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June 13, 2007

The Honorable Richard D. Bennett  
United States District Court  
District of Maryland  
U.S. Courthouse - Chambers 5D  
101 W. Lombard Street  
Baltimore, MD 21201

Re: **Snyder v. Phelps, et al. (Civil No. RDB 06-1389)**

Dear Judge Bennett:

This letter is submitted in response to defendants' Motion to Reconsider which challenges this Honorable Court's previous Order concerning the length and scope of plaintiff's medical examination. Consistent with the Court's guidance, plaintiff is submitting his position via the within letter.

Initially, it is important to note that "[e]ven if good cause is shown, it is still within the court's discretion to determine whether to order an examination." Curtis v. Express, Inc., 868 F.Supp. 467, 468 (N.D. N.Y. 1994). In addition, this Honorable Court has the power to include appropriate protective provisions in an Order directing a psychiatric examination. Swift v. Swift, 64 F.R.D. 440 (E.D. N.Y. 1974). In other words, this Court has broad discretion to determine the length and scope of a medical examination.

In the instant matter, Dr. Blumberg has indicated that his evaluation will include any and all items or issues *from birth to present* and this was further confirmed in the within Motion to Reconsider. In essence, defendants are conducting a fishing expedition to determine if plaintiff had any "stressors" throughout his entire life. Importantly, plaintiff is in his fifties and logically has had "stressors" at some point in his life. Even assuming *arguendo* that plaintiff had any particular "stressor" during his 50+ years of life, the fundamental principle of tort law is applicable -- defendants take plaintiff as they find him. Prior to beginning defendants' fishing expedition, they are required to show a greater showing of need than mere relevancy. See Schlagenhauf v. Holder, 379 U.S. 104, 118 (1964). Indeed, "[m]ental and physical examinations are only to be ordered upon a discriminating application by the district judge of the limitations prescribed by the rule." *Id* at 122. Our Supreme Court has recognized that this Court can "limit, terminate, or otherwise control the use of discovery devices so as to prevent either their use in bad faith or undue annoyance, embarrassment, or oppression." *Id* at 117. Apparently, defendants would like this case to turn into a case about plaintiff's sex life -- this revelation is an undue annoyance, attempt to embarrass plaintiff and tantamount to oppression.

According to defendants, any time constraints are unacceptable -- "no court-imposed limits." However, even in the case relied upon by defendants, the examination was evidently limited to 13

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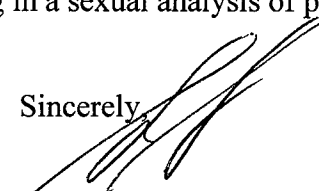
hours for three individuals. Defendants' concerns about cross-examination are of no moment. Certainly, Dr. Blumberg will be able to reveal that his examination was limited to three hours and purportedly could have been more comprehensive if given unlimited or unrestrained amounts of time to diagnose plaintiff endlessly concerning sex or abortions. Dr. Blumberg could make the same argument for two, three, four, six or even 12 or more hours, however, the Court must apply some reasonable limitation -- three hours is reasonable.

Importantly, Dr. Blumberg supplied defendants with questions for plaintiff's deposition. In addition, Dr. Blumberg has access to plaintiff's medical records. Likewise, defendants have plaintiff's expert reports and are permitted to conduct further discovery pursuant to Rules of Civil Procedure concerning experts. Put differently, Dr. Blumberg has been able to assess plaintiff's mental condition via reviewing plaintiff's medical records, and supposedly, by feeding defendants' attorney questions concerning puberty and first girlfriends. Armed with the information solicited from plaintiff (at the request of Dr. Blumberg), defendants still refuse to agree to any reasonable limitations upon the scope of the examination. Apparently, Dr. Blumberg believes that plaintiff's sexual history will "reveal much about a person's stressors." Notably, Dr. Blumberg has not referenced any authority for his position. In any event, even assuming *arguendo* that plaintiff's sexual history is even remotely relevant, defendants are stuck with the plaintiff they harmed and not one with a different sexual history.

In sum, a three hour limitation is reasonable under the circumstances and within the sound discretion of this Honorable Court and there is no legitimate reason to change this Court's previous Order. To avoid a fishing expedition, there must be some reasonable limitation placed upon the scope of defendants' examination. Requiring a 50 plus year old man to regurgitate his entire life history (e.g., puberty, potential teen-age sexual experiences, etc.) to identify potential "stressors" is unreasonable and can only be characterized as a fishing expedition. This fact, coupled with the heightened requirements under Rule 35, mandate that the scope of the examination be limited.

The purpose of the exam is to determine if plaintiff is damaged and, if so, was the damage caused by defendants. There is no legal authority to support defendants' request that there be no limitations on the length or scope of an exam. To the contrary, all legal authority supports the position that some limitations are required. Similarly, there is no legal authority to determine if there were ever any "stressors" any time in plaintiff's life. After reviewing Dr. Blumberg's declaration, the examination will apparently be about plaintiff's sexual history. Plaintiff requests that this Honorable Court limit the length of the examination to three hours and limit scope of the examination concerning sex by precluding Dr. Blumberg from engaging in a sexual analysis of plaintiff, and deny defendants' attempt to engage in a fishing expedition.

Sincerely,



Sean E. Summers

cc: Rebekah Phelps-Davis  
Shirley Phelps-Roper  
Jon Katz, Esquire