2007-CA-00755

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Reply

TABLE OF CONTENTS

TABLE OF CASES

STATUTES

TREATISES AND RESTATEMENTS

I.

REPLY TO FACTUAL INACCURACIES AND MIS-STATEMENTS OF THE RECORD

At page 2 of their brief the defendants claim, (without citation to the record) that the claimant "was receiving ALL BENEFITS to which was entitled in his LHWCA case" when he filed his civil complaint. [emphasis theirs]. That statement is at least factually misleading. Joe Riley's suffered a very substantial injury to his left foot resulting in a 50% impairment rating and a scheduled injury award that would have taken 102.5 weeks from his date of maximum medical improvement (9-16-98) to pay out. R. 149, 156. The payout date on the non-controverted scheduled award for impairment to the foot was thus in early September of 2000, indeed after the filing date of Riley's civil complaint on June 7, 2000. The Administrative Law Judge, however, awarded Joe Riley additional benefits for permanent partial disability beginning "[i]mmediately following timely payout of Claimant's scheduled award." R. 156. It is that part of the award that the defendant's tortuously sought to influence by surreptitious entry into Dr. Wiggins' office by their lobbyist "case manager."

At page 5 the defendants state that "[t]he trial court recognized that Riley's actions involved the controversion of his LHWCA workers' compensation claim, a matter controlled by federal and not state law." [citing R. 203]. No such statement exists in the record, and even if it did, it would be patently wrong. Joe Riley's civil case is about misconduct, not about workers' compensation. (See discussion of Atkinson below).

At page 6 of their brief the appellees claim that Joe Riley met with Caty Suthoff on July 21, 1997 "**at his own request.**" [emphasis theirs], citing R 441. The testimony of Joe Riley, reproduced at page 441 of the record, does not even come close to supporting that claim.

The testimony was as follows:

By MR. SALLOUM

Q. And is it correct that Ms. Suthoff called you before she came out to ask permission to come see you in the hospital?

By JOE RILEY

A. I think I – you know, she might of did, I don't know.

Q. You don't deny that she called and asked permission to come see you in the hospital do you?

A. I really don't know, I might have called her and told – well, I did call her and told her, I called Workman's Comp. at West Bank and I told them that I was in the hospital, and that's what I did.

Q. Okay, and then after you made that telephone call to Workman's Comp. Caty Suthoff came to see you in the hospital on October 21, 1997?

A. Yes.

Joe Riley'sanswers to that questioning might support a conclusion that Ingalls attorney, Richard Salloum, knew (as evinced by his leading questions) that it was Caty Suthoff who had called Joe Riley. And, it might also be read to support a conclusion that Joe Riley was messed up on Demerol and Morphine that he couldn't, despite his best efforts, remember who called who. But one thing is perfectly clear, Joe Riley's testimony in no way whatsoever supports any conclusion that he met with Caty Suthoff at "his own request", even when it is not so claimed in bold print. [As to Riley's being on Demerol and Morphine see R 173].

At page 9 the defendants once again claim "uncontradicted evidence" (presumably still found at R. 441. - no citation) that, "it was Joe Riley who gave Suthoff permission to see him in the hospital." They continue: [t]o this day, neither Joe Riley nor his past or present counsel have ever revoked the Medical Authorization." No citation to the record is given for that assertion. [and for the good reason that it is an "off the menu special"]. What the defendant's do not explain is how that bit of alleged "fact" is possibly relevant to this case.

Why would Joe Riley seek to revoke an "authorization" that he alleges in his law suit is void or voidable due to his extreme impairment at the time of execution, and that he alleges has already been voided by the Martin letter, [R. 141] and that so clearly fails to meet the pre-requisite of a "specific and unconditional" authorization of ex parte communications as required by Scott v. Flint? Even more germane to the issue (or non-issue); how could Joe Riley and this counsel possibly believe that there was any further bad conduct left to be prevented by "revocation" of the purported authorization? Furthermore, Ingalls asserts that they do not need any authorization to conduct ex parte communications in "investigation" of LHWCA claims. This goes back to their pre-emption by silence argument, ie, that which is not precluded is allowed, and that the exclusiveness of remedy provisions of the LHWCA prevent any tort actions against them so long as they carry their shield of "investigation of a claim." By that same argument, can't they also break into the claimant's house to obtain evidence? The Longshore Act is silent about that too.

At page 11 of their brief the defendants claim that "[Alexis] Hyland played a neutral role as medical case manager relating to Riley's LHWCA claim." [Emphasis added]. Exactly how is it that an agent hired by Ingalls and informed of a "goal" of establishing that Joe Riley's "back problems are not related to work injury to ankle" played a neutral role? R. 188. By that same logic a hit man can claim to play a neutral role in a murder.

At page 39 of their brief the defendants claim (once again without any reference to the record) that "Riley admitted there was never a period of time during the course of his LHWCA claim that he did not receive any benefits to which he was entitled." That unsupported claim, whether or not true, is certainly irrelevant to the issues before the court.

At page 42 the defendants continue with "factual" assertions without reference to the record, by a claim that they "NEVER denied any of Riley's claims." The truth of the matter is that employer controverted Joe Riley's back claim on or about July 9, 1999 and that such controversion continued until some time later after Dr. Wiggins "re-reversed" himself at his deposition of June 12, 2000. Said facts do not, to plaintiff's knowledge, appear in the 607 page record, but neither are they of any consequence to the issues on appeal.

At page 44 of their brief the defendants claim that Joe Riley "testified that he understood all of the questions being asked of him at the October 21, 1997 interview." [citing R. 442]. He did not do any such thing. In truth he was asked a compound question; "Isn't it correct that during that statement you to told her [Suthoff] that you understood the questions she asked you, and that you gave her truthful answers to the questions she asked?" Joe Riley's answer was, "I gave her the best answers of my ability at the time, yes." [R. 442]. Thus, Joe Riley answered the question about the truthfulness of his answers, to the best of his ability at the time, [impaired by narcotics and in pain as he was], but said nothing about whether he understood the questions. The answer to the question of Joe Riley's understanding on October 21, 1997 lies only in his affidavits of record at pages 173-176. That answer is that Joe Riley was only told that he was signing an authorization to obtain treatment. It was not read by him, or to him, nor explained to him, and that even if it had been he was so doped up and in so much pain that he would probably not have understood it. R. 173-176.

At page 32 of their brief the defendants claim that Riley relies on the Tennessee's case of Givens v. Millikin. The plaintiff, as per pages 18 and 19 of his brief relies rather on the later case of Alsip v. Johnson City Medical Center, 197 S.W. 3d 722 (Tenn. 2006). The Alsip case adopts only portion of Givens, primarily the recognition of "an implied covenant of confidentiality in medical care contracts between treating physicians and their patients." Alsip v. Johnson City Medical Center, 197 S.W. 3d 722, 725 citing Givens v. Millikin, 75 S.W. 3d 383 (Tenn. 2002).

It is Alsip that specifically recognizes that the public policy of the State of Tennessee (even in the absence privilege of a statute) requires prohibition or ex parte physician communications. Givens holds not at all as the defendants here claim, but only that the defendant's insurance company, Allstate, had no vicarious liability for claims of interference with physician/patient confidentiality. The case involved an appeal from a trial court ruling that the complaint failed to state a claim upon which relief could be granted. The court held that "because the complaint allege no legally cognizable injury resulting from these informal conferences with the plaintiff's physician we must find that she has not stated a claim that the Richardson Law Firm, by initiating informal and private conversations with her physician, induced him to breach his implied covenant of confidentiality." Givens v. Millikin, 75 S.W. 3d 383, 410 (Tenn. 2002). Thus, the case related only to a poorly drafted complaint so as to not allow for a vicarious liability claim against Allstate.

II.

REPLY TO APPELEE'S ARGUMENT

A. Generally

This appeal presents a case of first impression in the State of Mississippi. At issue is whether or not employees (in workers' compensation cases) and defendants (in civil cases) can

freely send in their agents to lobby the injured person's physicians to form opinion and produce records favorable to the employer/defendant. The vast majority of employers/defendants include language in their authorization forms specifically stating that ex parte contact with medical care providers is not allowed. A few, such as defendant Ingalls Shipbuilding, have chosen a different tact.

The "Medical Authorization" form signed by Joe Riley on October 21, 1997, while he was hospitalized, is quite a multi-functional document. It purports to provide for choice of physician, claim information release, medical records authorization, and (buried inconspicuously within the body of the records release) to allow doctors to "discuss or confer with Ingalls Shipbuilding Inc." the medical condition of the injured worker. R. 385. As is the case with Joe Riley, it is no doubt presented to numerous unrepresented injured workers with absolutely no mention of the fact it purports to allow for ex parte contact with physicians.

The principal arguments of the defendants are: 1) that the LHWCA, even though it is utterly silent on the issue, it somehow pre-empts state law that and this court is powerless to allow any action in tort to lie against them, even for gross violation of the public policy of the state; and 2) there is no Mississippi law recognizing that an action in tort lies against those who secretly contact and seek to persuade an injured person's doctors to see things their way.

The "pre-emption by silence" argument goes something like this: Nothing in the LHWCA disallows ex parte contacts with claimant's physicians – therefore they are allowed. Furthermore, any application of state tort law is pre-empted by the LHWCA although it is silent on the subject. The most difficult part of this argument should be keeping a straight face while making it.

The second argument of Ingalls; that there is no Mississippi case law allowing an action in tort versus third party actors who violate physician-patient privilege and privacy, simply seeks

to draw the maximum mileage from the fact that this case is one of first impression for the Court. It does therefore, and only therefore, follow that this Court has never before allowed such an action to proceed. The Mississippi Supreme Court has, however, provided a warning to the defendants of how it might rule in such a case. In Scott v. Flynt, the Mississippi Supreme Court recognized that our court rules apply only when a legal action is pending. (As in the before or after "controversion" dichotomy referenced by the defendant's at their page 31). The Court stated:

> The question of ex parte contacts and the waiver of a privilege only come into play during a court proceeding. Therefore, our rules are not applicable and can neither allow nor prohibit a defendant from speaking ex parte with the plaintiff's physician. We simply note with caution that those who violate these rules do so at their own risk.
>
> Scott v. Flynt, 704 So. 2d 998, 1006 [emphasis added].

The Court thus clearly provided a warning to third party actors who might seek to violate the zone of physician-patient privilege and privacy it set forth in Scott prior to initiation an any legal proceedings. Since the "these rules" referenced by the Court is obviously not a reference to the rules of civil procedure, it is an apparent reference to the public policy pronouncement of the Court against ex parte communications. The reference to "at their own risk" is an apparent reference to other liabilities such as those that might lie for damages in tort.

The plaintiff submits two primary controlling principals of his own for this case. First, the Mississippi Supreme Court has specifically rejected the philosophy of the Eli Lilly & Co. line of cases allowing ex parte contacts with doctors and instead specifically adopted that of Homer v. Rowen, prohibiting ex parte communications, "unless, with advance notice thereof, plaintiff specifically and unconditionally authorizes" them. Scott v. Flynt, 704 So. 2d 998, 1005 (Miss. 1996), citing; Homer v. Rowan, 153 F.R.D. 597, (S.D. Texas 1994). As in this case, the Supreme Court's choice between the philosophy of Eli Lilly and that of Rowen was whether or

not to recognize and protect important policy interests of physician-patient confidentiality and privacy. Our Supreme Court in Scott, a case of first impression, (as was Rowan to the 5th Circuit two years earlier) chose to follow the majority and better reasoned rule.

The plaintiff's second controlling principal is that the law and policy must be consistent and not in conflict. Our state has already chosen to value and protect the physician-patient relationship and privilege, as set forth in Miss Code Ann. § 13-1-21, from unauthorized ex parte communications. If those who violate the clearly expressed policy of the state by engaging in unauthorized ex parte communication with health care providers are not subject to an action at law for damages, then law and policy are not consistent, but are in conflict. This Court should follow up on the unequivocal warning given in Scott, not by backing off and saying "we didn't really mean it", but rather by saying, "we meant what we said and said what we meant."

"A patient's privilege of medical confidentiality is of paramount importance and must be afforded protection." Scott v. Flynt, 704 So. 2d 998, 1004 (Miss. 1996). Thus, the public policy of this state is clearly stated and a clear warning to those who would violate the policy has been given. It is only left to be seen whether those who play with fire will be shielded by the courts from being subject to getting burnt by it.

At pages 22 and 23 of their brief the defendants argue that provisions of the Larson's Workers' Compensation Law treatise favor them. Section 127.11, where Professor Larson discusses the "doubtful utility" of the physician-patient privilege as it relates to workers' compensation cases, is particularly favored by the defendants. The referenced section of Larson's treatise falls under his general heading § 127.11 "Probative-Value Versus Fair-Play Rules." The defendant's are apparently only interested in the first half of the equation.

Immediately following the section quoted by the defendants comes § 127.11 [4], entitled "Suggested Solution to the Evidence Problem." In that section, Professor Larson recognizes that

workers' compensation cases play out before "Industrial Commissions", not juries, and that therefore, rules related to probative value of evidence should be relaxed. 7-127 Larson's Workers' Compensation Law § 127.11 [4]. That rule is in accordance with Mississippi law per Scott v. Flynt. Under that heading Professor Larson continues: "But as to [a] second category of rules, those based on the fundamentals of fair hearing, there is no more reason to relax those in administrative-judicial hearings than in court cases." Id.

The plaintiff does not contend that the medical privilege, as far as access to his records, may not be held to be waived by the filing of a worker's compensation claim, since the claimant has placed his medical condition at issue. The issue of the conduct of ex parte contacts with the claimant's medical care providers by employers and carriers bent on private influence and persuasion fits not under Larson's heading of Probative Value of Evidence when medical condition is at issue, but is rather an issue of "fair play" in his dichotomy. But, the Court need not look to the more esoteric arguments of "probative value versus fair-play," set forth by Professor Larson since he speaks directly to the issue of ex parte communications in the same chapter of his workers' compensation treatise.

Larson's sub-section entitled "Ex Parte Investigations and Examinations" is on point and is not mentioned by the defendants for good reason, that being that it is wholly unfavorable to their arguments. 7-127 Larson's Workers' Compensation Law § 127.05 [4]. Under the "ex parte" heading Professor Larson discusses the South Carolina case of Brown v. Bi-Lo, Inc., where the workers compensation commission had ordered a claimant's attorney to "cease and desist from obstructing contact, including contact involving ex parte communication..... between the treating physician and the defendant's representatives." The state court of appeals affirmed the ruling. The Supreme Court of South Carolina reversed. 7-127 Larson's Workers'

Compensation Law § 127.06 [1], citing Brown v. Bi-Lo, Inc., 354 S.C. 436, 581 S.E. 2d 836 (2003).

According to Larson, the court acknowledged that the workers' compensation act required exchange of information on the claimant's medical condition at issue and the medical privilege was waived to that extent. The court held ex parte communications, however, were not authorized and were prohibited. Professor Larson's stated conclusion from the case is that there is a profound difference between discovery of "existing information" and actions seeking the "creation of new information outside of approved discovery channels." Id. That is exactly the distinction that applies here.

B. FEDERAL PRE-EMPTION HAS NO APPLICATION

As they unsuccessfully tried to do before the federal courts, the defendants once more (at page 20 of their brief) try to assert the Atkinson v. Gates McDonald & Co. case as somehow supporting their claims to federal pre-eruption by the Longshore and Harbor Workers Compensation Act. It does not.

It is clear that the LHWCA preempts claims for damages, "to employee[s] ... on account of ... injury or death." 33 U.S.C. § 905(a). "Injury" is defined as "accidental injury ... arising out of and in the course of employment." 33 U.S.C. § 902(2).

In Atkinson v. Gates, McDonald & Co., 838 F. 2d 808 (5th Cir. 1988), the plaintiff had sued in state court on claims of bad faith refusal of a Longshore and Harbor Workers' Compensation Act insurance carrier to pay benefits under the Act. The district court summarized her claims as; "asserting what are in essence state law claims for bad faith intentional infliction of emotional distress in terminating and refusing to pay compensation benefits and medical expenses which Atkinson was entitled to under the Longshore and Harbor

Workers' Compensation Act." Atkinson v. Gates McDonald & Co., 838 F.2d 808 @ 809 (5th Cir. 1988). The Fifth Circuit agreed that district court correctly stated the essence of the claims put forth by plaintiff Atkinson. Id.

The Atkinson Court said, "here, the pervasiveness of the LHWCA treatment of the payment of compensation due, and the conflict therewith which necessarily flows from any state penalty scheme respecting failure to pay LHWCA benefits which differs from the scheme of the LHWCA itself, persuade us that Atkinson's state law claims are preempted." Atkinson v. Gates, McDonald & Co., 838 F2d 808 at 812 (95th Cir. 1988). " In these circumstances, the Longshore and Harbor Workers' Compensation Act is plainly preemptive of any state law claim for intentional or bad faith wrongful refusal to pay benefits due under the Act..." Id.

The Atkinson court also stated:

> Since the Act itself provides not only for payment of benefits, but also for redress in the event of nonpayment of benefits, and further does not distinguish between good faith and bad faith nonpayment of benefits, the apparent intent of the Act is that the penalty provisions provide the exclusive remedy for late payment or nonpayment of benefits. Atkinson, 838 F.2d 808 at 812.

Any reliance on Atkinson as controlling authority for Joe Riley's case is plainly erroneous. In her case, plaintiff Atkinson sought damages for torts the sine qua non of which was non-payment of benefits due under the Act. Although there is some difference of authority among the Circuits as to the issue presented by Atkinson, the Fifth Circuit Court of Appeals reasonably ruled that the Longshore and Harbor Workers' Compensation Act preempts claims relating to non-payment of benefits. [For contrary holding see; Martin v. Travelers Insurance Co., 479 F.2d 329 (1st Cir. 1975), allowing claim for intentional torts for wrongfully stopping payment of compensation].

In the case now before this court, Joe Riley's claims are not in any way founded upon non-payment of benefits that may or may not be due to him under the Longshore and Harbor

Workers' Compensation Act. They are based upon independent tort claims under state law where no permissions or prohibitions are provided by federal law. Those are the important and controlling distinctions between this case and Atkinson.

In his Circuit Court complaint, Joe Riley alleges tort theories of recovery which are provided by state law. Although certainly the conduct of the defendants was committed with the intent of manipulation of potential liability in claims under the Longshore and Harbor Workers' Compensation Act, the Act does not provide a shield of limitation of liability for torts committed against a claimant after a cessation of the employee/employer relationship and outside of the employment context.

Joe Riley does not pursue an action for damages related to the employment contract, the nature of his injury, or non-payment of compensation benefits. His action is founded solely upon state law which provides him certain protections, rights and privileges, all of which were willfully, wantonly, callously, and intentionally disregarded by defendants who now seek to hide behind a shield of "exclusiveness of remedy" provided by the Longshore and Harbor Workers' Compensation Act. Essentially, they assert that the Longshore and Harbor Workers' Compensation Act gives them free reigns to ignore state law so long as their objective is related to administration of a longshoreman's claim.

It was important to the Court's ruling in Atkinson that congress considered the problems of non-payment of compensation as a "starving out" tactic by employers and carriers as indicated by the legislative history of the 1984 amendments to the Longshore and Harbor Workers' Compensation Act. Atkinson v. Gates, McDonald & Co., 838 F2d 808, 811 (5th Cir. 1988). There has been no claim or showing by the defendants in this case that there are any provisions of the Longshore and Harbor Workers' Compensation Act or any legislative history which

allows employer and carriers to send their agents to lobby treating physicians of Longshore claimants in order to persuade them to see things their way.

While the lack of a prohibition against ex parte communications by the Longshore and Harbor Workers' Compensation Act may give and administrative law judge no basis to, for example, exclude evidence so procured, it is quite another matter to say that the silence of the Act pre-empts state laws which provide medical privileges and other protections relating to the doctor patient relationship. One certainly must also question why the defendants, if they are sincere in relying upon their position in this case, routinely seek broad waivers of medical privilege which allow them to "confer with" injured workers' doctors.

No controlling authority has been discovered by the plaintiff for the Fifth Circuit or any other circuit which in any stands for the proposition that Longshore and Harbor Workers' Compensation Acts pre-empts state law claims relating to ex parte communications by the employers and carriers and their agents in administration of longshoremen's claims. The plaintiff can say with conviction, however, that Atkinson is not such authority.

C. INTENTIONAL INTERFERENCE WITH CONTRACT

The defendants contend, as they also did in federal court, that "any alleged actual loss" flowing from the contractual interference claim is compensable and pre-empted by the LHWCA. 33 U.S.C. § 905 (a) (Exclusiveness of liability)." That argument was not persuasive to the Fifth Circuit Court of Appeals and it has not grown any better here.

The defendants allege that the claimant must show an additional [to the fourth element test of Par Industries which Riley clearly meets], or fifth, element "that the contract would have been performed but for the alleged interference." [Appelee's brief at p. 38]. The Restatement of Torts Second mentions no such requirement and it can be applied only to situations where the

contract was not performed and the claim for tortuous interference is based upon the non-performance of the contract. Each of the Mississippi cases requiring the fifth element deals with claims for damages for non-performance of the contract. This case does not. Joe Riley seeks damages for intentional infliction of emotional distress, punitive damages and general damages for interference with his physician-patient contract and relationship, but no damages for non-performance of any contract.

Section 766 (k) the Restatement of Torts Second dealing with intentional interference with performance of contracts by third persons, (as here) says the following:

> K. *Means of interference.* There is no technical requirement as to the kind of conduct that may result in interference with the third party's performance of the contract. The interference is often by inducement.... It is not necessary to show that the third party was induced to break the contract. Interference with the third party's performance may be by prevention of the performance, as by physical force, by depriving him of the means of performance or by misdirecting the performance, as by giving him the wrong orders or information.

Restatement of Torts, Second, Ch. 37 Interference With Contract or Perspective Contractual Relation, § 766 (k), [emphasis added].

Since liability for damages for misdirecting (as opposed to preventing) performance is allowed, there can be no requirement for the "fifth element" in that class of cases. This conclusion can be stated as follows: Where the action for intentional interference with contractual relations is founded upon misdirecting rather than preventing performance of the contract neither party has any burden to show who or what caused "non performance" of the contract, since no such thing occurred. The Court should remain mindful of the fact that intentional interference with the contract for medical care is a commonly recognized basis for disallowance of ex parte physician conferences. (See Appellant's principal brief, p.21).

D. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The defendants claim that their acts "of investigating Riley's compensation claims were hardly willful or done with an 'actual intent to injure' Riley" Brief of Appellees, p.40. What nonsense! Of course they were done with an "actual intent to injure" Joe Riley. By resort to ex parte communication with Joe Riley's doctor the defendants hoped to influence Dr. Wiggins' medical opinion as to causation for Joe Riley's back injury. They had a direct pecurinary interest in the matter for which the improper influence was sought. R. 188.

Joe Riley submitted to the Circuit Court ample evidence of the profound effect that the defendant's actions had on him. In his affidavit of October 2, 2003 he stated: "As a result of the Defendant's actions, as complained of in my complaint ... including unauthorized ex parte communication with my doctor, I suffered great emotional distress and worry." R. 140.

In his affidavit of April 5, 2006, Joe Riley stated that: "Due to the Defendants ex parte communication with my physician Dr. Chris E. Wiggins, I suffered from severe worry, sleeplessness, and severe emotional distress all of which caused me to seek additional medical treatment, due to the defendant's interference with my medical treatment with Dr. Chris E. Wiggins." R. 173. Clearly Joe Ellis Riley makes a prima facia case for intentional infliction of emotional distress.

E. MALICE

The defendants argue that Joe Riley has not established an element of malice in their actions. Brief of Appellee p. 45-47. The defendants improperly attempt to hold the plaintiff to an impossible burden of having to prove what was in their minds. There is no such requirement at law.

Virtually everything complained of by Joe Riley in his complaint involved malice as he

alleged. The actions of the defendant were malicious in that: 1) They were undertaken in secret and without notice. 2) They were untaken with any authorization by the U.S. Department of Labor which oversees medical treatment of injured longshore workers. 3) They were done to influence opinions and cause creation of new information "rather than to discover or uncover any existing information." 4) They were done to harm Joe Riley's interests. [See notes of Alexis Highland. R.188.].

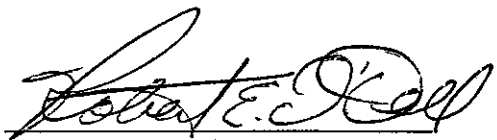
III.

CONCLUSION

This Court has a clear choices in the premises. On the one hand, the court can reverse the Circuit Court's improper grant of Summary Judgment and thus preserve the significance of physician/patient confidentiality as heretofore established by legislation and court precedents of the State of Mississippi

On the other hand, this Court can affirm the dismissal of Joe Riley's complaint and thereby declare "open season" on physician/patient privilege by those who do not recognize boundaries of fair play and good conscience, even when they are spelled out for them by existing law. We can only hope and trust that this Court will clearly and unambiguously announce the Mississippi not only recognizes, but commands, respect of physician/patient confidence, as do other states which have considered this question.

Respectfully submitted this the 12th day of May, 2008.



Robert E. O'Dell

CERTIFICATE OF SERVICE

I, ROBERT E. O'DELL, hereby certify that I have this date mailed by U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Reply Brief to the following:

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