

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Baltimore Division

ALBERT SNYDER, *

Plaintiff *

v. * Civ. No.: 1:06-cv-01389-RDB

FRED W. PHELPS, SR., *

et al. *

Defendants. *

* * * * *

SECOND DECLARATION OF NEIL BLUMBERG M.D.

My name is Neil Blumberg M.D. This declaration is made under the penalties of perjury:

1. I am over the age of eighteen and am competent to testify herein.

2. I reincorporate by reference herein my Declaration in this litigation that is dated June 6 or 7, 2007.

3. Defense counsel Jonathan Katz has informed me that the Court has offered the parties an opportunity to address the scope of the June 18 independent medical examination (IME) by me of the plaintiff, Albert Snyder. Defense counsel also has informed me that the Court determined that the IME will be limited to three hours.

4. Unless stated otherwise in this Declaration, all opinions stated herein are made within a reasonable degree of medical certainty.

5 By now, I have carefully reviewed the medical records provided in discovery by Plaintiff's counsel (and provided to me by Mr. Katz) as well as Plaintiff's deposition transcript from April 12, 2007. Even with this information, the IME will only be complete and accurate for there to be no court-imposed limits on the scope of inquiry and testing involved in my examination of Mr. Snyder, aside from that Mr. Snyder will not be asked to disrobe, there will be no physical interaction between Mr. Snyder and me, and the exam is anticipated to take no longer than one day.

6. Plaintiff, his doctors, or both, claim, among other things, that the Defendants' actions amounted to intentional infliction of emotional distress, exacerbated his depression, and exacerbated his diabetes.

These are very serious allegations that can only be independently tested through in-depth evaluation. For me to accurately and independently evaluate such claims, it is essential that I obtain a full history and conduct a full examination of Mr. Snyder, in part to identify the stressors in his life, and to determine the extent to which Defendants'

alleged actions would or would not have contributed to an exacerbated the stressors.

Stressors affect depression and allegedly affected Plaintiff's diabetes. A person's sexual history often reveals much about a person's stressors, any depression and personality, including, but not limited to, such matters as when the person first became sexually active and the type and frequency of the person's ongoing sexual activity; the extent to which the sexual activity contributed to harmony, disharmony, dysfunction, or guilt in the person's life; the extent to which the person has suffered sexual dysfunction, sexual abuse (or sexually abused others); the extent to which the person has had sexual relations with persons other than his spouse or main sexual partner at the time, or whether the main sexual partner has done the same; and whether abortions have been sought or obtained by plaintiff or his sexual partners.

7. I have no way to know the extent to which any particular area - including sexual history and tests related to sexual history - will be relevant to inquiry and further inquiry for this IME without first inquiring thereto. I will not merely be looking for Plaintiff's answers to my questions, but also will be observing his demeanor, tone of voice, body language, and overall response to any questions posed to him during the IME. Mr. Katz's deposition questions - and Plaintiff's answers

thereto - assist somewhat in my knowing the areas of inquiry for the IME, but only cover a small portion of questions I will need to ask, and do not show me Mr. Snyder's body language and overall demeanor in answering the questions.

8. Mr. Katz has informed me that he intends to ask the Court to reconsider its determination that the IME will not last past three hours. He informed me that the Court was firm about the three hour limitation, but, nevertheless, Mr. Katz has asked me briefly to address this in relation to his intended reconsideration motion:

Mr. Snyder is in his fifties, and has had substantial medical and psychological treatment subsequent to the death of his son Matthew and subsequent to Defendant's alleged actions, and beforehand, as well. Mr. Katz also informed me that Mr. Snyder's counsel has produced an expert report from a grief expert that Mr. Katz will provide me before the IME, concerning the harm that Defendants' alleged actions may have had on Plaintiff's reaching closure through the funeral of his son. In other words, one IME will be addressing, in part, psychological-related opinions from Mr. Snyder's psychologist, general physician, and grief expert.

9. The IME will be my only opportunity to meet with Mr. Snyder to independently review his three expert witness's own determinations and conclusions, and any subsequent visits

between him and his experts. The length of the IME is exclusively geared to produce an accurate IME.

From my in-depth experience conducting IME's for both civil and criminal litigation, I do not know of any way that I can produce an accurate IME in just three hours in Mr. Snyder's case. Depending on such factors as how quickly Mr. Snyder is able to respond in writing to written questions, for instance, that will affect the time period needed to obtain his personal and medical history alone. For the type of IME needed for Mr. Snyder, the history portion of the examination is expected to take around three hours, and could take longer if Mr. Snyder takes longer to answer questions.

Similarly, for the type of IME needed for Mr. Snyder, the testing part of the IME is expected to take around three hours, and can take longer if Mr. Snyder takes longer to respond to oral and written examination questions.

Certainly, if it is wished, I am available to complete the history part of the examination in one sitting, and the testing part on another date.

10. On occasion in past trials, opposing counsel has grilled me on cross examination about whether I spent enough time with the opposing lawyer's client to render accurate IME conclusions. Limiting Plaintiff's IME to three hours will not only prevent me from doing an accurate IME, but will also

provide fodder for Plaintiff's lawyers to conduct similar grilling of me on cross examination.

11. If the jury is not permitted to know that the IME length and scope have been limited - if they are limited - then it will be difficult for me accurately to convey in my testimony the extent to which my IME was not complete nor fully accurate as a result of such limitations.

12. If I am limited to a three-hour IME, I will only be able to take a history and perform a mental status examination, but will not be able to administer any objective psychological tests.

The foregoing is true and correct to the best of my knowledge and under the penalties of perjury.

Neil Blumberg M.D.

June 12, 2007