

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**DREW ADAMS, a minor, by and through  
his next friend and mother, ERICA  
ADAMS KASPER,**

**Plaintiff,**

**Case No.: 3:17-cv-00739-TJC-JBT**

**v.**

**THE SCHOOL BOARD OF ST. JOHNS  
COUNTY, FLORIDA,**

**Defendant.**

**DEFENDANT'S COMBINED OBJECTIONS AND EMERGENCY MOTION TO  
QUASH SUBPOENA OR, IN THE ALTERNATIVE, FOR PROTECTIVE  
ORDER AND SUPPORTING MEMORANDUM OF LAW**

Defendant, **SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA** (“Defendant” or “School Board”), through its undersigned counsel, and pursuant to Fed. R. Civ. P. 26 (b) and (c), Fed. R. Civ. P. 30(b)(2) and 34(b)(2)(A), Fed. R. Civ. P. 45(d) and M.D. Fla. Loc. R. 3.01, hereby provides its objections to the Subpoena Duces Tecum served on Defendant’s expert witness, Dr. Allan Josephson, on or about November 6, 2017; moves to quash the subpoena; or, in the alternative, requests the entry of a protective order relieving Dr. Josephson from bringing the requested records to his November 13, 2017 deposition. In support of the requested relief, Defendant states:

1. This Motion seeks protection from an untimely, overbroad subpoena that seeks confidential protected health information of individuals not a party to this action.

2. Dr. Josephson is one of Defendant's expert witnesses whose identity, qualifications and opinions were timely disclosed to Plaintiff on October 2, 2017.

3. Thereafter, on November 3, 2017, Plaintiffs noticed Dr. Josephson's deposition for November 13, 2017 in Louisville, Kentucky. (*See, Exhibit 1*).

4. On Monday, November 6, 2017, one week before Dr. Josephson's deposition, Plaintiffs served an amended deposition notice duces tecum and subpoena requiring Dr. Josephson to appear at his November 13 deposition with the following six categories of documents:

Category 1: Documents, including those electronically stored or maintained, sufficient to show that you review transgender patients at the Bingham Clinic.

Category 2: Documents, including those electronically stored or maintained, sufficient to show your duties or responsibilities as CEO of the Bingham Clinic.

Category 3: Documents, including those electronically stored or maintained, sufficient to show that you have evaluated, treated, and consulted with approximately 60 transgender children and adolescents, as set forth in your expert report in this matter.

Category 4: Documents, including those electronically stored or maintained, sufficient to show the diagnoses, if any, you made, and the treatments, if any,

you have prescribed to the 60 transgender children and adolescents you have evaluated, treated, and consulted with, as set forth in your expert report in this matter.

Category 5: Documents, including those electronically stored or maintained, sufficient to show that you have, in treating transgender patients, engaged in efforts in aligning a patient's gender identity with his or her birth sex, as indicated in your expert report in this matter.

Category 6: Documents, including those electronically stored or maintained, sufficient to show the name and address of all of the private psychotherapy offices at which you have evaluated, treated and consulted with transgender children and adolescents, as set forth in your expert report in this matter.

*(See, Exhibit 2).*

5. It is the November 6 deposition notice and accompanying subpoena that are the subject of this Motion.

6. As an initial matter, Plaintiffs' notice and subpoena are defective in their entirety because it does not provide adequate time to produce the requested records. Fed. R. Civ. P. 30(b)(2) and 34(b)(2)(A); Fed. R. Civ. P. Rule 45. On this basis alone, the Court may quash the subpoena or, alternatively, may enter a protective order.

7. Additionally, the documents demanded in Categories 1, 3, 4, 5 and 6 necessarily require Dr. Josephson to produce information that would cause him to violate the

Health Insurance Portability and Accountability Act (“HIPPA”), Pub. L. No. 104-191, 110 Stat. 1936 (codified as amended at 42 U.S.C. §§ 1320d to 1320d-8). Plaintiffs have not provided notice that the individuals whose information may be released have provided express authorization to release their medical information. Nor have Plaintiffs provided satisfactory assurances that the individuals whose information may be disclosed have been given notice of Plaintiff’s request for records containing protected health information. See, 45 C.F.R. §§ 164.512(e)(1)(ii)&(iii). Further, the protective order issued in this case is specific to Plaintiff and does not address third-parties whose information may be disclosed. See [Doc. 65 & 65-1].

8. Further, the subpoena imposes an undue burden on Dr. Josephson because it provides a mere 7 days within which he is given to compile literally hundreds if not thousands of documents and review them to ensure confidential information is not disclosed. Plaintiffs are free to inquire about many of the subjects contained in Categories 1-6 without requiring Dr. Josephson to violate his legal duty to keep protected information confidential, and this Court is authorized to require Plaintiffs to secure whatever information they believe the records will establish through other, less intrusive means pursuant to Rule 26(b)(2)(C).

9. Finally, the subpoena requests records that are not in Dr. Josephson’s control or possession as they belong to Dr. Josephson’s current and previous employers. Any records seeking information relating to patients seen by Dr. Josephson belong to the Bingham Clinic and/or Dr. Josephson’s previous employers.

10. A federal district court has broad authority to issue, upon a showing of good cause, an order protecting a party or person from “annoyance, embarrassment, oppression or

undue burden or expense.” Fed. R. Civ. P. 26(c). Additionally, federal courts are authorized to quash or modify a subpoena that (i) fails to allow a reasonable time to comply; (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden. Fed. R. Civ. P. 45(d)(3)(A)(i-iv).

11. Candidly, as discussed in the Memorandum of Law below there is some authority for the proposition that the federal district court within which a non-party resides must issue an order quashing a defective subpoena, numerous courts have found that the district court in which the action is pending may as well. In the unlikely event this Court determines that it does not have the authority to quash the subpoena at issue or enter an appropriate protective order preventing Dr. Josephson from having to produce the requested records, then, and in that event, the School Board requests entry of a protective order preventing Plaintiffs from taking Dr. Josephson’s deposition on November 13 and until such time as Defendant is able to obtain the necessary relief from the United States District Court, Western District of Kentucky, Louisville Division – the district and division in which the records are located.

**WHEREFORE**, Defendant respectfully requests the entry of an order quashing the subpoena or, in the alternative, requests the entry of a protective order relieving Dr. Josephson from bringing the requested records to his November 13, 2017 deposition. In the unlikely event the Court is unable to enter an order as requested, Defendant requests entry of a protective order preventing Dr. Josephson’s deposition from going forward on November 13, 2017 until such time as appropriate relief may be obtained from the United States District

Court, Western District of Kentucky. Finally, Defendant requests such other and further relief this Court deems appropriate.

**SPECIFIC OBJECTIONS TO DR. JOSEPHSON'S SUBPOENA**

In addition to its objection to the subpoena in its entirety based upon Plaintiff's failure to adhere to the notice requirements of Rules 30(b)(2) & 34(b)(2)(A) and 45, the School Board objects to each category set forth in the subpoena for the following reasons:

**Category 1:** Documents, including those electronically stored or maintained, sufficient to show that you review transgender patients at the Bingham Clinic.

**Objections:** In addition to the objections related to timeliness, to respond to this request, Dr. Josephson must necessarily produce medical records protected by HIPPA and Plaintiff has not provided notice that the individuals whose information may be released have provided express authorization to release their medical information. Nor has Plaintiff provided satisfactory assurances that the individuals whose information may be disclosed have been given notice of Plaintiff's request for said records. See, 45 C.F.R. § 164.512(e)(1)(ii)&(iii). Moreover, responding to this request is unduly burdensome. Further, the documents related to Dr. Josephson's treatment of patients are not in his custody, control or possession, they are in the custody, control, or possession of the Bingham Clinic.

**Category 2:** Documents, including those electronically stored or maintained, sufficient to show your duties or responsibilities as CEO of the Bingham Clinic.

**Objections:** Defendant relies solely on the timeliness undue objections set forth above.

**Category 3:** Documents, including those electronically stored or maintained, sufficient to show that you have evaluated, treated, and consulted with approximately 60 transgender children and adolescents, as set forth in your expert report in this matter.

**Objections:** Same objections as Category 1 above. Additionally, any patient records from before Dr. Josephson's employment with the Bingham Clinic are in the custody, control, or possession of Dr. Josephson's previous employers.

**Category 4:** Documents, including those electronically stored or maintained, sufficient to show the diagnoses, if any, you made, and the treatments, if any, you have prescribed to the 60 transgender children and adolescents you have evaluated, treated, and consulted with, as set forth in your expert report in this matter.

**Objections:** Same objections as Category 1 above. Additionally, any patient records from before Dr. Josephson's employment with the Bingham Clinic are in the custody, control, or possession of Dr. Josephson's previous employers.

**Category 5:** Documents, including those electronically stored or maintained, sufficient to show that you have, in treating transgender patients, engaged in efforts in aligning a patient's gender identity with his or her birth sex, as indicated in your expert report in this matter.

**Objections:** Same objections as Category 1 above. Additionally, any patient records from before Dr. Josephson's employment with the Bingham Clinic are in the custody, control, or possession of Dr. Josephson's previous employers.

**Category 6:** Documents, including those electronically stored or maintained, sufficient to show the name and address of all of the private psychotherapy offices at which you have

evaluated, treated and consulted with transgender children and adolescents, as set forth in your expert report in this matter.

**Objections:** Same objections as Category 1 above.

### **MEMORANDUM OF LAW**

#### **I. Rules 45 and 26 Authorize Entry of an Order Quashing the Subpoena or Entering a Protective Order**

Rule 45 allows parties to a civil action to compel non-parties to produce “documents, electronically stored information, or tangible things in that person's possession, custody, or control for inspection, copying, testing, or sampling.” In re: Subpoena Upon NeJame Law, P.A., Case No. 6:16–MC–8–ORL–41TBS, 2016 WL 1599831 at \*3 (M.D. Fla. Apr. 21, 2016) (citing Fed. R. Civ. P. 45(a)(1)(A)(iii), (a)(1)(D)). The ability of a party to utilize Rule 45 is not unlimited. Pursuant to the Rule:

On timely motion, the court for the district where compliance is required must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.

Fed. R. Civ. P. 45(d)(3)(A). “The party seeking to quash a subpoena bears the burden of establishing at least one of the requirements articulated under Rule 45(d)(3).” Malibu Media, LLC v. Doe, Case No. 8:14–CV–2351–T–36AEP, 2015 WL 574274 at \*3 (M.D. Fla. Feb. 11, 2015).

Here, the subpoena is defective in that Dr. Josephson has not been given a reasonable amount of time to comply and because five of the six categories require the production of

HIPAA protected medical records. Further, these same five categories impose an undue burden on Dr. Josephson. Because three of the four bases for quashing the subpoena set forth by Fed. R. Civ. P. 45(d)(3)(A) are present, this Court is urged to enter an appropriate order relieving Dr. Josephson from having to bring records to his deposition.

Rule 45 is not the only federal rule implicated by the subpoena. As the Court is well aware, Rule 26(b)(1) states that “[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26 (b)(1). Furthermore, Rule 26(b)(2)(C) requires the Court to limit the frequency or extent of discovery if:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

Fed. R. Civ. P. 26 (b)(2)(C).

Rule 26(c)(1) also authorizes any “party or any person from whom discovery is sought may move for a protective order,” and states that this Court “may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....” Fed. R. Civ. P. 26(c)(1). “The party seeking a protective order has the burden to demonstrate good cause, and must make ‘a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements’ supporting the need for a protective order.” Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc., 231 F.R.D. 426, 429–30 (M.D. Fla. 2005) (citing U.S. v. Garrett, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978)). However, the Court is given broad discretion to enter a protective

order and whether a protective order should issue is not dependent on whether a legal privilege exists justifying the order. Id. at 429 (citing Farnsworth v. Procter & Gamble Co., 758 F.2d 1545, 1548 (11th Cir. 1985)).

Further, the medical records requested are not in the control or possession of Dr. Josephson but rather his current or former employers. Accordingly, he should not be required to produce those records. See Developmental Technologies, LLC v. Valmont, Industries, Inc., 2015 WL 12844286 at \* 3 (M.D. Fla. Sept. 2, 2015).

Pursuant to Rules 45 or 26, the School Board requests that the Court quash the subpoena served on Dr. Josephson, or enter a protective order alleviating the need for Dr. Josephson to bring any records to his deposition.

**II. If Securing Relief from the United States District Court, Western District of Kentucky is Necessary, a Protective Order Prohibiting Plaintiffs from Deposing Dr. Josephson on November 13 is Appropriate**

Despite the general rule that a party lacks standing to quash a subpoena served on a non-party, “[a] party has standing to move to quash a subpoena served on a non-party if the party alleges a ‘personal right or privilege’ with respect to the subpoenas.” Auto-Owners Ins. Co. v. Se. Floating Docks, Inc., 231 F.R.D. 426, 429 (M.D. Fla. 2005) (quoting Brown v. Braddick, 595 F.2d 961, 967 (5th Cir. 1979)). “Many courts have routinely considered, without discussion of standing, a party’s motions to quash subpoenas duces tecum addressed to that party’s expert witnesses.” Smith v. Transducer Tech., Inc., Case No. Civ.1995/28, 2000 WL 1717334 at \*1 (D. Vi., Nov.16, 2000) (Resnick, M.J.) (citing Quaile v. Carol Cable Co., Inc., Civ. A. No. 90–7415, 1992 WL 277981, at \*1 (E.D. Pa. Oct.5, 1992) (Hutton, J.)) (plaintiff had standing to move for a protective order relating to subpoenas issued to

plaintiff's non-party expert witnesses) and Perry v. U.S., 1997 WL 53136 (N.D. Tex.1997); Ambrose v. Southworth Products Corp., 1997 WL 470359 \*1 (W.D. Va.); Hartford Fire Ins. Co. v. Pure Air on the Lake Limited Partnership, 154 F.R.D. 202, 204 (N.D. Ind.1993); Marsh v. Jackson, 141 F.R.D. 431 (W.D.Va.1991); First State Bank of Junction City Kansas v. Deere & Co. et al., 1991 WL 456375 (D. Kan 1991)). Moreover, several decisions from the Middle District of Florida hold that parties "do have standing to move to quash or modify a subpoena based on inadequate notice." Inglis v. Wells Fargo Bank N.A., Case No: 2:14-cv-677-FtM-29CM, 2016 WL 4193858 at \*2 (M.D. Fla. August 9, 2016)(citing Auto Owners Ins., 231 F.R.D. at 429 (stating "[n]ot only do Defendants have a personal interest in receiving adequate notice of depositions, a party has standing to enforce the Court's orders and rules.")).

The School Board respectfully urges this Court to follow the decisions of this District and other courts from around the country finding that it has standing to request the relief set forth in this Motion. However, should the Court determine that Defendant or Dr. Josephson must seek relief from the district court in which Dr. Josephson resides and where the documents in question are located, Defendant requests that a protective order be issued preventing Plaintiffs from taking the deposition on November 13 so that application may be made to the United States District Court, Western District of Kentucky, Louisville Division.

**CERTIFICATE OF COUNSEL CONFERENCE PURSUANT TO  
LOCAL RULE 3.01(g)**

Pursuant to 3.01(g) of the Local Rules of the Middle District of Florida, the undersigned certifies that they have conferred in writing and by telephone with the attorneys

representing the Plaintiff regarding the relief requested in the motion. The parties were unable to reach a resolution and Counsel for Plaintiffs do not consent to the relief requested.

Dated this 8th day of November, 2017.

Respectfully submitted,

*/s/ Kevin C. Kostelnik*

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 8th day of November, 2017, a true and correct copy of the foregoing was electronically filed in the U.S. District Court, Middle District of Florida, using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

*/s/ Kevin C. Kostelnik*

**KEVIN C. KOSTELNIK**

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

DREW ADAMS, et al.,

*Plaintiff,*

v.

THE SCHOOL BOARD OF ST. JOHNS  
COUNTY, FLORIDA,

*Defendant.*

No. 3:17-cv-00739-TJC-JBT

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**NOTICE OF DEPOSITION OF ALLAN JOSEPHSON, M.D.**

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PLEASE TAKE NOTICE that Plaintiff, pursuant to Federal Rule of Procedure 30, will take the deposition of Allan Josephson, M.D., on **Monday, November 13, 2017**, beginning at **9:00 a.m.** The deposition will take place at Kentuckiana Court Reporters, 730 West Main Street, Suite 101, Louisville, KY 40202 upon oral examination before a court reporter, or other competent entity authorized to take depositions in the State of Kentucky. This deposition will continue from day to day until completed. Attached is a Subpoena to Testify at Deposition, directed to Dr. Josephson.

PLEASE TAKE FURTHER NOTICE that this deposition may be recorded by audio, audiovisual, videographic, and/or stenographic means. This deposition is taken for the purpose of discovery or for such other purposes as are permitted under the Federal Rules of Civil Procedure.

If the deponent requires a special accommodation or an interpreter, please provide written notice to the undersigned by no later than November 6, 2017.

November 3, 2017

Respectfully submitted,

*/s/ Natalie Nardecchia*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2017, I caused a true and complete copy of the foregoing NOTICE OF DEPOSITION OF ALLAN JOSEPHSON, M.D., to be served upon the following parties hereto via email:

Robert J. Sniffen ([rsniffen@sniffenlaw.com](mailto:rsniffen@sniffenlaw.com))  
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Attorneys for Defendant, The School Board of St. Johns County, Florida

*/s/ Natalie Nardecchia*

Natalie Nardecchia

*(admitted pro hac vice)*

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AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida



Drew Adams, a minor

Plaintiff

The School Board of St. Johns County, Florida

Defendant

Civil Action No. 3:17-cv-00739-TJC-JBT

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Allan Josephson, M.D., 200 Chestnut Street, Louisville, KY 40202

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (Kentuckiana Court Reporters, 730 West Main Street, Suite 101, Louisville, KY 40202) and Date and Time (11/13/2017 9:00 am)

The deposition will be recorded by this method: Court reporter

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/03/2017

CLERK OF COURT

OR

Handwritten signature of attorney

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiff Drew Adams

Natalie Nardecchia, 4221 Wilshire Blvd., Suite 280, Los Angeles, CA 90010; nnardecchia@lambdalegal.org; (213) 382-7600

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 3:17-cv-00739-TJC-JBT

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

DREW ADAMS, et al.,

*Plaintiff,*

v.

THE SCHOOL BOARD OF ST. JOHNS  
COUNTY, FLORIDA,

*Defendant.*

No. 3:17-cv-00739-TJC-JBT

**AMENDED NOTICE OF DEPOSITION OF ALLAN JOSEPHSON, M.D.**

PLEASE TAKE NOTICE that Plaintiff, pursuant to Federal Rule of Procedure 30, will take the deposition of Allan Josephson, M.D., on **Monday, November 13, 2017**, beginning at **9:00 a.m.** The deposition will take place at Kentuckiana Court Reporters, 730 West Main Street, Suite 101, Louisville, KY 40202 upon oral examination before a court reporter, or other competent entity authorized to take depositions in the State of Kentucky. This deposition will continue from day to day until completed. Attached is a revised Subpoena to Testify at Deposition, directed to Dr. Josephson.

PLEASE TAKE FURTHER NOTICE that this deposition may be recorded by audio, audiovisual, videographic, and/or stenographic means. This deposition is taken for the purpose of discovery or for such other purposes as are permitted under the Federal Rules of Civil Procedure.

If the deponent requires a special accommodation or an interpreter, please provide written notice to the undersigned by no later than November 7, 2017.  
November 6, 2017

Respectfully submitted,

*/s/ Natalie Nardecchia*  
Natalie Nardecchia  
(*admitted pro hac vice*)  
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[nathaniel.smith@pillsburylaw.com](mailto:nathaniel.smith@pillsburylaw.com)

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 6, 2017, I caused a true and complete copy of the foregoing AMENDED NOTICE OF DEPOSITION OF ALLAN JOSEPHSON, M.D. to be served upon the following parties hereto via email:

Robert J. Sniffen ([rsniffen@sniffenlaw.com](mailto:rsniffen@sniffenlaw.com))  
Michael P. Spellman ([mspellman@sniffenlaw.com](mailto:mspellman@sniffenlaw.com))  
Terry J. Harmon ([tharmon@sniffenlaw.com](mailto:tharmon@sniffenlaw.com))  
Kevin C. Kostelnik ([kkostelnik@sniffenlaw.com](mailto:kkostelnik@sniffenlaw.com))  
SNIFFEN & SPELLMAN, P.A.  
123 North Monroe Street  
Tallahassee, FL 32301  
Attorneys for Defendant, The School Board of St. Johns County, Florida

*/s/ Natalie Nardecchia*  
Natalie Nardecchia  
(*admitted pro hac vice*)  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.  
4221 Wilshire Boulevard, Suite 280  
Los Angeles, CA 90010-3512  
Tel. 213-382-7600 | Fax: 213-351-6050  
[nnardecchia@lambdalegal.org](mailto:nnardecchia@lambdalegal.org)

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

Drew Adams, a minor
Plaintiff
v.
The School Board of St. Johns County, Florida
Defendant
Civil Action No. 3:17-cv-00739-TJC-JBT

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Allan Josephson, M.D., 200 Chestnut Street, Louisville, KY 40202

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (Kentuckiana Court Reporters, 730 West Main Street, Suite 101, Louisville, KY 40202) and Date and Time (11/13/2017 9:00 am)

The deposition will be recorded by this method: Court reporter

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Attachment

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/06/2017

CLERK OF COURT

OR [Handwritten Signature]
Attorney's signature

Signature of Clerk or Deputy Clerk

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiff Drew Adams, who issues or requests this subpoena, are: Natalie Nardecchia, 4221 Wilshire Blvd., Suite 280, Los Angeles, CA 90010; nnardecchia@lambdalegal.org; (213) 382-7600

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 3:17-cv-00739-TJC-JBT

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
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**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

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**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

### ATTACHMENT TO SUBPOENA

Plaintiff requests that the deponent, Dr. Josephson, bring the following documents, electronically stored information, or objects, to the deposition on November 13, 2017, and permit inspection and copying thereof, pursuant to Federal Rule of Civil Procedure 30.

As used in the requests below, “you” refers to Dr. Allan Josephson.

1. Documents, including those electronically stored or maintained, sufficient to show that you review transgender patients at the Bingham Clinic.
2. Documents, including those electronically stored or maintained, sufficient to show your duties or responsibilities as CEO of the Bingham Clinic.
3. Documents, including those electronically stored or maintained, sufficient to show that you have evaluated, treated, and consulted with approximately 60 transgender children and adolescents, as set forth in your expert report in this matter.
4. Documents, including those electronically stored or maintained, sufficient to show the diagnoses, if any, you made, and the treatments, if any, you have prescribed to the 60 transgender children and adolescents you have evaluated, treated, and consulted with, as set forth in your expert report in this matter.
5. Documents, including those electronically stored or maintained, sufficient to show that you have, in treating transgender patients, engaged in efforts in aligning a patient’s gender identity with his or her birth sex, as indicated in your expert report in this matter.
6. Documents, including those electronically stored or maintained, sufficient to show the name and address of all of the private psychotherapy offices at which you have evaluated, treated, and consulted with transgender children and adolescents, as set forth in your expert report in this matter.