IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---|---|---|
| DOCTOR'S DATA, INC., a Nevada corporation, | ) | |
| Plaintiff, | ) | No. 10-CV-3795 |
| v. | ) | |
| | ) | Hon. John J. Tharp, |
| STEPHEN J. BARRETT, M.D., NATIONAL COUNCIL AGAINST HEALTHFRAUD, INC., a California, corporation, and QUACKWATCH, INC., a dissolved Pennsylvania corporation, | ) | Judge Presiding |
| Defendants. | ) | |

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR AN ORDER AUTHORIZING ADDITIONAL DEPOSITION TIME AND CROSS-MOTION FOR A RULE 26(C) PROTECTIVE ORDER

Plaintiff Doctor's Data, Inc. ("Plaintiff" or "Doctor's Data"), by and through its attorneys, KULWIN, MASCIOPINTO & KULWIN, LLP. and AUGUSTINE, KERN & LEVENS, LTD., respectfully submits: (a) this response opposing Defendants' motion for an order authorizing additional deposition time, and (b) this cross-motion for a Rule 26(c) protective order limiting the 30(b)(6) deposition of Douglas Fields to 7 hours total time of testimony and further barring Defendants' counsel from engaging in any line of questioning that causes unreasonable delay and/or is designed to harass or oppress the witness, including but not limited to asking the deponent for hours at a time to opine on irrelevant and/or legal questions, such as "What is false or defamatory [about this title, fragment, phrase, sentence, and/or paragraph]" (Exhibit 1 at pp.133-149), found within fourteen (14) different publications by Defendant attacking Plaintiff (Exhibit 1 at p.131-32). In support, Plaintiff states as follows:

BACKGROUND FACTS

1. As alleged in Plaintiff's complaint, for years Dr. Barrett has charted, and continues to chart, a course to defame and destroy Plaintiff's medical laboratory testing business and the medical practices of physicians who did, or do, business with Plaintiff by submitting certain urine test samples to Plaintiff for analysis. Dr. Barrett has done so because, as a retired psychiatrist and self-anointed consumer advocate, Dr. Barrett determined that a particular urine test accepted for processing by Plaintiff was used by "quack" physicians to "defraud" patients.[1]

2. Up through the present, Defendant Dr. Barrett has employed numerous means to financially and professionally destroy Plaintiff and these physician customers. For instance, Dr. Barrett has repeatedly complained to the federal government – insisting that Plaintiff be shut down, stopped, and/or sanctioned – without success. Alternatively, Dr. Barrett has complained to laboratory licensing authorities – again without success. Moreover, Dr. Barrett has initiated many complaints with state medical licensing boards against these physicians for their alleged "quackery" and "defrauding" of patients.

3. Frustrated that no governmental or other authority agreed to shut down and/or punish such so-called "quackery" and/or "fraudulent" medical practice, Dr. Barrett resorted to widely publishing defamatory Internet articles/statements to destroy Plaintiff and these physicians. Aside from generally poisoning the public against Plaintiff and these physicians with his personally espoused defamatory views, Dr. Barrett used his defamatory publications and web-sites as a means to solicit prospective "class action plaintiffs" and litigants to sue

---

[1] Ironically, Dr. Barrett has previously sued for defamation on substantively identical grounds, after publically being called, among other things, "[illegible]" "[illegible]" and "[illegible]"); Exhibit 18 at ¶21a (Wilzig Ex. 38)). After losing substantial attorney's fees to one defendant, Dr. Barrett lost the remaining allegations of his defamation suit on procedural grounds for failure to prosecute.

Plaintiff and these physicians. Dr. Barrett did so by referring these prospective litigants to Attorney Wilzig so that they – with the assistance of their "main consultant" Dr. Baratz – could pursue a possible "quick settlement," individual litigation, and/or a class action.

4. However, this effort too appears to be failing, albeit at great cost. For instance, Plaintiff recently prevailed in one such litigation on summary judgment. In its summary judgment ruling in Plaintiff's favor, the court held, *inter alia*, that Plaintiff committed no fraud. Exhibit 2 p.1-2. The court reasoned that Plaintiff's test report included "an explanation of the provided reference range . . . in bold lettering and in sufficiently clear terms." *Id.* The court further held that Plaintiff had no "duty of care to interpret the results" of the plaintiff/patient's urine test, but rather it was the role of the patient's physician to do so, since the physicians are "qualified to interpret the results and offer a diagnosis." *Id.* 2-3.

5. Yet, Plaintiff's litigation victory was not for want of effort on Defendants' part. In one revealing email to Attorney Wilzig seeking to foment litigation against Plaintiff and after months and months of referring prospective plaintiffs to him, Dr. Barrett reveled, "

." Exhibit 3 (Wilzig Ex. 24). Indeed, Dr. Barrett's emails to Attorney Wilzig (spanning years) are replete with such overt conspiratorial statements/conduct, soliciting the demise of Plaintiff and its business, including:

(1) "

" (Exhibit 4 (Wilzig Ex. 18));

(2) "

." (Exhibit 4 (Wilzig Ex. 18));

(3) "

. (Exhibit 8 (Wilzig Ex. 27));

(4) ""

(Exhibit 8 (Wilzig Ex. 28));

(5) "

" (Exhibit 4 (Wilzig Ex. 18));

(6) "

(Exhibit 5 (Wilzig Ex. 13));

(7)

(Exhibit 5 (Wilzig Ex. 13));

(8)

(Exhibit 6 (Wilzig Ex. 22));

(9)

" (Exhibit 7 (Wilzig Ex. 24));

(10) "

(Exhibit 7 (Wilzig Ex. 24));

(11) "

" (Exhibit 8 (Wilzig Ex. 27));

(12)

' (Exhibit 9 (Wilzig Ex. 29));

(13) "

" (Exhibit 10 (Wilzig Ex. 31));

(14)

' (Exhibit 11 (Wilzig Ex. 35));

(15)

(Exhibit 12 (Wizig Ex. 7));

(16) '

" (Exhibit 11 (Wilzig Ex. 35));

(17) '

(Exhibit 13 (Wilzig Ex. 36)); and

(18)

' (Exhibit 14 (Wilzig Ex. 37)).

PROCEDURAL STATUS RELATING TO PLAINTIFF'S 30(B)(6) DEPOSITION

6. Plaintiff previously presented three 30(b)(6) witnesses in response to Defendants' 30(b)(6) notices that identified some 95 enumerated corporate topics. Defendants' counsel deposed three individuals, Dean Bass, David Quig, and Douglas Fields. Defendants' counsel deposed Mr. Fields for the longest period of time, approximately 3.5 hours.

7. However, Defendants' counsel terminated Plaintiff's 30(b)(6) deposition "to seek assistance from the Court." (Dfs' Mot., ¶2) At the time, Plaintiff's three executives had slated the entire day (and evening, if necessary) for their testimony and stood ready, willing, and able to proceed as long as required to complete the deposition that day.

8. Subsequently, Defendants filed a motion to compel relating to Plaintiff's Rule 30(b)(6) deposition. (Doc. Rec. #150)

9. After briefing and argument, the Court rejected virtually every substantive argument raised by the Defendants' Rule 30(b)(6) motion to compel. Transcript (10/26/12), p.68-81 (the Court rejecting Defendants' counsel's 30(b)(6) arguments, including that Plaintiffs' 30(b)(6) witnesses: (a) were "unprepared," *id.* p.69-72; (b) "were not the appropriate people to present," *id.* p.73-74; (c) must testify about "executive compensation," *id.* p.75; (d) must testify

about "all written standard procedures and protocols for testing provoked urine toxic metals samples" because those issues went to "accuracy, and accuracy is off the table," *id.* p.76; (e) must testify about "written standard procedures and protocols for testing non-provoked urine toxic samples" because they too were "off the table," relating to accuracy, *id.* p.76; (f) must testify about "training of employees who perform testing," *id.* p.77; (g) must testify about "guidelines and standards for conducting tests, [because] all go to accuracy," *id.* p.77; and (h) must testify about conduct by Quackwatch, Inc. that "did or did not . . . cause them [Plaintiff] harm after it was dissolved," *id.* p.79-80.

10. At a different Court hearing held on March 14, 2013, this Court ordered the completion of Plaintiff's 30(b)(6) deposition by May 6, 2013. (Doc. Rec. #181). Subsequently, at Defendants' request, Plaintiff agreed to reserve May 1 or May 2, 2013, for the completion of Plaintiff's 30(b)(6) deposition.

11. On April 23, 2013, the parties' counsel held a Rule 37 discovery conference. Among other topics, counsel discussed the completion of Plaintiff's Rule 30(b)(6) deposition, for which Plaintiff tendered Douglas Fields for all remaining topics. Contrary to Defendants' counsel's representation to this Court, Plaintiff's counsel did not state that he "may permit the time to extend 'a little.'" (Dfs' Mot. p¶6) Indeed, Plaintiff's counsel memorialized Plaintiff's position in written correspondence, curiously omitted from Defendants' motion. Exhibit 17 (correspondence memorializing Rule 37 conference).

12. With respect to Mr. Fields 30(b)(6) deposition, Plaintiff's counsel stated in full:

> Completion of Doug Fields' 30(b)(6) Deposition. You asked that Plaintiff agree to postpone the completion of Doug Fields' 30(b)(6) deposition, scheduled by agreement for May 1 or May 2, both dates that we have held open. I stated that we would consult with our client but likely not recommend any postponement. There is a court order to complete this deposition by May 6. Also, the foregoing documents that you claim are missing are small in number and even less significant as a substantive matter, particularly as it relates to Mr. Fields' 30(b)(6) deposition/topics. Subject to you cancelling the deposition, the parties agreed to complete Mr. Fields' deposition, beginning on May 2, 2012 at 9:30 a.m. ***I informed you that Plaintiff intends to comply with the Federal Rules of Civil Procedure as it relates to the duration of this deposition, particularly since Mr. Fields already has been deposed for approximately 3.5 hours of testimony time. Plaintiff will be reasonable in its application of the Federal Rules and could potentially agree to allow more than the maximum time allowed by law, but as of now, Plaintiff sees no valid reason for Mr. Fields' testimony (the former session and upcoming session, collectively) to exceed a total of 7 hours.*** You agreed to provide prompt notice if you decided to cancel Mr. Fields' deposition. Exhibit 17 p.3 (emphasis added).

13. In response, Defendants filed this motion seeking, "[A]t least one full day of 7 hours for the continued Rule 30(b)(6) Deposition of Plaintiff, with the possibility of additional days and time to follow depending on the number and cooperation of Plaintiff's witnesses." (Df's Mot. p.6)

## LEGAL FRAMEWORK/ANALYSIS

14. Plaintiff opposes Defendants' motion to subject Plaintiff's 30(b)(6) witness, Douglas Field, to more than an additional 3.5 hours of testimony. Defendants have failed to satisfy their burden of proof in establishing a legitimate factual or legal basis for extending the duration of Mr. Fields' 30(b)(6) deposition. In fact, granting additional time will only enable Defendants to continue to unreasonably harass, oppress, and annoy Plaintiff, in violation of the Federal Rules of Civil Procedure. Defendants' counsel's prior deposition examinations demonstrate this type of discovery abuse, as explained in detail below. Indeed, Defendant Dr. Barrett seemingly welcomes such abusive conduct, having previously celebrated the prospect

of discovery " " for Plaintiff (Exhibit 15 (Wilzig Exhibit 12, p.597)) and specifically stating with respect to this case that discovery will afford an " ." (Exhibit 16 (Wilzig Exhibit 45)) to further his mission of professionally and financially destroying Plaintiff and the physicians who submit test samples to Plaintiff's laboratory. Accordingly, as also explained below, Plaintiff is entitled to protective order with both temporal and substantive protections for Plaintiff's remaining 30(b)(6) deposition.

A. Defendants Have Failed to Satisfy Their Burden of Proof to Provide Any Good Cause That Would Justify Extending Mr. Fields' 30(b)(6) Deposition Beyond 7 Hours.

15. Federal Rule of Civil Procedure 30 controls Defendants' motion. Rule 30(d) provides, "Unless otherwise stipulated or ordered by the Court, a deposition is limited to 1 day of 7 hours." Fed. R. Civ. P. 30(d). A Court will grant a reasonable extension if "needed to fairly examine the deponent or if the deponent, another person, or any other circumstances impedes or delays the examination." *Id.* Defendants have the burden of proof to establish the requisite good cause for any Court ordered extension. *Id.* Commentary ("The party seeking a court order to extend the examination, or otherwise alter the limitations, is expected to show good cause to justify such an order").

16. Defendants have failed in their burden of showing good cause to extend Mr. Fields' Rule 30(b)(6) deposition beyond 7 hours. First, Defendants wrongly argue that Plaintiff and/or Plaintiffs' deponents previously "impede[d] and delay[ed]" the prior Rule 30(b)(6) examination testimony by: (a) issuing "instructions to not answer questions," (b) "refusals to answer questions on noticed topics," (c) "failure to produce requested documents," and (d) "failure to even read the subpoena notice to prepare for the question topics." (Dfs' Mot., ¶¶12-13) But, Defendants cite to no deposition testimony in support of these general arguments. *Id.*

On this basis alone, this Court should find that Defendants failed to satisfy their burden of proof and deny Defendants' motion for testimony exceeding 7 hours in length.

17. Also, and in any event, the Court already has rejected Defendants' arguments (a), (b), and (d) of the foregoing paragraph. As part of the October 26, 2012 hearing on Defendants' 30(b)(6) motion to compel, the Court read each of Plaintiffs' three 30(b)(6) deposition transcripts. Transcript (10/26/12) p.68-81. Additionally, the Court ruled that Plaintiff and Plaintiff's witnesses did not unreasonably "impede" or "delay" the 30(b)(6) depositions. To the contrary, the Court rejected Defendants' very arguments raised again here in their present motion, namely: (a) rejecting Defendants' claim that Plaintiffs' 30(b)(6) witnesses were "unprepared" for, among other reasons, "not [being] shown the specific deposition notice," *id.* p.69-72; (b) rejecting Defendants' claim that Plaintiffs' 30(b)(6) witnesses "were not the appropriate people to present," *id.* p.73-74; (c) rejecting Defendants' claim that Plaintiffs' 30(b)(6) witnesses must testify about "executive compensation," *id.* p.75; (d) rejecting Defendants' claim that Plaintiffs' 30(b)(6) witnesses must testify about "all written standard procedures and protocols for testing provoked urine toxic metals samples" because those issues went to "accuracy, and accuracy is off the table," *id.* p.76; (e) rejecting Defendants' claim that Plaintiffs' 30(b)(6) witnesses must testify about "written standard procedures and protocols for testing non-provoked urine toxic samples" because they too were "off the table," relating to accuracy, *id.* p.76; (f) rejecting Defendants' claim that Plaintiffs' 30(b)(6) witnesses must testify about "training of employees who perform testing," *id.* p.77; (g) rejecting Defendants' claim that Plaintiffs' 30(b)(6) witnesses must testify about "guidelines and standards for conducting tests, all go to accuracy," *id.* p.77; and (h) rejecting Defendants' claim that Plaintiffs' 30(b)(6) witnesses must testify about conduct by Quackwatch, Inc. that "did or did not . . . cause them

[Plaintiff] harm after it was dissolved," *id.* p.79-80. As such, Defendants seem to be unwilling to take "no" for an answer, and their arguments border on the frivolous as being previously ruled upon. For this reason as well, the Court should reject Defendants' claim that Plaintiff unduly "delayed" or "impeded" the prior 30(b)(6) deposition testimony.

18. Secondly, Defendants also improperly argue that they have shown good cause to depose Mr. Fields beyond 7 hours because of Plaintiff's "failure to produce requested documents" (Dfs' Mot. ¶¶12-13) and "delays in producing central liability and damages documents" (Dfs' Mot. ¶14). This is a misunderstanding – or distortion – of Rule 30(d), which allows an extension if a party or deponent or other circumstance "impedes or delays ***the examination***." Fed. R. Civ. P. 30(d). Any alleged failure to timely produce documents did not unreasonably extend (*i.e.*, "delay or impede") any Rule 30(b)(6) "*examination*"; such a circumstance would truncate (not lengthen) the examination. Moreover, even if such a circumstance could unreasonably "impede or delay an examination," Defendants certainly have not cited to any such example(s) in the record where the absence of documents unreasonably delayed or impeded the 30(b)(6) deposition testimony. Indeed, Defendants cite to no deposition testimony at all and attach no deposition transcripts whatsoever. In this respect as well, Defendants have failed in their burden of establishing good cause within the meaning of Rule 30(d) for any extension.

19. Third, Defendants untenably argue that they require more than 7 hours with Mr. Fields because "the examination will cover events occurring over a long period of time," including "damages over many accounts dating as far back as 2003" and "85 separate counts of defamation *per se*." (Dfs' Mot. ¶¶15-17) With respect to damages, Defendants are factually and legally wrong and far overstate the argument. In 2012, Plaintiff produced to Defendants an

expert financial report and damages analysis, which calculates damages from *2008 going forward*, not "as far back as 2003." Moreover, because Plaintiff produced to Defendants its expert damages report/analysis (and underlying financial data given to its expert) during fact discovery, Defendants possess a detailed and streamlined roadmap to damages (that most litigants would not have in fact discovery for a Rule 30(b)(6) deposition), which should shorten the 30(b)(6) testimony on damages, not extend it. Furthermore, Defendants will have an opportunity to depose Plaintiff's damages expert for 7 hours, a witness far better equipped to testify about Plaintiff's damage claim/analysis than Mr. Fields. Accordingly, for all these reasons, Defendants' claim that Plaintiff's damages claim requires more than 7 hours with Mr. Fields is specious.

20. The same is equally true for Defendants' argument that Plaintiff's "85 separate counts of defamation *per se*" require more than 7 hours with Mr. Fields. (Dfs' Mot. ¶17) Indeed, this is one of the primary arguments justifying Plaintiff's motion for a protective order *limiting* (not expanding) Mr. Fields' 30(b)(6) deposition. *See also infra* Section B. Defendants' counsel revealed his abusive tactics for this line of questioning during Mr. Fields' first deposition session. Defendants' counsel began this line of questioning by marking fourteen (14) exhibits, which consisted of Dr. Barrett's defamatory publications over the years (many of which still continue today as prominently displayed on the Internet for anyone to see who searches Plaintiff's name). Exhibit 1 p.131-32.

21. Defendants' counsel then started with the *title* of the first of fourteen publications. Defendants' counsel read the title of this first publication into the record as, "How the 'urine toxic metals' test is used to defraud patients." Defendants' counsel then asked if it was Doctor's Data's "allegation that this [title/phrase] is false?" Exhibit 1 p.133. After

numerous objections, Mr. Fields answered, "Yes, we allege that as false." *Id.* p.134. Defendants' counsel then asked, "What's false about this title?" *Id.* p.135. From there, Mr. Fields answered, essentially, that in the context of the entire article it was false because "Doctor's Data does not conspire with doctors to defraud patients, nor is our test report intended to defraud patients, nor on the face of it can it be so." *Id.* From this answer, Defendants' counsel argued with Mr. Fields: (a) "[D]o you see the words 'Doctor's Data'" in the title? (*id.* p.135); (b) "[W]here in the title . . . do you see the word 'conspiracy'" (*id.* 135-36); (c) "How do you associate Doctor's Data with the title" (*id.* at 136) [even though, as Mr. Fields noted, "One finger below [the title] is a picture of Doctor's Data's urine toxic metals test, which, according to the article is used to defraud patients. It doesn't take a great leap to understand what's being talked about in the title" *id.* p.136]; and (d) in response to this last answer by Mr. Fields, Defendants' counsel continued his abusive questioning by stating, "Does it say that Doctor's Data used it to defraud patients?" (*id.* p.136). And, on and on.

22. Nor did Defendants' counsel reasonably accept Mr. Fields' general response that "taken in its totality" the article and title falsely "accuses Doctor's Data of assisting in the defrauding of patients." *Id.* p.137. To the contrary, Defendants' counsel made clear:

> "I intend to go *from Exhibit 1 through Exhibit 14 on every statement* that the plaintiff has identified as being defamation *per se* in response to the discovery request, and I intend to ask the corporate representative *in detail the corporation's position and basis* for that allegation."

*Id.* p.138 (emphasis added). Not surprisingly, this lengthy, tedious, repetitive, and abusive line of questioning culminated with a "break" with Plaintiff's counsel stating, "[I]t would be good for all of us to cool off a little bit, myself included." *Id.* p.147.

23. Given Defendants' counsel's expressed intention of going through every title, phrase, sentence, and paragraph of 14 publications to ask abusive deposition questions, it is

clear why he requires more than 7 hours to depose Mr. Fields. However, Defendants' motion should be denied. Defendants' counsel's intended line of questioning is harassing, abusive, and non-material. Moreover, such questions are objectionable because they call for either legal or factual conclusion to be determined by the jury. Furthermore, there is no good faith dispute about: (a) which statements Plaintiffs have identified as defamatory (Plaintiff did so in its interrogatory answers), and (b) why Plaintiff so contends (*i.e.*, Plaintiff is not engaging in "shady" practices with "quack" physicians to "defraud" patients). For this reason as well, Defendants' motion to depose Mr. Fields for more than 7 hours should be denied. And, as explained below, because of this abusive line of questioning, Plaintiff is legally entitled to a protective order.

24. Additionally, Defendants should not obtain any extension of the 7-hour rule (and a protective order should be in place, as requested below) because Defendants' counsel intentionally used Plaintiffs' 30(b)(6) depositions to *affirmatively waste time*, with no conceivable purpose other than to annoy, oppress, and harass Plaintiff's witnesses. Defendants' counsel wasted an inordinate amount of time by asking each of Plaintiff's 30(b)(6) witnesses if they brought documents with them to the deposition pursuant to Defendants' 30(b)(6) notices, which the Court ruled was, of course, unnecessary. Transcript (October 26, 2012), p.68 (finding it to be a "non-issue" because the 30(b)(6) deposition notice called for documents identical to those already produced in response to Defendants' Rule 34 document requests). Yet, Defendants' counsel unreasonably wasted time and harassed Plaintiff's 30(b)(6) deponents by repeatedly asking (on many, many, many separate occasions) whether they "brought to the deposition" certain categories of requested 30(b)(6) documents, even though counsel knew that these witnesses brought no documents whatsoever. Still, Defendants' counsel felt compelled

to ask the question over and over again, instead of allowing one question and statement to serve the purpose for the record.

B. Plaintiff Should Be Provided a Protective Order to Limit Plaintiff's 30(b)(6) Deposition To 7 Hours and Prevent Unduly Harassing, Oppressive, and Abusive Questions/Conduct.

25. Plaintiff cross-moves for a protective order. Federal Rule of Civil Procedure 26(c) controls Plaintiffs' cross-motion. Fed. R. Federal Rule 26(c) provides that the Court may "for good cause issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" within a deposition, including but not limited to: (a) "specifying terms, including time and place," for the deposition, and (b) "forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters." Fed. R. Civ. P. 26(c).

26. As explained above in paragraphs 20-24, Defendants have used Plaintiff's 30(b)(6) depositions to unreasonably annoy, oppress, and harass Plaintiff and Plaintiff's witnesses. Moreover, this is precisely the type of abusive conduct that Dr. Barrett was referring to when he: (a) celebrated that "[redacted]" (in another, related litigation against Plaintiff that Dr. Barrett fomented, (Exhibit 15 (Wilzig Exhibit 12, p.597)), and (b) later announced with respect to this litigation, that discovery would afford him and his counsel an "[redacted]" (Exhibit 16 (Wilzig Exhibit 45)), no doubt to further his defamatory mission of professionally and financially destroying Plaintiff and those physicians who do business with Plaintiff. For all the foregoing reasons, Plaintiff requests that this Court grant a protective order placing temporal and substantive limitations/protections as to Plaintiff's forthcoming 30(b)(6) deposition.

## ATTORNEY CERTIFICATION

27. The undersigned Plaintiff's counsel certify pursuant to FRCP 37 and Local Rule 37.2 that they have made a good faith attempt to resolve the parties' differences regarding the foregoing deposition/discovery issue(s) but were unsuccessful through no fault of Plaintiffs' counsel. Counsel conferred in good faith in an attempt to resolve these discovery matters in a telephone conversation on April 23, 2012, without success.

## CONCLUSION

WHEREFORE, Plaintiff Doctor's Data requests that this Court: (a) deny Defendants' motion to extend Plaintiff's 30(b)(6) deposition beyond the general 7-hour total limit, and (b) grant Plaintiff a protective order, limiting Plaintiff's deposition of Douglas Fields to a total of 7 hours of testimony and further barring Defendants' counsel from engaging in any line of questioning that causes unreasonable delay and/or is designed to harass or oppress the witness, including but not limited to asking, and/or arguing with, the deponent to repeatedly opine on irrelevant and/or legal questions, such as "What is false or defamatory [about this title, fragment, phrase, sentence, and/or paragraph]."

Respectfully Submitted,

KULWIN, MASCIOPINTO & KULWIN, LLP.

By: s/Anthony J. Masciopinto
One of the Attorneys for
Plaintiff's Doctor's Data

KULWIN, MASCIOPINTO & KULWIN, LLP.
Shelly B. Kulwin
Anthony J. Masciopinto
161 N. Clark Street, #2500
Chicago, Illinois 60601
Phone: 312.641.0300
Fax: 312.855.0350

Respectfully Submitted,

AUGUSTINE, KERN AND LEVENS, LTD.

By: s/Jeffrey Levens
One of the Attorneys for
Plaintiff's Doctor's Data

AUGUSTINE, KERN AND LEVENS, LTD
Algis Augustine
Jeffrey Levens
218 N. Jefferson Street, Suite 202
Chicago, Illinois 60661
Phone: 312.648.1111
Fax: 312.648.1057

# EXHIBIT 1

**In the Matter Of:**

DOCTOR'S DATA -vs- BARRETT

10-CV-3795

---

# DOUGLAS FIELDS

*September 11, 2012*

---

*30(b)(6), Confidential*

ESQUIRE SOLUTIONS

800.211.DEPO (3376)
EsquireSolutions.com

Page 133

defamation, per se, from the title of this document, quote, "How the 'urine toxic metals' test is used to defraud patients." Is it your allegation that this is false?
MR. KOZACKY: Object to the form of the question. It's the corporation's allegation that this is false.
MR. BOTTS: And he's the corporate representative --
MR. KOZACKY: You asked him is it his.
MR. BOTTS: -- on the topic of defamation, per se.
MR. KOZACKY: That's right. So ask him if it's the corporation's position that this is false.
MR. BOTTS: Okay. I thought we covered that earlier. It might have been the earlier witness.
BY MR. BOTTS:
Q. When I say "you," I always mean you, Doctor's Data Corporation, plaintiff, in this case. It's just easier. If specifically you, I'll make that clear, and I apologize for any confusion.
Is it Doctor's Data's position that the title to Exhibit 1 is defamation, per se?
A. I would like you, if you wouldn't mind,

Page 134

to read back your preceding question or the earlier attempt to ask that question because it had more material in it which would allow me to answer that question.
MR. KOZACKY: I think the witness is asking to have the prior question read back.
MR. BOTTS: I'll just restate the question.
MR. KOZACKY: Thank you.
BY MR. BOTTS:
Q. The question is, is the title to Exhibit A alleged by plaintiff to be false?
A. Not to put too fine a point on it, but in your first attempt to ask this question, you indicated that we had alleged that, and then you are asking me to confirm whether or not we believe that is false.
If you are going to ask your series of questions in that fashion, then I will be able to answer your questions, yes, we allege that as false.
If what you're going to do is take this set of documents that's an inch thick and have me go through here and determine whether or not in our answers to interrogatories we have alleged that

Page 135

certain portions of these 9 million words are false, then we're going to have a real problem here, because it took a whole lot of people a whole lot of time pulling this stuff apart to do it, and I don't intend to counter what we've already responded to.
Q. I'll ask a different question.
What's false about this title to Exhibit A, Exhibit 1?
A. Doctor's Data does not conspire with doctors to defraud patients, nor is our test report intended to defraud patients, nor on the face of it can it be so.
Q. Okay. Where in the title to Exhibit 1 do you see the words "Doctor's Data"?
MR. KOZACKY: Object to the form of the of the question.
You may answer.
BY THE WITNESS:
A. When you have a copy of our report two inches from the title, it doesn't have to be there.
BY MR. BOTTS:
Q. Where in the title of it Exhibit 1 do you see the word "conspiracy"?

Page 136

A. I don't.
Q. And how do you associate Doctor's Data with the title?
MR. KOZACKY: Asked and answered.
BY THE WITNESS:
A. The title has "urine toxic metals" in quotes. One finger below that is a picture of Doctor's Data urine toxic metals test, which, according to this article is used to defraud patients. It doesn't take a great leap to understand what's being talked about in the title.
Q. Does it say that Doctor's Data used it to defraud patients?
MR. LEVENS: What do you mean by "it"?
MR. BOTTS: "It," the title.
MR. KOZACKY: Object to the form of the question. The document speaks for itself.
You may answer it as you're comfortable.
BY THE WITNESS:
A. As a reader of this, that is the way that I would take what is being written here.
BY MR. BOTTS:
Q. And I'm asking the corporation's position, its construction of why it is associated

Page 137

with the title, "How the 'urine toxic metals' test is used to defraud patients."
A. The corporation's position is that this paper, taken in its totality, accuses Doctor's Data of assisting in the defrauding of patients.
MR. KOZACKY: In addition, the corporation's position is set forth in its interrogatory answers, and the deposition of a 30(b)(6) witness is not a suitable place to rehash all of those interrogatory answers.
BY MR. BOTTS:
Q. And if I may, I'll read into the record the -- the response of the plaintiff, which is that, "This was published in an article bearing the same name, and the name itself is the initial libelous statement."
So the name itself -- and your response, is, "the name itself accuses Doctor's Data of conspiring to defraud patients," and I'm trying to explore that position, because I don't see it in the title of this document.
MR. KOZACKY: Well, if you take a pair of scissors and you cut out each independent word --
MR. BOTTS: Okay. I would like to have the

Page 138

witness answer it, though.
MR. KOZACKY: Well, you're looking at me when you're making the statement and you're asking me what I -- what my position is, and I'm --
MR. BOTTS: Okay. I'm not asking your position.
MR. KOZACKY: Okay. We stand on our objection. We've already answered these questions in interrogatory answers that go up to quadruple H. I object to duplicating this discovery unnecessarily in this deposition.
Please continue.
MR. BOTTS: What I intend to do -- maybe we can just shortcut this -- is I intend to go from Exhibit 1 through Exhibit 14 on every statement that the plaintiff has identified as being defamation, per se, in response to the discovery request, and I intend to ask the corporate representative in detail the corporation's position and basis for that allegation.
MR. KOZACKY: You're entitled to do that. I'm not going to obstruct you doing that. If you want to hear the witness say 75,000 times that you got to look at the whole thing in context, that's your

Page 139

right to take discovery in that manner.
MR. BOTTS: Are you telling me the witness is going to say that in every instance?
MR. KOZACKY: Well, I can tell by the first three questions that you've asked about this exhibit that it's patently clear you're going to parse through verbs, gerunds, semicolons, and quotation marks to look for words that are so painfully obvious not there to any sighted person that the only reason for asking my client who has been here about seven hours already questions like this is to harass him.
So, yes, I think it's going to be abundantly clear to you after you get through two or three more of these questions that you look at a libelous document in context, not one semicolon and not one colon at a time.
MR. BOTTS: Well --
MR. KOZACKY: That's my position. But ask your questions however you wish.
BY MR. BOTTS:
Q. Okay. The title of Exhibit 1 does not mention Doctor's Data, does it?
A. It mentions our urine toxic metals test.

Page 140

Q. Is Doctor's Data the only company in the world that does urine toxic metals testing?
A. No, it is not.
Q. How many others are there?
A. Well, let's see. There's the Mayo Clinic. There is LabCorp. There is Quest. There are a whole bunch of them.
Q. By a whole bunch, you mean more than a dozen?
A. Probably, yeah.
Q. More than a hundred?
A. No.
Q. More than 50?
A. Don't know. I might add that none of their pictures of their test reports are right below the title.
Q. Where in this title does it say "conspiracy"?
MR. KOZACKY: Object to the form of the question, asked and answered.
MR. LEVENS: This is raising another issue. We don't -- we don't know what you're talking about, unless you can provide us with a copy of our answers to interrogatories, if that's what you're

Page 141

going by, because we're -- as I sit here, I don't think we know that conspiracy figures into that.
MR. BOTTS: I would not have brought it up, had he not said that this -- his earlier testimony was that this title is defamatory because it alleges that Doctor's Data conspires with others to defraud patients.
BY THE WITNESS:
A. Mr. Botts, might I for a moment -- I wouldn't have testified to that had you given me an answer to our answers to interrogatories to have me comment on what we had said.
I'm sitting here in a position where we have taken great care to provide you with the answer to what you ask, what do we allege as being defamatory.
And now you want me to go back and parse through the information that was used to give those answers to interrogatories so that you can get me on the record to say things that we didn't say.
I don't intend to do that.
BY MR. BOTTS:
Q. Sir, that's a -- what I do intend to do is ask you questions as a corporate representative

Page 142

regarding the statements alleged to be defamatory.
I do intend to get into some specifics, because I haven't had an opportunity to do that yet. It has not been responded to in our discovery.
I intend to go through -- I do intend to go through every allegation of defamation in Exhibits 1 through 14. I intend to go through in detail.
I intend to ask the basis for the conclusion that it's a false fact, and whether or not it -- there is a basis for alleging that the statement is either concerning Doctor's Data, et cetera, et cetera, to inquire about the basis for the allegation of -- of a defamation per se.
MR. BOTTS: Now, if you are not going to respond to that, you should have produced a witness prepared to respond to those questions. It was clearly in the topics of this 30(b)(6) deposition.
What I hear now is that the witness refuses to be asked questions about that, and that you have not prepared a witness.
MR. KOZACKY: Your statement that we have not provided you with a list of allegedly defamatory

Page 143

statements is absurd, because we've provided you with a list that goes up to quadruple H.
You've also misheard me, because I never said that I wasn't going to let this witness testify. I said that you're harassing him by asking him questions in the manner you're asking him, which is a complete duplication of what our interrogatory answers have already told you, and I only have a certain patience for this.
You go ahead and ask your questions however you want, but if you're going to parse through every colon and semicolon, we're going to have a problem.
Our answers are in 15 or 20 pages of interrogatory answers. You don't get the right to rehash that discovery by propounding a 30(b)(6) deposition notice.
If you have specific questions about specific statements that your client libeled us with, ask this witness. So you're wrong. I never said that I'm not producing a 30(b)(6) witness on these topics.
My objection is to harassing him by asking him for information that already has been

Page 144

produced in interrogatory responses.
BY MR. BOTTS:
Q. I direct your attention to Exhibit 10. What was identified by your counsel as defamation, per se, is the entirety of the paragraph that begins in bold letters, "Dr. Barrett Sued." Do you see that paragraph?
A. I do.
MR. KOZACKY: One second. I'd like to see that, too.
Yes. Please proceed.
BY MR. BOTTS:
Q. What is false about the statement, "Dr. Barrett sued"?
MR. KOZACKY: Object to the form to the extent that it requires a duplication of our interrogatory answer.
You may supplement.
BY THE WITNESS:
A. In order to properly answer that question, I would need to see the detailed answer to our interrogatory.
BY MR. BOTTS:
Q. The answer to the interrogatory said,

Page 145

"These statements accuse plaintiff of conspiring to defraud patients and are false. Plaintiff does not use the test to deceive patients and plaintiff does not have reference ranges for provoked testing and its reports plainly state so." That was the position of the plaintiff.

Now, what about the statement, "Dr. Barrett sued," is false?

A. I thought you stated it was the entire paragraph.

Q. Yeah. I'm going to go through it bit by bit, because your counsel have already been -- well, I'm just going to go through it bit by bit, because we have a right to.

"Dr. Barrett sued," what's false about that?

MR. KOZACKY: Object to the form of the question.

BY THE WITNESS:

A. There's nothing false about that.

BY MR. BOTTS:

Q. The next sentence, "Doctor's Data, a lab that performs tests for many chelation therapists, has sued Dr. Stephen Barrett." What's false about

Page 146

that?

MR. KOZACKY: Object to the form of the question. It's abusive. That's my second abuse objection on this line of questioning.

Please answer the question.

BY THE WITNESS:

A. That sentence, taken by itself, there is nothing false about it. When taken in the context of all the other things, it becomes an attempt to further the falsehood of all the other things that have been published.

BY MR. BOTTS:

Q. There is a citation, "[Barrett S. Why Doctor's Data is trying to muzzle me. Quackwatch July 2010.]" What's false about that?

MR. KOZACKY: Object to the form of the question. It's abusive. This is the fourth time.

MR. BOTTS: I'll give you a running objection.

MR. KOZACKY: No, you're not going to get a running objection, because after five or six of these, I'm going to terminate the deposition, and I'm going to ask for a sanctions order.

BY MR. BOTTS:

Q. What is false about that citation?

Page 147

MR. KOZACKY: Abusive objection number four.

BY MR. BOTTS:

A. I don't know anything about that citation.

MR. BOTTS: All right. Let's take a short break. Would that be all right with you?

MR. KOZACKY: Totally all right with that. I think it would be good for all of us to cool off a little bit, myself included.

(WHEREUPON, the deposition was recessed from 3:59 p.m. until 4:16 p.m.)

MR. BOTTS: Let's go back on the record. When we left, there was a controversy over the latest response to interrogatories from the plaintiff to the defendant. We have gone out and copied the responses, and now you have a copy. I'm handing one to defense counsel, and defense counsel handed one to the witness.

MR. KOZACKY: Mike, this is one of two. This goes from -- basically, from ZZ to quadruple H. There's another one that goes from A to YY or something like that.

MR. BOTTS: This is the most recent, yes.

Page 148

Okay.

MR. KOZACKY: Okay. This supplements a prior one. I may have a copy of that.

MR. BOTTS: Let's just hang on for a second. I just wanted to go on the record that we have these. We've passed them out to you. Now another issue has loomed.

On the record, I'll propose to you -- we discussed earlier continuing Mr. Fields because Mr. Quig is coming up. I thought we could get some questions in on the exhibit, but --

MR. KOZACKY: Go ahead and start, just so you're not starting with A. That's all. Go ahead and start with this to get some of your questioning done.

MR. BOTTS: I will go back to where I was, but I don't want to hear that you don't have the full -- your full interrogatory answers.

MR. KOZACKY: Well, you are going to hear it, because we don't have our full interrogatory answers in front of the witness.

MR. BOTTS: Do you have QQ?

MR. KOZACKY: No. That's in the prior set.

MR. BOTTS: Let's --

Page 149

MR. KOZACKY: Move on to a different topic?
MR. KATSAROS: I think Ashley is trying to retrieve the previous set.
MR. BOTTS: By that time, I think Mr. Quig is going to be here. Let me propose this -- I had a couple questions I should have asked.
MR. KOZACKY: That's a good use of time.
MR. BOTTS: And then I think we can break, and when we pick up, we'll be prepared to discuss the allege defamation in detail and the rest of the topics.
MR. KOZACKY: Other than M, correct.
MR. BOTTS: We'll see. Maybe you'll wake up generous.
MR. KOZACKY: Maybe I will, and maybe I won't.
MR. BOTTS: Back on the record.
BY MR. BOTTS:
Q. Mr. Fields --
MR. KOZACKY: We have been on the record.
BY MR. BOTTS:
Q. Mr. Fields --
MR. BOTTS: Yes, we have. You're right.
BY MR. BOTTS:
Q. Mr. Fields, are you a part owner at all

Page 150

of Doctor's Data?
A. I am not.
Q. Do you own any stock in Doctor's Data?
A. I do not.
Q. Any stock options?
A. I do not.
Q. I believe you said you were on the board of directors, is that correct?
A. I am.
Q. And is there a specific capacity on the board of directors?
A. No. Just a board member.
Q. Who are the other board members?
A. I believe those are reflected in our board minutes.
Q. Okay. I haven't gotten them. Who are the other board directors?
A. Darrell Hickock, his mother Pat Hickock, myself and Karen Urek.
Q. Is there an owner of Doctor's Data?
A. Yes.
Q. And who would that be?
A. That would be Darrell Hickock.
Q. Is the -- is it publicly traded?

Page 151

A. It is not.
Q. Privately owned?
A. Yes.
Q. Are there any other significant stockholders in the corporation?
A. I believe his mother holds some stock, but it is under contract to be sold to him under an estate planning device.
MR. KOZACKY: By the way, this is confidential.
MR. KOZACKY: As are the minutes.
MR. BOTTS: Yeah.
BY MR. BOTTS:
Q. Are minutes kept of shareholder meetings of the board of directors meetings?
A. I think they're joint minutes, but they would speak for themselves. I don't recall.
MR. BOTTS: Okay. I don't believe that they have been produced.
MR. KOZACKY: They have.
THE WITNESS: They have.
MR. LEVENS: They have?
MR. BOTTS: Recently.
THE WITNESS: No. Some time ago.

Page 152

MR. KOZACKY: Month ago. Month ago.
MR. BOTTS: Okay. Why don't we take break.
(WHEREUPON, at 4:21 p.m. the deposition was adjourned sine die.)

# EXHIBIT 2

4506-8164

IN THE MARION SUPERIOR COURT NO. 10
STATE OF INDIANA

| | |
|---|---|
| RICK PFISTER, on his own behalf and on behalf of those similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>MEDICAL WELLNESS INSTITUTE, LLC, DOCTOR'S DATA, INC., and VINU A. PATEL, M.D.<br><br>Defendants. | CAUSE NO. 49D10-0802-CT-005046 |

FILED
214 OCT 29 2012
Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

## ORDER GRANTING DOCTOR'S DATA, INC.'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendant Doctor's Data, Inc.'s ("Doctor's Data") Motion for Summary Judgment. The Court has reviewed the parties' briefs supporting and opposing the motion and heard oral arguments on September 24, 2012, during which all parties were represented by counsel. The Court, after considering the written materials, including the parties' designations of evidence, and being duly advised, now finds and concludes that there is no genuine issues of material fact and that summary judgment should be entered in favor of Doctor's Data. The Court reasons as follows:

1. The designated evidence shows that Doctor's Data did not make a misrepresentation of fact to Plaintiff Rick Pfister ("Pfister"). The Urine Toxic Metals and Urine Toxics report (the "Report") contained the results of Pfister's urine test and a reference range. Pfister does not allege that the results of his urine test were false or otherwise fraudulent. None of the facts stated in the Report are untrue. Plaintiff's arguments that Doctor's Data used an inapplicable, inappropriate, and /or scientifically invalid reference range and methodology, even if proven true, do not constitute any knowing misrepresentation of fact as required to support a

claim of actual fraud. *Purcell v. Old Nat'l Bank*, 953 N.E.2d 527, 531 (Ind. Ct. App. 2011); *Rice v. Strunk*, 670 N.E.2d 1280, 1284 (Ind. 1996). Furthermore, an explanation of the provided reference range was stated, in bold lettering and in sufficiently clear terms for Pfister himself to question the application of the reference range. As a result, there is no misrepresentation of material fact for fraud.

2. There is also no genuine issue of material fact that Pfister did not actually or reasonably rely on the Report before incurring the expense of undergoing chelation therapy. Pfister testified in his deposition that he did not fully read the Report until after he began chelation therapy. He further admitted it was upon reading the Report thoroughly that he questioned Medical Wellness's diagnosis and prescribed therapy. Pfister cannot now claim that he actually and reasonably relied on the Report in making the decision to undergo chelation therapy after admitting that he did not read the Report in its entirety until after that therapy started. In the absence of actual and reasonable reliance, Pfister's claim for fraud must fail. *Dean V. Kruse Found. v. Gates*, 932 N.E.2d 763, 768 (Ind. Ct. App. 2010).

3. It is well established in Indiana that a claim for civil conspiracy is not an independent cause of action, but must be based on an independent intentional tort. *Winkler v. V.G. Reed & Sons*, 638 N.E.2d 1228, 1234 (Ind. 1994). In light of the fact that Pfister's claims for fraud fails as a matter of law and a conspiracy to commit negligence is a logical contradiction, summary judgment is entered on Pfister's conspiracy claim against Doctor's Data.

4. Pfister's claim for negligence also fails as a matter of law. A party may only be liable for negligence if it owed a duty of care to the plaintiff. Applying the standard articulated in *Webb v. Jarvis*, 575 N.E.2d 992 (Ind. 1991), it is clear that Doctor's Data did not owe Pfister a duty of care to interpret the results of his urine test. The level of interaction between Doctor's

Data and Pfister is too minimal to impose such a duty. Doctor's Data did not order the urine test, determine how the urine should be collected, or determine whether Pfister should be injected with a provoking agent prior to the urine test. Further, Doctor's Data did not examine Pfister or have any information regarding the context in which the urine test was ordered. Pfister alleges that he was given an invalid diagnosis and that he underwent unnecessary treatment. Doctor's Data was not involved in making this diagnosis or in recommending any treatment. Instead, Doctor's Data provided the Report to Pfister's physicians who are qualified to interpret the results and offer a diagnosis. This discharges Doctor's Data of any further duties. *Caputo v. Compuchem Laboratories, Inc.*, 1994 U.S. Dist. LEXIS 2191 at *10 (E.D. Pa. Mar. 21, 1994). Doctor's Data's role was limited to testing Pfister's urine sample and reporting the results. Doctor's Data did not owe a duty of care to interpret those results. Therefore, Pfister's claim for negligence must fail.

For the foregoing reasons, Doctor's Data's Motion for Summary Judgment should be and hereby is **GRANTED**.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that summary judgment is entered in favor of Doctor's Data on Counts IV, V, and VI of Plaintiff Rick Pfister's *First Amended Class-Action Complaint for Damages and Demand for Jury Trial.* That disposes of all claims against Doctor's Data, but not as to all defendants. However, the Court finds there is no just reason for delay and expressly directs entry of Final Judgment in favor of Defendant Doctor's Data, Inc. and against Plaintiff Rick Pfister.

So ordered.

OCT 29 2012
Date

Judge, Marion Superior Court

Distribution:

Linda George/Kathleen A. Farinas
Todd Barnes/Ashleigh M. Resetarits
GEORGE & SIPES
151 N. Delaware Street, Suite 1700
Indianapolis, IN 46204

Mary M. Ruth Feldhake
Elizabeth A. Schuerman
BOSE McKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204

Daniel R. Fagan
BINGHAM GREENEBAUM DOLL, LLP
10 W. Market Street, #2700
Indianapolis, IN 46204-2982

2226130_1.

# EXHIBIT 3

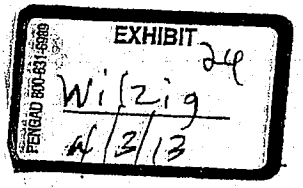


EXHIBIT
24
Wilzig
4/3/13
FENGAD 800-631-6989

# EXHIBIT 4

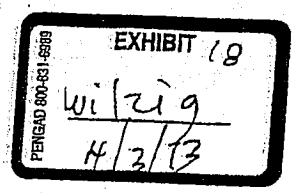


EXHIBIT 18
PENGAD 800-631-6989
4/3/13

# EXHIBIT 5

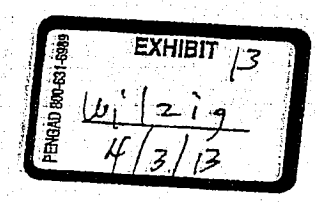


EXHIBIT 13
4/3/13
PENGAD 800-631-6989

# EXHIBIT 6

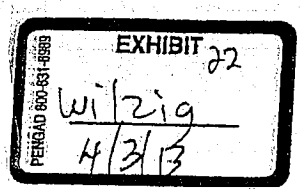


EXHIBIT 22
PENGAD 800-631-6989
WI 2ig
4/3/13

# EXHIBIT 7

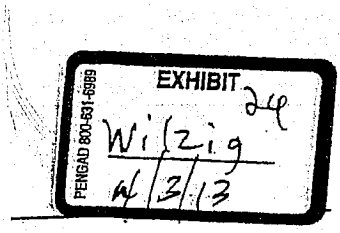
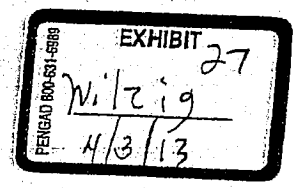


EXHIBIT
24
Wilzig
4/3/13
PENGAD 800-631-6989

# EXHIBIT 8




1

# EXHIBIT 9

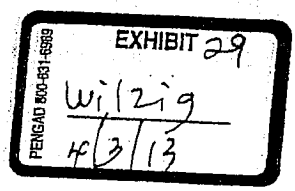
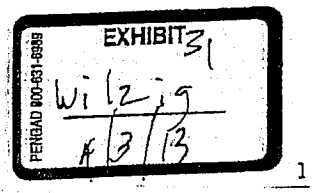


EXHIBIT 29
Wilzig
4/3/13
PENGAD 800-631-6989

# EXHIBIT 10




1

# EXHIBIT 11

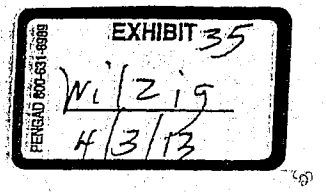


EXHIBIT 35
WI 2 19
4/3/13
PENGAD 800-631-6989

# EXHIBIT 12

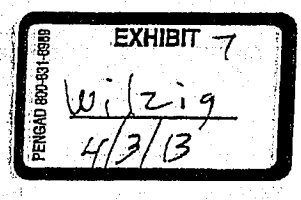


EXHIBIT 7
Wilzig
4/3/13
PENGAD 800-631-6989

# EXHIBIT 13

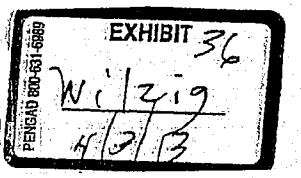


EXHIBIT 36
Wilzig
4/3/13
PENGAD 800-631-6989

# EXHIBIT 14

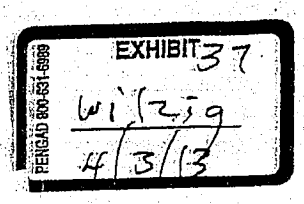


EXHIBIT 37
WITNESS
4/3/13
FEINGAD 800-631-6989

# EXHIBIT 15

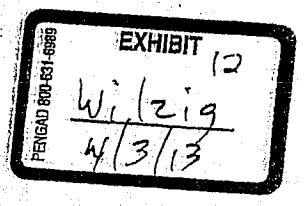


EXHIBIT 12
Wilzig
4/3/13
PENGAD 800-631-6989

# EXHIBIT 16

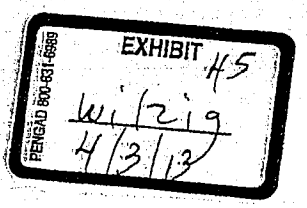


EXHIBIT 45
4/3/13
PENGAD 800-631-6989

EXHIBIT 17

KMK KULWIN MASCIOPINTO & KULWIN

April 24, 2013

*Via Email*
Michael K. Botts, Esq.
Attorney At Law
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Re: *Doctor's Data, Inc. v. Stephen J. Barrett, M.D., et al.*, 10 CV 3795 (N.D. Ill.)

Dear Mike:

This correspondence is to memorialize the parties' Rule 37 meet and confer conference that took place late yesterday. During the conference, the following discovery disputes/issues were discussed:

Supplemental Reference Range Documents. You started the discovery conference by asking about Doctor's Data most recent production of Monday morning via Federal Express. We explained that these were supplemental reference range documents just recently analyzed, approved, and finalized in the ordinary course of Doctor's Data's business. They are produced not because they are the subject of any prior court order or motion to compel but because they have come into existence, and Doctor's Data honors its responsibility to timely supplement its discovery production in such circumstances.

Documents Referencing Defendants/Allegedly Missing Attachments. You objected that some undefined number of the hundreds of pages produced that reference a Defendant (primarily emails) included an attachment not produced. I assured you that a thorough search was performed and that all responsive documents were produced to the best of Plaintiff's ability. However, Plaintiff agreed to check on allegedly missing attachments as long as you/your client would provide specific Bates-stamped pages to check. You provided one page, number 4984. We will check on this issue. You indicated that you were unwilling to provide other specific examples. I informed you that we would not go through the entire production for you. However, Plaintiff remains ready, willing and able to search for specific attachments if you provide the specific page numbers that suggest a potentially non-produced document. Finally, I explained that if you file a motion with respect to this issue, Plaintiff would feel compelled to bring before the court examples of Defendants' manipulation of its email discovery and confusing/incomplete production.

Explanatory Announcement & RR Redactions. You wanted Doctor's Data to un-redact the names of the individuals who received Plaintiff's explanatory announcement about the lawsuit it filed against Defendants and/or the doctor identifying information redacted from the produced

reference range spreadsheets. Disclosure of these individual names is irrelevant and highly prejudicial. In particular, Dr. Barrett has repeatedly expressed his commitment to use discovery for improper purposes, namely, as a sword to cause financial and professional harm to Plaintiff and the physicians who rely on Plaintiff. I provided examples during our conference, including: (a) Dr. Barrett publically celebrating that discovery in the *Coman* litigation (which he fomented but concealed to acknowledge in his published article) "would be a bitch"; (b) Dr. Barrett emailing Attorney Wilzig that discovery in Plaintiff's litigation would provide him with "an opportunity" to further learn about Plaintiff's internal workings and damage/target Plaintiff and its customers; and (c) Dr. Barrett targeting Plaintiff's physician customers (after learning of their names) by filing or assisting in the filing of professional complaints against them with their state licensing entities. Without a doubt, Dr. Barrett wants the names of Plaintiff's physician customers to continue his campaign to professionally destroy them and Plaintiff's business. Indeed, Dr. Barrett has continued to engage in this conduct throughout the course of this litigation, and at least one very stark example exists.

Reference Range Native Format. You objected, stating that the reference range spreadsheets (produced three different times) were not in native format. I explained that the spreadsheets were in fact in their native format, with appropriate redactions of physician and patient identifying information. Except for the redacted data (apparent from the electronic documents because the redactions are shaded), the spreadsheets are in the identical electronic format found and are fully searchable Excel electronic documents.

SOP/Test Protocols. You requested the production of Plaintiff's Standard Operating Procedures and Test Protocols. I explained that the judge previously ruled that "accuracy" documents were "off the table." These are accuracy documents, as you acknowledged. You disagreed with our understanding of the judge's ruling.

Kazuko/CARE Clinic Contract & Correspondence. I agreed to look into whether any contract exists, and if so, whether it was responsive to any request to produce that was at issue in your motion to compel and that the judge ordered produced. We have since determined that the only such document that exists – which was never signed – was already produced to you long ago (4765-4778). I further explained that Kazuko/CARE Clinic correspondence (your request #50) was a new matter, not at issue in your motion to compel and never ordered produced by the judge. I further noted that if your contention will be that old discovery requests are now in play, Plaintiff demands (and/or will ask the judge to order) that Defendants be subject to the same reciprocal obligation. This, of course, will open the door to why Attorney Wilzig produced and identified hundreds of emails (from or to Dr. Barrett) that Dr. Barrett omitted from his production.

Expert Correspondence/Billing. I again explained that Plaintiff has produced to Defendants all substantive documents provided to its damages expert. Defendants' demand for correspondence, if any, and billing information related to Plaintiff's expert will be produced in expert discovery, as is customary.

Completion of Doug Fields' 30(b)(6) Deposition. You asked that Plaintiff agree to postpone the completion of Doug Fields' 30(b)(6) deposition, scheduled by agreement for May 1 or May 2, both dates that we have held open. I stated that we would consult with our client but likely not recommend any postponement. There is a court order to complete this deposition by May 6. Also, the foregoing documents that you claim are missing are small in number and even less significant as a substantive matter, particularly as it relates to Mr. Fields' 30(b)(6) deposition/topics. Subject to you cancelling the deposition, the parties agreed to complete Mr. Fields' deposition, beginning on May 2, 2012 at 9:30 a.m. I informed you that Plaintiff intends to comply with the Federal Rules of Civil Procedure as it relates to the duration of this deposition, particularly since Mr. Fields already has been deposed for approximately 3.5 hours of testimony time. Plaintiff will be reasonable in its application of the Federal Rules and could potentially agree to allow more than the maximum time allowed by law, but as of now, Plaintiff sees no valid reason for Mr. Fields' testimony (the former session and upcoming session, collectively) to exceed a total of 7 hours. You agreed to provide prompt notice if you decided to cancel Mr. Fields' deposition.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

KULWIN, MASCIOPINTO & KULWIN, LLP.

By: /s/ Anthony J. Masciopinto
Anthony J. Masciopinto

cc: Counsel of Record
(Via Email)

# EXHIBIT 18