

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

**WALTER PAUL HOOVER AND
VIVIAN HOOVER**

PLAINTIFFS

V.

4:11CV00395

THE UNITED STATES OF AMERICA

DEFENDANT

ORDER

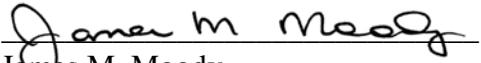
Pending are the government's objections to the use of the deposition of Dr. Vincent Runnels based upon Ark. Code Ann. §16-114-207(3), docket # 33. Plaintiffs have responded and reply briefs have been filed by both parties. Also pending is Plaintiffs' alternative motion to declare Ark. Code Ann. §16-114-207(3) unconstitutional.

The government argues that the Plaintiffs are barred from offering standard of care opinion testimony or proximate causation opinion testimony by Dr. Runnels in their case-in-chief. Dr. Runnels voluntarily offered his standard of care and causation opinions in his deposition. Further, as one of Plaintiff's treating physicians, Dr. Runnels opinions are also contained in the Plaintiff's medical records. Dr. Runnels is not subject to the subpoena power of the Court, thus, Plaintiffs have designated his deposition for use at trial.

The Court finds that Dr. Runnels deposition testimony can be used at trial. The government's objections are overruled. (Docket # 33) However, the Court will allow the government the opportunity to conduct a cross examination of Dr. Runnels by deposition

sometime prior to trial. Plaintiffs' motion to declare Ark. Code Ann. § 16-114-207(3) unconstitutional is denied as moot.

IT IS SO ORDERED this 24th day of June, 2013.


James M. Moody
United States District Judge