p>11 MR. ALFRED: Okay. Then I think at this</p> <p>12 point we need to get Judge Wheless on the phone if</p> <p>13 there's a concern about that, so --</p> <p>14 MS. KINGSTON: Well, you can take that up</p> <p>15 later.</p> <p>16 MR. ALFRED: No.</p> <p>17 MS. KINGSTON: Just from this point</p> <p>18 forward, if you've got something that's covered, you</p> <p>19 need to let us know ahead of time.</p> <p>20 MR. ALFRED: Well, you were there and you</p> <p>21 saw it, too, Melissa, as we were going through --</p> <p>22 MS. KINGSTON: But it's not my deposition.</p> <p>23 MR. ALFRED: Agreed on that, but I think I</p> <p>24 want to get Judge Wheless on the phone, because there</p> <p>25 are a lot of documents that I need to go over, that I</p>
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<p>1 that right?</p> <p>2 MS. MOORE: Correct.</p> <p>3 MR. ALFRED: Okay. Then I am not going to</p> <p>4 attach this binder as an exhibit, but I am going to</p> <p>5 reference the Bates numbers of Carmody 1 through 181 as</p> <p>6 the documents that are in the binder. So whenever I</p> <p>7 refer to the binder, those are the documents I'm</p> <p>8 referring to that Judge Wheless compelled by order for</p> <p>9 Dr. Carmody to produce to us in response to a motion to</p> <p>10 compel in this case. So if I refer to the word binder,</p> <p>11 that is what I'm referencing.</p> <p>12 I'm also, by the way, marking the</p> <p>13 Inspector Gadget and the Bad to the Bone documents as</p> <p>14 confidential under the protective order and would expect</p> <p>15 you, Mr. Rute, to comply -- you and your counsel to</p> <p>16 comply with the terms of the protective order, to the</p> <p>17 extent that those apply to these documents.</p> <p>18 MS. KINGSTON: Wait. So you're</p> <p>19 instructing the witness --</p> <p>20 MR. ALFRED: I said I'm expecting him to</p> <p>21 comply. If I need to go get a court order from Judge</p> <p>22 Wheless or get her on the phone, then I may need to do</p> <p>23 that.</p> <p>24 MS. KINGSTON: Well, from this point</p> <p>25 forward, if you have a document or material you expect</p>	<p>1 need to get Mr. Rute to testify about and don't know why</p> <p>2 there would be an opposition to entering into the</p> <p>3 protective order, given what's going on.</p> <p>4 So let's break for a few minutes and then</p> <p>5 we need to get Judge Wheless -- see if we can get Judge</p> <p>6 Wheless on the phone.</p> <p>7 Thank you. I'll be back in a second.</p> <p>8 VIDEOGRAPHER: Is everybody okay to go off</p> <p>9 the record?</p> <p>10 MR. ALFRED: Yes.</p> <p>11 MS. MOORE: Uh-huh.</p> <p>12 VIDEOGRAPHER: We're off the record at</p> <p>13 9:03 a.m.</p> <p>14 (Recess taken 9:03-9:09.)</p> <p>15 VIDEOGRAPHER: We're on the record at 9:09</p> <p>16 a.m.</p> <p>17 Q. (BY MR. ALFRED) Okay. Mr. Rute, I had</p> <p>18 previously defined the materials in the binder that</p> <p>19 Judge Wheless ordered produced by Dr. Carmody as</p> <p>20 documents 1 through 181 -- Carmody 1 through 181.</p> <p>21 So with that definition in mind, those</p> <p>22 documents form part of the spreadsheet or patient lists</p> <p>23 that were attached to the Bad to the Bone memo that you</p> <p>24 received; isn't that true?</p> <p>25 A. On the advice of counsel, I assert my Fifth</p>

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<p>1 Amendment rights under the United States Constitution 2 and decline to answer. 3 Q. And those documents in the binder are 4 documents that you personally reviewed after receiving 5 them from Dr. Carmody; isn't that true? 6 A. On the advice of counsel, I assert my Fifth 7 Amendment rights under the United States Constitution 8 and decline to answer. 9 Q. And you disseminated those documents in the 10 binder to people other than the Collin County Medical 11 Examiner; isn't that true? 12 A. On the advice of counsel, I assert my Fifth 13 Amendment rights under the United States Constitution 14 and decline to answer. 15 Q. And you shared that information in the binder 16 with plaintiffs' lawyers in an effort to cause them or 17 have them file malpractice lawsuits against Dr. Courtney 18 in a malicious manner; isn't that true? 19 A. On the advice of counsel, I assert my Fifth 20 Amendment rights under the United States Constitution 21 and decline to answer. 22 Q. Where did Dr. Carmody tell you that he kept 23 his information that he gathered or learned about 24 Dr. Courtney's patients? 25 A. On the advice of counsel, I assert my Fifth</p>	<p>1 as Ms. Liebbe and Mr. Loewinsohn, the billing practices 2 of Dr. Courtney for his neck and back procedures? Isn't 3 that true? 4 A. On the advice of counsel, I assert my Fifth 5 Amendment rights under the United States Constitution 6 and decline to answer. 7 Q. Isn't it true that you've received information 8 about Dr. Courtney's patients from Noel Kerns, in 9 addition to Dr. Carmody? 10 A. On the advice of counsel, I assert my Fifth 11 Amendment rights under the United States Constitution 12 and decline to answer. 13 Q. Has Ms. Kingston ever represented you as legal 14 counsel? 15 A. On the advice of counsel, I assert my Fifth 16 Amendment rights under the United States Constitution 17 and decline to answer. 18 Q. Isn't it true that you were sending 19 Ms. Kingston certain information about Dr. Courtney? 20 A. On the advice of counsel, I assert my Fifth 21 Amendment rights under the United States Constitution 22 and decline to answer. 23 Q. Why were you sending Ms. Kingston information 24 about Dr. Courtney? 25 A. On the advice of counsel, I assert my Fifth</p>
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<p>1 Amendment rights under the United States Constitution 2 and decline to answer. 3 Q. List for me all the persons that you have 4 discussed Dr. Courtney's medical procedures performed on 5 his patients and the outcomes. Who have you discussed 6 that with? 7 A. On the advice of counsel, I assert my Fifth 8 Amendment rights under the United States Constitution 9 and decline to answer. 10 Q. Isn't it true that you have discussed with 11 malpractice plaintiffs' lawyers the medical procedures 12 Dr. Courtney performed on his patients and their 13 outcomes? 14 A. On the advice of counsel, I assert my Fifth 15 Amendment rights under the United States Constitution 16 and decline to answer. 17 Q. Isn't it true that you have discussed with 18 other parties, including plaintiffs' malpractice 19 lawyers, allegations of Dr. Courtney's overutilization 20 of his medical hardware? 21 A. On the advice of counsel, I assert my Fifth 22 Amendment rights under the United States Constitution 23 and decline to answer. 24 Q. Isn't it true that you have discussed with 25 others, including plaintiffs' malpractice lawyers such</p>	<p>1 Amendment rights under the United States Constitution 2 and decline to answer. 3 Q. Isn't it true that you have e-mailed 4 Ms. Kingston on more than one occasion with information 5 about Dr. Courtney? 6 A. On the advice of counsel, I assert my Fifth 7 Amendment rights under the United States Constitution 8 and decline to answer. 9 Q. Do you have any plans in the future to meet 10 and talk with anybody about Dr. Courtney's patients 11 other than your own personal lawyer? 12 A. On the advice of counsel, I assert my Fifth 13 Amendment rights under the United States Constitution 14 and decline to answer. 15 Q. Do you have any plans to talk with Brett Shipp 16 about Dr. Courtney's patients? 17 A. On the advice of counsel, I assert my Fifth 18 Amendment rights under the United States Constitution 19 and decline to answer. 20 Q. Do you have any plans to talk with Ms. Liebbe 21 in the future about Dr. Courtney's patients and, in 22 particular, their confidential patient information? 23 A. On the advice of counsel, I assert my Fifth 24 Amendment rights under the United States Constitution 25 and decline to answer.</p>

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<p>1 Q. Isn't it true that you have filed Texas 2 Medical Board complaints against Dr. Courtney? 3 A. On the advice of counsel, I assert my Fifth 4 Amendment rights under the United States Constitution 5 and decline to answer. 6 Q. Isn't it true that you filed Medical Board 7 Complaint Number 13-0349 against Dr. Courtney? 8 A. On the advice of counsel, I assert my Fifth 9 Amendment rights under the United States Constitution 10 and decline to answer. 11 Q. Isn't it true that you filed Texas Medical 12 Board Complaint Number 17-3168 on behalf of 15 of 13 Dr. Courtney's patients with the Texas Medical Board? 14 A. On the advice of counsel, I assert my Fifth 15 Amendment rights under the United States Constitution 16 and decline to answer. 17 Q. Isn't it true that you got the names of the 18 patients that form the basis of Complaint Number 17-3168 19 from information that you received from Dr. Carmody? 20 A. On the advice of counsel, I assert my Fifth 21 Amendment rights under the United States Constitution 22 and decline to answer. 23 Q. And that information you received from 24 Dr. Carmody to file those 15 complaints under Complaint 25 Number 17-3168 contained confidential, protected health</p>	<p>1 true? 2 A. On the advice of counsel, I assert my Fifth 3 Amendment rights under the United States Constitution 4 and decline to answer. 5 Q. And those others that you disclosed or 6 discussed the patient file information of those 15 7 patients forming the basis of the Medical Board 8 Complaint Number 17-3168, those others included people 9 that were not affiliated with the Texas Medical Board or 10 any government regulatory agency; isn't that true? 11 A. On the advice of counsel, I assert my Fifth 12 Amendment rights under the United States Constitution 13 and decline to answer. 14 Q. And isn't it true that you have visited with 15 plaintiff malpractice lawyers, including Ms. Liebbe 16 and/or Mr. Loewinsohn, the information contained in the 17 confidential patient files of those 15 patients forming 18 the basis of Texas Medical Board Complaint 17-3168? 19 A. On the advice of counsel, I assert my Fifth 20 Amendment rights under the United States Constitution 21 and decline to answer. 22 Q. You've known Brett Shipp since 2011 or 2012 or 23 earlier; isn't that true? 24 A. On the advice of counsel, I assert my Fifth 25 Amendment rights under the United States Constitution</p>
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<p>1 information of Dr. Courtney's patients? 2 A. On the advice of counsel, I assert my Fifth 3 Amendment rights under the United States Constitution 4 and decline to answer. 5 Q. And isn't it true that for most, if not all, 6 of those 15 patients forming the basis of Complaint 7 Number 17-3168 with the Texas Medical Board, you did not 8 have those patients' consent, permission or authority to 9 file a Medical Board complaint on their behalf? 10 A. On the advice of counsel, I assert my Fifth 11 Amendment rights under the United States Constitution 12 and decline to answer. 13 Q. And it would not surprise you to know that 14 most of those 15 patients, the majority of them, other 15 than the ones that are currently represented by 16 Ms. Liebbe, did not provide consent or permission for 17 you to file Medical Board complaints on their behalf; 18 isn't that true. 19 A. On the advice of counsel, I assert my Fifth 20 Amendment rights under the United States Constitution 21 and decline to answer. 22 Q. And you have discussed with other individuals 23 the information contained in the patient files of those 24 15 patients forming the basis of Complaint Number 25 17-3168 filed with the Texas Medical Board; isn't that</p>	<p>1 and decline to answer. 2 Q. You worked with Ms. Liebbe on having Brett 3 Shipp air the investigative stories on WFAA -- or WFAA 4 about Dr. Courtney and his patients, didn't you? 5 A. On the advice of counsel, I assert my Fifth 6 Amendment rights under the United States Constitution 7 and decline to answer. 8 Q. Let me show you what I've marked as -- well, 9 on May 27th, 2011, you sent an e-mail to Dr. Courtney's 10 divorce counsel at that time, Rebecca Nahull (phonetic); 11 isn't that true? 12 A. On the advice of counsel, I assert my Fifth 13 Amendment rights under the United States Constitution 14 and decline to answer. 15 Q. And in that e-mail, you represented, quote, 16 See, Brett Shipp from WFAA TV 8 is a close friend, and 17 he has a real interest in Cynthia, Collin County, and a 18 whole bunch more." 19 You wrote that, didn't you? 20 A. On the advice of counsel, I assert my Fifth 21 Amendment rights under the United States Constitution 22 and decline to answer. 23 MS. MOORE: Is that being admitted? 24 MR. ALFRED: No. I'm not going to mark it 25 as an exhibit.</p>

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<p>1 Q. And you coordinated with Brett Shipp, also on 2 Dr. Carmody's behalf, to have the two stories that he 3 ran on WFAA -- let me rephrase. 4 You coordinated also with Dr. Carmody to 5 encourage Brett Shipp to run the stories against 6 Dr. Courtney on Channel 8; isn't that true? 7 A. On the advice of counsel, I assert my Fifth 8 Amendment rights under the United States Constitution 9 and decline to answer. 10 Q. Isn't it true that you conspired with 11 Dr. Carmody to deceive the FBI into thinking 12 Dr. Courtney violated federal law? 13 A. On the advice of counsel, I assert my Fifth 14 Amendment rights under the United States Constitution 15 and decline to answer. 16 Q. Isn't it true that you lied to the FBI to get 17 Dr. Courtney investigated? 18 A. On the advice of counsel, I assert my Fifth 19 Amendment rights under the United States Constitution 20 and decline to answer. 21 Q. You have filed complaints with the Texas 22 Medical Board maliciously in order to harass and cause 23 hardship for Dr. Courtney; isn't that true? 24 A. On the advice of counsel, I assert my Fifth 25 Amendment rights under the United States Constitution</p>	<p>1 and decline to answer. 2 Q. You have tried to extort money from 3 Dr. Courtney by using Dr. Courtney's confidential 4 patient information; isn't that true? 5 A. On the advice of counsel, I assert my Fifth 6 Amendment rights under the United States Constitution 7 and decline to answer. 8 Q. Isn't it true that you have given false 9 statements to federal investigators to exact revenge for 10 Cynthia Ellis, who is Dr. Courtney's ex-wife? 11 A. On the advice of counsel, I assert my Fifth 12 Amendment rights under the United States Constitution 13 and decline to answer. 14 Q. Isn't it true that Dr. Carmody gave you the 15 Bad to the Bone memo and Dr. Courtney's confidential 16 patient medical files? 17 MS. MOORE: Objection. This question has 18 been asked and answered several times. 19 MR. ALFRED: Let me finish the question. 20 I don't think it's been stated that way. And under the 21 civil rules, we just say objection to form on something 22 like that. But I've got a different iteration of this 23 question. 24 Q. Isn't it true that Dr. Carmody provided you, 25 Mr. Rute, with the Bad to the Bone memo containing</p>
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<p>1 and decline to answer. 2 Q. And in doing so, you used confidential, 3 protected health information of Dr. Courtney's patients 4 that were provided to you by Dr. Carmody; isn't that 5 true? 6 A. On the advice of counsel, I assert my Fifth 7 Amendment rights under the United States Constitution 8 and decline to answer. 9 Q. And Dr. Carmody has told you that his computer 10 that had the Bad to the Bone memo on it, in fact, did 11 not crash and instead was destroyed in order to 12 eliminate evidence of Dr. Carmody's wrongdoing; isn't 13 that true? 14 MS. MOORE: Could you rephrase the 15 question? 16 MR. ALFRED: Sure. 17 MS. MOORE: Objection, form. 18 Q. Isn't it true that Dr. Carmody told you that 19 he, Dr. Carmody, intentionally destroyed his computer 20 that had the Bad to the Bone memo on it, with the 21 confidential patient information of Dr. Courtney's 22 patients, in order to eliminate any evidence of 23 Dr. Carmody's wrongdoing? 24 A. On the advice of counsel, I assert my Fifth 25 Amendment rights under the United States Constitution</p>	<p>1 Dr. Courtney's confidential patient information in order 2 to exact revenge for Dr. Carmody's termination from 3 POSMC? 4 A. On the advice of counsel, I assert my Fifth 5 Amendment rights under the United States Constitution 6 and decline to answer. 7 Q. Isn't it true that Dr. Carmody was trying to 8 use you as a conduit to engage in a smear campaign 9 against Dr. Courtney and hurt his reputation? 10 A. On the advice of counsel, I assert my Fifth 11 Amendment rights under the United States Constitution 12 and decline to answer. 13 MR. ALFRED: Okay. Give me five minutes. 14 I think we're about done. Let me double check my notes. 15 VIDEOGRAPHER: We're off the record at 16 9:27 a.m. 17 (Recess taken 9:27-9:36.) 18 VIDEOGRAPHER: We're on the record at 9:36 19 a.m. 20 Q. (BY MR. ALFRED) I'm going to mark as Exhibit 21 No. 9 to your deposition an e-mail that you sent to 22 Ms. Kingston on October 4th, 2016. 23 (Exhibit 9 marked.) 24 Q. Do you see that down at the bottom, October 25 4th, 2016? Is that your e-mail to Ms. Kingston, with a</p>

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<p>1 copy to Kelly Liebbe?</p> <p>2 MS. MOORE: I'm reading this real fast.</p> <p>3 If I could have a second.</p> <p>4 If you could restate your question.</p> <p>5 Q. If you'll look at Exhibit No. 9, Mr. Rute. At</p> <p>6 the bottom quarter of the page, there it says there's an</p> <p>7 e-mail from you, Jonathan Rute, to Kelly Liebbe and</p> <p>8 Melissa Kingston. Do you see that?</p> <p>9 A. On the advice of counsel, I assert my Fifth</p> <p>10 Amendment rights under the United States Constitution</p> <p>11 and decline to answer.</p> <p>12 Q. Is that an e-mail that you sent to Ms. Liebbe</p> <p>13 and Ms. Kingston about Dr. Courtney?</p> <p>14 A. On the advice of counsel, I assert my Fifth</p> <p>15 Amendment rights under the United States Constitution</p> <p>16 and decline to answer.</p> <p>17 Q. Can you tell me all the discussions that you</p> <p>18 had with Ms. Liebbe and Ms. Kingston about this</p> <p>19 situation?</p> <p>20 A. On the advice of counsel, I assert my Fifth</p> <p>21 Amendment rights under the United States Constitution</p> <p>22 and decline to answer.</p> <p>23 (Exhibit 10 marked.)</p> <p>24 Q. I'll show you what I've marked as Exhibit 10.</p> <p>25 Have you seen this e-mail before?</p>	<p>1 A. On the advice of counsel, I assert my Fifth</p> <p>2 Amendment rights under the United States Constitution</p> <p>3 and decline to answer.</p> <p>4 Q. And that information that you used to file</p> <p>5 that Medical Board complaint referenced in Exhibit</p> <p>6 No. 10, in fact, came from confidential patient</p> <p>7 information of Dr. Courtney's patients provided to you</p> <p>8 by Dr. Carmody; isn't that right?</p> <p>9 MS. MOORE: Objection, form.</p> <p>10 Q. You still need to answer the question.</p> <p>11 A. On the advice of counsel, I assert my Fifth</p> <p>12 Amendment rights under the United States Constitution</p> <p>13 and decline to answer.</p> <p>14 (Exhibit 11 marked.)</p> <p>15 Q. I'll show you what I've marked as Exhibit 11</p> <p>16 to your deposition, Mr. Rute. You've seen this e-mail</p> <p>17 before?</p> <p>18 MS. MOORE: Do you have any proof that</p> <p>19 this was the attachment to this e-mail?</p> <p>20 MR. ALFRED: Well, that's another question</p> <p>21 I'm going to ask him, because it was produced by</p> <p>22 Dr. Carmody. That's why I'm asking him if he's ever</p> <p>23 seen this e-mail before.</p> <p>24 A. On the advice of counsel, I assert my Fifth</p> <p>25 Amendment rights under the United States Constitution</p>
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<p>1 A. On the advice of counsel, I assert my Fifth</p> <p>2 Amendment rights under the United States Constitution</p> <p>3 and decline to answer.</p> <p>4 Q. In fact, this e-mail confirms that you filed a</p> <p>5 Medical Board complaint against Dr. Courtney, doesn't</p> <p>6 it?</p> <p>7 A. On the advice of counsel, I assert my Fifth</p> <p>8 Amendment rights under the United States Constitution</p> <p>9 and decline to answer.</p> <p>10 Q. In that complaint referenced in Exhibit</p> <p>11 No. 10, that e-mail, is Complaint Number 17-3168 with</p> <p>12 the Texas Medical Board, correct?</p> <p>13 A. On the advice of counsel, I assert my Fifth</p> <p>14 Amendment rights under the United States Constitution</p> <p>15 and decline to answer.</p> <p>16 Q. So were you coordinating with Ms. Kingston for</p> <p>17 the filing of Medical Board complaints against</p> <p>18 Dr. Courtney?</p> <p>19 A. On the advice of counsel, I assert my Fifth</p> <p>20 Amendment rights under the United States Constitution</p> <p>21 and decline to answer.</p> <p>22 Q. And the information to file that Medical Board</p> <p>23 complaint on January 4th, 2017 could have only come from</p> <p>24 Dr. Courtney's confidential patient records; isn't that</p> <p>25 true?</p>	<p>1 and decline to answer.</p> <p>2 Q. So let me make sure that the question was</p> <p>3 properly presented, Mr. Rute.</p> <p>4 Have you ever seen this e-mail marked as</p> <p>5 Exhibit 11 to your deposition?</p> <p>6 A. On the advice of counsel, I assert my Fifth</p> <p>7 Amendment rights under the United States Constitution</p> <p>8 and decline to answer.</p> <p>9 Q. In fact, this is an e-mail that you sent to</p> <p>10 either Ms. Kingston or somebody in Ms. Kingston's office</p> <p>11 on July 25th, 2017; isn't that true?</p> <p>12 A. On the advice of counsel, I assert my Fifth</p> <p>13 Amendment rights under the United States Constitution</p> <p>14 and decline to answer.</p> <p>15 Q. It says, "I received via anonymous sources."</p> <p>16 Can you tell me who you received this</p> <p>17 information from that is in Exhibit 11 to your</p> <p>18 deposition?</p> <p>19 A. On the advice of counsel, I assert my Fifth</p> <p>20 Amendment rights under the United States Constitution</p> <p>21 and decline to answer.</p> <p>22 Q. Can you tell me whether you sent this to</p> <p>23 Ms. Kingston, somebody at her firm, or directly to</p> <p>24 Cam Carmody?</p> <p>25 A. On the advice of counsel, I assert my Fifth</p>

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<p>1 Amendment rights under the United States Constitution</p> <p>2 and decline to answer.</p> <p>3 Q. Do you know why there's no "To" line in this</p> <p>4 e-mail?</p> <p>5 A. On the advice of counsel, I assert my Fifth</p> <p>6 Amendment rights under the United States Constitution</p> <p>7 and decline to answer.</p> <p>8 Q. Did you obtain this information about Medical</p> <p>9 Board Complaint Number 17-2278 from Ms. Liebbe?</p> <p>10 A. On the advice of counsel, I assert my Fifth</p> <p>11 Amendment rights under the United States Constitution</p> <p>12 and decline to answer.</p> <p>13 Q. If you didn't receive this information in</p> <p>14 Exhibit 11 from Ms. Liebbe, did you share this</p> <p>15 information in Exhibit 11 with Ms. Liebbe?</p> <p>16 A. On the advice of counsel, I assert my Fifth</p> <p>17 Amendment rights under the United States Constitution</p> <p>18 and decline to answer.</p> <p>19 Q. We'll mark as Exhibit No. 12 another e-mail</p> <p>20 that was produced by Dr. Carmody, Bates labeled CAM 503.</p> <p>21 (Exhibit 12 marked.)</p> <p>22 Q. Do you see that e-mail, Mr. Rute?</p> <p>23 MS. MOORE: I haven't given it to him yet.</p> <p>24 Q. Will you answer my questions about this</p> <p>25 e-mail, Mr. Rute?</p>	<p>1 and decline to answer.</p> <p>2 Q. Isn't it true that you reached out to Matt</p> <p>3 Ralston of POSMC to discuss confidential patient</p> <p>4 information of Dr. Courtney?</p> <p>5 A. On the advice of counsel, I assert my Fifth</p> <p>6 Amendment rights under the United States Constitution</p> <p>7 and decline to answer.</p> <p>8 Q. What do you know about Dr. Carmody's 4WEB</p> <p>9 company?</p> <p>10 A. On the advice of counsel, I assert my Fifth</p> <p>11 Amendment rights under the United States Constitution</p> <p>12 and decline to answer.</p> <p>13 Q. Isn't it true that Dr. Carmody is committing</p> <p>14 the same acts that you are accusing Dr. Courtney of with</p> <p>15 respect to Dr. Carmody's 4WEB company?</p> <p>16 A. On the advice of counsel, I assert my Fifth</p> <p>17 Amendment rights under the United States Constitution</p> <p>18 and decline to answer.</p> <p>19 (Exhibit 13 marked.)</p> <p>20 Q. I'll show you what I've marked as Exhibit</p> <p>21 No. 13 to your deposition.</p> <p>22 MS. MOORE: Do you have the attachment?</p> <p>23 MR. ALFRED: I do not. That's what I want</p> <p>24 to ask him about.</p> <p>25 Q. Have you seen this e-mail before, Mr. Rute?</p>
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<p>1 A. On the advice of counsel, I assert my Fifth</p> <p>2 Amendment rights under the United States Constitution</p> <p>3 and decline to answer.</p> <p>4 Q. Do you know why this e-mail was produced</p> <p>5 without any attachments to it?</p> <p>6 A. On the advice of counsel, I assert my Fifth</p> <p>7 Amendment rights under the United States Constitution</p> <p>8 and decline to answer.</p> <p>9 Q. This is an e-mail from you to Ms. Kingston on</p> <p>10 August 9th, 2017, isn't it?</p> <p>11 A. On the advice of counsel, I assert my Fifth</p> <p>12 Amendment rights under the United States Constitution</p> <p>13 and decline to answer.</p> <p>14 Q. What were you telling Ms. Kingston in regards</p> <p>15 to "As promised... in regards to TMB Case 17-2278"?</p> <p>16 Can you tell me about those conversations with</p> <p>17 Ms. Kingston?</p> <p>18 A. On the advice of counsel, I assert my Fifth</p> <p>19 Amendment rights under the United States Constitution</p> <p>20 and decline to answer.</p> <p>21 Q. There were more e-mails like this that were</p> <p>22 sent by and between you and Ms. Kingston; isn't that</p> <p>23 true?</p> <p>24 A. On the advice of counsel, I assert my Fifth</p> <p>25 Amendment rights under the United States Constitution</p>	<p>1 A. On the advice of counsel, I assert my Fifth</p> <p>2 Amendment rights under the United States Constitution</p> <p>3 and decline to answer.</p> <p>4 Q. Do you know why the attachment to this e-mail</p> <p>5 was not produced?</p> <p>6 A. On the advice of counsel, I assert my Fifth</p> <p>7 Amendment rights under the United States Constitution</p> <p>8 and decline to answer.</p> <p>9 Q. Is this e-mail referencing the lawsuit that</p> <p>10 Kelly Liebbe filed on behalf of her clients against</p> <p>11 Dr. Courtney?</p> <p>12 A. On the advice of counsel, I assert my Fifth</p> <p>13 Amendment rights under the United States Constitution</p> <p>14 and refuse to answer.</p> <p>15 Q. And in your statement "I think is of interest</p> <p>16 to you and Dr. Carmody," you put that there because you</p> <p>17 were coordinating with Ms. Liebbe for the filing of</p> <p>18 these lawsuits; isn't that true?</p> <p>19 A. On the advice of counsel, I assert my Fifth</p> <p>20 Amendment rights under the United States Constitution</p> <p>21 and decline to answer.</p> <p>22 Q. In Exhibit No. -- I think it was No. 3. It</p> <p>23 was your Non-Party Movant Jonathan Rute Notice of</p> <p>24 Protection Under Amendment V of the Constitution of the</p> <p>25 United States.</p>

Page 53	Page 55
<p>1 MR. ALFRED: Was it 2 or --</p> <p>2 MS. MOORE: 3.</p> <p>3 MR. ALFRED:</p> <p>4 Q. No. 3. Can you please get that back out and</p> <p>5 take a look at it, Mr. Rute. And if you'll turn with me</p> <p>6 to page 2 of 4, in paragraph 1 where it says, "further,</p> <p>7 the Courtney parties have made serious allegations in</p> <p>8 this case involving barratry against the movant and a</p> <p>9 Dallas, Texas attorney, and these allegations also</p> <p>10 carries potential criminal implications."</p> <p>11 Do you see that there?</p> <p>12 A. On the advice of counsel, I assert my Fifth</p> <p>13 Amendment rights under the United States Constitution</p> <p>14 and decline to answer.</p> <p>15 Q. Which attorneys or attorney are you</p> <p>16 referencing in that paragraph?</p> <p>17 A. On the advice of counsel, I assert my Fifth</p> <p>18 Amendment rights under the United States Constitution</p> <p>19 and decline to answer.</p> <p>20 Q. Are you referencing Kelly Liebke in that</p> <p>21 section of your motion?</p> <p>22 A. On the advice of counsel, I assert my Fifth</p> <p>23 Amendment rights under the United States Constitution</p> <p>24 and decline to answer.</p> <p>25 MR. ALFRED: Okay. At this point I'm</p>	<p>1 MR. ALFRED: He's already -- that's fine.</p> <p>2 I'm not going to get into an argument here. The record</p> <p>3 is very clear that he was already in possession of those</p> <p>4 items and that he is the author. As admitted in other</p> <p>5 documents of the Inspector Gadget e-mail, your client</p> <p>6 has admitted in sworn interrogatories that he gave the</p> <p>7 Bad to the Bone memo to Mr. Rute. There's other</p> <p>8 evidence that he is already in possession of that, so --</p> <p>9 MS. KINGSTON: I will not --</p> <p>10 MR. ALFRED: -- that's fine.</p> <p>11 MS. KINGSTON: -- respond to your speaking</p> <p>12 objection or your -- we're not going to get into an</p> <p>13 argument and then you make your argument. I'm not</p> <p>14 agreeing to any of that. I'm just telling you we're not</p> <p>15 agreeing to any modifications of the protective order.</p> <p>16 MS. MOORE: We are going to return said</p> <p>17 exhibits.</p> <p>18 MS. KINGSTON: I think all of those</p> <p>19 exhibits belong to the court reporter anyway.</p> <p>20 MR. ALFRED: Right.</p> <p>21 MS. MOORE: So Mr. Rute actually does not</p> <p>22 have possession of any of the exhibits, specifically the</p> <p>23 ones that are being attempted to be added to the</p> <p>24 protective order, and I will tender mine as well.</p> <p>25 MR. ALFRED: What do you mean by</p>
Page 54	Page 56
<p>1 going to designate the Bad to the Bone and the Inspector</p> <p>2 Gadget documents that are attached to your deposition as</p> <p>3 confidential under the protective order even though</p> <p>4 there's ample evidence to show that you're already in</p> <p>5 possession of those documents, Mr. Rute, that I don't</p> <p>6 want you to further disseminate them. So I'm</p> <p>7 designating those documents as confidential under the</p> <p>8 protective order.</p> <p>9 At this time, I'm conferring with you,</p> <p>10 Ms. Moore, as to whether you will agree to, on behalf of</p> <p>11 your client, enter into the agreed protective order or</p> <p>12 if that's something I need to take up with Judge</p> <p>13 Wheless.</p> <p>14 MS. MOORE: We have indicated that we want</p> <p>15 no part of any confidential documents and don't want any</p> <p>16 part of the protective order as a non-party to this</p> <p>17 suit, and Mr. Rute would be happy to give you those</p> <p>18 exhibits back, however, we can't retroactively -- we</p> <p>19 already stated we didn't want to be part of the</p> <p>20 protective order, so then to put us into it afterwards</p> <p>21 is not proper.</p> <p>22 MR. ALFRED: Okay.</p> <p>23 MS. KINGSTON: And to be clear, we're not</p> <p>24 waiving any provisions of the protective order. To the</p> <p>25 extent you didn't follow it, that's on you.</p>	<p>1 possession? Do you mean as far as the exhibits that</p> <p>2 were entered today or do you mean in general? What do</p> <p>3 you mean by that?</p> <p>4 MS. MOORE: I mean today he is not in</p> <p>5 possession of Exhibits 8 and 9 that you are wanting to</p> <p>6 put under the protective order.</p> <p>7 MR. ALFRED: Okay. So I just want to</p> <p>8 confirm. When you say not in possession, he doesn't --</p> <p>9 you're representing to the court now that he doesn't</p> <p>10 independently have possession of those documents?</p> <p>11 MS. MOORE: I never said anything of the</p> <p>12 sort. I'm clearly speaking to the matter of the</p> <p>13 exhibits at hand that you are wanting to be covered by</p> <p>14 the protective order. I'm not speaking as to what he</p> <p>15 may or may not be in possession of.</p> <p>16 MR. ALFRED: Independently of what was</p> <p>17 here?</p> <p>18 MS. MOORE: Specifically at this</p> <p>19 deposition, neither Mr. Rute or myself are going to</p> <p>20 retain possession of Exhibits 8 and --</p> <p>21 MR. ALFRED: Is it 8 and 9?</p> <p>22 MS. MOORE: 8 -- it's not 9.</p> <p>23 7 and 8. Would you agree with those</p> <p>24 numbers?</p> <p>25 MR. ALFRED: 7 is the Inspector Gadget</p>

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I, JONATHAN RUTE, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

JONATHAN RUTE
THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared JONATHAN RUTE, known to me (or proved to me under oath or through _____)(description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2017.

NOTARY PUBLIC IN AND FOR THE
STATE OF _____

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deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

MS. MELISSA KINGSTON, ATTORNEY FOR PLAINTIFFS;
MR. MICHAEL S. ALFRED, ATTORNEY FOR DEFENDANTS;
MS. AMANDA FISHER MOORE, ATTORNEY FOR JONATHAN RUTE;

I further certify that I am neither counsel for, related to, not employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this _____ day of _____, 2017.



Jill Allen

Jill Allen, Texas CSR No. 3184
Certification Expires: 12/31/18
JANIS ROGERS & ASSOCIATES
Firm Registration No. 105
1545 West Mockingbird Lane
Suite 1032
Dallas, Texas 75235
(214)631-2655

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CAUSE NO. 417-03470-2016

CAMERON CARMODY, MD AND) IN THE DISTRICT COURT
CAMERON CARMODY, MD, PA,)
)
PLAINTIFFS,)
)
VS.) 417TH JUDICIAL DISTRICT
)
STEPHEN COURTNEY, MD,)
STEPHEN COURTNEY, MD, PA,)
)
DEFENDANTS.) COLLIN COUNTY, TEXAS

REPORTER'S CERTIFICATION
DEPOSITION OF JONATHAN RUTE
DECEMBER 13, 2017

I, Jill Allen, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, JONATHAN RUTE, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on the _____ day of _____, 2017 to the witness or to the attorney for the witness for examination, signature and return to me by the _____ day of _____, 2017;

That the amount of time used by each party at the Deposition is as follows:

MR. MICHAEL S. ALFRED - 1 HOUR, 22 MINUTES;
That pursuant to information given to the

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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____.

If returned, the attached changes and signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Michael S. Alfred, Custodial Attorney;

That \$_____ is the deposition officer's charges to the DEFENDANTS, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this _____ day of _____, 2017.



Jill Allen

Jill Allen, Texas CSR No. 3184
Certification Expires: 12/31/18
JANIS ROGERS & ASSOCIATES
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EXHIBIT “4”

Jonathan Rute
ProSe Litigant
3035 County Road 325
McKinney, TX 75069
C · (918) 421-1006
E · jonathan.rute@gmail.com

June 18, 2018

Honorable Cynthia Wheless
417th Judicial District Court
2100 Bloomdale Road, Suite 30290
McKinney, Texas 75071

Via E-File

Re: Cause No. 417-03470-2016; Stephen Courtney, MD. et al. vs. Kelly M Liebbe et al., In the 417th
Judicial District, Collin County, Texas

Dear Judge Wheless:

I. INTRODUCTION

On May 29, 2018 the court heard Defendant Rute's oral arguments with regards to DEFENDANT JONATHAN RUTE'S ORIGINAL ANSWER, SPECIAL EXCEPTIONS, AND MOTION FOR DISMISSAL. The Court has allowed additional time for all the parties to submit additional briefing material for consideration by the court. My original briefing did not include specific case law that clearly defines who is a covered HIPPA entity and sufficient evidence supporting Defendant RUTE's claim that his contacting law enforcement with regards to the actions of Stephen Paul Courtney were protected First Amendment communications in accordance with TEXAS LAW, CIVIL PRACTICE AND REMEDIES CODE, TITLE 2. TRIAL, JUDGMENT, AND APPEAL, SUBTITLE B. TRIAL MATTERS, CHAPTER 27. ACTIONS INVOLVING THE EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS.

II. BACKGROUND

As a direct result of Defendant RUTE's petition to local enforcement on July 27th 2015, The Courtney Parties, have engaged in filing numerous lawsuits making frivolous legal arguments that are vexatious and abusive of the judicial process. The Courtney Parties filed two different suits against Defendant RUTE in the 219th Judicial District Court for Collin County, Texas, raising false claims with regards to Defendant RUTE having HIPAA Protected Healthcare Information. As demonstrated in the case of ***United States v. Mathis***, The Department Health and Human Services (DHHS) promulgated the HIPAA regulations, it declared: "We shape the rule's provisions with respect to law enforcement according to the limited scope of our regulatory authority under HIPAA, which applies only to the covered entities and not to law enforcement officials." 65 Fed.Reg. 82462, 82679 (Dec. 28, 2000) (agency's response to public comments in connection with promulgation of final rule). **HIPAA defines as "covered entities" health plans, health care clearinghouses, and health care providers who transmit health information electronically.** Defendant Rute IS a private citizen NOT required to comply with HIPAA requirements but did use data to reported suspected criminal activity to law enforcement. The Courtney Parties have abused the legal system by filing numerous vexatious lawsuits aiming to silence Defendant RUTE's right to free speech and petitioning of government in a matter of public concern.

In the case of *UNITED STATES of America v. Mazen ABDALLAH, Wesam Abdallah* **SEE EXHIBIT A**

The alleged HIPAA violation does not raise a substantial issue to warrant the Abdallahs' release on bond pending appeal. In moving to suppress evidence before trial and in moving for acquittal or new trial, the Abdallahs argued that dismissal or suppression was appropriate because government agents investigating possible fraud in Americare's Medicare billings violated the criminal provisions of the Health Insurance Portability and Accountability Act ("HIPAA), 42 U.S.C. § 1320(d). HIPAA prohibits a "covered entity" from receiving and using protected health information. 45 C.F.R. § 164.502(a). The Abdallahs argued that Ayman Fares, a paid confidential informant, "stole" run sheets from Americare and gave them to FBI Agent Arciola. The Abdallahs asserted that Arciola violated HIPAA because she did not report Fares's crime but instead used the run sheets to further the criminal investigation into Americare. The Abdallahs asserted that Arciola "failed to inform the magistrate that she relied on stolen evidence and covered up the crime" and that "probable cause was dependent in part on information provided by a paid informant." (Docket Entry No. 349, at 48). **This court rejected these arguments, relying on cases holding that the FBI and other law enforcement agencies are not covered entities under HIPAA. See *United States v. Mathis*, 377 F.Supp.2d 640, 645 (M.D.Tenn.2005) ("HIPAA applies to 'a health plan,' 'a healthcare clearinghouse,' or 'a healthcare provider who transmits any health information in an electronic form in connection with a transaction referred to in Section 1320d-2(a)(1) of this title.' The FBI does not fit within any of these categories."); see also *State v. Straehler*, 307 Wis.2d 360, 745 N.W.2d 431, 435 (Wis.App.2007) (police officer is not a "covered entity" under HIPAA); *State v. Downs*, 923 So.2d 726, 731 (La.Ct.App.2005) (district attorney is not a "covered entity" under HIPAA).**

In the case of *Hector L. RODRIGUEZ, Appellant v. The STATE of Texas*, Appellee **SEE EXHIBIT B**

RUTE's AMMENDED ANSWER, SPECIAL EXCEPTIONS, AND MOTION FOR DISMISSAL

The Department Health and Human Services (DHHS) promulgated the HIPAA regulations, it declared: “We shape the rule's provisions with respect to law enforcement according to the limited scope of our regulatory authority under HIPAA, which applies only to the covered entities and not to law enforcement officials.” 65 Fed.Reg. 82462, 82679 (Dec. 28, 2000) (agency's response to public comments in connection with promulgation of final rule). HIPAA defines as “covered entities” health plans, health care clearinghouses, and health care providers who transmit health information electronically. See 45 C.F.R. §§ 160.102(a), 164.104(a).

III. STANDARD OF REVIEW

The statute allows a judge to dismiss frivolous lawsuits filed against one who speaks out about a “**matter of public concern**” within the first 60 days. “Matter of public concern” is defined expansively in the statute.

Defendant RUTE’s Anti-SLAPP motion is supported by attached exhibits showing the court that the lawsuit is based on, relates to, or is in response to Defendant RUTE’s exercising his right to free speech, right to petition or right of association and that the Courtney Parties Pleadings are lacking of any clear and specific evidence to the contrary.

The burden of proof while initially on Defendant RUTE who filed the Anti-SLAPP motion to establish (by a preponderance of the evidence) that the Courtney Parties lawsuit was filed in response to the exercise of his First Amendment rights. The burden now shifts to the plaintiff to establish (by clear and specific evidence) a prima facie case for each essential element of their claim.

The statute creates a stay of discovery in a lawsuit while an Anti-SLAPP motion is pending and/or appealed. The court however has discretion to order discovery pertaining to the motion if it feels it is necessary.

The statute provides for mandatory fee shifting when a party wins an Anti-SLAPP motion so that the person or entity wrongfully filing a lawsuit must pay the defense costs. There is a discretionary fee award if the Court finds that the Anti-SLAPP motion was frivolous or brought solely for the purpose of delaying the proceedings.

The statute provides an immediate right to an expedited appeal if the Anti-SLAPP motion is denied.

IV. DISCUSSION

First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

“If a legal action is based on, relates to, or is in response to a party’s exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.” Id. at 27.003(a). A defendant invoking the TCPA must therefore show three elements by a preponderance of the evidence: (1) there is a legal action; (2) “based on, relates to, or is in response to”; and (3) one of the protected activities.

A strategic lawsuit against public participation (SLAPP) is a lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. Such lawsuits have been made illegal in many jurisdictions on the grounds that they impede freedom of speech.

“[A] court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party’s exercise of: (1) the right of free speech; (2) the right to petition; or (3) the right of association.” Id. at 27.005(b).

(1) The First Amendment guarantees our right to free expression and free association, which means that the government does not have the right to forbid us from saying what we like and writing what we like; we can form clubs and organizations and take part in demonstrations and rallies.

(2) Defendant Rute petitioned local, State of Texas and Federal Law Enforcement with factual documentation in regards to the surgical related death of SPP. The information given to law enforcement described the criminal activities with regards to SPC and where law enforcement needed to look. The material provided to law enforcement was handled in four parts;

(3) The first part was an in-person meeting in the afternoon of July 23rd 2015 with criminal investigator Dale Dowdy at the Collin County District Attorney’s Office;

the second part was done on July 27th 2015 at the direction of criminal investigator Dale Dowdy where Mr. Dowdy directed Mr. Rute to take the detailed information received from Doctor Cameron Carmody MD and the other sources to the Collin County Medical Examiner (CCME). This was done through the transmission of an email to the CCME (**SEE EXHIBIT C**);

the fourth was a very detailed complaint filed with the State of Texas Medical Board using established TMB Complaint intake procedures. This was done in Early December 2016. As a direct result of the petition to Law Enforcement, The State of Texas Medical Board, with probable cause, initiated TMB investigation LOG #17-2278 and in 2018 files CASE # 18-0221 (**SEE EXHIBIT D**) against the Courtney Parties . This complaint and as disclosed by The Courtney Parties 20+ others complaints, have resulted in a lengthy investigation that continues to this day! On February 20, 2018 Defendant RUTE met with The State of Texas Medical Board personnel to discuss the preponderance of information provided and to make an TMB BOARD appearance to testify about THE STATE OF TEXAS MEDICAL BOARD DEFENDANT COURTNEY.

The information provided to the TMB was compiled by Defendant RUTE, Dr. Cameron Carmody MD and person(s) from Baylor Frisco and POSMC that were friend(s) of SPC's ex-spouse. The information provided to the CCME and criminal investigator Dale Dowdy in the form of an email and a face to face interview with investigative personnel from the CCME. During this meeting a large binder of documentation showing billing fraud, missing hardware, concealed device failures, serial patient images of SPC implanted hardware migrating into patient's nerves was handed to investigative personnel.

Further, the detailed patient medical material was also sent to The State of Texas Medical Board (TMB), included further in-depth detailed documentation of Medical Malfeasance involving hundreds of patients.

Further given to the TMB was provided with direct evidence to include the name(s) of persons involved in Fraud, Concealment, Tampering with evidence, Witness Intimidation, and retaliation to name just a few.

The Courtney Parties have brought false accusations indicating that Defendant RUTE's petitions to law enforcement are a sham and objectively baseless. The court can certainly understand the petition Defendant RUTE filed with law enforcement was based on facts and these facts have caused law enforcement investigations that have yielded governmental cases. The gravity of the evidence provided with a long detailed list naming hundreds of patients that were not given a proper standard of care by the Courtney Parties is at the very heart of this. The list and all of it's supporting documentation was assembled by Doctor Cameron Carmody MD using the medical records of his practice to report false claims and much more to the government.

V. APPLICABLE ANTI SLAPP CASE LAW

- ***NEAL RAUHAUSER V. JAMES MCGIBNEY AND VIAVIEW 2014-02-14-00215-CV***

In December 2015, James McGibney was ordered to pay a \$1 million Anti-SLAPP court sanction and \$300,000 in attorney's fees to Neal Rauhauser for filing a series of baseless lawsuits against him.[84] The ruling was temporarily reversed when the presiding judge granted McGibney's request for a new trial in February 2016, but reinstated in favor of Rauhasuer on 14 April 2016 with the SLAPP sanction against McGibney reduced from \$1 million to \$150,000.[85][86] **The judge ruled that McGibney had filed the suits to willfully and maliciously injure Rauhauser and to deter him from exercising his constitutional right to criticize McGibney.**[84]

- ***Gordon v. Morrone, 590 N.Y.S.2d 649, 656 (N.Y. Sup. Ct. 1992).***

The purpose of such gamesmanship ranges from simple retribution for past activism to discouraging future activism.

Those who lack the financial resources and emotional stamina to play out the “game” face the difficult choice of defaulting despite meritorious defenses or being brought to their knees to settle.

Persons who have been outspoken on issues of public importance targeted in such suits or who have witnessed such suits will often choose in the future to stay silent. New York Supreme Court Judge J. Nicholas Colabella, in reference to SLAPPs: "Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined."

- ***Streisand v. Adelman, (California Superior Court Case SC077257)***

Barbra Streisand, as plaintiff, lost a 2003 SLAPP motion after she sued an aerial photographer involved in the California Coastal Records Project. *Streisand v. Adelman, (California Superior Court Case SC077257)*[88][89].

- ***Lippincott v. Wisenhunt, 462 S.W.3d 507, 509 (Tex. 2015)***

Relying upon its earlier decision of *Lippincott v. Wisenhunt, 462 S.W.3d 507, 509 (Tex. 2015)* (per curiam), the Supreme Court of Texas ruled there is no requirement that the communications themselves have to be public. Instead, the statute only requires that the communication be made in connection with a matter of public concern. The court wrote:

The allegations include claims that Wisenhunt “failed to provide adequate coverage for pediatric cases,” administered a “different narcotic than was ordered prior to pre-op or patient consent being completed,” falsified a scrub tech record on multiple occasions, and violated the company’s sterile protocol policy. We have previously acknowledged that the provision of medical services by a health care professional constitutes a matter of public concern. See *Neely v. Wilson, 418 S.W.3d 52, 70 n.12 & 26 (Tex. 2013)* (determining that the public had a right to know about a doctor’s alleged inability to practice medicine due to a mental or physical condition); see also TEX. CIV. PRAC. & REM. CODE § 27.001(7) (defining “matter of public concern” to include issues related to health or safety, community well-being, and the provision of services in the marketplace, among other things). Thus, we conclude these communications were made in connection with a matter of public concern.

- ***ExxonMobil v. Coleman 2017-15-0407***

In *ExxonMobil v. Coleman*, the Supreme Court of Texas criticized the Dallas Court for suggesting that the communications at issue had to involve more than a “tangential relationship” to matters of public concern. Not finding that required by the statute which expressly states that the communications have to be made “in connection with” or about “an issue related to” safety, the court held the TCPA applied. As a result, the case was sent back to see whether the plaintiff.

VI. CONCLUSION

By a preponderance of evidence, Defendant Rute has provided this court sound reason to find that Defendant Rute HAS acted in good faith with regards to exercising his 1st Amendment Right and civil responsibility to report a matter of public concern about Doctor Stephen Paul Courtney to law

enforcement, the State of Texas Medical Board and that the claims are valid and were done in good faith and the court has a duty and responsibility to the law to allow the ongoing law enforcement investigations to run their due course without interference.

I would be happy to provide any additional briefing or respond to any questions the Court may have. Thank you for your consideration.

Yours truly,

/s/ JONATHAN RUTE

Jonathan Rute

EXHIBIT “5”

Kelly M. Liebbe
Trial Attorney

July 8, 2016

Via Certified Mail, Return Receipt Requested
7015 3010 0001 0595 6133
Dr. Stephen Courtney
Plano Orthopedic and Sports Medicine
5228 West Plano Parkway
Plano, Texas 75093

Re: Bryan Taylor

Dear Dr. Courtney:

This notice of healthcare liability claim is being provided to you in accordance with Chapter 74 of the Texas Civil Practice and Remedies Code. Enclosed you will find the Authorization Form for Release of Protected Health Information as required by Section 74.052 of the Code.

The basis of the claim is that you performed multiple unnecessary spine surgeries on Bryan Taylor using Eminent Spine hardware. The Eminent Spine hardware was not used properly. The hardware broke and caused damages to Bryan Taylor. The multiple surgeries you performed on Bryan Taylor not only failed to address the pathology causing Mr. Taylor's pain, it worsened his condition.

I am also enclosing a Section 74.052 medical authorization. In accordance with Chapter 74 of the Texas Civil Practice and Remedies Code, please provide a complete and unaltered copy of all of your records pertaining to Bryan Taylor within 45 days from the date of receipt of this notice.

To avoid a malpractice lawsuit, I must be notified by your insurance company that you have given written consent to your insurance company to begin negotiation of an immediate settlement. If good faith pre-suit settlement negotiations are not initiated, then suit will be filed following the expiration of sixty (60) days.

Very truly yours,
Kelly M. Liebbe
Kelly M. Liebbe

encl.
cc: Via First Class Mail
William Dunnill
1010 W. Ralph Hall Parkway -2nd Floor
Rockwall, Texas 75032

Kelly M. Liebke
Trial Attorney

July 18, 2016

Via Certified Mail, Return Receipt Requested
7015 3010 0001 0595 6089
Dr. Stephen Courtney
Plano Orthopedic and Sports Medicine
5228 West Plano Parkway
Plano, Texas 75093

Re: Alan Tarrant

Dear Dr. Courtney:

This notice of healthcare liability claim is being provided to you in accordance with Chapter 74 of the Texas Civil Practice and Remedies Code. Enclosed you will find the Authorization Form for Release of Protected Health Information as required by Section 74.052 of the Code.

The basis of the claim is that you performed multiple unnecessary spine surgeries on Alan Tarrant using Eminent Spine hardware. The Eminent Spine hardware was not used properly. The hardware broke and caused damages to Alan Tarrant. The multiple surgeries you performed on Alan Tarrant not only failed to address the pathology causing Mr. Tarrant's pain, it worsened his condition.

I am also enclosing a Section 74.052 medical authorization. In accordance with Chapter 74 of the Texas Civil Practice and Remedies Code, please provide a complete and unaltered copy of all of your records pertaining to Alan Tarrant within 45 days from the date of receipt of this notice.

To avoid a malpractice lawsuit, I must be notified by your insurance company that you have given written consent to your insurance company to begin negotiation of an immediate settlement. If good faith pre-suit settlement negotiations are not initiated, then suit will be filed following the expiration of sixty (60) days.

Very truly yours,

Kelly M. Liebke

encl.
cc: Via First Class Mail
William Dunnill
1010 W. Ralph Hall Parkway -2nd Floor
Rockwall, Texas 75032

2619 HIBERNIA STREET • Dallas, TX 75204 • p: 214.753.4788 • f: 214.279.9531
Kelly@KLLawTexas.com

Kelly M. Liebke
Trial Attorney

August 30, 2016

Via Certified Mail, Return Receipt Requested
Dr. Stephen Courtney
Plano Orthopedic and Sports Medicine
5228 West Plano Parkway
Plano, Texas 75093

Re: Bethany Kendrick

Dear Dr. Courtney:

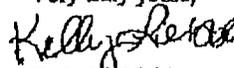
This notice of healthcare liability claim is being provided to you in accordance with Chapter 74 of the Texas Civil Practice and Remedies Code. Enclosed you will find the Authorization Form for Release of Protected Health Information as required by Section 74.052 of the Code.

The basis of the claim is that you performed unnecessary spine surgery on Bethany Kendrick using Eminent Spine hardware. The Eminent Spine hardware was not used properly. The hardware broke and caused damages to Bethany Kendrick. The surgery you performed on Bethany Kendrick not only failed to address the pathology causing Ms. Kendrick's pain, it worsened her condition.

I am also enclosing a Section 74.052 medical authorization. In accordance with Chapter 74 of the Texas Civil Practice and Remedies Code, please provide a complete and unaltered copy of all of your records pertaining to Bethany Kendrick within 45 days from the date of receipt of this notice.

To avoid a malpractice lawsuit, I must be notified by your insurance company that you have given written consent to your insurance company to begin negotiation of an immediate settlement. If good faith pre-suit settlement negotiations are not initiated, then suit will be filed following the expiration of sixty (60) days.

Very truly yours,


Kelly M. Liebke

encl.

EXHIBIT “6”

Eileen Parzyck

From: jonathan.rute <jonathan.rute@gmail.com>
Sent: Wednesday, January 04, 2017 11:00 AM
To: Melissa Kingston
Attachments: 20161206_155836.jpg

Melissa,

I wanted to provide you with the tracking info for the complaint I sent to the Texas Medical Board. USPS 9505 5126 8926 6341 0601 61

Best Regards
Jonathan

Sent via the Samsung Galaxy S7, an AT&T 4G LTE smartphone

**PRIORITY
★ MAIL ★**

Jonathan Rute
3035 County Road 325
McKinney, Texas 75069

**TRACKED
★ ★ ★
INSURED**

MEDIUM FEA
FINE RATE TEX. AN

The State of Texas Medical Board
P.O. Box 2018, MC-263,
Austin, Texas 78768-2018



EXHIBIT “7”

Kelly M. Liebke
Trial Attorney

June 15, 2017

Via Certified Mail, Return Receipt Requested

7016 1370 0001 6130 6365

Dr. Stephen Courtney
Plano Orthopedic and Sports Medicine
5228 West Plano Parkway
Plano, Texas 75093

Re: [REDACTED]

Dear Dr. Courtney:

This notice of healthcare liability claim is being provided to you in accordance with Chapter 74 of the Texas Civil Practice and Remedies Code. Enclosed you will find the Authorization Form for Release of Protected Health Information as required by Section 74.052 of the Code.

The basis of the claim is that you performed unnecessary spine surgeries on [REDACTED] using Eminent Spine hardware. The Eminent Spine hardware was not used properly. The hardware failed and caused damages to [REDACTED]. The surgeries you performed on [REDACTED] not only failed to address the pathology causing [REDACTED] pain, it worsened her condition.

I am also enclosing a Section 74.052 medical authorization. In accordance with Chapter 74 of the Texas Civil Practice and Remedies Code, please provide a complete and unaltered copy of all of your records pertaining to [REDACTED] within 45 days from the date of receipt of this notice.

To avoid a malpractice lawsuit, I must be notified by your insurance company that you have given written consent to your insurance company to begin negotiation of an immediate settlement. If good faith pre-suit settlement negotiations are not initiated, then suit will be filed following the expiration of sixty (60) days.

Very truly yours,


Kelly M. Liebke

encl.

cc: Via First Class Mail

William Dunnill

1010 W. Ralph Hall Parkway -2nd Floor
Rockwall, Texas 75032

EXHIBIT “8”

Kelly M. Liebke
Trial Attorney

June 9, 2017

Via Certified Mail, Return Receipt Requested

7016 1370 0001 6130 6341

Dr. Stephen Courtney
Plano Orthopedic and Sports Medicine
5228 West Plano Parkway
Plano, Texas 75093

Re: [REDACTED]

Dear Dr. Courtney:

This notice of healthcare liability claim is being provided to you in accordance with Chapter 74 of the Texas Civil Practice and Remedies Code. Enclosed you will find the Authorization Form for Release of Protected Health Information as required by Section 74.052 of the Code.

The basis of the claim is that you performed unnecessary spine surgeries on [REDACTED] using Eminent Spine hardware. The Eminent Spine hardware was not used properly. The hardware failed and caused damages to [REDACTED]. The procedures you performed on [REDACTED] not only failed to address the pathology causing [REDACTED] pain, it worsened her condition.

In accordance with Chapter 74 of the Texas Civil Practice and Remedies Code, please provide a complete and unaltered copy of all of your records pertaining to [REDACTED] within 45 days from the date of receipt of this notice.

To avoid a malpractice lawsuit, I must be notified by your insurance company that you have given written consent to your insurance company to begin negotiation of an immediate settlement. If good faith pre-suit settlement negotiations are not initiated, then suit will be filed following the expiration of sixty (60) days.

Very truly yours,


Kelly M. Liebke

encl.

cc: Via First Class Mail

William Dunnill
1010 W. Ralph Hall Parkway -2nd Floor
Rockwall, Texas 75032

EXHIBIT “9”

Kelly M. Liebke
Trial Attorney

December 14, 2017

Via Certified Mail, Return Receipt Requested

Stephen P. Courtney
1351 West President George Bush Highway
Richardson, Texas 75080

Re: [REDACTED]
[REDACTED]

Dear Dr. Courtney:

This notice of healthcare liability claim is being provided to you in accordance with Chapter 74 of the Texas Civil Practice and Remedies Code. Enclosed you will find the Authorization Form for Release of Protected Health Information as required by Section 74.052 of the Code.

The basis of the claim is that you allowed Dr. Stephen Courtney to perform unnecessary spine surgeries on [REDACTED] using Eminent Spine hardware. The Eminent Spine hardware was not used properly. The hardware failed, and caused damages to [REDACTED]. The surgeries performed on [REDACTED] not only failed to address the pathology causing her pain, it worsened her condition.

I am also enclosing a Section 74.052 medical authorization. In accordance with Chapter 74 of the Texas Civil Practice and Remedies Code, please provide a complete and unaltered copy of all of your records pertaining to [REDACTED] within 45 days from the date of receipt of this notice.

Very truly yours,



Kelly M. Liebke

encl.

cc Via First Class Mail

STEED DUNNILL REYNOLDS BAILEY STEPHENSON LLP
William C. Dunnill
Sid Murphy
1010 West Ralph Hall Parkway, Second Floor
Rockwall, Texas 75032