

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

**REPLY IN SUPPORT OF DEFENDANT
SAM GHoubRIAL, M.D.'S MOTION
FOR SANCTIONS AND MOTION TO
STRIKE DR. GUNNING'S
CONFIDENTIAL DEPOSITION
TRANSCRIPT**

Initially, Plaintiffs' Brief in Opposition fails to address the elephant in the room: the entire deposition transcript is marked CONFIDENTIAL. The center of the transcript's cover is marked ***CONFIDENTIAL***, as is each of the subsequent 273 pages. Plaintiffs simply ignored the explicit designation by publicly filing almost immediately after receiving the transcript.

Moreover, the parties explicitly agreed to meet and confer over what specific portions of the deposition testimony would need to be designated confidential subject to the protective order at a later date. *See* Gunning Dep. at 74:22 – 75:2 (“... **we can go back and designate portions of the testimony that need to be treated the same way** [marked confidential subject to filing under seal].”). Plaintiffs' Counsel's repeated use of “we” demonstrates that the collective parties *agreed* to mark the transcript as confidential and *agreed* to “go back and designate portions of the testimony” that need to be redacted and filed subject under seal. Accordingly, when the parties received the deposition transcript, the entirety of the transcript was marked CONFIDENTIAL, as agreed, subject to further review. Incredibly, Plaintiffs currently argue that the transcript—containing 274 markings stating “CONFIDENTIAL”—was demonstrably not agreed to be marked confidential. Defendant Ghoubrial requests that the Court refer to the four corners of the transcript to conclude that the entire transcript was marked confidential and that the parties explicitly agreed to meet and confer over

what specific portions of testimony needed to be filed under seal subject to the Protective Order at a later date, as the Protective Order requires.

Unfortunately, Plaintiffs failed to meet and confer as promised and required under the Protective Order. Additionally, Plaintiffs filed the transcript within 24 hours of receiving the transcript on December 19, 2018, lending no other party any time to review the transcript to determine whether any portions could raise confidentiality issues. (See 12/19/2018 E-mail transmission of deposition transcript from Veritext, attached as Exhibit A). Plaintiffs' argument that no confidentiality issues exist within the transcript misses the point. The Protective Order requires that the parties meet and confer regarding issues of confidentiality. Here, potential issues were noted during the deposition and the parties agreed to return to those issues at a later date. Plaintiffs did not adhere to this agreement and violated the Protective Order. Critically, Plaintiffs went ahead and filed a transcript, almost immediately upon receipt, despite:

- Each and every page of the transcript being clearly marked CONFIDENTIAL;
- Agreeing to go back and review the transcript for confidentiality issues; and
- Being required to meet and confer about confidentiality issues under the Protective Order.

Therefore, the Court must swiftly and severely sanction Plaintiffs for their blatant disregard of all parties confidentiality rights in violation of the Protective Order and strike all references to the inappropriately-filed deposition transcript.

Respectfully Submitted,

By: /s/ Bradley J. Barmen

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CERTIFICATE OF SERVICE

The foregoing Defendant Sam Ghoubrial, M.D.'s Memorandum in Opposition to Plaintiffs' Motion for a Protective Order Barring Speaking Objections at Depositions has been filed on the 15th day of January, 2019 using the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

Counsel for Defendant

Sam N. Ghoubrial, M.D.

Subject: FW: [EXT] File(s) for: Williams, Member, Et Al. v Kisling, Nestico & Redick, Llc, Et Al.;
Witness(es): Richard Gunning , M.D.; Assignment #3028229
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From: "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>
To: "Szucs, Helen" <Helen.Szucs@lewisbrisbois.com>

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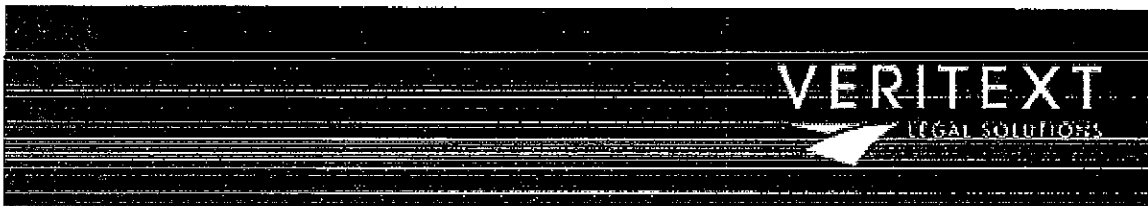
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