

DOCKET

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

FILED

AUG 22 2002

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY _____ DEPUTY

ANDREA LOCKE, Individually, as)
 Personal Representative, Mother)
 and as Next Friend of Alexis)
 Nicole Barrera, Deceased,)
)
 Plaintiff,)
)
 vs.)
)
 CIMARRON MEMORIAL HOSPITAL)
 et al.,)
)
 Defendants.)

No. CIV-01-213-W

ORDER

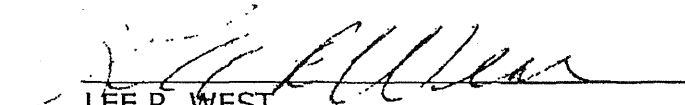
On July 19, 2002, the Court directed counsel for the plaintiff, Andrea Locke, individually, and as personal representative, mother and next friend of Alexis Nicole Barrera, deceased, to submit an affidavit setting forth the attorney's fees and expenses she had incurred as a result of defense counsel's failure to submit to Locke the reports of all expert witnesses required by Rule 26, F.R.Civ.P. The Court has now received the affidavit of plaintiff's counsel, Hunter Thomas Hillin, wherein Hillin has stated that he spent 4.5 hours in connection with this matter and that a reasonable, usual and customary attorney fee rate of \$250.00 should be applied.

Upon review of the record, the Court finds the hours spent by Hillin and the rate he has requested to be both reasonable and appropriate under the circumstances. Accordingly, the Court AWARDS to Locke attorney's fees in the

93

amount of \$1125.00 to be recovered from attorneys A. Scott Johnson and Mary
B. Hanan and the law firm of Johnson, Hanan, Heron and Trout, P.C.

ENTERED this 22nd day of August, 2002.


LEE R. WEST
UNITED STATES DISTRICT JUDGE

**PLAINTIFFS' OBJECTIONS TO THE MOTION FOR PRO HAC VICE
ADMISSION OF A. SCOTT JOHNSON**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs and make their objections to the Motion Requesting Permission to Participate Pro Hac Vice of A. Scott Johnson and in support thereof would show the Court as follows:

I. Deficient Motion

The Motion by Mr. Johnson to appear Pro Hac is deficient. Mr. Johnson's Motion indicates that he is familiar with Rule XIX of the Rules Governing Admission to the Bar of Texas, yet his motion is not accompanied by the mandatory motion of the resident practicing attorney with whom the non-resident attorney intends to be associated in the proceeding of this particular matter indicating that the resident attorney finds the applicant reputable and recommends that the applicant be granted permission to participate in these particular proceedings before the Court. *See Rule XIX(b), Rules Governing Admission to the Bar.*

II. Frequent Appearances

Plaintiffs have reason to believe that Mr. Johnson, the non-resident attorney, is appearing in courts in Texas on a frequent basis. Further, that in the cases in which Mr. Johnson was granted permission to appear Pro Hac, Mr. Johnson's conduct was unprofessional.

Plaintiffs' object to the Court considering the Motion Requesting Permission to Participate Pro Hac Vice of A. Scott Johnson as shown above.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs move that the Court Deny the Motion Requesting Permission to Participate Pro Hac Vice of A. Scott Johnson and for such other and further relief, at law or in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

THE EDWARDS LAW FIRM, L.L.P.
1400 Frost Bank Plaza
Corpus Christi, Texas 78403-0480
Telephone: (361) 698-7600
Facsimile: (361) 698-7614

By: _____



WILLIAM R. EDWARDS
State Bar No. 06465000
ANGELINA BELTRAN
State Bar No. 02111700

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record, as listed below, by the method of service indicated, on this the 30th day of June, 2005.



ANGELINA BELTRAN

VIA HAND DELIVERY TO:

Ms. Melanie S. Breedlove
COOPER & SCULLY
700 Louisiana, Suite 3850
Houston, Texas 77002

Mr. Kevin E. Oliver
COOPER & SCULLY
900 Jackson St., Suite 100
Dallas, Texas 75202

Mr. Richard C. Woolsey
Mr. Lane Jarvis
HERMANSEN, MCKIBBEN, WOOLSEY & VILLARREAL, L.L.P.
1100 Tower II
555 N. Carancahua
Corpus Christi, Texas 78478

CAUSE NO. 03-61778-3

FLORA SANCHEZ, Individually, as Heir
and as Personal Representative of the Estate
of Natividad Rodriguez, Deceased;

YOLANDA BENAVIDEZ, Individually,
as Heir and as Personal Representative
of the Estate of Natividad Rodriguez,
Deceased;

PATRICIA MORENO, Individually,
as Heir and as Personal Representative
of the Estate of Natividad Rodriguez,
Deceased;

VIOLA GUTIERREZ, Individually,
as Heir and as Personal Representative
of the Estate of Natividad Rodriguez,
Deceased; and

MARIVEL R. CARRILLO, Individually,
as Heir and as Personal Representative
of the Estate of Natividad Rodriguez,
Deceased,

Plaintiffs,

vs.

RIVERSIDE HOSPITAL, INC. d/b/a
NORTHWEST REGIONAL HOSPITAL;

SEBASTIAN CERNA, M.D., P.A.; and

SEBASTIAN CERNA, M.D., Individually,
and In His Assumed or Common Name,

Defendants.

IN THE COUNTY COURT

AT LAW NO. 3

NUECES COUNTY, TEXAS

FILED - PATSY PEREZ
CLERK OF COUNTY &
DISTRICT COURTS
NUECES COUNTY, TEXAS
BY [Signature]
2005 AUG 15 P 2:36
DPTY

**PLAINTIFFS' AMENDED MOTION TO REVOKE PRO HAC VICE ADMISSION
OF A. SCOTT JOHNSON**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs and make their objections and Move to Revoke the Pro Hac Vice Admission of A. Scott Johnson to participate in the case and in support thereof would show the Court as follows:

I. Violation of the Texas Rules of Civil Procedure

A. Scott Johnson, an Oklahoma attorney, filed a Motion for Permission to Appear Pro Hac Vice in the trial of this matter on or about June 28, 2005.¹ Another Motion was filed on July 28, 2005 though the Court had conditionally granted the Motion filed June 28, 2005.

Contemporaneous with the filing of this Motion, Plaintiffs have also filed a Motion to Strike a "retained" testifying expert witness, Jack Cortese, M.D. as alleged by A. Scott Johnson, a non resident attorney. Mr. Johnson refuses to provide Plaintiffs with evidence of his alleged retention of Jack Cortese, M.D. as a testifying expert.² Though asked to do so, Mr. Johnson refuses to disclose the date on which he "retained" Jack Cortese as a testifying expert.³ When asked to disclose the date on which he retained Jack Cortese, Mr. Johnson indicated that it was "none of your business". Mr. Johnson further refuses to disclose the

¹ Plaintiffs filed Objections to the said Johnson Motion on June 30, 2005.

² See attached Exh. "A," letter from A. Scott Johnson, dated 8/12/05 to W.R. Edwards.

³ See attached Exh. "B," letter from William R. Edwards to A.S. Johnson dated 8/12/05.

matters required to be disclosed under Rule 194.2(e) with regard to “retained” experts, though the rules require such disclosure without the need for Plaintiffs to specifically request it.

II. Disregard for the Texas Rules of Professional Conduct

Plaintiffs have reason to believe that A. Scott Johnson, a non-resident attorney, has disregarded the Texas Rules of Professional Conduct, Sections 3.01, 3.04(a), (e) and 8.04 (3), (4) and (12), with regard to his conduct involving the witness Jack Cortese, M.D.

Further, Plaintiffs believe that A. Scott Johnson, the non resident attorney has induced Jack Cortese, M.D. to violate Federal HIPAA regulations⁴ with regard to Mrs. Rodriguez, as well as violated the regulations himself in the manner in which he has obtained the health information of Mrs. Rodriguez from Jack Cortese, M.D. Jack Cortese has never requested authorization to discuss his deceased patient’s health information with anyone, including, Mr. Johnson. Mr. Johnson never requested authorization from Plaintiffs to discuss Mrs. Rodriguez health information with Jack Cortese, M.D.

Further, Mr. Johnson’s client, Riverside Hospital, Inc. d/b/a Northwest Regional Hospital has alleged that Jack Cortese, M.D. as an individual who caused or who contributed to cause Mrs. Rodriguez’s death.⁵ Given this scenario, other statutory violations may surface which would subject Jack Cortese to serious consequences. Certainly Plaintiffs should be

⁴ 42 USC Section 1320d-5 and 1320d-6 strictly regulates the manner in which identifiable health information is obtained by an individual and disclosed to another person.

⁵ See Defendant Hospital’s Second Amended Answer filed June 28, 2005 and Defendant Cerna’s similar allegations filed August 5, 2005.

entitled to know about any discussions Mr. Johnson has had with an individual his client accused of causing Mrs. Rodriguez's death.

Plaintiffs' urge that the Court consider Plaintiffs Motion to revoke its permission to A. Scott Johnson to Participate Pro Hac Vice in this matter and that their motion be granted.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs move that the Court GRANT Plaintiffs Motion to Revoke its Permission to A. Scott Johnson to Participate Pro Hac Vice in these proceedings, and for such other and further relief, at law or in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

THE EDWARDS LAW FIRM, L.L.P.

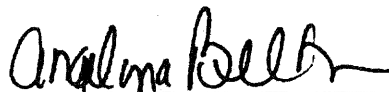
1400 Frost Bank Plaza

Corpus Christi, Texas 78403-0480

Telephone: (361) 698-7600

Facsimile: (361) 698-7614

By: _____



WILLIAM R. EDWARDS

State Bar No. 06465000

ANGELINA BELTRAN

State Bar No. 02111700

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record, as listed below, by the method of service indicated, on this the 13th day of August, 2005.



ANGELINA BELTRAN

VIA FACSIMILE & CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

Mr. Kevin E. Oliver
COOPER & SCULLY
900 Jackson St., Suite 100
Dallas, Texas 75202

Mr. A. Scott Johnson
Johnson & Hanan
Chase Tower, Suite 2750
100 N. Broadway Ave.
Oklahoma City, Oklahoma 73102-8846

Mr. Richard C. Woolsey
Mr. Lane Jarvis
HERMANSEN, MCKIBBEN, WOOLSEY
& VILLARREAL, L.L.P.
1100 Tower II
555 N. Carancahua
Corpus Christi, Texas 78478

JOHNSON AND HANAN

ATTORNEYS AT LAW

CHASE TOWER, SUITE 2750
100 NORTH BROADWAY AVENUE
OKLAHOMA CITY, OKLAHOMA 73102-8848
405/232-6100 FAX 405/232-6105

A. SCOTT JOHNSON
MARY B. HANAN
ALEXANDER C. VOSLER
JON M. WILLIFORD
BRYAN E. STANTON

JOHN B. HILL
NIG S. BATT
JUSTIN P. ELLERS
JAMES DEE GRAVES

August 12, 2005

Via Telecopy 698-7614

Mr. Bill Edwards
THE EDWARDS LAW FIRM, L.L.P.
802 N. Carancahua, Suite 1400
P.O. Box 480
Corpus Christi, Texas 78403-0480

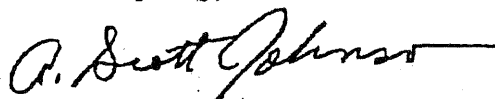
RE: Cause No. 03-61778-3; Flora Sanchez, Individually, As Heir and As
Personal Representative of the Estate of Natividad Rodriguez, Deceased,
et al vs. Northwest Regional Hospital, et al;
In the County Court at Law No. 3, Nueces County, Texas

Dear Bill:

Dr. Cortese advised me that you contacted him on the morning of August 12, 2005. Dr. Cortese is my retained expert. Dr. Cortese was listed in our disclosures as an expert and on the pre-trial order. You have never requested to take his deposition. In an effort to cooperate, I will attempt to arrange a video deposition of Dr. Cortese at Mr. Woolsey's office on Sunday, August 14, 2005, if you now for the first time, believe you need to depose him. Please advise me immediately if you want to take his deposition and I will attempt to make the appropriate arrangements. Otherwise, I will assume that you are satisfied with our numerous disclosures regarding Dr. Cortese. Of course, I am not complaining about or concerned with your initial direct contact with my expert witness, but in the future please contact me about information regarding my experts.

I look forward to hearing from you.

Yours very truly,



A. Scott Johnson

EXHIBIT A

AUG 12 2005

THE EDWARDS LAW FIRM, L.L.P.

ATTORNEYS AT LAW

P. O. BOX 480

CORPUS CHRISTI, TEXAS 78403-0480

(361) 698-7600

WILLIAM R. EDWARDS
BOARD CERTIFIED
PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

August 12, 2005

FROST BANK PLAZA
SUITE 1400 78470
FAX: (361) 698-7614

Mr. A. Scott Johnson
Johnson and Hanan
Chase Tower, Suite 2750
100 North Broadway Ave.
Oklahoma City, OK 73102-8846

Via Facsimile c/o of "BHM&V" &
Facsimile: (405) 232-6105

Re: Cause No. 03-61778-3; *Flora Sanchez, Individually, As Heir and as Personal Representative of the Estate of Natividad Rodriguez, et al. v. Northwest Regional Hospital, et al.*, In the County Court at Law No. 3, Nueces County, Texas.

Dear Mr. Johnson:

I received your letter of today stating Dr. Cortese is your retained expert. I do take issue with your statement that Dr. Cortese was properly designated as a "retained expert" under our rules of practice. Dr. Cortese was identified by the hospital as a "healthcare provider" amongst 35 other healthcare providers as recent as 7/25/05. I would certainly like to see some evidence of a "retainer" of Dr. Cortese by your firm within the hour. I will not agree to modify Dr. Cortese's duty to appear on Monday, August 15th pursuant to the subpoena served on him.

Also, I take issue to your statement that I contacted Dr. Cortese. I attempted to contact Dr. Cortese. Dr. Cortese returned my call, but I did not speak with him. Dr. Cortese's call came after 11:00 a.m. on August 12, 2005 by which time I received your letter of August 12, 2005 advising Dr. Cortese was your "retained expert."

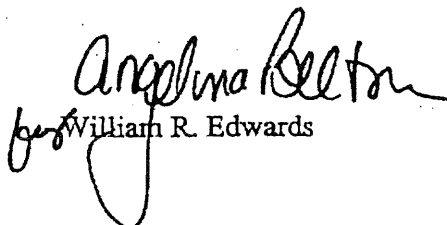
Your offer of a Sunday deposition is not a solution to the problem.

Please be advised that I intend to and will take this matter up with Court as promptly as possible.

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

Very truly yours,

THE EDWARDS LAW FIRM, L.L.P.


William R. Edwards

WRE/AB:njh

EXHIBIT B

All Counsel

Re: Cause No. 03-61778-3; *Flora Sanchez, Individually, As Heir and as Personal Representative of the Estate of Natividad Rodriguez, et al. v. Northwest Regional Hospital, et al.*

Page 2

Via facsimile:

Mr. Kevin E. Oliver
COOPER & SCULLY, P.C.
Founders Square
900 Jackson Square, Suite 100
Dallas, Texas 75202

Mr. Richard Woolsey
Mr. Lane Jarvis
HERMANSEN, MCKIBBEN, WOOLSEY
& VILLARREAL, L.L.P.
1100 Tower II
555 N. Carancahua Street
Corpus Christi, Texas 78478

CAUSE NO. 03-61778-3

FLORA SANCHEZ, Individually, as Heir
and as Personal Representative of the Estate
of Natividad Rodriguez, Deceased;
ET AL.,

Plaintiffs,

vs.

RIVERSIDE HOSPITAL, INC. d/b/a
NORTHWEST REGIONAL HOSPITAL;
ET AL.,

Defendants.

§
§
§
§
§
§
§
§
§
§
§

IN THE COUNTY COURT

AT LAW NO. 3

NUECES COUNTY, TEXAS

**PLAINTIFFS' FIRST SUPPLEMENTAL MOTION TO PLAINTIFFS'
AMENDED MOTION TO REVOKE THE PRO HAC VICE ADMISSION OF
A. SCOTT JOHNSON**

TO THE HONORABLE JUDGE OF SAID COURT:

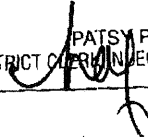
COME NOW Plaintiffs in the above-styled and numbered cause and file this their
PLAINTIFF'S FIRST SUPPLEMENTAL MOTION TO PLAINTIFFS' AMENDED
MOTION TO REVOKE THE PRO HAC VICE ADMISSION OF A. SCOTT JOHNSON
pursuant to the Rules Governing Admission to the Bar of Texas, Rule XIX(e) and, in support
thereof, would show the Court as follows:

I.

On Monday, August 15, 2005, the Court held a hearing on PLAINTIFFS'
AMENDED MOTION TO REVOKE PRO HAC VICE ADMISSION OF A. SCOTT

FILED

AUG 19 2005

PATSY PEREZ
DISTRICT CLERK, NUECES COUNTY, TEXAS
BY  DEPUTY

JOHNSON. Plaintiffs incorporate herein by reference its First Amended Motion and all of the exhibits contained therein by reference as well as Plaintiffs' Objections to the Motion for Pro Hac Vice Admission of A. Scott Johnson, filed June 30, 2005, without the necessity of refileing each of the documents and exhibits already before the Court for all purposes.

At the hearing on Plaintiffs First Amended Motion, Dr. Jack Cortese, Scott Johnson's "retained expert," testified that he had provided Mr. Johnson with "a copy of an article"

Q. And have you turned that research over to or information about that research over to Mr. Johnson?

A. There was just a copy of an article, yes.

Q. You gave him a copy of an article?

A. Yes.

(See Transcript of August 15, 2005 Hearing p. 9, lines 16-20; Ex. 1 attached hereto.)

After testimony had concluded at the hearing of August 15, 2005, the Court, among other things, ordered that the Defendant Hospital produce its "retained expert" for deposition on the afternoon of Monday, August 15, 2005, at 2:30 p.m. Said deposition was commenced, but not finished. It is to be completed on the afternoon of Thursday, August 18, 2005.

At the deposition on the afternoon of Monday, August 15, 2005, Dr. Cortese testified that he had provided A. Scott Johnson with more than "just a copy of an article".

Q. And you said this morning that you had come up with one article I think you said?

A. I gave a group of papers concerning an issue that I had listed, you know, in my consultation.

Q. And what publication did this group of papers come from that you gave to Mr. Johnson?

A. There's a nephrologic literature called Up-To-Date.

Q. Okay.

A. And then there's a compendium called Micromedics that's just like a PDR, just list the drug and its uses.

(Deposition of Dr. Cortese, August 15, 2005, p. 35, line 20-p. 36, line 1; p. 36, lines 5-12; Ex. 3 attached hereto.).

Among other things, the Court ordered Dr. Cortese to provide copies of that literature to Plaintiffs' counsel. Copies of the literature provided are attached hereto as Exhibit 16, 17, 18, 19 and 20. Instead of there being "just a copy of an article" Plaintiffs' attorneys have been provided with five (5) articles.

A. Scott Johnson was present in Court when Dr. Cortese testified that he had provided Mr. Johnson with "just a copy of an article." Mr. Johnson had to know that that testimony was incorrect. Notwithstanding that fact, Mr. Johnson failed to inform the Court that his "retained expert" was in error and that, in fact, he had provided several more documents than he testified to. Mr. Johnson did nothing to provide Plaintiffs with all the literature provided to him by "his retained expert" following the hearing. Had it not been for the Court's ordering the taking of Dr. Cortese's deposition, Plaintiffs would undoubtedly never have known of more than "just a copy of an article," at least not before Dr. Cortese was called as a witness.

II.

Under the Court's Docket Control Order of November 4, 2004, Defendants' experts were to be designated by April 4, 2005. (See Plaintiffs' First Amended Motion.) Dr. Cerna's expert designation was extended by Rule 11 letter to April 6, 2005. Ex. 12, Rule 11 letter. Supplementation deadline for discovery for all parties was extended to June 6, 2005 by Rule 11 letter. Ex. 13, Rule 11 letter. After receipt of Defendants Designation of experts and final

supplementation to discovery, on June 7, 2005, Plaintiffs' attorneys sent a written request to the Hospital's attorneys asking:

"To the extent that you have had oral or written communications of any kind with any healthcare provider of Ms. Rodriguez, please so identify each and supplement your discovery accordingly."

Ex. 4, Letter dated June 7, 2005. No information has been received pursuant to that request.

In fact, the Hospital lawyer responded on June 8, 2005 stating:

"No authorizations have been provided to any of her healthcare providers, and no oral or written communications have occurred discussing Mrs. Rodriguez's care and treatment at Northwest Regional Hospital on August 22, 2002."

Ex. 6, June 8, 2005 letter.

A similar letter was forwarded to Dr. Cerna's lawyers on that date. Ex. 7, Letter dated June 7, 2005. No response has been received to that letter identifying Dr. Cortese.

Also on June 7, 2005, a letter was sent to the Hospital's lawyers asking

"Please also supplement your discovery with any authorizations which you have sent Mrs. Rodriguez's healthcare providers"

Ex. 4, Letter dated June 7, 2005.

An additional letter dated June 7, 2005 was sent to the Hospital lawyers requesting

"Please immediately produce the 'properly executed HIPAA authorization' by which your firm obtained medical records pertaining to Mrs. Rodriguez from any medical provider per your facsimile of June 6, 2005." Ex. 5 attached hereto.

On June 8, 2005, the Hospital's lawyer responded indicating,

"... all records in our possession were obtained via deposition upon written question."

Ex. 8, letter dated June 8, 2005.

III.

Pursuant to Rule 194, Plaintiffs' had served on Defendant Hospital a Request for Disclosure, which required Defendant Hospital to identify and produce pursuant to section (f), for any testifying expert:

- (1) the expert's name, address, and telephone number;
- (2) the subject matter on which the expert will testify;
- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) *if the expert is retained by, employed by, or otherwise subject to the control of the responding party:*
 - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (B) the expert's current resume and bibliography.

Ex. 14, Request for Disclosure to Hospital.

The Defendant Hospital wholly failed to provide any such information with regard to A. Scott Johnson's "retained expert," Dr. Cortese. Ex. A, Affidavit of Angelina Beltran.

None of the information requested in that Request for Disclosure had even been identified, let alone produced, with respect to Dr. Cortese, A. Scott Johnson's "retained expert," until some of the information was identified by Dr. Cortese, Monday, August 15, 2005, in open court, the day that this case was set for the commencement of jury selection. Even on Monday, August 15, 2005, after the Court recessed the hearing, a full disclosure was not forthcoming from Mr. Johnson.

An examination of the materials provided shows that apparently Defendant Hospital intends to put forward a new defense not previously raised and not heretofore addressed by Plaintiffs' expert witness. A further delay of the trial may well result.

In this regard, Rule 193.6(a), (b):

- (a) Exclusion of Evidence and Exceptions. A party who fails to make, amend, or supplement a discovery response in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the court finds that:
 - (1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or
 - (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.
- (b) Burden of Establishing Exception. The burden of establishing good cause or the lack of unfair surprise or unfair prejudice is on the party seeking to introduce the evidence or call the witness. A finding of good cause or of the lack of unfair surprise or unfair prejudice must be supported by the record.

IV.

At the hearing on August 15, 2005, a H.I.P.A.A. Release was introduced into evidence marked Plaintiffs' Exhibit 4 (Ex. 10 hereto), signed by Viola R. Gutierrez. Mr. Johnson testified that the release authorized Dr. Cortese to release protected healthcare information to him.

Q. Did Dr. Cortese have a HIPPA release?

A. There was a HIPPA release signed – *two HIPPA releases signed; one that was sent to Dr. Cerna and one that was sent to Spohn*. And both HIPPA releases contained re-disclosure provisions in them which permit re-disclosure of information in this lawsuit.

Q. Do you have a copy of that release that was signed?

A. I do.

Q. Is there anything in Exhibit 4 that authorizes Dr. Cortese to release information to you or anyone else?

A. Yes.

Q. Where is that?

A. It says: Persons or organizations authorized to disclose health care information. All healthcare providers including doctors and hospitals from August 23rd, 2002, to present. And then it lists all medical records radiology, etcetera, etcetera, hospital buildings by authorized custodian of records to give up any of this information of all treatment.

Ex. 2, Transcript of August 15, 2005, A. Scott Johnson, p. 21, line 6-11; 14- 16; p. 23, lines 23-9.

In fact, Plaintiffs' Exhibit 4, dated May 21, 2003 authorized disclosure of records only to

“The Edwards Law Firm, L.L.P., their employees, agents or representatives”

and the release expired by its own terms at “final conclusion of the pending case or 180 days from the date of signature.” A. Scott Johnson was not “telling it like it is” when he gave such testimony. That H.I.P.A.A. release clearly did not authorize Dr. Cortese to release Natividad Rodriguez’s healthcare information to Mr. Johnson, let alone allow Mr. Johnson to retain Dr. Cortese. Exhibit 4, was not said to be one provided by Plaintiffs directly to Dr. Cortese.

As to the Spohn Hospital H.I.P.A.A. authorization allegedly in Mr. Johnson’s possession which authorized the disclosure of healthcare information to him by Dr. Cortese, the only authorization which the Hospital would have had access to was an authorization for records sent to Spohn (Ex. 9 hereto) for the Deposition on Written Question requested by the Hospital. It was even more restrictive than the one identified by Mr. Johnson introduced as Plaintiffs Exhibit 4. What Mr. Johnson failed to mention to the Court was that that Spohn South Hospital H.I.P.A.A. release contained the following limitations, restrictions, and instructions:

“This authorization does not authorize you to disclose with DSI Records, its employees or employer, the patient’s medical condition, are, history, treatment, diagnosis, prognosis, etiology, or medical are, and strictly forbids such disclosure.”

“This authorization is for a one time use only and expires immediately on the completion of the copying or reproduction of the records.”

Ex. 9, Copy of H.I.P.A.A. Authorization; Ex. 9, Letter of May 26, 2005.

DSI completed the copying of Natividad Rodriguez’s Spohn records on or about September 15, 2004. Ex. A, Affidavit of Angelina Beltran.

The Hospital lawyers knew the H.I.P.A.A. release was intended to expire on the completion of the Deposition on Written Question -- they received a copy of the communication with Spohn South! Ex. 9, Letter of May 26, 2004. Plaintiffs' counsel also instructed Spohn South and Counsel for the Hospital by way of the same letter of May 26, 2004 to

“Please destroy the authorization upon the completion of the Deposition on Written Questions or return same to this office.”

Ex. 9, Letter of May 26, 2004.

Plaintiffs' attorneys were never informed that the destruction of the H.I.P.A.A. authorization had not been accomplished or that it was being used in any way to secure healthcare information on Mrs. Rodriguez without Plaintiffs knowledge or consent. Plaintiffs counsel specifically requested this information as shown above.

V.

As to the HIPAA authorization to Dr. Cerna that Mr. Johnson testified under oath allowed him to discuss Mrs. Rodriguez's healthcare information with Dr. Cortese, Plaintiffs would show that a request for records pursuant to 4590i was sent to Dr. Cerna on or about May 28, 2003. Ex. 15, 4590i letter to Dr. Cerna. That authorization would have been in the same form as Plaintiffs Exh 4 to the hearing of August 15, 2005. It too would have allowed disclosure of healthcare information to “The Edwards Law Firm, L.L.P., their employees, agents or representatives” and the release expired by its own terms at “final conclusion of the pending case or 180 days from the date of signature.” A. Scott Johnson was again, not

“telling it like it is” when he gave such testimony.

Plaintiffs have signed and disseminated in any way only two (2) forms of H.I.P.A.A. authorizations in this case: (1) the form contained in Plaintiffs’ Exhibit 4 (Ex. 10 hereto) for release of healthcare information to the Edwards Law Firm, expiring 180 days from the signature, and (2) the authorization sent to Spohn South Hospital regarding the Deposition on Written Question (Ex. 9 hereto).¹

Mr. Johnson’s assertion that any of these two authorizations, (Dr. Cerna’s and Spohn South’s) permitted him to obtain any of Natividad Rodriguez’s protected healthcare information for Dr. Cortese is disingenuous at best.

In fact, Dr. Cortese testified that he was not aware of any release of any kind from the Rodriguez family to talk to the defense lawyer about Mrs. Rodriguez’s medical condition.

Q. Did you have any release of any kind from the Rodriguez family to talk to these lawyers about any part of Mrs. Rodriguez’ medical condition?

A. Not they [sic] I’m aware of.

Hearing Transcript of August 15, 2005, Dr. Cortese, p. 8, line 8-11 Ex. 1 attached hereto.)

Mr. Johnson (Ex. 2, Transcript, August 15, 2005, p. 14, line 24) suggests to the Court and to Dr. Cortese that Defendant’s Ex. 1 (Ex. 11 attached hereto), the subpoena issued May 18, 2005 for records from Dr. Cortese’s office, authorized Dr. Cortese to accept a retainer

¹ In all candor, Dr. Cortese was sent an authorization in the form of Plaintiffs’ Exhibit 4 to his custodian of records on November 21, 2003. That authorization would have expired after 180 days as well.

from Mr. Johnson, discuss Mrs. Rodriguez's protected healthcare case information with Mr. Johnson and to do medical research for Mr. Johnson.

By Mr. Johnson: "And we've heard about whether you had any authorization to do this - -"

By Mr. JOHNSON:

Q. And did I ask you - we were talking about whether you were authorized to do this or not. You may not be aware of it, that a subpoena issued for medical records from your office - - and all of this probably went to your office chart in 2004. Are you aware that the authorization to release that information by way of subpoena was actually issued to your office?

A. I didn't know it was a subpoena. We get requests for records.

Hearing Transcript of August 15, 2005, Dr. Cortese, p. 13, lines 12-18, p. 14, lines 20-p. 15, line 3; Ex. 1 attached hereto.

An examination of Defendant's Ex. 1 (Ex. 11 attached hereto), a deposition on written question to the Custodian of Records for Dr. Cortese, makes it plain that the subpoena contained in Defendant's Ex. 1 directed the custodian of records

"to appear and there under oath to answer certain written questions to be propounded to the witness"

The witness did so and the answer to the records questions were

"no records on this patient - never seen in this office."

Again, Mr. Johnson is not telling the Court or the witness "how it is." No HIPAA authorization was provided by Plaintiffs in conjunction with this DWQ. Defendant's Ex. 1 (Ex. 11 attached hereto) simply did not authorize the complained of activity. In fact, Defendant's Ex. 1 was issued at the request of the Hospital, Mr. Johnson's client, not by Plaintiffs.

VI.

Rule 3.03(a)(5), Texas Rules of Professional Conduct provides that

“a lawyer shall not offer or use evidence the lawyer knows is false.”

By not correcting the hearing testimony of Dr. Cortese that Dr. Cortese provided “just a copy of an article” Mr. Johnson violated this Rule. By using Plaintiffs’ Ex. 4 as authorization for his actions, Mr. Johnson violated this Rule. By using Plaintiffs’ Ex. 4 as giving Dr. Cortese authority to engage in the complained of activity, Mr. Johnson violated this Rule.

Mr. Johnson showed Mr. Cortese a document that he claims allowed Dr. Cortese to take the actions he took. Dr. Cortese testified as follows in this regard,

Q. Did Mr. Johnson show you any written authorization before you started talking to him about Mrs. Rodriguez?

A. I did ask him. I said is this permitted.

Q. The question was: Did he show you any written authorization from either Mrs. Rodriguez or her family?

A. Yes, Sir. He showed me a document.

Q. What document, do you know?

A. Sir, I don’t know the legalese to identify those forms.

THE COURT: To the best of your ability, would you describe that document?

THE WITNESS: It was about a – I want to say a two or three page document, and I remember it said healthcare providers involved in the case or something to that effect.

Hearing Transcript Dr. Cortese, August 15, 2005, p. 21, lines 14- p. 22, line 4; Ex. 1 attached hereto.

Mr. Johnson had no document that authorized the disclosure of personal healthcare information by Dr. Cortese. But he apparently convinced Dr. Cortese that it was okay to

disclose Mrs. Rodriguez's protected healthcare information and to violate several of the Ethics Rules of the American Medical Society of which he is a Member. Hearing Transcript, Dr. Cortese, August 15, 2005, p. 23, line 23 - p. 26, line 13; Ex. 1 attached hereto.

Rule 4.01(a), Texas Rules of Professional Conduct provides that

“in the course of representing a client, a lawyer shall not make a false statement of material fact or law to a third person.”

Mr. Johnson's representation to Dr. Cortese that any document he may have shown to Dr. Cortese allowed Dr. Cortese to engage in the complained of conduct clearly violates Rule 4.01(a).

As part of his application to appear pro hac vice before this Court, Scott Johnson averred that he had familiarized himself with the Texas Rules of Professional Conduct. See Mr. Johnson's application on file with the Court. Accordingly, Johnson must have known that in Texas

“A lawyer shall not knowingly . . . offer or use evidence that the lawyer knows to be false.”

Tex. Disciplinary R. of Prof'l Conduct 3.03(a)(5).

Moreover, “If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts.” Id. 3.03(b). Johnson knowingly violated this Rule when he failed to correct or withdraw his “retained expert's”

false testimony that the expert had only provided Johnson with one medical article when, in truth, he had provided at least five such articles, and that he had authority to communicate and for the release of healthcare information of Mrs. Rodriguez, when in fact he did not.

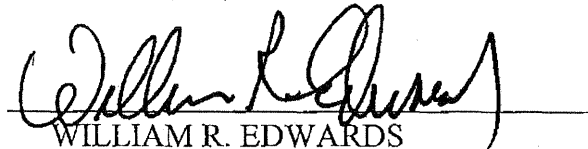
The conduct of Mr. Johnson has certainly violated Rule 3.02, Texas Rules of Professional Conduct.

Taking into account all that has occurred, Mr. Johnson's Pro Hac Vice privileges should be revoked and Plaintiffs pray that they be revoked and for such other and further relief to which Plaintiffs may appear entitled.

Respectfully submitted,

THE EDWARDS LAW FIRM, L.L.P.
802 N. Carancahua, Suite 1400
Corpus Christi, Texas 78478
Telephone: (361) 698-7600
Facsimile: (361) 698-7614

By:



WILLIAM R. EDWARDS
State Bar No. 06465000
ANGELINA BELTRAN
State Bar No. 02111700
JO EMMA ARECHIGA
State Bar No. 00786996

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record, as listed below, by the method of service indicated, on this the 19th day of August, 2005.



ANGELINA BELTRAN
WILLIAM R. EDWARDS

VIA HAND DELIVERY TO:

Mr. Richard C. Woolsey
Mr. Lane Jarvis
HERMANSEN, MCKIBBEN, WOOLSEY
& VILLARREAL, L.L.P.
1100 Tower II
555 N. Carancahua
Corpus Christi, Texas 78478

Mr. A. Scott Johnson
C/O
HERMANSEN, MCKIBBEN, WOOLSEY
& VILLARREAL, L.L.P.
1100 Tower II
555 N. Carancahua
Corpus Christi, Texas 78478

**VIA FACSIMILE & CERTIFIED MAIL
RETURN RECEIPT REQUESTED TO:**

Mr. Kevin E. Oliver
COOPER & SCULLY
900 Jackson St., Suite 100
Dallas, Texas 75202

Mr. A. Scott Johnson
Johnson & Hanan
Chase Tower, Suite 2750
100 N. Broadway Ave.
Oklahoma City, Oklahoma 73102-8846

REPORTER'S RECORD
CAUSE NO. 361778-3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FLORA SANCHEZ, INDIVIDUALLY, (IN THE COUNTY COURT
AS HEIR AND AS PERSONAL (REPRESENTATIVE OF THE ESTATE (OF NATIVIDAD RODRIGUEZ, (DECEASED, ET AL (VS. (AT LAW NO. 3 (NORTHWEST REGIONAL HOSPITAL, (ET AL (NUECES COUNTY, TEXAS

REQUESTED TESTIMONY OF JACK L. CORTESE, M.D.

On the 15th day of August, 2005, the following proceedings came on to be heard in the above-entitled and numbered cause before the HONORABLE MARISELA SALDANA Judge Presiding, held in Corpus Christi, Nueces County, Texas:

Proceeding reported by machine shorthand.

(ORIGINAL)

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COUNSEL FOR THE PLAINTIFFS:

MR. WILLIAM R. EDWARDS
State Bar No. 06465000
MS. ANGELINA BELTRAN
State Bar No. 02111700
THE EDWARDS LAW FIRM, L.L.P.
802 North Carancahua
Suite 1400
Corpus Christi, Texas 78470
(361) 698-7500

COUNSEL FOR NORTHWEST REGIONAL HOSPITAL:

MR. KEVIN E. OLIVER
State Bar No. 15260650
COOPER & SCULLY, P.C.
900 Jackson Street
Suite 100
Dallas, Texas 75202
(214) 712-9500

MR. A. SCOTT JOHNSON
State Bar No. 04665
JOHNSON AND HANAN
100 North Broadway Avenue
Suite 2750
Oklahoma City, Oklahoma 73102
(405) 232-6100

COUNSEL FOR SEBASTIAN CERNA:

MR. RICHARD C. WOOLSEY
State Bar No. 21989100
HERMANSEN, MCKIBBEN, WOOLSEY & VILLARREAL, L.L.P.
555 North Carancahua
1100 Tower II
Corpus Christi, Texas 78478
(361) 882-6611

1 (Examination of Jack L. Cortese, M.D.)

2 MR. EDWARDS: That's all I have right now.
3 I'm sorry. I did want to call Dr. Cortese.

4 THE COURT: Dr. Cortese, this is the
5 witness chair. Before you take your seat in the witness
6 chair, would you please raise your right hand.

7 Do you solemnly swear, sir, that the
8 testimony you're going to give in this will be the truth,
9 the whole truth, and nothing but the truth so help you
10 God?

11 THE WITNESS: I do.

12 THE COURT: Very well. You may have a
13 seat, sir. Be sure and place that microphone near to you
14 so that you'll be heard.

15 Mr. Edwards.

16 JACK L. CORTESE, M.D.,
17 having been first duly sworn, testified as follows:

18 EXAMINATION

19 BY MR. EDWARDS:

20 Q. Would you state your name for the record,
21 please, sir.

22 A. Jack Lacardi Cortese.

23 Q. And back in August of 2002 on the 23rd, you had
24 an occasion to become a physician for a lady by the name
25 of Natividad Rodriguez; is that correct?

1 A. That is correct.

2 Q. You were called in consultation by somebody
3 to -- for what purpose?

4 A. For evaluation of renal status of this patient.

5 Q. And approximately how long before she died was
6 that that you saw her?

7 A. A very short time.

8 Q. A couple of hours?

9 A. That would be approximately right.

10 Q. You have had occasion to -- have you ever
11 discussed this case with me?

12 A. No, sir. I've tried to call you back on
13 Friday. You weren't in your office.

14 Q. That was the first attempt you made to call me,
15 and that was in response to my call to you?

16 A. Yes, sir. That was your first call to me.

17 Q. I think the message was I wanted to talk to you
18 about the subpoena; is that correct?

19 A. It was just to call your office, sir.

20 Q. All right. Did you have occasion to talk to
21 Mr. Woolsey about this case?

22 A. Yes, I have.

23 Q. Did you have occasion to talk to Mr. Oliver
24 about this case?

25 A. Yes, sir.

1 Q. Have you had occasion to talk to Mr. Johnson
2 sitting here about this case?

3 A. Oh, yes, sir.

4 Q. Has Mr. Johnson agreed to pay you for your
5 services in this case?

6 A. Yes, he has.

7 Q. And what were those services to encompass?

8 A. To answer any questions in reference to the
9 case.

10 Q. And in any part of the case?

11 A. No specific part that I'm aware of.

12 THE COURT: Just a moment, gentlemen.

13 Mr. Edwards, you were asking.

14 MR. EDWARDS: Thank you, Your Honor.

15 Q. (By Mr. Edwards) When you say "about the case"
16 have you had occasion since you've been retained by
17 Mr. Johnson to review records in this case?

18 A. Yes.

19 Q. What records did you review?

20 A. Different lab tests, X-rays.

21 Q. Did you review any records from Northwest
22 Regional Hospital?

23 A. Not that I call specifically, not that I
24 recall.

25 Q. Did you review any records from Dr. Williams'

1 office?

2 A. There were many different papers that I saw. I
3 can't tell you which office that they originated from.

4 Q. So you can't say that you didn't see records
5 from Northwest, and you can't say you didn't see records
6 from Dr. Williams?

7 A. Specifically, yes.

8 Q. Did you discuss with Mr. Johnson or Mr. Oliver
9 or Mr. Woolsey, any of them, any of the activity or
10 conduct that occurred at Northwest?

11 A. Yes, I did.

12 Q. And what regard did you discuss that? Did you
13 talk about whether or not what her condition was at
14 Northwest?

15 A. Yes.

16 Q. Did you talk about what the standard of care
17 was at Northwest?

18 A. No real standard of care, just what occurred.

19 Q. What occurred at Northwest; did you give them
20 any opinions concerning how you felt about the condition
21 of Mrs. Rodriguez was at Northwest?

22 A. It was more of me perceiving what her condition
23 was by looking at records more than me giving an opinion.

24 Q. Well, did you tell them what you perceived her
25 condition to be at Northwest?

1 A. Yes.

2 Q. Did you have any authority from anyone to look
3 at the records from Northwest?

4 A. I don't know how to answer that.

5 Q. Did you have a written authority from anybody
6 in the Rodriguez family?

7 A. Me, personally, no.

8 Q. Do you know what a HIPPA authorization is
9 today?

10 A. Yes, sir.

11 Q. What is a HIPPA authorization?

12 A. It's a patient confidentiality standard to
13 follow.

14 Q. All right. Did you have any kind of written
15 agreement from anybody in the Rodriguez family that would
16 have waived the privacy rights of Mrs. Rodriguez'
17 condition, records, or anything about her protected
18 medical information from anybody in the Rodriguez family?

19 A. Other than the family giving me permission to
20 take care of her while she was alive when I was called
21 in.

22 Q. My question dealt with what happened at
23 Northwest.

24 A. Well, any consultation that I do in the
25 hospital, I take into account any activity.

1 Q. And my question is: Did you have any kind of
2 HIPPA authorization from the Rodriguez family to talk
3 about that with these lawyers for the defendants in this
4 case?

5 A. I'm not aware that I can split off one person's
6 condition to talk about versus another time of their
7 condition.

8 Q. Did you have any release of any kind from the
9 Rodriguez family to talk to these lawyers about any part
10 of Mrs. Rodriguez' medical condition?

11 A. Not that I'm aware of.

12 Q. Did you ever indicate to the Rodriguez family
13 in any way that you thought you might accept a retainer
14 from the lawyers defending the defendants in this case,
15 any of them?

16 A. I'm sorry. Could you repeat that question.

17 Q. Did you ever communicate with anybody connected
18 with the Rodriguez family that you were considering
19 taking a retainer in particular from Mr. Johnson?

20 A. No, sir.

21 Q. Did you ever inform my office of that?

22 A. No, sir.

23 Q. How much time have you spend on this case so
24 far?

25 A. Two or three hours.

1 Q. And what was your agreement with Mr. Johnson
2 about how much he was going to pay you in respect to your
3 involvement in this case?

4 A. Just an hourly rate.

5 Q. Of what?

6 A. I believe he agreed to \$350.

7 Q. Have you sent him a bill yet?

8 A. No, sir.

9 Q. Would you say you've spent some two to three
10 hours?

11 A. Yes.

12 Q. And how did you spend that two to three hours?

13 A. In sitting down and talking with him, reading
14 through -- as I said chemistry and X-ray reports, and
15 doing research at home myself.

16 Q. And have you turned that research over to or
17 information about that research over to Mr. Johnson?

18 A. There was just a copy of an article, yes.

19 Q. You gave him a copy of an article?

20 A. Yes.

21 Q. And were you explaining to Mr. Johnson what all
22 those various lab reports what you thought they meant,
23 that sort of thing?

24 A. Yes.

25 Q. Did Mr. Johnson show you any of the pleadings,

1 the papers that the plaintiffs had filed, what their
2 claims were?

3 A. I don't recall any legal document.

4 Q. Did Mr. Johnson discuss with you anything about
5 what the defendants' defenses were?

6 A. I'm sorry. Say that again.

7 Q. Did Mr. Johnson discuss with you anything at
8 all about what the defendant's defenses were?

9 A. I don't think I quite understand what you're
10 asking.

11 Q. Do you know what a defense to a case is? Do
12 you know what I mean when I say a defense to a case; what
13 their theory was?

14 A. Okay. I understand that, yes.

15 Q. Did you discuss with Mr. Johnson what the
16 defendant's theories were in the case?

17 A. Yes.

18 Q. And was part of what you were doing -- what you
19 were retained to do was to help Mr. Johnson support those
20 theories?

21 A. I was asked my medical opinion.

22 Q. Right. And you were asked to form medical
23 opinions with regard to the theories that the defendant
24 had; is that correct?

25 A. Well, that makes me think of a pro or a con.

1 I just gave an unbiased response to what I thought.

2 Q. In other words, they'd say: This is what we
3 think, you agree, something like that, or do you
4 disagree; that kind of discussion?

5 A. It was more like what does this lab value mean.

6 Q. Okay. Did it ever cross your mind that you
7 might have some sort of judiciary duty to Mrs. Rodriguez
8 and her family?

9 A. No.

10 Q. Did Mr. Johnson tell you that at any point in
11 time that from here on out you tell anybody that asked
12 you about the case to come see me or something like that?

13 A. He didn't direct me to do that, no.

14 Q. Did he tell you anything about calling him or
15 anything like that if somebody contacted you?

16 A. I think we were -- I told him I respected the
17 confidentiality of this.

18 Q. Which confidentiality, between you and
19 Mr. Johnson?

20 A. Anything that I discuss.

21 Q. Anything that you discussed with Mr. Johnson?

22 A. I would have the same respect of any
23 confidentiality if I discussed anything with you.

24 Q. I understand you thought you had a confidential
25 relationship with Mr. Johnson in that regard, what you

1 discussed?

2 A. In these situations, I'm cautious of speaking
3 to anyone.

4 THE COURT: Dr. Cortese, Mr. Edwards is
5 asking you a question. When you said "I respect the
6 confidentiality" and then he asked you -- and then you
7 told him "as if I discussed something with you, I would
8 respect that confidentiality" and he asked you "does that
9 apply to what you discussed with Mr. Johnson?" Is the
10 answer yes or no?

11 THE WITNESS: Yes.

12 Q. (By Mr. Edwards) So you thought you had a
13 confidentiality relationship with Mr. Johnson in that
14 regard?

15 A. Yes.

16 MR. EDWARDS: We pass the witness.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q. Dr. Cortese, have you ever been retained in any
20 other medical legal matter as an expert to review records
21 and be compensated for your time?

22 A. Yes.

23 Q. And in those other instances where someone has
24 asked you to review records and be compensated for your
25 time, how much did you charge for your time?

1 A. Anywhere from 300 to \$350 an hour.

2 Q. So when I asked you to review these records
3 with me and explain these labs, did we reach an agreement
4 that I would compensate you for your time?

5 A. That is correct.

6 Q. Did I ask you to, in anyway, to arrive at any
7 opinions contrary to what you would believe medically
8 from looking at these records?

9 A. That is correct.

10 Q. I did not or I did?

11 A. You did not.

12 Q. And we've heard about whether you had any
13 authorization to do this --

14 MR. JOHNSON: May I approach the witness,
15 Your Honor?

16 THE COURT: Yes, sir.

17 MR. JOHNSON: This is Defendants' Exhibit
18 1.

19 THE COURT: Dr. Cortese, did you ask
20 Mr. Johnson what should you do if you were contacted by
21 Mr. Edwards or other counsel?

22 THE WITNESS: I did and he said just call
23 him.

24 THE COURT: You did ask the question of
25 Mr. Johnson?

1 THE WITNESS: I'm trying to think of how
2 -- let me just think here for a second. I don't think it
3 was for him in particular, but I said if I was
4 approached. He said just talk to him.

5 THE COURT: All right. He didn't tell
6 you -- he didn't instruct you to call him first; you
7 don't remember that?

8 THE WITNESS: No. He did not tell me to
9 call him first.

10 THE COURT: Okay. And he didn't tell you
11 to call him first, and he would write a letter to
12 Mr. Edwards to that effect?

13 THE WITNESS: No.

14 THE COURT: All right. Thank you.

15 Q. (By Mr. Johnson) Did I ever try to influence
16 you to tell anyone anything other than the truth as
17 reflected in the medical records and in your opinion in
18 that regard?

19 A. That's all you asked.

20 Q. And did I ask you -- we were talking about
21 whether you were authorized to do this or not. You may
22 not be aware of it, that a subpoena issued for medical
23 records from your office -- and all of this probably went
24 to your office chart in 2004. Are you aware that the
25 authorization to release that information by way of

1 subpoena was actually issued to your office?

2 A. I didn't know it was a subpoena. We get
3 requests for records.

4 Q. And on the first evening we visited by that
5 were time, had you actually been subpoenaed by
6 Mr. Edwards to be a witness in this case?

7 A. Yes.

8 MR. JOHNSON: And I would move
9 introduction of Exhibit 1.

10 MR. EDWARDS: No objection.

11 Q. (By Mr. Johnson) And Exhibit 2, is this the
12 subpoena that you received by Mr. Edwards to be a witness
13 in this case?

14 A. There was money attached, but yes. This is
15 the --

16 Q. Compensation attached to be a witness?

17 MR. EDWARDS: Objection, Your Honor.
18 That's a witness fee, and the Court knows that that's
19 required by law. It's not compensation.

20 THE COURT: Is that a dollar, Doctor; do
21 you remember?

22 THE WITNESS: I think it's \$10.

23 MR. EDWARDS: The required witness fee,
24 Your Honor.

25 THE COURT: Okay.

1 Q. (By Mr. Johnson) And did you take -- when you
2 spent time with me, did you take time away from your
3 family and time that you might have been at your office
4 or working?

5 A. Yes.

6 Q. All right. And it's that kind of time you've
7 been compensated for in the past in looking at legal
8 medical matters?

9 A. Yes.

10 Q. So there's nothing out of the ordinary here?

11 A. No.

12 Q. Okay. Did you know that Mr. Edwards had you
13 listed as an expert witness in this case also?

14 A. I'm not aware of his.

15 Q. Did you know that Mr. Woolsey also had you
16 listed you as an expert witness?

17 A. Right.

18 Q. Did you know that in addition to that,
19 Mr. Edwards had an executed HIPPA authorization
20 release that the Court has already seen, did you know
21 about it until today?

22 A. No.

23 Q. And did you know that pursuant to the --

24 MR. EDWARDS: Your Honor, I'll object to
25 the last question not being a correct statement. I don't

1 believe it's a HIPPA release.

2 MR. JOHNSON: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 MR. JOHNSON: I don't know which exhibit
5 it was but --

6 THE COURT: It's Plaintiffs' Exhibit 4.

7 MR. JOHNSON: Well, I think the document
8 speaks for itself. It's a HIPPA compliance.

9 Q. (By Mr. Johnson) Doctor, did I ever make any
10 kind of offer to compensate you other than for your time?

11 A. That's all.

12 Q. And in our discussions, did we discuss your
13 analysis of the labs in your report and the things that
14 were going on the 23rd at Spohn, was that the primary
15 part of our discussion?

16 A. That is correct.

17 Q. And did you -- Doctor, did you know that under
18 the laws of Texas that when a lawsuit is filed and an
19 injured put in issue that there is a waiver of any
20 confidential privilege of physician expert opinion?

21 MR. EDWARDS: Objection. That's not a
22 correct statement of the law.

23 MR. JOHNSON: I believe that it is but
24 I'll waive, Your Honor.

25 THE COURT: Anything further, Mr. Johnson?

1 MR. JOHNSON: No, I'll pass.

2 MR. WOOLSEY: Just briefly.

3 CROSS-EXAMINATION

4 BY MR. WOOLSEY:

5 Q. Dr. Cortese, you and I have known each other a
6 period of years now?

7 A. Yes, sir.

8 Q. How long have you been here in Corpus?

9 A. This is my 25th year.

10 Q. All right. And over the last say 10 or 15
11 years, have you and I had occasion to see one another in
12 various contexts?

13 A. Yes, sir.

14 Q. Including lawsuits?

15 A. That is correct.

16 Q. Where I may have bounced an idea or two off of
17 you?

18 A. Yes, sir.

19 Q. Nephrology, internal medicine, what have you?

20 A. Yes.

21 Q. One of the things that Mr. Johnson had asked
22 you about was if you had been retained in other medical
23 contexts to provide testimony and did I have a recent
24 experience with you in that sort of a context?

25 A. In an unrelated case, yes, sir.

1 Q. Yes, sir. That's what I'm asking.

2 A. Not this one.

3 Q. The reason I'm exploring this with you is that
4 you indicated to Mr. Edwards that you had talked to me
5 about this case, Mrs. Natividad Rodriguez, and I don't
6 remember ever talking to you about it. Is today the
7 first time you've seen me with these two fellows?

8 A. Yes. And I apologize if I made it sound like
9 that. We've never discussed this case before.

10 Q. Okay. That is what I'm trying to clear up,
11 because you did tell Mr. Edwards and the Court that you
12 and I had discussed the Natividad Rodriguez case, and I
13 just wanted to clarify that.

14 A. That's wrong on my part. I'm sorry. Forgive
15 me. I'm a little anxious, and listening I might jump the
16 gun or something.

17 Q. All right. You and I have had plenty of
18 discussion over the years about a variety of things, but
19 we've never discussed the patient who you cared for on
20 August 23, 2002?

21 A. That is correct.

22 Q. Very well, Doctor. Thank you.

23 EXAMINATION

24 BY MR. EDWARDS:

25 Q. When I called your office and you got the

1 message to call me, what's the first thing you did?

2 A. Kept taking care of the patient that I was
3 involved with at the time.

4 Q. And then what did you do next? Called
5 Mr. Johnson, right?

6 A. Did I call Mr. Johnson? I tried your office
7 first.

8 Q. Are you sure of that?

9 A. I know I called on two separate times.

10 THE COURT: At what point in time did you
11 call Mr. Johnson, if at anytime, after receiving
12 Mr. Edwards' call?

13 THE WITNESS: Oh, I called him then I
14 called Mr. Johnson then I called your office again.

15 Q. (By Mr. Edwards) Why did you call
16 Mr. Johnson's office, or Mr. Johnson, I should say; why
17 did you call him after I called you?

18 A. It's my only contact and such, and I'm trying
19 to take care of patients and don't know what to do so.

20 Q. In that authorization that went to your office,
21 did that do anything other than authorize you to deliver
22 records to the court reporter or do you know?

23 A. Are you talking about the subpoena you sent
24 over with the gentlemen, sir?

25 Q. No. I'm talking about when the court reporter

1 came and got records from your office. Mr. Johnson made
2 some mention about an authorization that went to your
3 office.

4 A. That's a couple of years ago. I don't recall
5 the specifics now.

6 Q. And so when you talked to Mr. Johnson, you
7 weren't relying on that authorization by you talking to
8 him; is that correct? When you talked to Mr. Johnson,
9 you were not relying on any authorization that might have
10 been signed by Mrs. Rodriguez or any of her family; is
11 that correct?

12 A. I'm not certain, sir. I don't know how to
13 answer that for you.

14 Q. Did Mr. Johnson show you any written
15 authorization before you started talking to him about
16 Mrs. Rodriguez?

17 A. I did ask him. I said is this permitted.

18 Q. The question was: Did he show you any written
19 authorization from either Mrs. Rodriguez or her family?

20 A. Yes, sir. He showed me a document.

21 Q. What document, do you know?

22 A. Sir, I don't know the legalese to identify
23 those forms.

24 THE COURT: To the best of your ability,
25 would you describe that document?

1 THE WITNESS: It was about a -- I want to
2 say a two-or-three page document, and I remember it said
3 healthcare providers involved in the case or something to
4 that effect.

5 THE COURT: Mr. Edwards.

6 Q. (By Mr. Edwards) Were you ever retained by a
7 defendant in a case where the plaintiff -- you know when
8 I talk about the difference between a plaintiff and the
9 defendant?

10 A. I believe so.

11 Q. The plaintiff is the one that brings the case.
12 The defendant is the one that defends it, right?

13 A. Okay.

14 Q. You're well familiar with that in the medical
15 area, are you not?

16 A. Yes.

17 Q. I mean you've done a lot of work in that area,
18 haven't you, with FACALA, for example?

19 A. With who?

20 Q. You know what FACALA is; Citizens Against
21 Lawsuit Abuse?

22 A. I know the entity. I haven't done any work for
23 them, sir.

24 Q. Have you done any work with the Texas Medical
25 Association or any other group with regard to, you know,

1 tort reform things? I'm just trying to find out the
2 extent of your knowledge. I'm not criticizing.

3 A. No, sir. It wasn't taken as such.

4 Q. Do you recall doing any work in that area?

5 A. Other than making a contribution, that's about
6 it.

7 Q. Going back to my question then. Were you ever
8 retained by a defendant in a lawsuit to evaluate your
9 patient's records or give your opinions and your patient
10 wasn't the defendant. Maybe that's not clear. Let me
11 try it again.

12 A. It wasn't clear, sir.

13 Q. One of your patients brings a lawsuit against a
14 doctor or a hospital, have you ever been retained by the
15 doctor or the hospital or any other defendant in that
16 circumstance to do any kind of evaluation of work for the
17 defendants with regard to your patient's case?

18 A. Yes, I have.

19 Q. How many times have you done that?

20 A. One, that I can recall.

21 Q. How long ago was that?

22 A. Year or two.

23 Q. Are you a member of the AMA?

24 A. Yes, I am.

25 Q. Are you familiar with the -- what's that

1 called? What do you call it, the Rules of Ethics; what
2 do you in the medical profession refer to from an ethical
3 standpoint?

4 A. The Rules of Ethics.

5 Q. Do you agree with those Rules of Ethics of the
6 American Medical Association?

7 A. In general.

8 Q. Do you agree with the rule of the American
9 Medical association that says that: The relationship
10 between patient and physician is based on trust and gives
11 rise to the physician's ethical obligations to place
12 patient's welfare above their own self interest and above
13 obligations to other groups and to advocate for the
14 patient's welfare; are you familiar with that one?

15 A. Not the exact wording, no, sir.

16 Q. Do you agree with that?

17 A. Yes, I agree with that.

18 Q. How about the one that says: The patient has a
19 right to confidentiality. The physician should not
20 reveal confidential communications or information without
21 consent of the patient unless provided by law or the need
22 to protect the welfare of the individual or the public
23 interest?

24 A. I agree.

25 Q. Do you feel like anything that you're talking

1 to Mr. Johnson about is necessary to protect the public
2 interest?

3 A. Oh, gosh. How do I answer something like that
4 for you, Mr. Edwards?

5 Q. Well, it's your opinion. I'm just asking for
6 your opinion. Do you think it's necessary for you to
7 confer with Mr. Johnson to protect the public interest to
8 as opposed to the interest of your patient?

9 A. I'm locked. I'm sorry. I can't answer that
10 one.

11 Q. Can't answer that one?

12 A. Yeah, I can't --

13 Q. That's all right. I'm not going to browbeat
14 you about it.

15 A. Thank you.

16 Q. How about the one that says: The physician
17 should not reveal confidential communications or
18 information without the expressed consent of the patient
19 unless required to do so by law; do you agree with that?

20 A. Yes.

21 Q. Did you have the express consent of your
22 patient to release information --

23 THE COURT: Patient was deceased, did not.
24 Continuing.

25 Q. (By Mr. Edwards) Do you agree with the rule of

1 the American Medical Association that when three
2 physicians are called upon to testify in matters that
3 could adversely impact their patient's medical interest,
4 space, shift, decline to testify unless the patient
5 consents or unless ordered to do so by legally
6 constituted authority. Do you agree with that one?

7 A. I could agree with that.

8 Q. Had you been ordered to disclose information
9 concerning Mrs. Rodriguez' health by any legally
10 constituted authority when you talked to Mr. Johnson that
11 you know of?

12 A. Based on the document I saw I thought I was
13 permitted under the family's permission.

14 Q. You think you had the specific consent of the
15 family to do that?

16 A. I am a healthcare provider, so yes.

17 MR. EDWARDS: Pass the witness.

18 MR. JOHNSON: I don't have anything
19 further, Judge.

20

21

22

23

24

25

1 THE STATE OF TEXAS *

2 COUNTY OF NUECES *

3

4 I, ANGEL BLAND-HAZLEY, Official Court Reporter in
5 and for the County Court at Law No. 3 of Nueces County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all of the testimony of Jack L. Cortese, M.D., directed
9 by counsel as statement of facts in the above styled and
10 numbered cause in court reported by me.

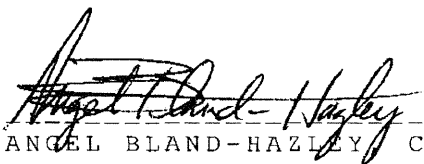
11 I further certify that the total cost for the
12 preparation of this Reporter's Record is \$275.00 to be
13 paid by The Edwards Law Firm.

14 WITNESS MY OFFICIAL HAND, this the 17th day of
15 August, 2005.

16

17

18



ANGEL BLAND-HAZLEY, CSR No. 7149
Expiration Date: December 31, 2006
Official Court Reporter
County Court at Law No. 3
Nueces County Courthouse
901 Leopard Street, 7th Floor
Corpus Christi, Texas 78401
(361) 888-0625

19

20

21

22

23

24

25

REPORTER'S RECORD
CAUSE NO. 361778-3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FLORA SANCHEZ, INDIVIDUALLY, (IN THE COUNTY COURT
AS HEIR AND AS PERSONAL (REPRESENTATIVE OF THE ESTATE (OF NATIVIDAD RODRIGUEZ, (DECEASED, ET AL (VS. (AT LAW NO. 3 (NORTHWEST REGIONAL HOSPITAL, (ET AL (NUECES COUNTY, TEXAS

REQUESTED TESTIMONY OF SCOTT JOHNSON

On the 15th day of August, 2005, the following proceedings came on to be heard in the above-entitled and numbered cause before the HONORABLE MARISELA SALDANA Judge Presiding, held in Corpus Christi, Nueces County, Texas:

Proceeding reported by machine shorthand.

(ORIGINAL)

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COUNSEL FOR THE PLAINTIFFS:

MR. WILLIAM R. EDWARDS
State Bar No. 06465000
MS. ANGELINA BELTRAN
State Bar No. 02111700
THE EDWARDS LAW FIRM, L.L.P.
802 North Carancahua
Suite 1400
Corpus Christi, Texas 78470
(361) 698-7500

COUNSEL FOR NORTHWEST REGIONAL HOSPITAL:

MR. KEVIN E. OLIVER
State Bar No. 15260650
COOPER & SCULLY, P.C.
900 Jackson Street
Suite 100
Dallas, Texas 75202
(214) 712-9500

MR. A. SCOTT JOHNSON
State Bar No. 04665
JOHNSON AND HANAN
100 North Broadway Avenue
Suite 2750
Oklahoma City, Oklahoma 73102
(405) 232-6100

COUNSEL FOR DR. SEBASTIAN CERNA:

MR. RICHARD C. WOOLSEY
State Bar No. 21989100
HERMANSEN, MCKIBBEN, WOOLSEY & VILLARREAL, L.L.P.
555 North Carancahua
1100 Tower II
Corpus Christi, Texas 78478
(361) 882-6611

1 (Examination of Scott Johnson.)

2 MR. EDWARDS: Judge, we'll call
3 Mr. Johnson to the stand.

4 THE COURT: Mr. Johnson.

5 MR. JOHNSON: Well, Your Honor, I don't
6 know that that would be appropriate considering the fact
7 that I'm counsel of record for this hearing.

8 THE COURT: This is for purposes of the
9 motion on this hearing, Mr. Edwards; is that correct?

10 MR. EDWARDS: That's correct, Your Honor.

11 THE COURT: Mr. Edwards, you filed the
12 motion in writing?

13 MR. EDWARDS: Yes, Your Honor. It's an
14 amended motion called Plaintiff's Amended Motion to
15 Revoke The Pro Hac Vice.

16 THE COURT: I've just released the clerk.
17 Do you happen to have a copy of that one? Thank you,
18 sir. You may examine the witness. Mr. Johnson, I don't
19 know that your switch is on.

20 MR. JOHNSON: I think it is.

21 A. SCOTT JOHNSON,

22 EXAMINATION

23 BY MR. EDWARDS:

24 Q. Would you please state your name.

25 A. Scott Johnson.

1 MR. EDWARDS: Is the witness sworn, Your
2 Honor?

3 THE COURT: Yes. Oh, I'm sorry.

4 MR. JOHNSON: I think I'm always under
5 oath.

6 THE COURT: Well, let me administer the
7 oath to you as a witness.

8 MR. JOHNSON: Okay.

9 THE COURT: Do you solemnly swear, sir,
10 that the testimony which you're going to give in this
11 case will be the truth, the whole truth, and nothing but
12 the truth so help you God?

13 MR. JOHNSON: Yes, Your Honor.

14 Q. Are you licensed to practice law in the state
15 of Texas?

16 A. Yes. I am on pro hac facie basis in one or
17 more cases.

18 Q. You don't have a Texas law license however?

19 A. That's correct.

20 Q. Any appearance that you've made in Texas courts
21 has been on a pro hac basis?

22 A. That's correct.

23 Q. Are you familiar with the Texas Rules of
24 Discipline?

25 A. I am.

1 (Exhibit No. 1 was marked.)

2 Q. (By Mr. Edwards) We have marked as Exhibit 1
3 in this case a Supplemental Designation of -- what did
4 you call it?

5 MR. OLIVER: Your Honor, may I approach
6 the witness to give him a copy?

7 THE COURT: Yes, sir.

8 Q. (By Mr. Edwards) Exhibit -- what is that
9 Supplemental Response; is that Exhibit 1 that was marked
10 when were changing things around? I got Exhibit 2 marked
11 on here, and I don't want --

12 THE COURT: Plaintiffs' Exhibit No. 1 is
13 Defendants' Riverside Hospital's d/b/a Northwest Regional
14 First Supplemental Expert Designation and Third
15 Supplemental Responses To Plaintiffs' Disclosure.

16 MR. EDWARDS: That's Third Supplemental,
17 Judge, or First?

18 THE COURT: It is First Supplemental
19 Expert Designation and Third Supplemental Responses To
20 Plaintiffs' Request For Disclosure.

21 Q. (By Mr. Edwards) And is that the -- there was
22 some discussion earlier off the record, is this the
23 Supplemental Designation that you had referenced to
24 earlier and the one on which you're standing now?

25 A. I think what is marked here is the Supplement

1 to Discovery.

2 Q. That's what I'm talking about.

3 A. Well, that's the Discovery Supplement. There's
4 also a Disclosure Supplement of the same day, so I'm not
5 sure which one you want to discuss.

6 Q. Was there also a disclosure that was made on --
7 a Supplemental To Disclosure that was made on the same
8 day?

9 A. That's correct.

10 Q. Is that a different document than the one
11 that's in front of you now?

12 A. I believe that it is.

13 Q. Does that disclosure have different information
14 concerning expert witnesses than what is included in the
15 Third Supplemental Response To Plaintiffs' Witnesses, the
16 request for -- they're both in the same document?

17 A. I believe there's a designation -- Supplemental
18 Designation and a Supplement To Discovery, but in answer
19 to your question I believe they're identical in content.

20 Q. This one that I'm looking at says Northwest
21 Regional Hospital's First Supplemental Designation And
22 Third Supplemental Responses To Disclosure. That's both
23 in the same document?

24 A. Well, that may be on this one, but there's a
25 designation on here also. I think they're all the same.

1 Q. And in this designation in this Supplemental
2 Response To Request For Disclosure or in any other
3 response to a Request For Disclosure or Designation Of
4 Experts, did you ever or anyone or the hospital ever
5 indicate that Dr. Cortese was a "retained" expert?

6 A. In this designation, the response was pursuant
7 to Rule 195.2 of the Rules of Procedure, which is a
8 response to what experts are anticipated that will be
9 called at the time and designation of those as
10 testifying experts. And under that response under that
11 Supplemental Response, there are four listed experts that
12 will be called as testifying experts but in response to
13 that.

14 The first one is separately listed as
15 Dr. Kalina. The second one is separately listed as Nurse
16 Ramirez. The third one is separately listed as
17 Dr. Cerna, and the fourth one is listed as other medical
18 providers but very carefully states that those medical
19 providers that are listed after the two long paragraphs
20 of narrative will testify as treating physicians, and
21 they will testify to the extent of their expertise, their
22 interpretation of radiographs, laboratory studies, and
23 the proximate cause of any alleged injuries.

24 It is further anticipated that the
25 treating physicians and/or hospital personnel, nurses,

1 lab techs will testify as to the nursing emergency care
2 provided to Ms. Rodriguez at Northwest and acceptable
3 standards of care. These individuals health care
4 providers are expected to testify concerning their
5 qualifications, education, training, experience,
6 respective areas of practice, the fields they practice
7 in.

8 They're also expected to testify regarding
9 any depositions, medical records, documents, and
10 materials they have reviewed in this case. They are also
11 expected to testify concerning their experience with
12 medical conditions and medical treatments involved in
13 Ms. Rodriguez' case including the alleged injuries and
14 damages of claims.

15 They will also be excepted to testify on
16 standard of care issues, causation issues, and other
17 related matters. And then listed behind that are the
18 doctors and other health care providers that are expected
19 to meet those set out areas of testimony, and among them
20 is Dr. Cortese and others.

21 MR. EDWARDS: Your Honor, we object to
22 that answer not being responsive.

23 Q. (By Mr. Edwards) The question was: Anywhere
24 in this disclosure or any others, was it ever indicated
25 that Dr. Cortese was a "retained" expert?

1 A. And the answer is yes. The testifying expert
2 in the same category as the other three as listed
3 previously.

4 Q. There are no -- well, let me go at it this way.
5 Under paragraph four, how many people are listed? That's
6 the one you just read was paragraph four, wasn't it?

7 A. It is. I don't know the exact --

8 Q. Well, let's count them. Let me just read it.

9 A. All right.

10 Q. Dr. Richard E. Berry, Bay Area Healthcare Group
11 Limited, Corpus Christ Medical Center, it's agents,
12 employers, representatives, or custodian of records;
13 Lawrence Brenner, M.D., Colleen C. Campbell, M.D.,
14 Richard Campbell, M.D., Cardiology Associates of Corpus
15 Christi, it's employees, agents, and representatives,
16 and/or custodian of records including but not limited to;
17 Rosabel Mora, COR; M. Rodriguez, COR; Sebastian Cerna,
18 Christus Spohn Hospital South, it's employees, agents,
19 representatives, and/or custodian of record including but
20 not limited to; Mary Ellen Amoro,
21 E. Barnett, L. Bishop, R.N., J. Childress, R.N., Bob
22 Blank, lab results; Jan Garcia, R.N., Mark Jerbice, Mark
23 Green, Anita Guzman, Tricia Harrison, Joel Jackson, Abel
24 Moldevaro, Vira Blank, Michelle Rodriguez, Yvonne
25 Sanchez --

1 THE COURT: What's going to be your
2 question?

3 Q. (By Mr. Edwards) My question is this:
4 Mr. Johnson, is this entire list -- and I'm just getting
5 down on -- I think it's the third page -- the question to
6 them is: Are they all retained experts, sir?

7 A. They're all listed as testifying --

8 THE COURT: Mr. Johnson.

9 A. Yes. They're testifying experts.

10 THE COURT: No, sir. That's not the
11 question, Mr. Johnson, and I don't intend to sit here and
12 play this game all morning. There is a question before
13 you, and the question is pretty straightforward.

14 A. The only one I've retained is Dr. Cortese.

15 THE COURT: Thank you, sir.

16 Q. (By Mr. Edwards) Does this document in any
17 way, shape, or form state that you have retained
18 Dr. Cortese?

19 A. Does not say that.

20 Q. Does any other document that you have filed
21 other than the letter that's in evidence here Exhibit 3,
22 I believe, say that you have retained Dr. Cortese?

23 A. No, sir, it does not.

24 Q. Do you have a copy of Exhibit 3?

25 A. I don't know which one it is.

1 Q. That's the -- let me go first to -- Exhibit 2,
2 I think is the August the 11th letter?

3 A. I know what it says, but --

4 MR. EDWARDS: Is that Exhibit 2, Your
5 Honor, an August 11th letter?

6 THE COURT: Yes.

7 Q. (By Mr. Edwards) In the first paragraph you
8 say I've been in contact with Dr. Cortese; correct?

9 A. That's correct.

10 Q. Had you ever told me prior to this letter that
11 you had been in contact with Dr. Cortese?

12 A. No.

13 Q. Anything in this letter, August the 11th
14 letter, Exhibit 2, that says you have retained
15 Dr. Cortese?

16 A. Not that I see.

17 Q. Exhibit 3 is the August 12th letter?

18 A. Right.

19 Q. In that you say "Dr. Cortese is my retained
20 expert." Correct?

21 A. That's correct.

22 Q. Had you ever told me -- is this the first time
23 that you told me that Dr. Cortese was your retained
24 expert?

25 A. That's correct.

1 Q. The last sentence in that paragraph says --
2 well, let me go first to the sentence that says "in an
3 effort to cooperate, I will attempt to arrange a video
4 deposition of Dr. Cortese at Mr. Woolsey's office on
5 Sunday, August 14th, 2005."

6 If you now for the first time believe you
7 need to depose him, were you in such a relationship with
8 Dr. Cortese that you felt that if I wanted to do a
9 deposition I needed to talk to you about your arranging a
10 deposition with Dr. Cortese?

11 A. I think my letter is pretty clear that I would
12 try to arrange that is you so desire, but I had no way of
13 knowing that on a Sunday that I could get it done.

14 Q. But when you say arranged, you mean call
15 Dr. Cortese and see if he'd be available?

16 A. Correct.

17 Q. At Mr. Woolsey's office, I guess for this
18 deposition to be taken?

19 A. Sure. Yes, sir.

20 Q. Is that correct?

21 A. That's correct.

22 Q. And Mr. Woolsey represents Dr. Cerna,
23 co-defendant in the case?

24 A. That's correct.

25 Q. Then you say "otherwise, I will assume that you

1 are satisfied with our numerous disposures regarding
2 Dr. Cortese. Of course, I'm not complaining about a
3 concern with your initial direct contact with my expert
4 witness."

5 A. Correct.

6 Q. So at that time you're telling me I made an
7 initial contact with your expert witness when I called
8 Dr. Cortese, correct?

9 A. That's not what I'm saying. I said there that
10 I wasn't complaining about any contact you may have had.
11 It was my understanding that you had called him, and I
12 just said that I am not complaining about that.

13 Q. I know but what you called him was "your expert
14 witness."

15 A. To the extent that I was paying him, yes.

16 Q. And then you say "but in the future please
17 contact me about information regarding my experts."

18 A. That's what I said.

19 Q. And you meant that to mean and include
20 Dr. Cortese?

21 A. That's what I said, yes.

22 Q. That's what you meant?

23 A. That's what I said, yes.

24 Q. Well, now up until that time until I had this
25 notice, I had the full right to communicate with

1 Dr. Cortese, correct?

2 A. As far as I knew, you did, and for two years or
3 so.

4 Q. And after this, I did not; correct?

5 A. I did not know because he's a testifying expert
6 that I had given -- agreed to compensate pursuant to the
7 the rulings of Texas, a testifying expert is allowed to
8 be compensated for their time. That's what I had agreed
9 to do.

10 Q. You testified that you are familiar with the
11 Texas Disciplinary Rules of Professional Conduct,
12 correct?

13 A. I am.

14 Q. When it comes to talking to third parties or
15 talking to other people that are either third parties or
16 more particularly talking to people who are -- and let me
17 get the wording here.

18 MR. JOHNSON: Can I have a copy of the
19 rules to look at, please.

20 MR. EDWARDS: Sure.

21 Q. (By Mr. Edwards) Are you familiar with Rule
22 4.02b before this hearing?

23 A. Communication with one represented by counsel?

24 Q. Yes, sir.

25 A. Yes.

1 Q. Are you familiar with subparagraph b, little b?

2 A. In representing a client, a lawyer shall not
3 communicate or cause another to communicate about that
4 subject reputation with a person or other lawyer who is
5 known to have retained counsel.

6 Is that the one you're talking about? I
7 am familiar with that.

8 Q. Okay. Now, you've kind of skipped over this.
9 Let me make sure that you've read the part that says
10 "shall not communicate about the subject of
11 representation with a person or organization the lawyer
12 knows to be employed or retained for the purpose of
13 conferring with or advising another lawyer about the
14 subject of the representation.

15 You had retained Dr. Cortese to confer
16 with you and advise you with regard to the subject matter
17 of this litigation, didn't you?

18 A. I retained him -- I offered to compensate him
19 for his time to visit with me about this case.

20 Q. And you told me he was a retained expert?

21 A. I told you exactly what's in that letter, yes,
22 sir.

23 Q. And so --

24 THE COURT: You told him earlier that he
25 was your retained expert?

1 A. Yes.

2 Q. Right. So under this would you agree with me
3 that under this provision I can't talk to Dr. Cortese,
4 because he's been employed or retained for the purpose of
5 conferring with or advising you about the subject of his
6 representation?

7 A. I think that's what that says, and I think
8 that's what the Rule of Discovery say with regard to
9 paying or compensating an expert witness. I'm suppose to
10 disclose it.

11 Q. So, as of the time that you retained the expert
12 Dr. Cortese, you cut me off from direct contact with
13 Dr. Cortese under this 4.02b, correct?

14 A. That's certainly one way to look at it.

15 Q. Is there any other way to look at it?

16 A. Well, it was my understanding you had called
17 Dr. Cortese and he called you back, and I told him to
18 talk to you.

19 Q. I called you at Mr. Woolsey's office; is that
20 correct?

21 A. That's right. You called Mr. Woolsey and I
22 spoke with you.

23 Q. And you put me on a speakerphone over there, I
24 believe. I was on s speakerphone.

25 A. I believe that's right.

1 Q. And Mr. Woolsey was in the office.

2 A. I believe that's right.

3 Q. And who else was there?

4 A. I think we were the only two there.

5 Q. And I ask you to tell me when you had retained
6 Dr. Cortese.

7 A. You did.

8 Q. And what did you tell me?

9 A. I told you at that time that it was my work
10 product.

11 Q. You told me that it was none of my business.

12 A. I told you it was my work product.

13 Q. Did you not tell me it was none of my business?

14 A. I told you it was my work product.

15 THE COURT: Answer the question, sir.

16 A. That's all I said. It was my work product.

17 THE COURT: Answer yes or no. The Court
18 is now posing the question: Did you or did you not tell
19 Mr. Edwards that it was none of your business?

20 A. I did not.

21 Q. (By Mr. Edwards) You stand by that?

22 A. I don't recall saying those words.

23 Q. Well, then if somebody else says that you did
24 say it, you can't dispute; is that correct?

25 A. I'm not disputing. I know I said that I

1 believed it was my work product. That's all I recall.

2 Q. Now under the Rules of Discovery, I'm entitled
3 to know if you have a retained expert when you retain
4 them, am I not?

5 A. I don't see that in these rules. I don't see
6 that in the rules. There's a rule that I am to disclose
7 all of these matters, but I don't see them saying when I
8 retain them is part of it.

9 THE COURT: Mr. Johnson and Mr. Edwards,
10 It's almost 10:00 in the morning, and we've got this and
11 another aspect of this matter. I've got 80 -- and those
12 are always my superceding concern, that the citizens that
13 are called for jury duty, they're my overriding concern.

14 How does Counsel feel about my telling
15 them to come back at 1:15 and we begin with them?

16 MR. EDWARDS: That's fine by me.

17 MR. WOOLSEY: Good.

18 MR. OLIVER: Whatever, Your Honor.

19 THE COURT: Unless somebody thinks we're
20 going to finish this in the next hour then we have an
21 hour to start our work with the jury.

22 MR. WOOLSEY: Judge, it's almost 11:00.

23 THE COURT: I'm sorry, 11:00. I'm looking
24 at that from here, and I --

25 MR. WOOLSEY: I'm not challenging the

1 Court. My only point was would it be more realistic to
2 have them come back at 2:00 or 1:45? We've got a lot of
3 ground to plot here.

4 THE COURT: And I'm getting a little
5 impatient with the pace and the repetition. Let's do
6 1:30 with the jury. Leo, would you tell the 80-person
7 venire panel to report directly to the fifth floor
8 courtroom at 1:45. Thank you.

9 Gentlemen and ladies here, I trust you
10 heard what I just instructed the bailiff. I'm receiving
11 the panel at 1:45, and I'm going to do everything
12 possible to receive them at 1:45 and not keep them in a
13 holding pattern at that time. I tell you that so that
14 you can expedite your argument to the Court.

15 Mr. Johnson, had you finished your answer.

16 A. I believe so.

17 THE COURT: All right, Mr. Edwards.

18 Q. (By Mr. Edwards) You'll agree with me then
19 Mr. Johnson that after the discussion we've been through
20 concerning my ability to talk with freely and by myself
21 with Dr. Cortese that once you had told me that you had
22 him as a retained expert that you had obstructed my
23 access to Dr. Cortese?

24 A. I wouldn't use the word, obstructed? What I
25 did was advise you that I was indeed compensating him and

1 felt that the rules apply in that regard, with the Rules
2 of Civil Procedure.

3 THE COURT: Applied in what regard, sir?

4 A. In terms of contacting me if he wanted to
5 talked to Dr. Cortese.

6 Q. (By Mr. Edwards) So, you had -- if I want to
7 think or the Court wants to think that obstruction is
8 putting yourself between me and the treating physician
9 then you would have obstructed; is that correct?

10 A. I think that's --

11 THE COURT: Let's not get hung up on the
12 word, obstructed. You could no longer access Dr. Cortese
13 directly, Mr. Edwards?

14 MR. EDWARDS: Correct, Your Honor.

15 Q. (By Mr. Edwards) Were you familiar with the
16 Disciplinary Rule 3.04?

17 A. Okay. Okay.

18 Q. 3.04 says: The lawyer shall not obstruct
19 another parties access to evidence in anticipation of a
20 dispute, unlawfully alter or destroy" -- the rest of it
21 doesn't have anything to do with the application unless
22 you want to put it all in.

23 A. And I did not do that. I did nothing that was
24 unlawful at all. I did exactly what the Rules of
25 Procedure contemplate. I disclosed to you that I was

1 compensating this witness for his time. That's all I did
2 and disclosure is mandatory under 194.1. I think I had a
3 mandatory duty to disclose that to you as a matter of
4 law, and I did exactly that. So rule 3.04 hadn't got
5 anything to do with this.

6 Q. Did Dr. Cortese have a HIPPA release?

7 A. There was a HIPPA release signed -- two HIPPA
8 releases signed; one that was sent to Dr. Cerna and one
9 that was sent to Spohn. And both HIPPA releases
10 contained re-disclosure provisions in them which permit
11 re-disclosure of information in this lawsuit.

12 Q. To whom?

13 A. To anyone.

14 Q. Do you have a copy of that release that was
15 signed?

16 A. I do.

17 Q. What exhibit number are we up to?

18 THE COURT: Three. You were ready for
19 number 4.

20 MR. EDWARDS: May I approach the witness
21 and put a appear sticker on that, Your Honor?

22 THE COURT: Yes, sir.

23 Q. (By Mr. Edwards) Is there anything in Exhibit
24 4 that authorizes Dr. Cortese to release information to
25 you or anyone else?

1 A. Yes.

2 Q. Where is that?

3 A. It says: Persons or organizations authorized
4 to disclose health care information. All healthcare
5 providers including doctors and hospitals from August
6 23rd, 1992, to present. And then it lists all medical
7 records radiology, etcetera, etcetera, hospital buildings
8 by authorized custodian of records to give up any of this
9 information of all treatment.

10 Q. And what is the date that begins?

11 A. 5-21-03.

12 Q. I'm sorry. What's the date of the records the
13 information that's authorized to be released?

14 A. It says from August 23rd, 1992, to present.

15 Q. What was the date of the records from Northwest
16 Regional Hospital?

17 A. August 22nd of 2002 at 8:50 a.m. in the morning
18 until about 1:45 that afternoon and then to include the
19 Spohn records of August 22nd through August 23rd.

20 Q. Did you show a disclose to Dr. Cortese the
21 Northwest Regional Hospital records on Mrs. Rodriguez?

22 A. You know, I don't know if we talked about those
23 or not. To be honest with you, I don't know.

24 Q. Who would know whether that occurred or not?

25 A. Well, I don't think we did. I think we talked

1 about the records from Spohn Hospital and what was going
2 on with Ms. Rodriguez at Spohn.

3 Q. Were there any records from Northwest that
4 pre-dated August 23 and the records from Spohn that you
5 reviewed with Dr. Cortese?

6 A. Pre-dated from Northwest?

7 Q. Yeah.

8 A. I don't think there are any from Northwest that
9 pre-date August 22nd.

10 Q. Did you discuss at all anything that happened
11 with regard to Mrs. Rodriguez with Dr. Cortese? Discuss
12 anything that happened before August 23, 2002?

13 A. Well, we discussed her treatment at Spohn,
14 August the 22nd. She went to Spohn, August 22nd, and
15 arrived there at about 4:30 in the afternoon.

16 Q. Did you discuss that treatment with him?

17 A. We looked at those records as I recall.

18 Q. Are those records covered by that release?

19 A. Absolutely.

20 Q. Why do you say that?

21 A. Because it says: All records from August 23rd,
22 1992, to present. Health care information to be
23 disclosed under topic 3 from August 23rd, 1992, to
24 present. Complete in-patient and out-patient, emergency
25 room, history and physical, discharge, consultation,

1 progress, laboratory, radiology, property, pathology.

2 Q. Well, what part of that covers records that
3 were made before August 23, 2002?

4 A. I don't understand the question. It says from
5 1992 forward.

6 Q. 1992?

7 A. That's what it says.

8 Q. I thought you said 2002.

9 A. I'm sorry.

10 Q. August 23, 1992?

11 A. That's what this document says.

12 Q. And who is that signed by?

13 A. It is signed by Ms. Viola R. -- I don't want
14 to mispronounce her last name.

15 THE COURT: How do you spell it?

16 A. G-U-T-I-E-R-R-E-Z.

17 THE COURT: Gutierrez.

18 A. Gutierrez.

19 Q. (By Mr. Edwards) In any disclosure that you
20 made to us, did you ever state what the conclusions or
21 opinions of Dr. Cortese are?

22 A. I think that they are set out that he is going
23 to give his opinions about medical causation with regard
24 to the -- well, I have to get the exact wording here. He
25 is expected to testify concerning his qualifications and

1 education, and he is expected to testify regarding the
2 medical records, and documents, and material, his care of
3 treatment, and the causation issues regard Mrs. Rodriguez
4 from August 22nd, 2002, through to her hospitalization.
5 That's what it says.

6 Q. My question is: Did you ever tell us what
7 those opinions were?

8 A. Not other than what's stated in this document
9 here.

10 Q. So, is there anything in there you think that
11 tells us what his opinions are?

12 A. Yes. It says he's going to testify about his
13 opinion relative to standards of care, significance of
14 clinical findings, interpretations of the radiographs,
15 laboratory studies, and proximate cause of any injuries
16 alleged in this case, and his treatment of the patient.

17 Q. What are his opinions as to any one of those
18 things; is any of that in there?

19 A. Yes. His interpretations and findings is
20 contained in the record. It's part of the medical record
21 in the chart.

22 Q. You're limiting that to what he has in the
23 chart?

24 A. What he's written in the chart is his opinions
25 and findings.

1 MR. EDWARDS: I'm marking Exhibit 5.

2 (Exhibit No. 5 was marked.)

3 THE COURT: Yes, sir.

4 MR. EDWARDS: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes, sir.

7 Q. (By Mr. Edwards) Can you identify Exhibit 5 as
8 a copy of Dr. Cortese's consultation report on Mrs.
9 Rodriguez of August 23, 2002?

10 A. That's what it looks like, date stamped.

11 MR. EDWARDS: We would offer Exhibit 5
12 only for the purpose of this hearing, Your Honor.

13 THE COURT: Any objection? Yes, sir. You
14 may continue.

15 Q. (By Mr. Edwards) There is absolutely no
16 question as to whether Dr. Cortese was a treating
17 physician of Mrs. Rodriguez?

18 A. That's exactly right. He was a consulting
19 physician that saw her on August the 23rd, I believe.

20 Q. And he is one of her treating physicians under
21 those circumstances, correct?

22 A. Yes. Board-certified nephrologist that saw her
23 August 23rd.

24 Q. And he saw her and treated her in conjunction
25 with the matters that are at issue in this case?

1 A. Absolutely.

2 MR. EDWARDS: We pass the witness, Your
3 Honor.

4 CROSS-EXAMINATION

5 BY MR. OLIVER:

6 Q. Mr. Johnson, as of the time you -- when was the
7 first time that you met with Dr. Cortese?

8 A. I believe that the first time that I met
9 Dr. Cortese would have been -- well, I think -- well, I'm
10 not sure what day of the week Monday that week was. This
11 last week that would have been the 8th or -- yes, so the
12 9th. I believe it would have been the evening of the
13 10th would have been the first time.

14 Q. Do you have an understanding one way or the
15 other as to whether the time you first met with
16 Dr. Cortese on the 10th had he been served with a
17 subpoena to appear as a witness in this case?

18 A. He had been.

19 Q. By whom was he served that subpoena?

20 A. Mr. Edwards.

21 Q. Have you reviewed the materials in this case
22 with regard to whether Mr. Edwards has identified
23 Dr. Cortese as expert witness?

24 A. He did.

25 Q. Who brought up --

1 A. I have and he did identify him as an expert
2 witness.

3 Q. Who brought up the subject of compensating
4 Dr. Cortese for his time, you or Dr. Cortese?

5 A. Dr. Cortese.

6 Q. Did you ever tell Dr. Cortese that he could not
7 speak with anyone about this case?

8 A. I did not until -- I believe it was Friday, he
9 called me and said that Mr. Edwards had called him and
10 said "do I need to speak to him?" I told him, sure, call
11 him back. And then he said "well, what do you do from
12 now on?" And I said, well, I'll write him a letter and
13 tell him that I'm compensating you. I have to anyway.

14 Q. Did you ever ask Dr. Cortese to change his
15 testimony or change anything about his opinions in this
16 case as a result of the compensation you agreed to
17 provide him?

18 A. Absolutely not.

19 Q. To your knowledge, had Dr. Cortese been
20 contacted by anyone about this case on the plaintiffs'
21 side or the defense side prior to the time that you speak
22 with him on the 10th?

23 A. To my knowledge, he had not.

24 MR. OLIVER: That's all the questions I
25 have.

1 MR. EDWARDS: We have no further
2 questions, Your Honor.

3 THE COURT: Very well. You may stand
4 down, sir.

5 MR. EDWARDS: I call Mr. Woolsey.

6 MR. JOHNSON: I do need to correct one
7 thing. It's possible that Dr. Cortese was initially
8 contacted by Mr. Oliver or Mr. Oliver's office first for
9 me to talk to him. He asked me when he was first
10 contacted.

11 THE COURT: Who's Mr. Oliver?

12 MR. OLIVER: It's me, Judge.

13 MR. JOHNSON: I think there is that end --

14 THE COURT: Okay.

15 MR. JOHNSON: I'm sorry about that.

16 THE COURT: That's fine.

17

18

19

20

21

22

23

24

25

1 THE STATE OF TEXAS *

2 COUNTY OF NUECES *

3

4 I, ANGEL BLAND-HAZLEY, Official Court Reporter in
5 and for the County Court at Law No. 3 of Nueces County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all the testimony of Scott Johnson directed by counsel as
9 statement of facts in the above styled and numbered cause
10 in court reported by me.

11 I further certify that the total cost for the
12 preparation of this Reporter's Record is \$305.00 to be
13 paid by The Edwards Law Firm.

14 WITNESS MY OFFICIAL HAND, this the 17th day of
15 August, 2005.

16

17



ANGEL BLAND-HAZLEY, CER No. 7149

18

Expiration Date: December 31, 2006

19

Official Court Reporter

20

County Court at Law No. 3

Nueces County Courthouse

21

901 Leopard Street, 7th Floor

Corpus Christi, Texas 78401

(361) 888-0625

22

23

24

25

I.

By letter dated September 27, 2005, Kevin A. Koudelka, filed the Motion of A. Scott Johnson to participate pro hac vice in the above-styled and numbered cause. Plaintiffs ask the Court to take judicial notice of said Motion as it appears in the Court's records.

II.

Plaintiffs oppose the granting of the said attorney's motion to appear pro hac vice for the reasons hereinafter stated.

III.

Heretofore, on or about June 28, 2005, and again on July 29, 2005, in a case styled *Flora Sanchez, et al. v. Northwest Regional Hospital, et al.*, Cause No. 03-61778-3 in County Court at Law No. 3 of Nueces County, Texas (hereinafter referred to as the "Sanchez case"), A. Scott Johnson filed a motion to be allowed to participate pro hac vice in the Sanchez case. True copies of such motions are attached hereto as Exhibit "A." On or about July 30, 2005, Plaintiffs filed their objections to the motion for pro hac vice admission of A. Scott Johnson in the Sanchez case. True copies of those objections are attached hereto as Exhibit "B."

IV.

After a brief hearing, the Court signed its Order admitting A. Scott Johnson pro hac vice for participation in the Sanchez case. A copy of said Order is attached hereto as Exhibit "C."

V.

Thereafter, on August 15, 2005, Plaintiffs filed their Motion to revoke the pro hac vice admission of A. Scott Johnson in the Sanchez case and their Amended Motion to Revoke Pro Hac Vice Admission of A. Scott Johnson in the Sanchez case. A true copy of Plaintiffs' Motion to Revoke is attached hereto as Exhibit "D" and a copy of Plaintiffs' Amended Motion to Revoke is attached hereto as Exhibit "E."

VI.

The gravamen of Plaintiffs' Motion to Revoke the Pro Hac Vice Admission of A. Scott Johnson in the Sanchez case involved the actions of A. Scott Johnson in purportedly "hiring" Dr. Jack Cortese, one of Plaintiffs' decedent's treating physicians, as a "retained expert" on the Wednesday preceding trial, thereby effectively and explicitly preventing Plaintiffs' counsel's independent contact with said treating physician. Reference is made to said Plaintiffs' Motion and Amended Motion to Revoke, including the attachments thereto, for a more extensive description of the conduct called into question by the Motions. The letter from Mr. Johnson regarding his employment of Dr. Cortese is Exhibit "A" to said Motion.

VII.

The Sanchez case was scheduled to begin jury trial on August 15, 2005, in County Court No. 3 of Nueces County, Texas. Eighty (80) jurors were summoned for the purposes

of that trial. Instead of beginning the jury selection, however, on August 15, 2005, hearing commenced on Plaintiffs' Motion and Amended Motion to Revoke.

VIII.

On the basis of conduct that occurred during the August 15, 2005, hearing, and the deposition of Dr. Jack Cortese which took place on the afternoon of August 15, 2005, Plaintiffs' filed their First Supplemental Motion to Plaintiffs' Amended Motion to Revoke the Pro Hac Vice Admission of A. Scott Johnson. A true copy of Plaintiffs' First Supplemental Motion to Plaintiffs' Amended Motion to Revoke the Pro Hac Vice Admission of A. Scott Johnson, together with all of the exhibits thereto, is attached hereto as Exhibit "F." Plaintiffs believe that said First Supplemental Motion and the Exhibits attached thereto are self-explanatory, but generally, Mr. Johnson represented to the witness, Dr. Cortese, and the Court, that a certain HIPAA authorization signed by Mrs. Rodriguez' daughter provided authority for Dr. Cortese to discuss protected health information with Mr. Johnson. The authorization did not allow this disclosure. Further, Mr. Johnson failed to correct the witness statement that a medical literature search had been conducted by Dr. Cortese and that the witness provided a copy of a medical literature, rather than five (5) literature searches. Mr. Johnson did nothing to supplement the discovery with the literature supplied to him by Dr. Cortese.

IX.

The actions of A. Scott Johnson subject of Plaintiffs' First Supplemental Motion involved in past testimony given at the August 15, 2005, hearing and the actions of A. Scott Johnson to which those proceedings pertained.

X.

Before a hearing on Plaintiffs' First Supplemental Motion to Plaintiffs' Amended Motion to Revoke the Pro Hac Vice Admission of A. Scott Johnson, the Court continued the trial of the Sanchez case until August 22, 2005, and dismissed the eighty (80) potential jurors who had been assembled for the case on August 15, 2005.

XI.

No hearing was held on Plaintiffs' First Supplemental Motion to Plaintiffs' Amended Motion to Revoke the Pro Hac Vice Admission of A. Scott Johnson, because the Sanchez case settled prior to the hearing on the Supplemental Motion. Accordingly, Judge Saldaña took no action with respect to said Supplemental Motion.

XII.

In his motion requesting permission to participate pro hac vice in the instant case, Mr. Johnson failed to list the Sanchez case as a cause by which he appeared or sought leave to appear in Texas courts in the last two (2) years.

XIII.

A. Scott Johnson has failed to swear to the facts contained in his Motion, as required by Rule XIX of the Texas Rules Governing Admission to the Bar. A copy of said Rule XIX is attached hereto as Exhibit "G."

XIV.

Plaintiff would show that notwithstanding the fact that A. Scott Johnson stated in his application that he was familiar with the "State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct" governing the conduct of members of the Bar of Texas and agreed to at all times abide by and comply with those Rules so long as he was engaged in any way in the Sanchez case, by his conduct in the Sanchez case, the filing of an unverified Motion in the present case, Mr. Johnson has demonstrated that he was and is not familiar with those Rules and that he would not at all times abide by and comply with those Rules.

XV.

There is no reason to believe that he is any more familiar with those Rules today than he was in August of 2005, or that he would be any more likely to abide by those Rules today than he was likely to abide by those Rules in August of 2005.

XVI.

Plaintiffs would show that the prior actions of A. Scott Johnson as outlined herein have demonstrated plainly that Mr. Johnson is not qualified to be admitted pro hac vice in this case and that his application for admission should be denied.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Application for Admission Pro Hac Vice of A. Scott Johnson to participate in this case be, in all things, denied, and for such other and further relief as to which Plaintiffs may show themselves entitled.

Respectfully submitted,

THE EDWARDS LAW FIRM, L.L.P.

P. O. Box 480

Corpus Christi, Texas 78403-0480

Telephone: (361) 698-7600

Facsimile: (361) 698-7614

By: _____

WILLIAM R. EDWARDS

State Bar No. 06465000

ANGELINA BELTRAN

State Bar No. 02111700

JO EMMA ARECHIGA

State Bar No. 00786996

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record, as listed below, by the method of service indicated, on this the 7th day of October, 2005.

WILLIAM R. EDWARDS
ANGELINA BELTRAN

Mr. J.A. Canales
Mr. Hector A. Canales
CANALES & SIMONSEN, P.C.
2601 Morgan Avenue
Corpus Christi, Texas 78465-5624
Via Hand Delivery

Mr. J. Truscott Jones
JONES CARR MCGOLDRICK, L.L.P.
5307 E. Mockingbird Lane, Suite 600
Dallas, TX 75206
Via Fax w/o exhibits - (214) 828-9229
Via CM/RRR w/exhibits

Mr. William A. Abernethy
DONNELL, ABERNETHY & KIESCHNICK
555 N. Carancahua, Suite 400
P.O. Box 2624
Corpus Christi, Texas 78403-2624
Via Hand Delivery