

IN THE COURT OF CLAIMS FOR THE STATE OF OHIO 2015 FEB 12 PM 12:56

**MATTHEW RIES, Admr., et al.,**

Plaintiff,

vs.

**THE OHIO STATE UNIVERSITY  
MEDICAL CENTER,**

Defendant.

Case No. 2010-10335

Judge McGrath

**ORIGINAL**

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

On February 4, 2015, Defendant filed a motion to exclude certain witnesses from testifying at trial because they were not timely disclosed as experts. Plaintiffs, by and through counsel, respectfully submit the following response.

Respectfully submitted,



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**ON COMPUTER**

## MEMORANDUM IN OPPOSITION

By letter dated January 8, 2015, counsel for Plaintiffs notified defense counsel of his intent to include three subsequent treating physicians from OhioHealth as potential witnesses in this case. These individuals, who by education, training, and experience would qualify as expert witnesses, are pathologist Mark D. Brownell, M.D., hematologist Jane M. Leiby, M.D., and neurosurgeon Janet W. Bay, M.D. Defendant has moved the Court to exclude these witnesses on the basis that they were not timely disclosed. Plaintiffs voluntarily withdraw Dr. Bay from the list of possible witnesses.

Neither Dr. Brownell nor Dr. Leiby was specially retained by Plaintiffs to provide expert testimony in this case and it is not Plaintiffs' intent to call them to provide expert testimony. These physicians treated Michael McNew at Riverside Methodist Hospital and the medical chart from that admission includes records prepared by these physicians. Plaintiffs' reason for identifying these subsequent treating physicians has been explained to Defendant and Defendant is aware that Plaintiffs have no real interest in calling any of these physicians to provide expert testimony beyond what is contained within the medical records. There is no dispute regarding the authenticity of the OhioHealth medical records related to the decedent's treatment at Riverside Methodist Hospital. Rather, the treating physicians have been named as a prophylactic measure if any admissibility issue is raised regarding the notes which they made in these records.

As the Court is aware, recorded data and observations in a properly authenticated medical record are admissible. In this case, the medical records include certain statements from these treating physicians that go beyond their recorded observations and could be argued to be inadmissible without the testimony of the physician authoring the statement to authenticate it.

These physicians have been named as potential witnesses out of an abundance of caution to address any potential evidentiary issue that may arise as to statements that are part of the

medical records. Based on the anticipated evidentiary rulings of this Court, in all likelihood testimony from Dr. Brownell and Dr. Leiby will not even be necessary since the records themselves provide the information Plaintiffs seek to introduce. The physicians have been disclosed solely to address any evidentiary issue that may arise relating to the statements they have recorded in the medical chart.

For the foregoing reasons, Plaintiffs urge the Court to hold in abeyance any ruling on Defendant's motion until there is a definitive ruling on the evidentiary issues that these witnesses were identified to address.

Respectfully submitted,

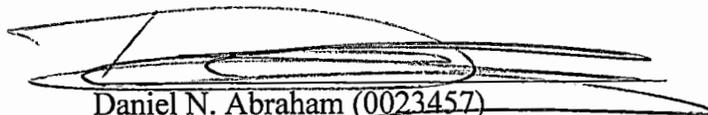


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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing instrument was served upon the following counsel of record via email only, this 12<sup>th</sup> day of February, 2015:

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