

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.

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

Pursuant to Rules 26, 34 and 45 of the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the Middle District of Florida (the "Local Rules"), Plaintiff Drew Adams ("Plaintiff" or "Drew"), by and through his next friend and mother, Erica Adams Kasper, opposes *Defendant's Combined Objections and Emergency Motion to Quash Subpoena or, in the Alternative, for Protective Order and Supporting Memorandum of Law* filed on November 8, 2017 [D.E. 80] (the "Motion"), and respectfully requests that the Motion be denied.

**INTRODUCTION**

By its Motion, Defendant is effectively asking this Court to thwart Plaintiff's efforts to obtain documents that relate to issues raised in Dr. Josephson's expert report that go directly to his qualifications and experience. In his initial report served on October 2, 2017 (the "Report"), Dr. Josephson identified himself as an expert psychiatrist in transgender

health on the basis, in part, of having consulted with, evaluated and/or treated 60 transgender patients during this career.<sup>1</sup> Since the issuance of the Report, Plaintiff has attempted to confirm Dr. Josephson's experience on issues relevant to this case and to verify the accuracy of his representations regarding the treatment of 60 transgender children and adolescents. As a result of these efforts, Plaintiff has good faith basis to believe that the statements are, at best, misleading and, at worst, inaccurate. Once Plaintiff obtained a good faith basis to question certain of the information contained in the Report regarding Dr. Josephson's experience, Plaintiff prepared and issued the subpoena that is the subject of the Motion.

The Motion should be denied because as a threshold matter Defendant does not have standing to object to the subpoena. The Motion is also facially insufficient given that none of the arguments raised by Defendant amounts to good cause to quash the subpoena. *First*, Dr. Josephson was provided sufficient time to respond<sup>2</sup> because Rule 45 requires only a reasonable period to respond (not 30 days) and any delay was created by Defendant in any event.<sup>3</sup> *Second*, no HIPAA concerns are implicated as Plaintiff advised Defendant that all

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<sup>1</sup> Report at ¶8.

<sup>2</sup> Given that this Court entered an order that, among other things, postpones Dr. Josephson's deposition [D.E. 81], Defendant's argument regarding timing is moot. It is likely that Dr. Josephson's deposition cannot be re-scheduled prior to the November 22, 2017 discovery cut-off given the other depositions already calendared, but presumably the parties can work together to find an agreeable date prior to the trial.

<sup>3</sup> Plaintiff accepted service on behalf of both of his experts in this case and for each of the third party witnesses to facilitate Defendant's taking of the depositions and to avoid unnecessary expense and delay. Although Plaintiff requested the same courtesy with respect to Defendant's expert Dr. Josephson, for reasons unknown to Plaintiff, counsel for Defendant refused to accept service for either its own experts, Dr. Josephson and Dr. Hruz, and has likewise not agreed to accept service for any of the third party witnesses that it has identified. This required Plaintiff to physically serve Dr. Josephson, an exercise that requires more time

protected health information (“PHI”) (names, social security numbers, addresses, etc.) could be (and should be) redacted. Federal law expressly provides that such information can be disclosed in any event and such information is already expressly protected by the Stipulated Protective Order, dated October 12, 2017 [D.E. 72] in this case. *Third*, by virtue of Dr. Josephson’s representation that he provided medical care to these transgender patients (and, thus should have copies of their medical records in his own files) and the fact that he is the Chief Executive Officer of Bingham Clinic, he has possession, custody or control over the requested materials. As such, production of the documents of any patients he may have treated individually or through the clinic presents no burden or hardship on Dr. Josephson. *Fourth*, in an effort to ameliorate any claimed shortness in time to respond, Plaintiff advised Defendant that he would consider receiving the documents at a later mutually agreed upon date. Lastly, to the extent that Dr. Josephson believed relief in a federal district court in Kentucky was appropriate, he certainly could have sought such relief. For these reasons, the Motion should be denied.

## **ARGUMENT**

### **1. Defendant Lacks Standing to Quash the Subpoena served on Dr. Josephson.**

“A party does not have standing to quash a subpoena served on a third party unless the party alleges a personal right or privilege with respect to the materials subpoenaed.”

*Cellairis Franchise, Inc. v. Duarte*, 193 F. Supp. 3d 1379, 1381 (N.D. Georgia 2016)

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than simply emailing the subpoena to counsel. The subpoena was indisputably served within days of Dr. Josephson’s issuance of his rebuttal report on November 3, 2017. Attached as Composite Exhibit “A” is the communications with counsel for Defendant where Defendant refused to accept service of the subpoena for Dr. Josephson.

(citations omitted). Courts find a “personal right” to subpoenaed documents “in limited circumstances, including personal bank records, previous employment, social networking accounts, and webmail inboxes.” *Id.* (citation omitted); *see also Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc.*, 231 F.R.D. 426, 429 (M.D. Florida 2005) (the defendants failed to establish a “personal right” as to business records of non-parties, and thereby lacked standing under Rule 45 to quash the subpoenas regarding financial records).

Here, Defendant has not even alleged that it meets the required criteria to intervene in the validly served subpoena, nor could it. Defendant has no personal right with regard to the subpoenaed documents. Defendant has likewise failed to show that any of the documents are privileged. The documents requested are not privileged, and, as discussed below, Plaintiff has already agreed that any redactions can be made for personal identifying information including names, addresses, parents’ names, Social Security numbers and the like. Having failed to articulate any personal right or privilege, there is simply no basis to entertain the Motion.<sup>4</sup>

Indeed, Defendant has no personal right or privilege to protect with regards to these records. Dr. Josephson is *Defendant’s* testifying expert in this case. By issuing a report where he claims to have evaluated, consulted and/or treated 60 transgender patients and is using this as a basis to bolster his credentials as an expert in the areas of gender dysphoria

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<sup>4</sup> Although there is authority for the proposition that a party can object where there is inadequate notice, Defendant had adequate notice of the intent to serve the subpoena, but refused to accept service of the same. Plaintiff separately attempted to work cooperatively with Defendant after it objected to find a date for production that was acceptable, but Defendant refused. In short, Plaintiff tried to ameliorate any objection raised by Defendant, but Defendant simply would not agree to any accommodation other than quashing of the subpoena.

and in the treatment of transgender patients, Dr. Josephson has put the truth of these statements and his credibility as an expert in this field directly at issue. Plaintiff is entitled, based on its good faith basis, to test credibility of these statements. This simply cannot be done for 60 patients absent the documents that corroborate or invalidate his role and treatment of these patients. Dr. Josephson and Defendant should not be able to use his testimony and rely on his credentials, if Plaintiff does not have an opportunity to verify the information contained therein. Absent the medical records, there is no other way to test the extent and nature of the treatment that this expert provided. In light of Dr. Josephson's representations, Defendant has not and certainly cannot identify any personal right or privilege and accordingly, the Motion should be denied.

**2. Federal law authorizes in the disclosure of the requested information.**

Assuming the Court finds that Defendant does have standing to move to quash the subpoena of a non-party, HIPAA does not support the relief Defendant seeks. Instead, Section 164.512(e)(1)(ii) expressly provides that sought after medical records should be produced. Specifically, this section states:

*(e)Standard: Disclosures for judicial and administrative proceedings -*

**(1)Permitted disclosures.** A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

\*

\*

\*

**(ii)** In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: ...

... **(B)** The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

\*

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(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or

(B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

45 C.F.R. Section 164.512(e).

Here, there is an existing HIPAA protective order in place, as well as a separate confidentiality and protective order agreed to by the parties. Indeed, the Stipulated Protective Order entered by this Court protects such information from disclosure by its express terms. *See* D.E. 72 at para 1(a) (“As used in this Stipulated Protective Order, “CONFIDENTIAL” or “CONFIDENTIAL INFORMATION” shall mean . . . protected health information . . . of any witness or party that any party or third party . . . in good faith designates as CONFIDENTIAL INFORMATION[.]”). Ignoring the express terms of the Stipulated Protective Order, Defendant focuses only on the existing HIPAA protective order, which Defendant argues only covers documents relating to the Plaintiff. However, even ignoring the Stipulated Protective Order and assuming Defendant’s argument were true as it relates to the HIPAA order, the parties could easily modify the same to extend to documents relating to third parties. Here, that is not necessary given that Plaintiff advised that Dr. Josephson and/or Defendant can redact any PHI from the documents. The sole purpose of obtaining the information is to be able to evaluate the extent and nature of the care rendered by Defendant’s expert given the testimony he provided in the Report. For this reason, it

should not be necessary to modify the existing HIPAA protective order, but Plaintiff is certainly amenable to doing so if the Court believes it would be appropriate.

It is also noteworthy that the Bingham Clinic's own website advises its patient that it may disclose PHI absent any notice to patients before doing so. Attached as Exhibit B is an excerpt from the Bingham website. Regardless, as discussed above, federal authority clearly contemplates the production of PHI and medical records associated with third parties where a subpoena is issued, which is precisely the case here. Moreover, the HIPAA protective order and the Stipulated Protective Order ensure that the materials are properly maintained. In short, there is no basis to withhold the production of the records. However, to the extent Defendant or Dr. Josephson chose, they can certainly redact any PHI as Plaintiff has previously advised.

**3. Plaintiff complied with Rule 45 and the documents should be produced.**

Federal Rule of Civil Procedure 45 provides that a party may serve a subpoena on a nonparty commanding them to produce “designated documents, electronically stored information, or tangible things” in the nonparty's “possession, custody, or control.” Fed. R. Civ. P. 45(a)(1)(A)(iii). Rule 45 does not provide a minimum time period within which compliance with a subpoena may be commanded. When a subpoena is issued during discovery, typically the issuing party may allow up to 30 days after service to comply with a subpoena, but may demand compliance within a shorter time period if reasonable under the circumstances (*see Subair Sys., LLC v. Precisionaire Systems, Inc.*, No. 08-cv-60570, 2008

WL 1914876, at \*2 & n. 4 (S.D. Fla. Apr. 26, 2008) (ten days notice reasonable under FRCP 45)).<sup>5</sup>

Here, as noted above, the shortened period was precipitated by Dr. Josephson's disclosure in his report on October 2, 2017 and Plaintiff's investigation into the veracity of the same. Had Defendant's expert not made such representations—which Plaintiff has a good faith basis to believe is either entirely inaccurate or at best misleading—the subpoena would be unnecessary. The timing was exacerbated by Defendant's refusal to accept service of the subpoena, something that Plaintiff did for both of his experts and for each of the four non-party witnesses. Given the timing of the upcoming trial, the timing of Dr. Josephson's disclosure regarding the treatment at issue and the prejudice that Plaintiff would suffer if he could not appropriately test the statements made by this expert, this Court should either shorten the time period for production to the date of his deposition (which will now be rescheduled) or, alternatively, require production of the information prior to the close of discovery.

**4. Dr. Josephson has possession, custody and control of the documents requested because he is the CEO of Bingham Clinic.**

Defendant next suggests that he does not have the ability to produce the information as the documents belong to the Bingham Clinic.<sup>6</sup> But Dr. Josephson holds himself out as the

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<sup>5</sup> It also bears mentioning that the subpoena issued to Dr. Josephson complies with the authority cited by Defendant, *Marsh v. Jackson*, 141 F.R.D. 431 (W.D. Va. 1992), which supports first trying to obtaining documents related to an expert's work from the expert himself. This is precisely what Plaintiff did. Due to Defendant's efforts to block production, Plaintiff will be forced to separately subpoena the entity directly to obtain the information, which Dr. Josephson should easily be able to produce with little or no burden whatsoever.

CEO of that entity, and claims to supervise those working in the clinic. In light of Dr. Josephson's position and scope of purported employment, and in particular his representation regarding the treatment, consultation and evaluation of patients, it is unlikely that these documents are not in his possession, custody or control given. Accordingly, the medical records associated with the care he rendered to transgender patients—which are the only ones that Plaintiff requested—should be in files he maintains consistent with the rules relating to the state board of medicine. Plaintiff has not asked for the files of other physicians, nor does Plaintiff seek any PHI of these patients. Plaintiff simply wants to be able to question Dr. Josephson using the medical records for these individuals to establish what specific care Dr. Josephson rendered to these 60 patients and whether Dr. Josephson has accurately represented his experience rendering care to transgender individuals. This simply cannot be done properly absent the redacted medical records.

When interpreting the meaning of “possession, custody or control,” courts have held that “[c]ontrol is defined not only as possession, but as the legal right to obtain the documents requested upon command.” *Costa v. Kerzner Intern. Resorts, Inc.*, 277 F.R.D. 468, 471 (S.D. Fla. 2011) (citing *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984)); see also *Jans ex rel. Jans v. The GAP Stores, Inc.*, No. 05–1534, 2006 WL 2691800, at \*2

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<sup>6</sup> Dr. Josephson's report is unclear regarding whether all or any of the 60 patients were Bingham patients or whether he consulted with, treated or evaluated individuals at other facilities or in an individual private practice. Plaintiff does not have that information at this time, but from his Curriculum Vitae it appears that Dr. Josephson has been associated with the Bingham Clinic since 2003 and associated with the University of Louisville for the same period. To the extent Dr. Josephson treated these patients at an individual private practice rather than at Bingham, he would obviously be in possession, custody, and control of such documents.

(M.D. Fla. Sept. 20, 2006) (emphasizing that the “term ‘control’ is broadly construed”).<sup>7</sup> In *Siegmund v. Xuelian*, No. 12-62539, 2016 WL 1359595 (S.D. Fla. Apr. 5, 2016), the plaintiff sought to compel the production of corporate documents related to the defendants’ positions as *former* officers of a corporation. *See Siegmund*, 2016 WL 1359595 at \*2. The court held that it could not compel the defendants to produce corporate documents because (1) as former officers they did not have sufficient control over the documents belonging to their former corporation, and (2) an order to compel would ignore the legal distinction between a corporation and its officers and shareholders. *See id.* at 3. Unlike in *Siegmund*, Dr. Josephson is the acting CEO of the Bingham Clinic<sup>8</sup> and has affirmatively represented that he has evaluated, consulted with and/or treated 60 transgender patients, meaning that he should maintain copies of such records given his stated involvement in their care. As the CEO, there can be no question that he has the “legal right to obtain the documents requested upon command.” *See Searock*, 736 F.2d at 653; *see also Nelson v. United States*, 201 U.S. 92, 115-16 (1906). Dr. Josephson, the CEO, is the human manager of the corporation, and therefore has possession, custody, or control of the corporation’s documents sought by the subpoena, which he himself put at issue in this case. For these reasons, the Motion should be denied and the documents produced albeit redacted of any PHI.

**5. Plaintiff has made every possible accommodation to Defendant and its expert.**

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<sup>7</sup> Although these cases are in the context of FRCP Rule 34, governing requests for production served on a party, the rule uses precisely the same language as Rule 45 and courts elsewhere appear to use the same standard for both rules.

<sup>8</sup> *See* Dr. Josephson’s expert report at ¶¶2 and 7.

In connection with the meet and confer, Plaintiff made it clear that any PHI could be redacted from responsive material produced. Defendant fails to mention this offer in its Motion, but Plaintiff made it clear both orally and in writing that this would be acceptable. Plaintiff also attempted to accommodate the other complaint regarding timing and offered—to this own detriment—to accept production of the documents after the deposition of Dr. Josephson but in advance of the discovery close. These documents are important to establish the actual level of expertise that Dr. Josephson has gained in treating transgender individuals. While Plaintiff would like to have the information at the deposition, it was willing to accept the documents later so that it could at least have them in advance of trial.

### **CONCLUSION**

Defendant failed to establish good cause and therefore this Court should not issue a protective order. Rule 45 (d)(3) provides the bases for quashing or modifying a subpoena, but, as noted above, a party must have standing to do so. Given that Defendant has no standing to object or otherwise seek to quash the subpoena discussed above, this Court should likewise not issue a protective order or otherwise address or adjudicate Defendant's objections. To the extent that Dr. Josephson has legitimate objections to the subpoena, only he can raise them absent any demonstration that Defendant has some specific interest or privilege in the documents at issue. Even if Defendant had standing, it has not met the burden to establish that any of the claimed challenges were not remedied by the concessions Plaintiff offered in the meet and confer process. The Motion should be denied.

Dated: November 10, 2017

Respectfully submitted,

/s/ Jennifer G. Altman

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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 10, 2017, I caused a true and complete copy of the foregoing was served on Defendant's counsel of record via email as follows:

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

*/s/ Jennifer G. Altman*

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**COMPOSITE  
EXHIBIT A**

**Natalie Nardecchia**

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**From:** Natalie Nardecchia  
**Sent:** Friday, November 3, 2017 11:02 AM  
**To:** Robert J. Sniffen; Michael Spellman; 'Terry Harmon'; Kevin Kostelnik  
**Cc:** 'Rivaux, Shani'; Altman, Jennifer; Lapointe, Markenzy; Kaplan, Aryeh; Tara Borelli; Paul Castillo; Omar Gonzalez-Pagan  
**Subject:** Notice of Deposition - Dr. Josephson  
**Attachments:** Notice of Deposition and subpoena Josephson.pdf

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	Robert J. Sniffen	
	Michael Spellman	
	'Terry Harmon'	
	Kevin Kostelnik	
	'Rivaux, Shani'	
	Altman, Jennifer	
	Lapointe, Markenzy	
	Kaplan, Aryeh	
	Tara Borelli	Delivered: 11/3/2017 11:02 AM
	Paul Castillo	Delivered: 11/3/2017 11:02 AM
	Omar Gonzalez-Pagan	Delivered: 11/3/2017 11:02 AM

Dear Counsel,

Please see the attached Notice of Deposition of Allan Josephson, M.D., with a subpoena for his testimony attached thereto.

Please let me know – today if possible – if your office will agree to accept service of the attached deposition subpoena for Dr. Josephson, so we can avoid having to personally serve him.

Thank you,

Natalie

Natalie Nardecchia  
Senior Attorney  
*Pronouns: she/her*  
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**Natalie Nardecchia**

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**From:** Natalie Nardecchia  
**Sent:** Monday, November 6, 2017 12:42 PM  
**To:** 'Robert J. Sniffen'; 'Michael Spellman'; 'Terry Harmon'; 'Kevin Kostelnik'  
**Cc:** 'Rivaux, Shani'; 'Altman, Jennifer'; 'Lapointe, Markenzy'; 'Kaplan, Aryeh'; Tara Borelli; Paul Castillo; Omar Gonzalez-Pagan; K D  
**Subject:** Amended Notice of Deposition - Dr. Josephson  
**Attachments:** Amended Notice of Deposition - Josephson.pdf

Tracking:	Recipient	Delivery
	'Robert J. Sniffen'	
	'Michael Spellman'	
	'Terry Harmon'	
	'Kevin Kostelnik'	
	'Rivaux, Shani'	
	'Altman, Jennifer'	
	'Lapointe, Markenzy'	
	'Kaplan, Aryeh'	
	Tara Borelli	Delivered: 11/6/2017 12:42 PM
	Paul Castillo	Delivered: 11/6/2017 12:42 PM
	Omar Gonzalez-Pagan	Delivered: 11/6/2017 12:42 PM
	K D	

Dear Counsel,

Please see the attached Amended Notice of Deposition of Allan Josephson, M.D., with a revised subpoena for his testimony and the production of records attached thereto.

Please respond to my inquiry below regarding whether your office will accept service for Dr. Josephson.

Thank you,

Natalie

**From:** Natalie Nardecchia  
**Sent:** Friday, November 3, 2017 11:02 AM  
**To:** Robert J. Sniffen <rsniffen@sniffenlaw.com>; Michael Spellman <mspellman@sniffenlaw.com>; 'Terry Harmon' <tharmon@sniffenlaw.com>; Kevin Kostelnik <KKostelnik@sniffenlaw.com>  
**Cc:** 'Rivaux, Shani' <shani.rivaux@pillsburylaw.com>; Altman, Jennifer <jennifer.altman@pillsburylaw.com>; Lapointe, Markenzy <markenzy.lapointe@pillsburylaw.com>; Kaplan, Aryeh <aryeh.kaplan@pillsburylaw.com>; Tara Borelli <tborelli@lambdalegal.org>; Paul Castillo <pcastillo@lambdalegal.org>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>  
**Subject:** Notice of Deposition - Dr. Josephson

Dear Counsel,

Please see the attached Notice of Deposition of Allan Josephson, M.D., with a subpoena for his testimony attached thereto.

Please let me know – today if possible – if your office will agree to accept service of the attached deposition subpoena for Dr. Josephson, so we can avoid having to personally serve him.

Thank you,

Natalie

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**Natalie Nardecchia**

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**From:** Natalie Nardecchia  
**Sent:** Tuesday, November 7, 2017 9:12 AM  
**To:** 'Terry Harmon'; Robert J. Sniffen; Michael Spellman; Kevin Kostelnik  
**Cc:** Rivaux, Shani; Altman, Jennifer; Lapointe, Markenzky; Kaplan, Aryeh; Tara Borelli; Paul Castillo; Omar Gonzalez-Pagan; K D  
**Subject:** RE: Amended Notice of Deposition - Dr. Josephson

Terry,

Can you please explain the bases for your proposed motion to quash the subpoena? For instance, are there specific document requests to which you object (and do you have proposed modifications), or do you object to there being any document requests at all? I would appreciate clarification.

If you contend that the amount of time in which Dr. Josephson has to produce records is insufficient, can you please explain and also tell me which date he could produce the records on prior to the close of discovery? We may be open to agreeing to a later date of production.

Thank you for confirming that Dr. Josephson will appear for his deposition on November 13. I never got a response from you as to whether your office would accept service of the subpoena to Dr. Josephson, so we will be attempting service on him today.

Natalie

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**From:** Terry Harmon [mailto:tharmon@sniffenlaw.com]  
**Sent:** Tuesday, November 7, 2017 6:05 AM  
**To:** Natalie Nardecchia <nNardecchia@lambdalegal.org>; Robert J. Sniffen <rsniffen@sniffenlaw.com>; Michael Spellman <mspellman@sniffenlaw.com>; Kevin Kostelnik <KKostelnik@sniffenlaw.com>  
**Cc:** Rivaux, Shani <shani.rivaux@pillsburylaw.com>; Altman, Jennifer <jennifer.altman@pillsburylaw.com>; Lapointe, Markenzky <markenzky.lapointe@pillsburylaw.com>; Kaplan, Aryeh <aryeh.kaplan@pillsburylaw.com>; Tara Borelli <tborelli@lambdalegal.org>; Paul Castillo <pcastillo@lambdalegal.org>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; K D <kd@kdlawoffice.com>  
**Subject:** RE: Amended Notice of Deposition - Dr. Josephson

Good morning Natalie:

I spoke to Omar this morning at the deposition site, but he suggested I reach out to you via-email. We plan to file a motion to quash the subpoena served yesterday with respect to the deposition of Dr. Josephson on 11/13. This deposition has been scheduled for at least 2 weeks, and Plaintiff waited until a week before the deposition to demand that Dr. Josephson bring documents to the deposition. Even more, Dr. Josephson's deposition was not originally noticed as a deposition *duces tecum*. We will obviously be proceeding with the deposition on 11/13, but we will be moving to quash the document production portion of the subpoena.

Please feel free to let me know your position. We will be filing today. If you need to discuss the matter further, please call Robert Sniffen at our Firm.

Terry

Terry J. Harmon, Esquire

Shareholder

**SNIFFEN & SPELLMAN, P.A.**

123 North Monroe Street

Tallahassee, Florida 32301

T 850.205.1996 / F 850.205.3004

[tharmon@sniffenlaw.com](mailto:tharmon@sniffenlaw.com) / [www.sniffenlaw.com](http://www.sniffenlaw.com)



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**From:** Natalie Nardecchia [<mailto:nNardecchia@lambdalegal.org>]

**Sent:** Monday, November 06, 2017 3:42 PM

**To:** Robert J. Sniffen <[rsniffen@sniffenlaw.com](mailto:rsniffen@sniffenlaw.com)>; Michael Spellman <[mspellman@sniffenlaw.com](mailto:mspellman@sniffenlaw.com)>; Terry Harmon <[tharmon@sniffenlaw.com](mailto:tharmon@sniffenlaw.com)>; Kevin Kostelnik <[KKostelnik@sniffenlaw.com](mailto:KKostelnik@sniffenlaw.com)>

**Cc:** Rivaux, Shani <[shani.rivaux@pillsburylaw.com](mailto:shani.rivaux@pillsburylaw.com)>; Altman, Jennifer <[jennifer.altman@pillsburylaw.com](mailto:jennifer.altman@pillsburylaw.com)>; Lapointe, Markenzy <[markenzy.lapointe@pillsburylaw.com](mailto:markenzy.lapointe@pillsburylaw.com)>; Kaplan, Aryeh <[aryeh.kaplan@pillsburylaw.com](mailto:aryeh.kaplan@pillsburylaw.com)>; Tara Borelli <[tborelli@lambdalegal.org](mailto:tborelli@lambdalegal.org)>; Paul Castillo <[pcastillo@lambdalegal.org](mailto:pcastillo@lambdalegal.org)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; K D <[kd@kdlawoffice.com](mailto:kd@kdlawoffice.com)>

**Subject:** Amended Notice of Deposition - Dr. Josephson

Dear Counsel,

Please see the attached Amended Notice of Deposition of Allan Josephson, M.D., with a revised subpoena for his testimony and the production of records attached thereto.

Please respond to my inquiry below regarding whether your office will accept service for Dr. Josephson.

Thank you,

Natalie

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**From:** Natalie Nardecchia

**Sent:** Friday, November 3, 2017 11:02 AM

**To:** Robert J. Sniffen <[rsniffen@sniffenlaw.com](mailto:rsniffen@sniffenlaw.com)>; Michael Spellman <[mspellman@sniffenlaw.com](mailto:mspellman@sniffenlaw.com)>; 'Terry Harmon'

<tharmon@sniffenlaw.com>; Kevin Kostelnik <KKostelnik@sniffenlaw.com>

Cc: 'Rivoux, Shani' <shani.rivoux@pillsburylaw.com>; Altman, Jennifer <jennifer.altman@pillsburylaw.com>; Lapointe, Markenzy <markenzy.lapointe@pillsburylaw.com>; Kaplan, Aryeh <aryeh.kaplan@pillsburylaw.com>; Tara Borelli <tborelli@lambdalegal.org>; Paul Castillo <pcastillo@lambdalegal.org>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>

**Subject:** Notice of Deposition - Dr. Josephson

Dear Counsel,

Please see the attached Notice of Deposition of Allan Josephson, M.D., with a subpoena for his testimony attached thereto.

Please let me know – today if possible – if your office will agree to accept service of the attached deposition subpoena for Dr. Josephson, so we can avoid having to personally serve him.

Thank you,

Natalie

Natalie Nardecchia  
Senior Attorney  
*Pronouns: she/her*  
Lambda Legal  
Western Regional Office  
4221 Wilshire Boulevard, Suite 280  
Los Angeles, CA 90010-3512  
Tel (213) 382-7600 ext. 231  
Fax (213) 351-6050  
[nnardecchia@lambdalegal.org](mailto:nnardecchia@lambdalegal.org)  
[www.lambdalegal.org](http://www.lambdalegal.org)

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**Natalie Nardecchia**

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**From:** Natalie Nardecchia  
**Sent:** Wednesday, November 8, 2017 8:43 AM  
**To:** Kevin Kostelnik  
**Subject:** Adams subpoena to Dr. Josephson

Hi Kevin,

I got your voice message and just left you a voice message in return.

Feel free to call me to discuss the subpoena when you get a chance. My direct line is (323) 370-6905.

Thanks,

Natalie

Natalie Nardecchia  
Senior Attorney  
*Pronouns: she/her*  
Lambda Legal  
Western Regional Office  
4221 Wilshire Boulevard, Suite 280  
Los Angeles, CA 90010-3512  
Tel (213) 382-7600 ext. 231  
Fax (213) 351-6050  
[nnardecchia@lambdalegal.org](mailto:nnardecchia@lambdalegal.org)  
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**Natalie Nardecchia**

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**From:** Natalie Nardecchia  
**Sent:** Wednesday, November 8, 2017 10:36 AM  
**To:** 'Kevin Kostelnik'  
**Subject:** Adams - Subpoena to Dr. Josephson

Dear Kevin,

Thank you for conferring with me this morning regarding the deposition subpoena to Dr. Josephson.

I have re-read the HIPAA protective order. To the extent that you contend the current HIPAA protective order does not cover the documents responsive to the subpoena to Dr. Josephson we can offer the following. We could amend the HIPAA protective order or otherwise enter a specific order that provides any protections that you believe are necessary. That said, it is our position that since the relevant personally identifying information can be redacted by Dr. Josephson, there really are no HIPAA concerns. The redactions could be made for personal information that includes names, addresses, parents names, social security etc.

Please let me know your thoughts on the above, and whether, coupled with my suggestions on the phone, that is sufficient to address your concerns regarding the document requests to Dr. Josephson.

Please also confirm that regardless of any objections to the document demands or motion to quash by Defendant, that Dr. Josephson will appear for his deposition on November 13, 2017.

Thank you,

Natalie

Natalie Nardecchia  
Senior Attorney  
*Pronouns: she/her*  
Lambda Legal  
Western Regional Office  
4221 Wilshire Boulevard, Suite 280  
Los Angeles, CA 90010-3512  
Tel (213) 382-7600 ext. 231  
Fax (213) 351-6050  
[nnardecchia@lambdalegal.org](mailto:nnardecchia@lambdalegal.org)  
[www.lambdalegal.org](http://www.lambdalegal.org)

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# **EXHIBIT B**

**University of Louisville  
Physicians  
UofL Health Care Outpatient  
Center  
401 East Chestnut Street  
Louisville, KY 40202**

**JOINT NOTICE OF PRIVACY  
PRACTICES**  
University of Louisville Physicians  
Organized Health Care Arrangement

**Effective Date: April 14, 2003  
Revised: December 1, 2013**

**THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND  
DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION.  
PLEASE REVIEW IT CAREFULLY.**

**OUR PLEDGE TO YOU**

Your health information is something that University of Louisville Physicians has always worked to keep private. We also are ethically and legally bound to keep it confidential under state and federal laws.

**WHAT IS THIS DOCUMENT?**

This document, called a Joint Notice of Privacy Practices, tells you how we may use and share your health information. This includes using and sharing it so that we may provide you with health care and be paid for it, and so that we may run our business and follow state and federal legal rules. We are required by law to provide you with this notice and to follow its terms.

**WHO FOLLOWS THIS NOTICE?**

This Joint Notice describes the privacy practices of the following groups or entities:

- 1) University of Louisville Physicians practices
- 2) University of Louisville Practices: Children and Youth Project, Neonatal Follow-up, Weisskopf Child Evaluation Center (WCEC), Pediatrics Kosair Charities clinic, 550 Clinic, and Campus Health Services (all locations).

These groups or entities may change from time to time. You will be provided with a separate notice if they do not follow the privacy practices of this notice.

Other separate health care providers at the University of Louisville Medical Center also may provide you with health services. You might receive a notice of privacy practices from them, too.

**WAYS WE MAY USE AND SHARE YOUR  
HEALTH INFORMATION FOR CERTAIN  
PURPOSES WITHOUT YOUR PERMISSION**

**Treatment.** We will use and share your medical information for your care.

**Example:** Doctors, dentists, students, medical residents, or other university workers may read your record to learn if a treatment is working. Your medical information also may be shared with doctors or dentists outside of University of Louisville Physicians to decide the best treatment for you.

**Payment.** We may use and share your medical information to be paid for the care and services we provided you.

**Examples:** We may contact your insurance company to check coverage or benefits for a certain procedure, or for referral purposes. Please be aware that we report information to insurance companies based on the insurance information you provide. Insurance companies send bills to the person who is named on the insurance card, which may or may not be you.

**Health Care Operations.** We need to use and share your health information to run our health care business. We may use or share your information for several reasons related to our health care activities.

**Examples:** We may share your medical information in our training programs where students, trainees, or other health care practitioners learn to improve their health care skills. Your information may also be used for quality improvement, safety programs, and to see how well our health care personnel are doing.

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**Business Associates.** We may share your medical information with another company or organization, called a "business associate" that we hire to provide a service to us or on our behalf. Business associates must also follow privacy rules.

**Example:** A company that submits bills on our behalf to your insurance company.

**Appointment Reminders.** We may contact you to remind you of an appointment or to change one. We may also let you know that it is time for a follow-up appointment or a regular check-up.

**Health-Related Benefits, Services and Treatment Alternatives.** We may contact you to let you know about health-related benefits or services, or possible treatment alternatives that may be of interest to you.

**Fundraising Activities.** UofL health care providers rely on the kindness of the community to help us provide quality health care to this region. *Patients who share their experiences and suggest ways to work with us are giving back in a meaningful way.* Their information also helps us improve and expand our services. We may use limited information about you, called demographic information, along with the dates you received care, the department and/or physician who provided your care, outcome information, and your health insurance status for fundraising efforts to support our mission. We also may share this information with our related foundation or business associates so they can contact you for your support. Your generosity helps us continue to be an outstanding provider of health care services in this region. You have a right to opt out of receiving such communications.

**Required Disclosures.** The Secretary of the Department of Health and Human Services may investigate privacy violations. If your health information is requested as part of an investigation, *we must share your information with the Secretary*

*of the Department of Health and Human Services.* Under the same laws, we must give you access to information in your medical record. The laws also permit us to keep certain information from you.

**Required by Law.** We must share medical information if federal, state, or local law requires us to.

**Public Health and Safety.** We may share your medical information for public health reasons. These include:

- to prevent or control disease, injury, or disability;
- to report births and deaths;
- to report child abuse or neglect;
- to report information to the FDA about the products it oversees;
- to let you know that you may have been exposed to a disease or may be at risk for getting or spreading a disease or condition; or
- to your employer in certain limited instances.

**Abuse and Neglect.** The law may require us to report suspected abuse, neglect or domestic violence to state and federal agencies. Your information may be shared with these agencies for this purpose. Generally, you will be told that we are sharing this information with these agencies.

**Health Oversight Activities.** Certain health agencies are in charge of overseeing health care systems and government programs or to make sure that civil rights laws are being followed. We may share your information with these agencies for these purposes.

**Legal Proceedings.** If a court or administrative authority orders us to do so, we may release your health information and records. We will only share the information required by the order. If we receive

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any other legal request, we may also release your health information and records. However, for such other requests, we will only release the information if we are told that you know about it, and had a chance to object and did not, or if we have received confirmation that the party requesting the information has agreed to protect it under an order approved by a court or administrative authority.

**Law Enforcement.** We may share health information if a law enforcement official asks for it:

- to respond to a court order, warrant, summons, or other similar process;
- to identify or locate a suspect, fugitive, material witness, or missing person; or
- to obtain information about an actual or suspected victim of a crime.

We may share information with a law enforcement official:

- if we believe a death was the result of a crime;
- to report crimes on our property; or
- in an emergency.

**Coroners, Medical Examiners, and Funeral Directors.** We may share health information with a coroner or medical examiner to identify a deceased person or find the cause of death. We also may release health information to funeral directors if they need it to do their job.

**Organ and Tissue Donation.** If you are an organ donor, we may release medical information to the organizations in charge of getting, transporting, or transplanting an organ, eye, or tissue.

**Research.** We may share your medical record with researchers, without your permission, in very limited situations. In most cases, a researcher must submit his/her request to see your information to a special group called the Institutional Review Board ("IRB").

The IRB will decide if it should allow the researcher to use or share your information. Your medical information also may be used by or shared with researchers to prepare for research, but only under strict conditions. Under similar strict conditions, medical information about deceased people can be used or shared.

**To Prevent a Serious Threat to Safety.** We may use and share your medical information to prevent a serious threat to your health and safety or the health and safety of others.

**Specialized Governmental Functions.** We may share your medical information and records with:

**Authorized federal officials**

- for intelligence, counter-intelligence, and other national security activities authorized by law; or
- to protect the President.

**Armed forces command authorities or the Department of Veterans Affairs**

- to see if you are fit for military duty or eligible for veterans health services; or
- to see if you are medically fit to receive a security clearance by the Department of State.

**Correctional facility or law enforcement official or agency** if you are an inmate or under the custody of a law enforcement official or agency, if necessary, to:

- help the correctional facility provide you with health care; or
- protect the health and safety of you and/or others.

**Workers Compensation.** We may share your health information with agencies or individuals to

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follow workers compensation laws or other similar programs.

**WAYS WE MAY USE AND SHARE YOUR  
HEALTH INFORMATION WHEN WE HAVE  
GIVEN YOU A CHANCE TO OBJECT**

You have the right to agree or disagree to the following uses of your medical information. If you are not here or able to agree or disagree, we may still use and share information if we think that it may be best for you.

**Individuals Involved in Your Care or Payment for Your Care.** We may share medical information about you with your family members, friends, or any other person you tell us who is involved in your medical care or who helps pay for it.

**Disaster Relief.** We also may share medical information about you to a disaster relief agency so that your family can be told of your condition and location.

In some circumstances, you may have a chance to object to the sharing of information for this purpose.

**OTHER USES AND SHARING OF YOUR HEALTH INFORMATION REQUIRE YOUR WRITTEN AUTHORIZATION**

Certain uses and sharing of your health information that are not described in this notice will be made only with your written permission, called an Authorization. These include uses and disclosures of psychotherapy notes, uses and disclosures of your health information for marketing purposes, and disclosures that constitute a sale of your health information.

You may revoke your authorization at any time, but it will not be effective for uses or disclosures that have already taken place. To revoke an authorization, you must write to the University of

Louisville Physicians Privacy Officer at the address listed below.

**YOUR RIGHTS REGARDING YOUR HEALTH  
INFORMATION**

You have certain rights regarding your health information, described below. These rights apply to the health information we keep. You must submit a written request to use any of these rights. You can send your written request to the University of Louisville Physicians Privacy Officer at the address listed below.

**Right to Request Special Communications.** You have the right to ask that we write or call you at a different address or phone number and/or by a different way. We will try to follow all reasonable requests.

If you would like us to use a different address, phone number, or different way of reaching you, you must ask for this in writing. We will not ask why you want to do this. Your request must tell us how you wish to be contacted.

**Right to Inspect and Copy.** You have the right to read or get a copy of your health information, with some exceptions. We may turn down your request under certain circumstances. If we do so, you may ask for a licensed health care professional chosen by us to review why we turned you down. We will follow the reviewer's decision.

**Right to Request Changes.** If you believe the health information that we created is wrong or incomplete, you may ask us to change it. *You must provide a reason why you want the change.* We cannot take out or destroy any information already in your medical record. Under certain circumstances, we are permitted to deny your request for a change. If we do not agree to the change, we will provide you with a letter explaining the reason for our denial. You can then write us a

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letter if you disagree with our reason for denying the changes. You can send this letter to the University of Louisville Physicians Privacy Officer at the address listed below. Your letter will be attached to the information you wanted changed or corrected. We may also send you a letter in response.

**Right to an Accounting of Disclosures.** We are required to track who we share your health information with under certain circumstances. You have the right to ask for a copy of this list. Your request must give a time period, which may not be longer than 6 years.

If you would like to ask for a list of disclosures, you must ask for it in writing. You must tell us the date(s) you would like to see. The first list will be given to you free. We are permitted to charge a reasonable fee if you request an additional list of disclosures in the same 12 month period. Your right to receive this list is subject to certain limitations and the law permits us to exclude certain types of disclosures from the list we provide.

**Right to Request Restrictions.** You have the right to ask for a restriction or limitation on the medical information we use or share about you. We are not required to agree to your request, with one exception. We are required to agree when you ask us to refrain from sharing your information with a health plan, if the information pertains to a health care item or service that you have paid for out of pocket in full. For other requests, if we choose to agree, we will follow your request unless the information is needed to provide you with emergency treatment. You must tell us the type of restriction you want and to whom it applies.

**Right to Receive Breach Notifications.** In many instances, you have the right to know if your unsecured information has been lost, stolen, or otherwise seen by people who do not usually have the right to see it.

**Right to a Paper Copy of This Notice.** You have the right to a paper copy of this notice. Copies of this notice will be posted and available at each location where medical services are provided and at [www.uoflphysicians.com](http://www.uoflphysicians.com).

#### **CHANGES TO THIS NOTICE**

We reserve the right to change this notice. We reserve the right to make the revised or changed notice effective for your health information we already have as well as any we get in the future. Any changes in this notice will be posted on our web site at [www.uoflphysicians.com](http://www.uoflphysicians.com). The revised notice also will be available at any of the locations where University of Louisville Physicians offers services.

#### **WHAT IF I HAVE QUESTIONS OR NEED TO REPORT A PROBLEM?**

If you have any questions about this notice or about how your health information is used or shared by us please contact the University of Louisville Physicians Privacy Officer by calling 502-588-4520 or 855-588-6001.

If you believe your privacy rights have been violated, you may file a complaint with us.

To file a complaint, please contact the University of Louisville Physicians Privacy Officer at 502-588-4520 or 855-588-6001, or write to the Privacy Officer at PO Box 909, Louisville, KY 40201-0909. Please give as much information as possible so that the complaint can be looked into properly.

You may also file a complaint with the Secretary of the Department of Health and Human Services. ***Your care will not be affected if you file a complaint, nor will any action be taken against you.***