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COURT OF CLAIMS
OF OHIO

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IN THE COURT OF CLAIMS OF OHIO

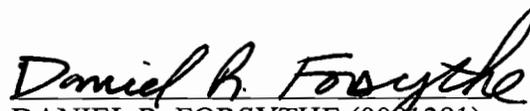
MATTHEW RIES, Admr., et al.,	:	
	:	
Plaintiffs	:	
v.	:	Case No. 2010-10335
THE OHIO STATE UNIVERSITY	:	Judge Patrick M. McGrath
MEDICAL CENTER,	:	
Defendant	:	

**DEFENDANT'S MOTION TO EXCLUDE
UNTIMELY IDENTIFIED EXPERT WITNESSES**

Defendant, The Ohio State University Medical Center ("OSUMC"), hereby moves this Court for an Order excluding plaintiffs' purported expert witnesses, Mark D. Brownell, M.D., Jane M. Leiby, M.D., and Janet W. Bay, M.D., from testifying at the trial of this matter. This Motion is made pursuant to Local Court of Claims Rule 7(E) and Ohio Rule of Civil Procedure 37(B). A memorandum in support of this motion is set forth below.

Respectfully Submitted,

MICHAEL DEWINE
Attorney General of Ohio



DANIEL R. FORSYTHE (0081391)
JEFFREY L. MALOON (0007003)
Assistant Attorneys General
Court of Claims Defense
150 East Gay St., 18th Floor
Columbus, OH 43215-4220
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COUNSEL FOR DEFENDANT

ON COMPUTER

MEMORANDUM IN SUPPORT

I. Introduction.

Defendant The Ohio State University Medical Center moves this Court to exclude the following purported plaintiffs' expert witnesses from testifying at trial due to their untimely identification: Mark D. Brownell, M.D., Jane M. Leiby, M.D., and Janet W. Bay, M.D. Counsel for plaintiffs notified defense counsel on January 8, 2015 of his intention to call these physicians as trial witnesses. (Copy of plaintiffs' counsel letter is attached as Exhibit A). Plaintiffs' counsel clearly states that he believes these three physicians "will qualify as expert witnesses." However, this notification was provided well past the deadline for identification of plaintiffs' expert witnesses. In addition, plaintiffs failed to provide expert reports from these untimely-identified experts, as required by L.C.C.R. 7(E).

Pursuant to this Court's February 7, 2014 Entry, plaintiffs' expert reports were originally due on or before June 30, 2014. The parties informally agreed to extensions of time to provide each other their reports. On June 30, 2014 (Kenneth Braunstein, M.D.; Jerome Daniel, M.D.; Anthony Gamboa, Ph.D.), July 1, 2014 (Christine Reid, RN), July 23, 2014 (Andrew Eisenberger, M.D.), July 25, 2014 (Stephen Bloomfield, M.D.; Scott Hockenberry, M.D.), plaintiffs identified their experts to defendant as well as provided the requisite expert reports. After plaintiffs' service of these reports, there was never any indication nor request from plaintiffs' counsel that additional time was needed to identify additional experts. On August 22, 2014, defendant identified its experts and provided expert reports from Stephen Payne, M.D.; Mark Fialk, M.D.; and Olaf Johansen, M.D. On October 15, 2014, defendant provided an expert report from Bruce Jaffee, Ph.D., whom was previously identified as an economist expert.

In its February 7, 2014 Entry, this Court set the discovery deadline for January 9, 2015. Depositions of both parties' above expert witnesses were conducted on various dates from October 22, 2014 through January 22, 2015. Again, the parties informally agreed to allow some of these depositions after the discovery deadline.

Plaintiffs were abundantly aware at the outset of this case of the medical issues addressed by the newly proposed experts. The three new experts identified were in fact treating physicians of plaintiffs' decedent during his final hospitalization at Riverside Methodist Hospital in September, 2009. (Compl., ¶ 16). Plaintiffs no doubt have had access to their decedent's medical records prior to filing this lawsuit in September, 2010, and knew of the identification of these medical providers. Plaintiffs' untimely identified experts should be excluded from testifying at trial, because there is no reasonable excuse why they were not previously identified.

II. Plaintiffs failed to properly identify Doctors Brownell, Leiby, or Bay as expert witnesses as required by L.C.C.R. 7(E) and Civ. R. 26(E)(1).

Plaintiffs failed to properly identify Doctors Brownell, Leiby, or Bay as expert witnesses as required by L.C.C.R. 7(E) and Civ. R. 26(E)(1). Therefore, these untimely identified expert witnesses should be excluded from trial.

Local Court of Claims Rule 7(E) provides: "A party may not call an expert witness to testify unless a written report has been procured from said witness..." and that the penalty for failure to comply with this rule is that "[a]n expert will not be permitted to testify or provide opinions on issues not raised in his report." Since plaintiffs have failed in this regard, any testimony from Doctors Brownell, Leiby, or Bay must be excluded from trial. Plaintiffs cannot demonstrate good cause for this disregard of the Local Rules of this Court.

Furthermore, Civ. R. 26(E)(1) provides that:

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows: A party is under a duty seasonably to supplement his response with respect to any question directly addressed to... the identity of each person expected to be called as an expert witness at trial and the subject matter on which he is expected to testify.

The purpose of these rules is to prevent surprise and “to avoid hampering either party in preparing its claim or defense for trial.” *Huffman v. Hair Surgeon* (1985), 19 Ohio St.3d 83, 86 (excluding a rebuttal expert that was disclosed late and not previously identified in written discovery responses). “This is accomplished by way of a discovery procedure which mandates a free flow of accessible information between the parties upon request, and which imposes sanctions for failure to timely respond to reasonable inquiries.” *Id.*, at 85.

The Supreme Court of Ohio has recognized a trial court’s authority and discretion to control the litigation before it by setting and enforcing pre-trial procedure by scheduling witness disclosures deadlines. See *Paugh & Farmer, Inc. v. Menorah Home for Jewish Aged* (1984), 15 Ohio St.3d 44. The Supreme Court has already expressly approved the trial court’s right to exclude the testimony of witnesses who were not identified in a timely manner as a way of enforcing pre-trial disclosure orders. *Id.*; *Huffman v. Hair Surgeon* (1985), 19 Ohio St. 3d 83.

As discussed above, plaintiff’s January 8, 2015 identification of Doctors Brownell, Leiby, or Bay as expert witnesses was well past not only the Court ordered expert identification deadline, but also well past the informal extension agreed upon between the parties. Yet plaintiffs provide no explanation for their untimely identification of these purported expert witnesses.

In addition, on January 3, 2011, plaintiffs served written responses to OSUMC's interrogatories and only identified the following individuals as expert witnesses: Marc Cooperman, M.D., and Kenneth Braunstein, M.D. Specifically, OSUMC's Interrogatory No. 3 asked plaintiffs to "[i]dentify each expert witness that you expect to call to testify in this action and the subject matter on which each expert is expected to testify." (Copy of plaintiffs' signed response is attached as Exhibit B). To date, plaintiffs never provided supplemental responses to this written discovery as required by Civ. R. 26(E)(1), as discussed above. Clearly, plaintiffs have failed to comply with this Court's expert disclosure date or ask for relief from such a date, and plaintiffs have failed to comply with their obligation to provide supplemental discovery responses.

OSUMC will be significantly prejudiced by plaintiffs' late disclosures. OSUMC has already produced two physicians (as well as three medical staff members) for depositions who rendered care and treatment to plaintiffs' decedent. In addition, the discovery depositions have already been taken of plaintiffs' six medical experts, and defendant's three medical experts. The discovery deadline was January 9, 2015, and now the parties must prepare for trial. Allowing additional expert witnesses at this late stage of the case causes a direct prejudice to OSUMC and its witnesses.

III. Plaintiffs have failed to provide expert reports from Doctors Brownell, Leiby, or Bay as required by L.C.C.R. 7(E).

In addition to their untimely identification as experts, plaintiffs have also failed to provide expert reports from Doctors Brownell, Leiby, or Bay as required by L.C.C.R. 7(E). Regarding the submission of reports, L.C.C.R. 7(E) states:

All experts must submit reports. If a party is unable to obtain a written report from an expert, counsel for the party must demonstrate that a good faith effort was made to obtain the report and must advise the court and opposing counsel of the name and address of the expert, the subject of the expert's expertise together with his qualifications and a detailed summary of his testimony. In the event the expert witness is a treating physician, the court shall have the discretion to determine whether the hospital and/or office records of that physician's treatment which have been produced satisfy the requirements of a written report. The court may exclude testimony of the expert if good cause is not demonstrated.

Without a report, expert witnesses cannot testify in the Court of Claims. When plaintiffs attempted to identify Doctors Brownell, Leiby, or Bay as expert witnesses, they merely referred defendant to these physicians' own treatment records of plaintiffs' decedent. (Exhibit A). However, under L.C.C.R. 7(E), plaintiffs must demonstrate that they made a good faith effort to obtain a report – even from a treating physician – and if no report is provided, a party must provide not only the name, address, and area of expertise of the witness, but also the expert's “qualifications and a detailed summary of his testimony.” It is within the Court's discretion to accept a treating physician's records in lieu of a written report. Nonetheless, the Court “may exclude testimony of the expert if good cause is not demonstrated.” See L.C.C.R. 7(E).

Because plaintiffs not only failed to timely identify Doctors Brownell, Leiby, or Bay as expert witnesses, but also failed to provide expert reports from them, including failing to demonstrate good cause, this Court must exclude their testimony at trial.

IV. Conclusion.

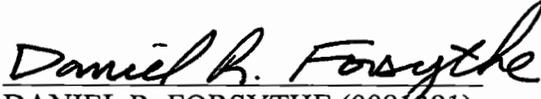
Defendant is entitled to the timely production of expert reports as required by the scheduling order and Local rules, as it should be able to learn the basis for the allegations being made. The failure of plaintiffs to comply with the Court's scheduling entry and Local Rules has

greatly prejudiced defendant. Pursuant to Civ. R. 37(E), counsel for defendant has attempted to informally resolve the matter by requesting that plaintiffs withdraw these untimely identified experts. (Copy of email from defense counsel is attached as Exhibit C). But counsel for plaintiffs have given no indication that they will withdraw these witnesses. (*Affidavit of Daniel R. Forsythe*, attached).

L.C.C.R. 7(F) specifically states that the sanctions outlined in Civ. R. 37(B)(2) may be assessed for a failure to timely comply with L.C.C.R. 7, which includes the submission of expert reports. Therefore, defendant respectfully requests that this Court issue an Order excluding Doctors Brownell, Leiby, or Bay from testifying at trial.

Respectfully Submitted,

MICHAEL DEWINE
Attorney General of Ohio


DANIEL R. FORSYTHE (0081391)
JEFFREY L. MALOON (0007003)
Assistant Attorneys General
Court of Claims Defense
150 East Gay St., 18th Floor
Columbus, OH 43215-4220
Telephone: (614) 466-7447
Fax: (866) 422-9165
COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Defendant's Motion to Exclude* was sent by regular U.S. Mail, postage prepaid, this 4th day of February, 2015 to:

David I. Shroyer
Daniel N. Abraham
536 South High Street
Columbus, Ohio 43215
Counsel for Plaintiff


DANIEL R. FORSYTHE (0081391)
Assistant Attorney General

IN THE COURT OF CLAIMS OF OHIO

MATTHEW RIES, Admr., et al., :
 :
 Plaintiffs :
 :
 v. : Case No. 2010-10335
 :
 THE OHIO STATE UNIVERSITY : Judge Patrick M. McGrath
 MEDICAL CENTER, :
 :
 Defendant :

AFFIDAVIT OF DANIEL R. FORSYTHE

STATE OF OHIO)
) SS:
 COUNTY OF FRANKLIN)

Now comes Daniel R. Forsythe, first being duly cautioned and sworn, says and deposes:

1. My name is Daniel R. Forsythe. I am an Assistant Attorney General assigned to the case of *Matthew Ries, Admr., et al. v. The Ohio State University Medical Center*, and have personal knowledge of the events set forth here;

2. On January 8, 2015, counsel for defendant received correspondence from counsel for plaintiffs identifying three new trial expert witnesses: Mark D. Brownell, M.D., Jane M. Leiby, M.D., and Janet W. Bay, M.D.;

3. On January 29, 2015 and February 3, 2015, counsel for defendant emailed counsel for plaintiffs requesting that he withdraw the above-mentioned physicians as trial witnesses due to untimely identification and for failure to comply with L.C.C.R. 7. In the emails, counsel for defendant requested a response from plaintiffs' counsel by February 3, 2015. Attached as Exhibit C to defendant's motion to exclude is a true and accurate copy of the emails;

4. As of the filing of defendant's motion to exclude, counsel for plaintiffs have given no indication that they will withdraw these witnesses;

5. Further, Affiant sayeth naught.

Daniel R. Forsythe
DANIEL R. FORSYTHE

Sworn to before me and subscribed in my presence this 4th day of February, 2015.

Lindsey M. Grant
NOTARY PUBLIC



Lindsey M. Grant, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.



CSA | COLLEY SHROYER ABRAHAM

*A Professional Association Of Trial Lawyers
Medical Negligence, Personal Injury & Product Liability*

DAVID I. SHROYER
DANIEL N. ABRAHAM
BETH C. JONES
ELIZABETH S. BURKETT
OF COUNSEL
JASON A. BLUE
OF COUNSEL

January 8, 2015

Via Email & Regular Mail

Jeffrey L. Maloon, Esq.
Daniel R. Forsythe, Esq.
Assistant Attorneys General
Court of Claims Defense Section
150 E. Gay Street, 18th Floor
Columbus OH 43215

**Re: Matthew Ries, Admr., et al. v. The Ohio State University Medical Center
Court of Claims of Ohio Case No.: 2010-10335
Trial Date: May 26, 2015**

Dear Jeff and Dan:

Following the recent deposition of Kenneth Braunstein, M.D., I asked him to clarify his opinion as to Mr. McNew's prognosis if an earlier diagnosis had been made. Enclosed please find a copy of Dr. Braunstein's supplemental report.

In addition, we are adding to our potential witness list three subsequent treating physicians from OhioHealth, to verify their treatment and diagnosis pertaining to the decedent's final admission. Those individuals, who by education and training will qualify as expert witnesses, are pathologist Mark D. Brownell, M.D., hematologist Jane M. Leiby, M.D. and neurosurgeon Janet W. Bay, M.D. I have enclosed a copy of their relevant charting from the previously exchanged OhioHealth records.

Finally, we have made a couple requests via email for dates to depose Mark Bush, LPN. It is my understanding that Dan is working on this request. We have also updated you on the list of potential mediation dates with Robert Hanson, Esq. February 10th, February 24th and March 4th are currently available. Please let us know as quickly as possible if you wish to reserve any of these three dates, or if OSU is interested in mediating sometime later in the year, but well before our May 26th trial date.

Thank you for your time and attention. If you should have any questions regarding the above, please do not hesitate to call me on my cell at 614-582-3801.

Very truly yours,

David I. Shroyer



DIS/clb

RECEIVED

JAN 05 2011

IN THE COURT OF CLAIMS OF OHIO

ATTORNEY GENERAL'S OFFICE
COURT OF CLAIMS DEFENSE

MATTHEW RIES, Admr., et al. :
Plaintiffs :
v. : Case No. 2010-10335
THE OHIO STATE UNIVERSITY : Judge Joseph T. Clark
MEDICAL CENTER :
Defendant :

PLAINTIFFS' RESPONSE TO DEFENDANT 'S FIRST
SET OF INTERROGATORIES TO PLAINTIFFS

In accordance with Civil Rule 33, Defendant requests that Plaintiffs answer the following interrogatories within twenty-eight (28) days of service hereof.

The following instructions and definitions shall apply to your answers to these interrogatories.

INSTRUCTIONS

1. Your answers are to made in the spaces provided. If additional space is needed, please attach supplementary information sheets.
2. With respect to each of the interrogatories propounded plaintiffs are to indicate who prepared the answer to each such interrogatory; to identify each person consulted in preparing the answer to each such interrogatory; and to identify any document or documents relied upon in answering any such interrogatory.
3. Where an interrogatory seeks an answer which relates to oral communications between persons, or requires reference to such oral communications, the answer should identify the person or persons among whom the communication was made. Where an interrogatory asks if a person performed a specific function, the answer should identify each person who participated in performing that function.



4. These interrogatories are continuing and the answers require supplementation of any subsequently obtained relevant information in accordance with Civil Rule 26(E).

DEFINITIONS

1. "Person" or "persons" include natural persons, corporations, firms, partnerships, associations, joint ventures or any other type or form of legal entity, whether formal or informal.

2. The word "or" shall mean and/or.

3. The term "document" shall mean any kind of written, printed, recorded, or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies, and drafts and both sides thereof, and including but not limited to: papers, books, letters, correspondence, telegrams, cables, telex messages, financial statements, memoranda, notes, notations, work papers, transcripts, minutes, reports, and recordings of telephone or other conversations, or of interviews, or of conferences or other meetings, affidavits, statements, summaries, opinions, studies, analyses, evaluations, contracts, agreements, proposals, journals, statistical records, desk calendars, appointment books, diaries, expense account records, lists, tabulations, summaries, sound recordings, computer printouts, data processing input and output, microfilms, and all other records kept by electronic, photographic, magnetic, or mechanical means, and things similar to any of the foregoing, however denominated.

4. The term "identify" shall mean:

- (A) With respect to any document (without regard to whether the document or the document's contents may be subject to some claim of privilege from disclosure) to set forth the date thereof, the name or names of the person or persons authorizing such documents, the name or names of the person or persons to whom such documents were given or transmitted, and the title, if any; and to describe the relevant page or pages and line or lines thereof, or annex a copy of the documents to these interrogatories with appropriate designations of such page or pages and line or lines;
- (B) With respect to any natural person, to state the full name, home address, home telephone number, business address, and business telephone number;

- (C) With respect to facts or contentions or allegations in this action, to state all matters which you believe to be true and relevant to the subject of the interrogatory; and
- (D) With respect to an oral communication, to state the speaker, each person spoken to or who otherwise heard the communication, and the substance of the communication.

5. The term "communication" shall mean any written or oral conversation or contact, formal or informal, at any time or place, and under any circumstance.

6. The term "complaint" shall refer to the complaint, and any amendments thereto, filed by plaintiffs in this action.

7. The term "decedent" shall refer to Michael McNew.

INTERROGATORIES

1. Identify each agent or employee of the defendant that you claim to have been negligent, and whose negligence you claim caused the decedent's death.

**ANSWER: Syed G. Husain, M.D.
Agents and Employees of Ohio State University Medical Center to be determined.**

2. With regard to each person identified in response to interrogatory number 2, please describe briefly each negligent act or omission of each such person that you claim caused the decedent's death.

18. ANSWER: The doctors, nurses, administrators, staff, and employees of Defendant OSU Medical Center fell below the accepted standard of care, skill, and diligence for health care providers and medical provider employees in Ohio or other similar communities in the care and treatment of Decedent. Defendant and its doctors, nurses, administrators, staff, and employees failed to meet the accepted standard of care, skill, and diligence including, but not limited to their: (1) failing to properly diagnose Decedent's thrombocytopenia; (2) failing to order the appropriate tests and procedures to diagnose Decedent's thrombocytopenia; (3) failing to initiate and execute the appropriate treatment plan for Decedent; (4) failing to order blood work during Decedent's August 30, 2009 physical; (5) failing to evaluate Decedent, or order blood work, based upon new complaints of bleeding, bruising, and shortness of breathe; (6) failing to refer Decedent to an Emergency Room for evaluation; and/or (7) any other negligent acts.

3. Identify each expert witness that you expect to call to testify in this action and the subject matter on which each expert is expected to testify.

ANSWER: Marc Cooperman, M.D.
Chalmers P. Wylie Ambulatory Care Center
420 N. James Road
Columbus, Ohio 43219

Kenneth M. Braunstein, M.D.
5669 Peachtree Dunwoody Road
Suite 240
Atlanta, Georgia 30342

4. Identify each lay witness that you expect to call to testify in this action.

ANSWER: Cyrelle McNew
Syed G. Husain, M.D.
Agents and Employees of the Ohio State University Medical
Center, to be determined.

5. If decedent was hospitalized prior to the date of his death, please identify each hospital at which decedent was hospitalized, the dates of hospitalization and the reason for the hospitalization.

ANSWER: No.

6. Identify any communication that you or any other person may have had with any employee or agent of defendant which you contend is an admission or acknowledgement of fault or legal responsibility on the part of the defendant with respect to the allegations and claims made in the complaint.

ANSWER: None.

7. State each chronic illness, disease or condition, including but not limited to, heart disease, hypertension, diabetes, cancer, ulcer, hernia, venereal disease, tuberculosis, mental illness, mental retardation, epilepsy, fainting spell, congenital defects, arthritis, rheumatism or diseases of the skin with which decedent was afflicted or suffered, and the dates for each condition.

ANSWER: Decedent did not suffer from any chronic illnesses.

8. Identify the source, date, and amount of any money, payments, entitlements, benefits, settlements, damages or other collateral recovery that decedent or his family members or the decedent's estate received from any person, organization, corporation, fund, labor union, insurance company, governmental agency or any other source as the result of decedent's death.

ANSWER: Unknown at this time. Plaintiff reserves the right to supplement this response.

9. Identify all documents reflecting your receipt of any money, payments, entitlements, proceeds, benefits, settlements, damages, or other collateral recovery that you identified in response to the proceeding interrogatory.

ANSWER: See answer to interrogatory number 8.

10. Identify each person that you claim is entitled to recover compensatory damages under R.C. 2125.02(B) due to decedent's death, and explain their relationship to decedent.

ANSWER: Cyrelle McNew – Wife
Jason McNew – Son
Bradford McNew – Son
Mitchell McNew- Son

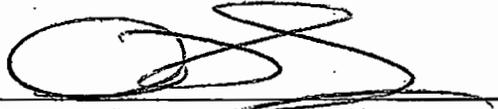
11. State the amount of any lost wages (past or future) that you will claim were lost as a result of decedent's death and which you claim should be recovered in this action.

ANSWER: Unknown at this time. Plaintiff reserves the right to supplement this response.

12. Was an autopsy performed on the decedent?

ANSWER: No.

Respectfully submitted,



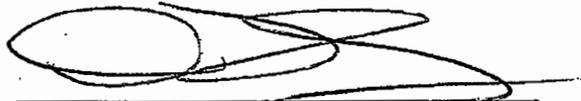
David I. Shroyer (0024099)
COLLEY SHROYER & ABRAHAM CO., LPA
536 South High Street
Columbus, OH 43215
*Attorney for Plaintiffs Cyrelle McNew and
Matthew Reis, Admin. of the
E/O Michael McNew, dec'd.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by regular U.S. Mail, postage prepaid, upon the following counsel of record this 31st day of January, 2011:

Karl W. Schedler, Esq.
Daniel R. Forsythe, Esq.
Assistant Attorneys General
Court of Claims Defense
150 East Gay Street, 18th Floor
Columbus, OH 43215
*Counsel for Defendant OSUMC,
Court of Claims Action and
Syed G. Husain, M.D.,
Franklin Cty. Common Pleas Action*

Timothy T. Tullis, Esq.
Traci A. McGuire, Esq.
Kegler, Brown, Hill & Ritter
65 East State Street, Suite 1800
Columbus, OH 43215
*Counsel for Defendant
Ohio State University Physicians, Inc.
Franklin Cty Common Pleas Action*



David I. Shroyer (0024099)
*Attorney for Plaintiffs Cyrelle McNew and
Matthew Reis, Admin. of the
E/O Michael McNew, dec'd.*

VERIFICATION

STATE OF _____)
COUNTY OF Middlesex)ss.
_____)

Having first been sworn and cautioned, I hereby verify that the answers to the foregoing interrogatories are true.

[Signature]

Sworn to before me at Sovereign Bank Newton Center this 13 day
of December, 2010.

[Signature]
NOTARY PUBLIC



JASON WEISS
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 28, 2015

RECEIVED

Daniel R. Forsythe

From: Daniel R. Forsythe
Sent: Tuesday, February 03, 2015 4:30 PM
To: David I. Shroyer (dshroyer@csajustice.com)
Cc: Cheryl Botkin (cbotkin@csajustice.com); Kim Van Doorn (kvandoorn@csajustice.com); Jeffrey Maloon (jeffrey.maloon@ohioattorneygeneral.gov)
Subject: RE: Ries - Riverside treating physicians
Attachments: image004.png; image001.png

David:

I understand that you spoke with my co-counsel Mr. Maloon today to discuss our issue regarding your recent identification of Doctors Brownell, Leiby, and Bay as trial witnesses (outlined in the below email). We are informing you that we are not willing to stipulate to them being witnesses at trial. Therefore, as it appears you are unwilling to withdraw them as potential witnesses, we will file a motion to have them excluded as witnesses due to untimely identification.

Many thanks
Dan



Daniel R. Forsythe
Senior Assistant Attorney General – Court of Claims Defense Section
Office of Ohio Attorney General Mike DeWine
Office number: 614-466-7447
Fax number: 866-422-9165
Direct number: 614-466-8420
Daniel.Forsythe@OhioAttorneyGeneral.gov

**Fro
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Dani
el R.
Fors
ythe
**Sen
t:**

Thursday, January 29, 2015 1:44 PM
To: David I. Shroyer (dshroyer@csajustice.com)
Cc: Cheryl Botkin (cbotkin@csajustice.com); Kim Van Doorn (kvandoorn@csajustice.com); Jeffrey Maloon (jeffrey.maloon@ohioattorneygeneral.gov)
Subject: Ries - Riverside treating physicians

David:

We are in receipt of your January 8, 2015 correspondence, in which you identify Mark Brownell, M.D., Jane Leiby, M.D., and Janet Bay, M.D. as trial expert witnesses. However, such notification was done after the expert witness identification deadline. In addition, you failed to comply with Local Rule 7(E). I now request that you withdraw these physicians as potential witnesses. Otherwise, I will be forced to file a motion to exclude their testimony under Local Rule 7(E). Please let me know by Tuesday February 3, 2015 of your intention.

Many thanks,
Dan

Daniel R. Forsythe
Senior Assistant Attorney General – Court of Claims Defense Section
Office of Ohio Attorney General Mike DeWine
Office number: 614-466-7447

