

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 and)
)
 DR. RACHEL TUDOR,)
)
 Plaintiff/Intervenor,)
)
 v.)
)
 SOUTHEASTERN OKLAHOMA)
 STATE UNIVERSITY,)
)
 and)
)
 THE REGIONAL UNIVERSITY)
 SYSTEM OF OKLAHOMA,)
)
)
 Defendants.)

CASE NO. 5:15-CV-00324-C

**REPLY IN SUPPORT OF DR. RACHEL TUDOR'S
MOTION TO QUASH SUBPOENA OF MS. FELESHIA PORTER AND
FOR SANCTIONS**

I. INTRODUCTION

Dr. Tudor respectfully moved the Eastern District of Oklahoma to quash the Subpoena of Ms. Feleshia Porter (ECF Doc. 77 [hereinafter “Second Porter Subpoena”]) and to impose sanctions upon Defendants and/or Defendants Counsel for multiplying proceedings, forum-shopping the psychotherapist-patient privilege issue, and failing to take reasonable steps to avoid imposing an undue burden upon non-party witness Ms. Porter. Dr. Tudor’s Motion was transferred to this Court on August 4, 2016. ECF Doc. 87-1. Defendants’ response (ECF Doc. 111) to Dr. Tudor’s Motion offers new and inaccurate statements of fact and law, none of which overcome Dr. Tudor’s arguments.

II. ARGUMENT

A. **Defendants Have Not Satisfied their Burden to Demonstrate that Tudor Waived the Psychotherapist-Patient Privilege.**

Defendants assert that if the psychotherapist-privilege exists, that Dr. Tudor’s privilege “must yield” because, *inter alia*, Dr. Tudor placed her mental condition into issue. Not so.

Mental Condition Not An Element of Tudor’s Claims. As Dr. Tudor explained in her Motion, she did not put her mental condition into issue by filing her complaint in intervention or claiming entitlement to remedies. ECF Doc. 82-1 at 13–16. Indeed, Defendants cite no binding precedent that clearly supports their argument. For example, *Dixon v. City of Lawton, Okla.*, stands for the narrow proposition that the privilege does not apply in any proceeding in which any party relies upon the condition as an element of the claim or defense. 898 F.2d 1443, 1451 (10th Cir. 1990) (quotations and citations

omitted). Dr. Tudor's discrimination, retaliation, and hostile work environment claims are not predicated upon statements Tudor exchanged with Porter during the course of psychotherapy, and Defendants have not raised in good faith how statements exchanged during the course of treatment with Ms. Porter buttresses any defense to Tudor's claims, thus *Dixon* is inapposite.

Moreover, even if Tudor's mental condition were at issue, waiver has not occurred here since Dr. Tudor has not made a factual claim regarding her gender dysphoria diagnosis that can only be assessed by examination of a privileged communication. *Cf. Walsh v. Seaboard Surety Co.*, 184 F.R.D. 494, 496 (D.Conn.1999) (“[E]ven if a party does not attempt to make use of a privileged communication, he may waive the privilege if he asserts a factual claim the truth of which can only be assessed by examination of a privileged communication.”).

B. Defendants Have Failed to Demonstrate that the Psychotherapist-Patient Privilege Must Yield to the Needs of this Case.

Documents Sought Do Not Shed Light on Damages Claimed. Defendants' argue that they are entitled to privileged therapist records because Tudor is seeking damages to redress her injuries also fails. First, the records Defendants seek relate to treatment Dr. Tudor received prior to the events complained of in this lawsuit. These records thus do not in any way shed light on the “humiliation, loss of enjoyment of life, and loss of professional reputation” (ECF Doc. 111 at 7) Tudor claims. *Jones v. Halliburton Energy Servs., Inc.*, 2016 WL 1179210, at *2 (W.D. Okla. Mar. 24, 2016) (finding that proportionality fails where request seeks discovery beyond what is needed for specific

time period pertinent to claims and/or defenses); *Gatewood v. Stone Container Corp.*, 170 F.R.D. 455, 460 (S.D. Iowa 1996) (“[T]he Court recognizes that a person’s medical and mental health history involve private, personal information which ought not be disclosed on the basis of attenuated relevance. The fact that plaintiff has claimed general emotional distress damages does not give defendant carte blanche to peruse plaintiff’s medical history.”).

Second, even if the documents sought did touch on damages claimed in this lawsuit, this alone is not a reason to pierce the privilege. As other courts have recognized, an aggrieved employee in an employment discrimination case can testify to her injuries during trial, obviating the need for producing privileged medical and/or therapy records. *See, e.g., Kim v. Nash Finch Co.*, 123 F.3d 1046, 1065 (8th Cir. 1997) (plaintiff’s testimony and testimony of plaintiff’s family member is sufficient to evidence damages); *Luu v. Seagate Tech., Inc.*, 2011 WL 920013, at *8 (D. Minn. July 5, 2001) (similar).

Third, Defendants argue that Tudor’s privilege should yield because Defendants desire to delve into Tudor’s “mental and emotional state prior to the actions alleged in this lawsuit” (ECF Doc. 111 at 8). However, Defendants are not entitled to depose Ms. Porter and receive otherwise privileged documents from Ms. Porter for this purpose because Defendants have failed to demonstrate that Tudor’s mental condition prior to the events complained of in this litigation sheds light on the claims or defenses in this litigation. *See, e.g., Fox v. Gates Corp.*, 179 F.R.D. 303, 306–07 (D.Colo. 1998) (limiting discovery on privileged medical and therapy records to period during which employee claimed to suffer distress from defendant-employer’s conduct). As Tudor has repeatedly

made clear, the damages she seeks in this litigation are attributable to Defendants' conduct, which started *after* Tudor ceased treatment with Porter. *Compare* Doc. 71-3 ¶ 4 (“To my recollection I had two visits with Ms. Porter in 2007, both of which occurred *before* I started presenting my gender as female at Southeastern Oklahoma State University.”) *with* ECF Doc. 34 at 5 (“Here, it is clear that Defendants’ actions as alleged by Dr. Tudor occurred because she was female, yet Defendants regarded her as male. Thus, the actions Dr. Tudor alleges Defendants took against her were based upon their dislike of her presented gender.”).

Defendants Are In Possession of Documents Substantiating Claims in Tudor’s Declaration. Defendants also argue that they require the privileged documents because they are purportedly unable to rely upon Tudor’s recollection of the timing of and scope of treatment with Ms. Porter and thus need to depose Ms. Porter delineated in her Declaration. *See* ECF Doc. 71-3 [hereinafter “Tudor Declaration”]. This argument also fails. Defendants are in possession of several documents that substantiate the assertions in the Tudor Declaration,¹ obviating any need to depose Ms. Porter on these issues.

Plaintiff United States’ reliance upon expert Dr. Brown does not give rise to waiver of psychotherapist privilege by Tudor. Defendants also argue that because

¹ *Compare* ECF Doc. 71-3, Tudor Declaration ¶ 3 (“To my recollection, I received psychotherapy care from Ms. Porter in 2007 only”), *id.* ¶ 4 (“To my recollection I had two visits with Ms. Porter”) *with* Exhibit A (Porter invoices indicating dates of treatment as April 4, 2007 and May 11, 2007). *Compare* Tudor Declaration ¶ 4 (“To my recollection, my treatment with Ms. Porter was narrowly focused on diagnosing me with a condition that is now called gender dysphoria.”) *with* Exhibit B (Declaration of Ms. Feleshia Porter; authenticating ECF Doc. 111-2, and providing additional information supporting Tudor’s assertions).

Plaintiff United States has indicated that it is likely to present Dr. Brown, an expert on transgender persons, at trial that Defendants are entitled to depose Ms. Porter. Not so.

The United States use of Dr. Brown as an expert witness cannot give rise to a waiver of psychotherapist patient privilege by Tudor. As the United States has previously clarified, Dr. Tudor is the holder of this privilege (ECF Doc. 75 at 14); thus only Tudor can take steps to waive the privilege. Tudor has not waived the privilege expressly or triggered waiver, therefore the privilege still stands.

Moreover, Defendants' purported desire to glean additional "general" information from Ms. Porter—to the extent it sheds light on forthcoming testimony from Dr. Brown—as to diagnosis or treatment of Tudor's gender dysphoria is inapposite (Doc. 111 at 10). As this Court has previously held, Defendants do not honestly claim ignorance of Dr. Tudor's transgender status or her gender dysphoria diagnosis.² To the extent that Defendants desire additional information touching on issues raised in Dr. Brown's report, they are free to depose Dr. Brown.

C. Sanctions are Warranted

Dr. Tudor believes that sanctions are appropriate because, *inter alia*, Defendants unreasonably multiplied proceedings, engaged in forum-shopping, and their conduct ran

² Order Denying Defendants' Motion to Compel, ECF Doc. 92 at 2–3 (“[D]efendant’s Answer to Plaintiff’s Complaint in this matter contains sufficient admissions regarding Intervenor’s transition status to overcome Defendant’s current suggestion that it is unaware of Intervenor’s transition from male to female. Further, Defendant has at no time raised or suggested as a defense to Plaintiff’s claims in this matter that Intervenor was not, in fact, undergoing a transition in her gender. Thus, there is no basis to find the documentation sought by Defendant has some tendency to either prove or disprove a fact in dispute. Nor is it likely to lead to information relevant to a matter in dispute. *See* Fed. R. Civ. P. 26(b)(1).”).

afoul of Rule 45(c)'s good faith requirement to take reasonable steps to avoid imposing an undue burden upon non-party witness Ms. Porter. ECF Doc. 82-1 at 19–20.

Multiplied Proceedings Were Triggered by Defendants' Conduct. Defendants' averment that Dr. Tudor—not the Defendants—sought the involvement of three different courts fails on its face.

It is Defendants' conduct which multiplied proceedings on the psychotherapist-privilege issue at the heart of the Second Porter Subpoena. For example: It was Defendants who noticed the First Porter Subpoena for Dallas, Texas. ECF Doc. 64 (filed June 6, 2016). It was Defendants who refused to respond to a letter from Tudor's counsel seeking to limit the First Porter Subpoena. *See* ECF Doc. 71-7 (June 9, 2016 letter from Ezra Young to Defendants' Counsel). It was Defendants who filed a Motion to Compel with this Court, demanding that the United States produce all medical and therapy records pertaining to Tudor's transgender status on June 23, 2016, claiming, *inter alia*, that psychotherapist privilege had been waived. *See* ECF Doc. 67 at 14–15. And it was Defendants who proceeded to serve the First Porter Subpoena on July 11, 2016 while their Motion to Compel (ECF Doc. 67) was still pending before this Court. It was also Defendants who waited for Dr. Tudor to move the Northern District of Texas for relief (ECF Doc. 71-1), waited for the Northern District of Texas to issue an order setting a briefing schedule for Tudor's Motion (ECF Doc. 74-1), and then took steps to moot out the Texas motion (ECF Doc. 80-1 [email notifying Tudor's counsel that First Porter Subpoena was withdrawn, thus Tudor's pending Texas motion is mooted]). It was also Defendants whom, within minutes of receiving email notice from Tudor's counsel that

she had noticed the Texas Court that her First Porter Subpoena Motion was mooted (ECF Doc. 82-20 [email from Angela Ivy to all counsel time stamped July 28, 2016 11:13am [eastern time]], noticed the Second Porter Subpoena. ECF Doc. 77 [Second Porter Subpoena]; ECF Doc. 111 at 12 (admitting that Defendants filed the Second Porter Subpoena on July 28, 2016 at 10:19am [central time])).

Defendants Willfully Misrepresent Their Conduct During the Meet and Confer Process to This Court. Defendants' Reply repeatedly misrepresents Defendants' counsel's conduct during the meet and confer process in an ill-fated attempt to pass blame to Dr. Tudor.

Contrary to Defendants' representations, Dr. Tudor's counsel repeatedly requested that Defendants narrow the scope of the First and Second Porter Subpoenas to prevent having to seek relief with the courts of compliance in both instances. *Contra* ECF Doc. 111 at 13. For example, Jillian Weiss conducted a meet and confer with Dixie Coffey on the evening of July 11, 2016. During this call, Coffey refused to narrow the scope of the First Porter Subpoena, claiming the privilege had been waived, and notified Weiss that their differences were irreconcilable, thus necessitating filing of the First Subpoena related motions with the Northern District of Texas.³

For example, Ezra Young conducted multiple meet and confer calls with Dixie

³ Weiss and Coffey did not discuss filing the Subpoena motions with any particular court during the July 11, 2016 call. Weiss did attempt to call Coffey several times on July 15, 2016 to notify Coffey that, pursuant to Rule 45, Tudor's motions must be filed with the Northern District of Texas; Weiss recalls leaving at least one voicemail for Coffey notifying Coffey of the necessity of filing with the Northern District of Texas. Coffey did not respond to Weiss' voicemail until *after* Tudor filed her motion with the Northern District of Texas on July 18, 2016.

Coffey and Jeb Joseph on August 1, 2016. During these calls, as noted in Young's memorializations of these calls (see generally Exhibits C and D), Defendants' counsel repeatedly refused to narrow the scope of the Second Porter Subpoena. Indeed, Defendants' counsel refused compromises proposed by Tudor's counsel and stubbornly insisted that they were entitled to question Ms. Porter about issues that Tudor believes to be protected by the psychotherapist privilege and were further entitled to request of Porter all documents encompassed by the Second Porter Subpoena. Exhibit C (August 1, 2016 email time stamped 12:21pm [eastern time]; memorializing August 1 morning meet and confer call). Indeed—the only “compromise” offered by Defendants' in the course of the August 1 calls that touched on the privilege issue was permitting Mr. Young to attend the Porter deposition and raise objections at that time. Exhibit D (August 1, 2016 email time stamped 7:11pm [eastern time]; memorializing August 1 evening meet and confer call). However, Mr. Young informed Defendants that this compromise did not resolve Tudor's concerns since Defendants would not promise to refrain from seeking information and documents from Porter about the specific issues Young indicated were protected by the privilege.⁴

Dated: August 29, 2016

⁴ See Exhibit D (Ezra Young to Dixie Coffey: “You did not say that you would take any line of questioning off the table. You did not say that you would not push forward on questions to which I raised objections based on privilege. Nor did you represent that you would amend the Second Porter Subpoena to ensure that the documents you currently seek production of are limited to only the items to which we can all agree the privilege does not apply.”).

Respectfully Submitted,

/s/ Ezra Young

Ezra Young (NY Bar No. 5283114)

Admitted *Pro Hac Vice*

Law Office of Jillian T. Weiss, P.C.

P.O. Box 642

Tuxedo Park, NY 10987

949-291-3185

Fax: 917-398-1849

eyoung@jtweisslaw.com

Jillian T. Weiss (NY Bar No. 2125011)

Admitted *Pro Hac Vice*

Law Office of Jillian T. Weiss, P.C.

P.O. Box 642

Tuxedo Park, NY 10987

845-709-3237

Fax: 845-915-3283

jtweiss@jtweisslaw.com

Brittany M. Novotny (Okla. Bar No. 20796)

National Litigation Law Group, PLLC

42 Shepherd Center

2401 NW 23rd St.

Oklahoma City, OK 73107

405-429-7626

Fax: 405-421-9164

bnovotny@nationlit.com

VERIFICATION OF COUNSEL

The below-signed counsel certify that all statements regarding conversations with Defendants' counsel are true and correct as stated.

/s/ Ezra Young

Ezra Young

/s/ Jillian Weiss

Jillian Weiss

ATTORNEYS FOR PLAINTIFF/INTERVENOR

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2016, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

I further certify that on August 29, 2016 I emailed a copy of the foregoing and all exhibits to:

Ms. Feleshia Porter, MS, LPC

3530 Forest Lane, #55

Dallas, Texas 75234

feleshia@aol.com

Pro Se

/s/ Ezra Young _____

Ezra Young

Exhibit C



From: Ezra Young eyoung@jtweisslaw.com
Subject: Re: Tudor - Depo Subpoena to Dr. Porter
Date: August 1, 2016 at 12:21 PM
To: Jeb Joseph jeb.joseph@oag.ok.gov
Cc: Dixie Coffey dixie.coffey@oag.ok.gov, Jillian Weiss jweiss@jtweisslaw.com, Allan Townsend Allan.Townsend@usdoj.gov, Valerie Meyer Valerie.Meyer@usdoj.gov, Shayna Bloom Shayna.Bloom@usdoj.gov

Jeb and Dixie,

I am following up to memorialize the calls that we had this morning concerning Ms. Porter's deposition which is presently noticed for August 11, 2016.

As I noted on the phone—Dr. Tudor believes that the information and documents that you are seeking are protected by psychotherapist-patient privilege. Dr. Tudor does not believe that that April 2007 letter from Ms. Porter to Southeastern expressing Porter's willingness to confirm the diagnosis and needs outlined within that letter constitute a waiver. It is my understanding that the April 2007 Porter letter merely permitted Ms. Porter to confirm diagnosis as well as the contents of the letter—nothing more. As I informed you over the phone: Dr. Tudor is unwilling to turn over documents withheld pursuant to a 502 order. Dr. Tudor offered that she'd let Ms. Porter provide a declaration confirming the dates of treatment as well as the purpose of treatment and diagnosis if you withdrew the subpoena of Ms. Porter (an offer previously made via letter in June 2016). You turned down this offer. I also notified you that Ms. Porter is unavailable for a deposition on August 11 (she is out of the state and office between August 3 and August 14, 2016), and that August 11 conflicts with the date that Dr. Tudor noticed for our 30b6.

During this call—and unrelated to the Porter Subpoena 2—you asked about:

1. Dr. Tudor's availability for a second deposition date (for the record we would oppose re-deposing Dr. Tudor; I expressly advised that I am unaware of Dr. Tudor's availability at this point).
2. Alternative dates for Ms. Porter's deposition as well as whether Ms. Porter would consent to a deposition in OKC or Ardmore (I expressly advised that I am unaware of Ms. Porter's availability past the scheduling conflict outlined above and do not know if she would consent to an alternative deposition location).
3. Dixie specifically questioned whether Dr. Tudor has provided "all medical documents" pertaining to "treatment." My understanding is that you are seeking medical and psychotherapist documents pertaining to treatment for gender dysphoria which Dr. Tudor alleges in her Complaint in Intervention she was unable to get coverage of because of the exclusion in the employer provided health plan (pertinent years of treatment would thus be between mid-2007 and mid-2011). I told you that it is my recollection that we previously produced documents that memorialize treatments needed as well as treatments received during the pertinent timeline.

My understanding is that OAG will review Dr. Tudor's other medical records (previously produced in late 2015) and get back to me today on whether you are willing to move the Porter deposition and/or withdraw the subpoena.

If I do not hear back from you by 4pm central I will go ahead and file the motion to quash and transfer as well as seek appropriate relief given the multiple proceedings Defendants have initiated re: Porter psychotherapist-patient privilege issue and failure to comply with Rule 45 in issuing the Porter Subpoena 2.

Best,

Ezra Young, Esq.
Law Office of Jillian T. Weiss, P.C.
P.O. Box 642
Tuxedo Park, NY 10987
Tel: (949) 291-3185
Fax: (917) 398-1849
Email: eyoung@jtweisslaw.com
Web: jtweisslaw.com

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On Aug 1, 2016, at 11:15 AM, Jeb Joseph <jeb.joseph@oag.ok.gov> wrote:

Ezra,
We just tried calling you, but it went immediately to your voicemail. Please advise.
Thanks,
Jeb

From: Ezra Young [<mailto:eyoung@jtweisslaw.com>]

Exhibit D



From: Ezra Young eyoung@jtweisslaw.com
Subject: Re: Tudor - Depo Subpoena to Dr. Porter
Date: August 1, 2016 at 7:11 PM
To: Dixie Coffey dixie.coffey@oag.ok.gov
Cc: Jeb Joseph jeb.joseph@oag.ok.gov, Jillian Weiss jweiss@jtweisslaw.com, Allan Townsend Allan.Townsend@usdoj.gov, Valerie Meyer Valerie.Meyer@usdoj.gov, Shayna Bloom Shayna.Bloom@usdoj.gov, Lori Cornell lori.cornell@oag.ok.gov

Dixie:

Respectfully, that is not my recollection of the conversation we had starting at 5:07pm eastern (4:07pm central time).

You and Jeb called me at 5:07pm eastern. You asked me why I had sent an email to you both earlier today advising if we could not reconcile our differences Dr. Tudor would go ahead and file the pertinent motions with the ED Okla. I clarified that this was the same representation I made on our calls earlier today. I then specifically asked if you would withdraw the Second Porter Subpoena as a means of resolving both the privilege issue as well as the date conflict issue. (To my understanding that was not done during our conversation earlier today, was not communicated to me as having been done during our call this evening).

As to the scope of inquiry here: You asked me what items I believe not to be protected by the privilege and I gave those to you: dates of treatment, purpose of treatment, and the diagnosis itself. You asked if there were other areas which I did not believe to be subject to the privilege, at which point I said that insofar as you are seeking to ask Ms. Porter about her treatment of and statements and records of statements of that treatment with Dr. Tudor (which, based on what Jillian has told me about the meet and confer call you had with her regarding the First Porter Subpoena, is the purpose of your inquiries under the Second Porter Subpoena) that I believe all such statements to be privileged. At that point you started listing off things that you said you believed were not privileged (including specific categories of statements made by Ms. Porter and Dr. Tudor during the course of treatment) which we have previously represented (as I advised over the phone) are privileged.

As to Ms. Porter's availability: I reiterated during this call that I do not personally know of Ms. Porter's availability past what I have already told you—that Ms. Porter told me only that she is out of state and out of office from August 3 through August 14, 2016. I asked if you would propose an alternative date that falls outside of the window Ms. Porter indicated she is not available; you told me you could not pick a date. I then asked you (again) to withdraw the Second Porter Subpoena as a means of resolving all issues. You declined to withdraw the Second Porter Subpoena and then began to push on to the privilege issue again.

As to what things Dr. Tudor would be "able to assert privilege" to (as you frame it in your email below): To clarify—what you told me over the phone this evening was that Defendants were willing to allow me to attend Ms. Porter's deposition and to make oral objections as to privilege. You did not say that you would take any line of questioning off the table. You did not say that you would not push forward on questions to which I raised objections based on privilege. Nor did you represent that you would amend the Second Porter Subpoena to ensure that the documents you currently seek production of are limited to only the items to which we can all agree the privilege does not apply.

Additional issues: Towards the end of our call when I stated that I believed in good faith that we were unable to reconcile our differences and because of that I had to go ahead and file the motion, you asked me again what information Dr. Tudor believes not to be privileged. I reiterated what I identified above. At this point you stated that you were not aware of the dates of treatment. I clarified that the dates of treatment were provided, and that you were given the dates of treatment by way of Dr. Tudor's sworn declaration which was included as an exhibit to the Motion to Quash and Transfer filed with the ND Texas in July 2016. After some back and forth, you (Dixie) stated that "Dr. Tudor has been dishonest in many other regards throughout this litigation" and so you (Dixie) could not trust that the contents of that sworn declaration were truthful. I then informed you that your statements concerning Dr. Tudor's character were totally inappropriate.

It was around this point that I clarified—again—that based on our conversation we have been unable to resolve our dispute concerning the Second Porter Subpoena and that Dr. Tudor would need to go ahead and file the motion with the ED Okla. At that point—for a reason that is unclear—you questioned me as to why we must file with the ED Okla. I clarified the requirements of FRCP Rule 45, you claimed I misunderstood the rule and then asked me why the WD Okla "is not a complying court." I then reiterated my understanding of Rule 45 and its application here and advised that I did not believe you were bringing up this point in good faith. Around that point you started asking me about other persons Dr. Tudor has sought "treatment" from, I interrupted you to clarify that the sole purpose of this call was to settle the Second Porter Subpoena issues, and I reiterated that based on the call we could not reconcile our differences and I would go ahead and file the motion. Before the call ended you (Dixie) accused me prospectively of planning to misrepresent our conversation to the ED Okla. via filings that you had not (during our call) yet reviewed. I advised you that I did not intend to and would not misrepresent the details of our conversation this evening and that you are welcome to make any corrections you think are needed in your responsive filings. At that point I took notes (again) on your position to ensure accuracy, and we ended our call. (Feel free to use this email chain as an exhibit in your responsive filings.)

Best,

Ezra Young, Esq.
Law Office of Jillian T. Weiss, P.C.
P.O. Box 642
Tuxedo Park, NY 10987
Tel: (949) 291-3185
Fax: (917) 398-1849
Email: eyoung@jtweisslaw.com
Web: jtweisslaw.com

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On Aug 1, 2016, at 5:56 PM, Dixie Coffey <dixie.coffey@oag.ok.gov> wrote:

Ezra,

We have agreed to amend the subpoena for a subsequent date, but you have not provided us any dates for her availability. We also identified several categories of inquiry that are not covered by the alleged privilege, and acknowledged you would be able to assert privilege to certain communications between Tudor and Porter, but you are not willing to accept that, and continue to insist that you have no option but to file a motion to quash.

Dixie L. Coffey
Assistant Attorney General
Litigation Division, Office of the Attorney General
Phone:(405)522-2891; Fax (405) 521-4518

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From: Ezra Young [<mailto:eyoung@jtweisslaw.com>]
Sent: Monday, August 01, 2016 4:24 PM
To: Jeb Joseph
Cc: Dixie Coffey; Jillian Weiss; Allan Townsend; Valerie Meyer; Shayna Bloom; Lori Cornell
Subject: Re: Tudor - Depo Subpoena to Dr. Porter

Jeb and Dixie:

As we discussed over the phone just now—we are going to go ahead and file our motion with the ED of Okla. To my understanding you have not withdrawn the subpoena, so we will need to go ahead and file.

Ezra Young, Esq.
Law Office of Jillian T. Weiss, P.C.
P.O. Box 642
Tuxedo Park, NY 10987
Tel: [\(949\) 291-3185](tel:(949)291-3185)
Fax: [\(917\) 398-1849](tel:(917)398-1849)
Email: eyoung@jtweisslaw.com
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On Aug 1, 2016, at 5:11 PM, Jeb Joseph <jeb.joseph@oag.ok.gov> wrote:

Ezra,

We, as always, are willing to work with you on schedule. We stated this in as many words during our telephone call with you this morning. If August 11 does not work, we are more than happy to work with you for a different date. I know you told us that Porter is out of state until August 15, but we can certainly work with you and her to find dates that work for all involved.

Hopefully this addresses the immediacy of your concerns.

Thanks,
Jeb

Jeb E. Joseph
Assistant Attorney General
Litigation Division
Office of the Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
(405) 522-8940 - Office
(405) 521-4518 - Fax

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