

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

DYLAN BRANDT, *et al.*,

PLAINTIFFS,

v.

No. 4:21-CV-00450-JM

LESLIE RUTLEDGE, *et al.*,

DEFENDANTS.

**MOTION FOR PROTECTIVE ORDER AND TO QUASH
NOTICE OF DEPOSITION OF SEPARATE DEFENDANT RHYS L. BRANMAN**

Defendants, through counsel, for their Motion for Protective Order and to Quash the Notice of Deposition to Dr. Rhys L. Branman, hereby state as follows:

1. Plaintiffs filed this lawsuit on May 25, 2021.
2. Defendant Dr. Branman has been sued in his official capacity as a member of the Arkansas State Medical Board.
3. This Court issued a Final Scheduling Order on September 30, 2021, initially setting a discovery deadline of December 17, 2021. The discovery deadline, after having been twice further extended, is now set for May 26, 2022.
4. Less than two weeks before the extended discovery deadline, Plaintiffs notified Defendants – for the first time– that they sought to depose Dr. Branman. Plaintiffs proposed May 24 and 25 as desired dates for deposing Dr. Branman.
5. Notwithstanding Plaintiffs’ unreasonably delayed notice, Defendants attempted to work with these proposed dates, but, with such a short turnaround time, Dr. Branman is not available for either date. Dr. Branman is a surgeon who actively treats patients and regularly conducts surgery in his treatment of those patients. Those surgeries are typically scheduled months in advance. Plaintiffs were notified in writing of Dr. Branman’s unavailability for those dates.

6. Only nine days before the extended discovery deadline, Plaintiffs issued a Notice of Deposition to Dr. Branman for the following Tuesday, May 24, 2022. A copy of the Notice of Deposition is attached hereto as Exhibit “A” and incorporated herein by reference.

7. On May 24, 2022, Dr. Branman is scheduled to perform three separate surgeries on three separate patients. These surgeries have been scheduled for months and were scheduled prior to Plaintiffs’ notifying Defendant Branman that they seek to depose him in this matter.

8. Additionally, Dr. Branman is unavailable for the remaining days during the week of May 23, 2022. A Declaration of Dr. Branman detailing his unavailability is attached hereto as Exhibit “B” and incorporated herein by reference.

9. On Monday, May 23, 2022, Dr. Branman is scheduled to perform a surgery on a patient that will last a total of six hours. He is also scheduled to see three patients for post operative follow up appointments. *See Ex. B, ¶ 7.*

10. On Wednesday, May 25, 2022, Dr. Branman is scheduled to perform two surgeries, one of which is scheduled to last five hours and the other will last one hour. *See Ex. B, ¶ 9.*

11. Dr. Branman is also scheduled to undergo a personal medical procedure on Thursday, May 26, 2022. After undergoing this procedure, he will need a recovery time of approximately one week. During this recovery time, he will also be unavailable. *See Ex. B, ¶ 11.*

12. As a result, Dr. Branman is unavailable during the week of May 23, 2022. Counsel for Dr. Branman notified Plaintiffs that Dr. Branman was not available for the date in question. In an attempt to confer in good faith without the need for this Court’s intervention, Defendants requested that Plaintiffs withdraw their Notice of Deposition, and that Defendants would need to file a motion to quash the Notice if Plaintiffs did not do so. Plaintiffs have unreasonably refused.

13. Of particular note, the parties have conferred for months in scheduling and coordinating depositions for multiple other parties and witnesses, and virtually all of the depositions have been scheduled several weeks in advance. Plaintiffs have never indicated throughout the parties' communications a desire to depose Dr. Branman. Forcing Dr. Branman to sit for a deposition at the last minute will impose an undue burden on him due to both professional and personal medical obligations. Plaintiffs could have easily avoided imposing this undue burden on Dr. Branman because at any time in previous negotiations, they could have – and should have – indicated a desire to depose him. Further, Dr. Branman has been a named Defendant since the inception of this litigation. The last-minute Notice suggests that Plaintiffs seek to annoy, harass, and place an undue burden on Dr. Branman with no regard to his personal and professional obligations. Plaintiffs have not provided any reason for why they waited until the eve of the extended discovery deadline, what additional information Defendant Branman will provide, or how his deposition is not otherwise duplicitous or within the scope of the rules of discovery.

14. There are currently four other depositions of the parties' expert witnesses scheduled for the weeks of May 16, 2022, and May 23, 2022, which represent the last remaining depositions that were set to take place. Specifically, expert depositions took place on Thursday, May 19, 2022, and Friday, May 20, 2022. Two more expert depositions are set to take place on Wednesday, May 25, 2022, and Thursday May 26, 2022. The expert reports prepared by these witnesses total hundreds of pages of analysis that are central to the complex legal issues in this case. Accordingly, there is extensive preparation involved for these depositions, and requires not only a thorough review of the reports and opinions of each expert, but in preparing for the witnesses' examination as well.

15. While Plaintiffs, who are currently represented by 17 different attorneys, may not take issue with preparing for another deposition at the last minute, Defendants have only four active attorneys handling this case. Defendants have relied upon the discovery agreements put in place between the parties in preparing for the already-packed deposition schedules. Because of Defendants' limited number of attorneys, they will be hindered in their ability to prepare for a deposition prior to conducting the already-scheduled expert depositions on May 25 and 26. Moreover, Defendants have now had to prepare this Motion due to Plaintiffs' conduct, which is exactly what this Court's Final Scheduling Order sought to avoid.

16. Based on these circumstances, good cause exists for quashing Dr. Branman's Notice of Deposition and issuing a protective order concerning the unduly delayed Notice of Deposition that was issued just before the close of discovery. Forcing Dr. Branman to cancel and reschedule both personal and professional medical procedures with mere days' notice could have been avoided without such a severe and undue burden to him.

17. A brief in support of this Motion is being filed contemporaneously herewith and is incorporated herein by reference.

WHEREFORE, Defendants respectfully request that this Court enter a protective order denying Plaintiffs' unduly delayed discovery request and quashing Plaintiffs' Notice of Deposition to Dr. Branman.

Respectfully Submitted,

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NOTICE OF VIDEOTAPED DEPOSITION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on May 24, 2022, Plaintiffs Dylan Brandt, et al. will take the remote and videotaped deposition of Dr. Rhys Branman before a certified court reporter in accordance with and pursuant to the Federal Rules of Civil Procedure. The deposition shall begin at 9:00 a.m. at the Office of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas, 72201. The deposition shall be recorded by audiovisual and stenographic means. All parties are invited to attend the taking of this deposition.

Dated: May 17, 2022

/s/ Leslie Cooper

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**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I, DANIEL J. RICHARDSON, hereby certify that on May 17, 2022, I caused a true and correct copy of the foregoing **NOTICE OF VIDEOTAPED DEPOSITION OF DR. RHYS BRANMAN**, to be served via electronic mail on the defendants' counsel of record as follows:

Nicholas Bronni (nicholas.bronni@arkansasag.gov)

Michael Cantrell (michael.cantrell@arkansasag.gov)

Dylan Jacobs (dylan.jacobs@arkansasag.gov)

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Dated: May 17, 2022

/s/ Daniel J. Richardson
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DECLARATION OF RHYS L. BRANMAN

I, Rhys L. Branman, hereby declare that I am competent to testify and have personal knowledge regarding the statements contained in this declaration. I further declare, under penalty of perjury, as follows:

1. I am a medical doctor and currently serve as a member of the Arkansas State Medical Board. I was appointed to the Board in May 2018 by Governor Asa Hutchinson, with my term scheduled to expire on December 31, 2022.

2. In addition to my role as a member of the Board, I also maintain a private medical practice and treat patients in this practice. In my private practice, my treatment of patients includes performing surgeries and procedures, which are scheduled months in advance.

3. On May 17, 2022, the Plaintiffs in this case served a Notice of Deposition upon me through my counsel. The deposition is scheduled to take place on Tuesday, May 24, 2022, beginning at 9:00 a.m.

4. Through my counsel, I advised Plaintiffs that I am unavailable on May 24, 2022, and I am also unavailable on May 25, 2022.

5. I submit this declaration to provide additional information concerning my unavailability during the week of May 23, 2022.

6. I currently am scheduled to perform numerous surgeries on patients under my care from May 23 through 25, 2022, respectively.

7. Specifically, on Monday, May 23, 2022, I am currently scheduled to conduct a 6-hour surgery on a patient, which is a significant undertaking. Also on that day, I have three (3) other patients who are scheduled to see me for post operative appointments. These appointments are vital in ensuring the patient is fully recovering from a surgery I have performed.

8. On Tuesday, May 24, 2022, I have three (3) total surgeries scheduled, including a 4-hour surgery. The other two surgeries on this date are both scheduled to be 1-hour surgeries, but may take longer.

9. On Wednesday, May 25, 2022, I have two (2) total surgeries scheduled, including a 5-hour surgery and another 1-hour surgery, both of which may take longer than their scheduled times.

10. As stated above, I consult with my patients months in advance regarding the scheduling of their surgeries, which necessarily involves my patients making arrangements in their own professional and personal lives. Because the scheduled surgeries are set to take place in less than a week, my patients have already made scheduling arrangements in both having their respective surgeries conducted and the time needed to recover from the surgery. Moving a surgery will cause it to be postponed until months away, and will likely cause an undue hardship on both my patient and my medical practice.

11. Similarly, I am scheduled to undergo a personal medical procedure on Thursday, May 26, 2022, which has also been scheduled for weeks. Due to this procedure, I will require approximately a recovery time of one week until I am able to begin seeing my patients again. I have had to make significant adjustments in my professional scheduling to ensure my personal

medical care does not conflict with my treatment of patients. Moving this medical procedure will cause an undue hardship on me because it will postpone my treatment and force me to reschedule this procedure to a time that will likely conflict with previously-scheduled surgeries of my own patients and cause undue hardships on those patients as well.

12. Preparing for and attending a deposition any day during the week of May 23, 2022, including on the scheduled time on Tuesday, May 24, 2022, will significantly burden my ability to perform my professional duties in treating my patients, as well as interfere with my own personal medical care.

I swear, under penalty of perjury, that the foregoing statements are true.

Executed this 19th day of May, 2022.


RHYS L. BRANMAN